

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE July 30, 2015

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 18-15

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Fiscal Year (FY) 2015 Unemployment Insurance (UI) Worker Misclassification Prevention and Detection Supplemental Funding Opportunity.

1. **Purpose.** To notify states of the availability of FY 2015 UI funds to address worker misclassification within the federal-state UI program and provide guidance to states on how to apply for these funds.

2. **References.**

- Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235;
- ET Handbook No. 401, 4th Edition, Unemployment Insurance Reports;
- Unemployment Insurance Program Letter (UIPL) No. 3-11, *Implementation of the Effective Audit Measure*; and
- UIPL No. 18-14, *Fiscal Year 2014 Unemployment Insurance Worker Misclassification Prevention and Detection Supplemental Funding Opportunity*.

3. **Background.** The U.S. Department of Labor (Department), Employment and Training Administration (ETA), is committed to the development of UI tax-related systems and tools focused on the prevention and detection of worker misclassification. The Consolidated and Further Continuing Appropriations Act, 2015, (the Act) provides funds for states to enhance their prevention and detection methods for worker misclassification. Worker misclassification occurs when an employer incorrectly classifies an employee as a non-employee such as when the employee is incorrectly classified as an independent contractor. In some cases, when an employer does not report an employee, the employment relationship may be part of the underground economy. Both of these actions reduce UI tax revenue, and adversely affect a worker's ability to receive UI benefits, worker's compensation, Social Security benefits, health insurance coverage, retirement coverage, and protection under the Fair Labor Standards Act. The Act includes \$10 million for activities to address the misclassification of workers. ETA's Office of Unemployment Insurance will make \$10 million available, through competitive grants, to states to help states increase their capacity

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for preventing and detecting worker misclassification and to help states enforce their state UI laws and policies related to worker misclassification.

4. Use of Funds. States may propose projects to:

- Improve systems that will enable them to share data with Federal and state agencies. For example, incorporating the Internal Revenue Service (IRS) 1099-Misc extract files from the IRS' *Government Liaison Data Exchange Program* (GLDEP);
- Implement targeted audit strategies to focus on industries most likely to misclassify workers;
- Establish a statewide task force to target egregious worker misclassification schemes;
- Develop education and outreach programs for employers to help prevent misclassification; and
- Develop other innovative approaches designed to enhance the prevention and detection of misclassified workers.

5. Application, Award, and Expenditure of Supplemental Funds. All states are invited to apply for these grants. States that did not receive funding last year (in FY 2014) and that meet the criteria for a grant award in FY 2015 will receive priority for funding. Since only \$10 million is available for funding state projects, ETA anticipates limiting awards to \$500,000 per state. Therefore, states may request up to \$500,000 for a misclassification project(s). If the projected cost of a project exceeds the maximum amount of \$500,000, the state must commit to completing the project without additional Federal funds (for example, using funds leveraged from other sources). However, if the amount of funds approved for all states is less than the total amount available (\$10 million), the Department will fund projects in excess of \$500,000 and/or fund additional projects. A state submitting multiple projects totaling in excess of \$500,000 should rank each of the projects in the order of funding preference.

Due to the tight timeframe for developing and submitting these proposals, states should provide only the information requested. Proposals will be scored and ranked for funding beginning with the highest score(s) and continuing until all funds have been exhausted. Proposals that do not meet a minimum standard score of 80 points will not be funded. If a state requests funds to expand or enhance a previously funded project, the state must clearly describe in detail how the funds will be used to accomplish the expansion or enhancement of the project. After projects have been approved, a Letter of Award will be issued to the state(s) listing the proposal(s) that is being funded by the supplemental budget request (SBR). It will include the funding level for each proposal and the total funding level for the state's SBR along with any other information and documents required by the common rules. Additionally, the state will also receive a grant award package that includes a Notice of Obligation.

States must obligate the funds for misclassification projects by September 30, 2017, and liquidate the obligations within 90 days of that date. Upon written request from the state, no later than August 31, 2017, ETA's grant officer may extend the liquidation period, provided

that the funds have been obligated to an outside contractor. An extension cannot be granted if the funds are intended for use by state staff or by another state agency. During the life of the project, states will submit a separate ETA 9130 to report quarterly financial information. States are encouraged to use the application document provided in the Attachment to this UIPL to prepare an SBR package. States must also submit both the form SF-424 (OMB No. 4040-0004) http://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf and SF-424A (OMB No. 4040-0006) <http://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf> covering all projects in the SBR. Applications that do not follow this prescribed format will be returned to the states for correction without review. The Department reserves the right to negotiate grant amounts with each applicant. States will be required to submit revised forms SF-424 and SF-424A if the final award amount is different from the initial request. New grant agreements will be executed for supplemental funds awarded under this UIPL.

6. **Funding Criteria.** States may reference the Supplemental Budget Request Outline in the attachment to this UIPL for a detailed explanation of how applications will be assessed against the criteria. State proposals will be scored based on the following general criteria:
 - *Project Timeline(s):* States should identify all key dates in their proposals by including a timeline. The value of this element is 10 points.
 - *Description of Costs:* States should identify all staff costs, hardware and software costs along with other related costs for the proposed project(s). The value of this element is 15 points.
 - *Strategic Design:* States should provide an analysis of current operations and a description of the state's proposed solution(s). The value of this element is 50 points.
 - *Measurable Improvements Expected in UI Operations:* States should list and quantify the expected improvements after implementing the proposed solution(s). The value of this element is 25 points.
7. **SBR Reporting Requirements.** Each state recipient of SBR funds must submit a narrative Quarterly Progress Report (ETA 9165) and Quarterly Financial Report (ETA 9130) containing updates on the progress and implementation of each grant project as listed in the award letter. ETA will issue additional guidance on the submission of quarterly progress reports to meet the reporting and record keeping requirements of these grants.
8. **OMB Information Collection.** OMB Information Collection No. 1225-0086, expires January 31, 2016.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments about the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of the Departmental Clearance Officer, 200 Constitution Avenue NW, Room

N1301; Washington, DC 20210. Comments may also be emailed to DOL_PRA_PUBLIC@dol.gov. PLEASE DO NOT RETURN THE COMPLETED APPLICATION TO THIS ADDRESS. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS ANNOUNCEMENT.

9. **Action Requested.** State administrators are requested to:

- Provide information contained in this UIPL to appropriate staff;
- Work with the appropriate ETA Regional Office to develop a successful proposal(s); and
- Send, via e-mail, an electronic copy of the proposal and accompanying forms to ows.sbr@dol.gov by **August 21, 2015** – along with a copy to the ETA Regional Office.

10. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.

11. **Attachment.** Supplemental Budget Request Outline

Supplemental Budget Request Outline

1. **Name of the Project:**
2. **Amount of Funding Request for the Project:** Provide the total dollars requested for this proposal. By submitting this proposal, the state agrees to complete this project without additional Federal funds.
3. **State Contact:** Provide the name, telephone number and e-mail address of the individual who can answer questions related to this proposal.
4. **Project Description:** Briefly describe what the funds will accomplish.
5. **Project Timeline:** The value of this section is 10 points. Provide a timeline based on the date of the grant award. Identify the dates of all significant steps in this project from date of receipt of the grant through the projected implementation date of the project. A detailed timeline, which lists the target dates or milestones for all the key tasks, will receive more points than a general timeline that fails to capture key dates and tasks.
6. **Description of Costs:** The value of this section is 15 points. Provide a description of the costs associated with the proposed project. Costs must be clearly broken out for a state to receive the maximum 15 points.

a. Staff: States should use the table format below to request state or contractor staff. Please provide actual cost descriptions.

Type of Position(s)	Number of Positions	Staff or Contract	Number of Hours	Cost Per Hour	Total Cost

- b. Hardware, Software, and Telecommunications Equipment: Provide an itemized list of hardware, software and telecommunications equipment including the cost per item and the number of each item requested. A description of each item should provide information needed to identify the specific item and a description of the size and capacity of each item, if applicable.
- c. Other: Identify and explain the need for each item; provide the expected cost per item.
7. **Strategic Design:** The value of this section is 50 points. Include a brief description of the strategic project design identifying key reasons this project is needed and how it will improve the state’s performance in preventing and detecting worker misclassification.

For example, a state may propose using IRS file extracts, such as the 1099-Misc extract file, to perform computer matches, which may identify employers that are not submitting or are underreporting state UI reports.

Below is a breakdown for the points of the strategic design elements that should be included in the application.

- a. Analysis of Current Operations: The value of this part of the element is 10 points. Include evidence of a well-thought-out analysis of current operations and identify any problem(s) that this project will address. Include evidence the state used to identify that a problem(s) exists and provide information reflecting the current status of any systems or procedures in place to address the problem.
- b. Proposed Solution: The value of this part of the element is 40 points. States should describe how the project will increase the state's capacity for preventing and detecting worker misclassification and enforcing state UI laws and policies related to reducing the incidences of worker misclassification. The proposal should explain how the planned solution will work, including any changes to current operations. These changes may include adding methods of addressing misclassification that are not being optimized and/or implementing new processes to address worker misclassification. If another commonly known solution(s) could also work, the state should explain why the proposed solution is preferred based on the state's needs.

The emphasis should be on long term solutions that will address ongoing problems. Long term solutions that help to ensure consistent high performance such as passing the Effective Audit Measure each year will be scored highly. For example, the proposal could involve implementing a solution(s) that enhances future program operations such as developing a new or enhanced automated system(s) that identifies industries most likely to misclassify workers for field audits and is a good predictor of high yield audits. The score of this element will be reduced by up to 8 points if the proposed solution is determined to be short-term that only meets current operational needs.

- 8. Measurable Improvements Expected in UI Operations:** The value of this element is 25 points. List and quantify the improvements expected from implementing the proposed project. Provide estimates of realistic quantifiable improvements and/or cost reductions (e.g., improvement might be an estimated 25 percent decrease in the number of employers who misclassify employees). The narrative should explain how the estimate(s) was derived.