

Attachment D, Part 1

**Comments on FRN: Proposed Changes to UI Performs**

#	Issue	Comment	DOL Response
1	<p><b>Result of Changes</b></p> <p><b>Increased Focus</b></p> <p><b>Management Information</b></p> <p><b>Regarding GPRA</b></p> <p><b>SQSP</b></p> <p><b>CAPs</b></p>	<p>15 states commented on expected results of the 5-year review of performance measures, as did NELP &amp; AFL/CIO.</p> <p>11 states approved of increased focus on critical measures.</p> <p>5 states were glad to see that Management Information would be collected for their use, although 1 suggested evaluating these reports to reduce their number. 1 state mentioned favoring consolidation of benefits payment time lapse. 1 state mentioned its approval of the 21 day time lapse for all nonmonetary determinations.</p> <p>Both NELP &amp; AFL/CIO commented in opposition to the changes as detrimental to the jobless, and called attention to reductions in funding of state employment service operations since 2001. 2 states agreed that further reviews such as this one should be planned for the future.</p> <p>2 states said that the GPRA goals should not become performance measures for individual states, and another state questioned the logic of differing standards for Tier I versus GPRA.</p> <p>7 states favored the streamlining of the SQSP narrative; 4 states specifically stated that they disliked being required to describe prevailing economic or political conditions as a part of the SQSP.</p> <p>5 states and NELP addressed the subject of CAPs:</p>	<p><i>Core (formerly "Tier I") measures are assigned a criterion that is intended to be a floor below which performance must not fall, while GPRA measures set performance goals every state should try to achieve.</i></p> <p><i>DOL hopes to see the narratives in the SQSP as concentrated commentary on performance issues; however, states can choose to include information on other factors if they are contributing to performance problems.</i></p>

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		<p>1 state commented that the cycle of UI Performs evaluation does not allow sufficient time for corrective action plans to work before they are changed or dropped;</p> <p>1 state asked “What efforts will USDOL make to enforce the correction of deficiencies regarding ALPs that are habitually covered in the SQSP narratives &amp; by CAPs but remain below the required thresholds?”</p> <p>2 states were comfortable with the plan as outlined; 1 state suggested that other approaches to corrective action (including doing nothing) could be considered besides CAPs.</p> <p>NELP is concerned that DOL “only requires a ‘corrective action plan’ after the state has failed to meet the criteria and workers have lost out on benefits for a substantial period. . . DOL must do much more to fulfill its role in ensuring that workers receive benefits when due . . .”</p>	<p><i>CAPs are Corrective Action Plans – they should be written to produce effective and appropriate actions. DOL encourages states to do long-range (multi-year) planning and to include requests for technical assistance or analysis of operations in order to boost performance. Milestones can be redesigned annually to reflect changing performance. In many cases, a one-year cycle is not long enough for results to become apparent as either successful or unsatisfactory.</i></p> <p><i>The proposed changes in performance measures are in no way a lowering or lessening of standards, and in no way will be detrimental to jobless workers. To the contrary, the changes will allow states to better focus on the most critical program areas that will promote better customer service.</i></p> <p><i>DOL consistently monitors state performance and works cooperatively with the state agencies to help improve performance. DOL takes all the steps outlined in 20 CFR Section 640.8 as needed, and will continue to do so.</i></p>
2	<p><b>Nonmonetary Determinations Timeliness</b></p> <p><b>Issue Detection Date</b></p>	<p>23 states commented on the proposed change to the measure, as did NELP.</p> <p>16 states agreed that the beginning parameter of detection date makes a better measure of nonmonetary determinations timeliness than the week-ending date of the first affected week, largely because issue detection date marks the time at which the state has control of the disposal of the issue.</p> <p>SWAs also feel timeliness [using w/e date] would be adversely affected by backdating of claims and other issues.</p>	<p><i>DOL agrees that calculating time lapse from the date an issue is detected is the most valid measure of state operational efficiency. (For claimants and employers, the week-ending date of the first affected week is arguably more pertinent.)</i></p> <p><i>States have been reporting time lapse from issue detection date to determination date since January 1997, but errors in reporting the issue detection date remain unacceptably high, as verified through data validation carried out during the nonmonetary quality reviews.</i></p>

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	<b>Week-ending Date of First Affected Week</b>	<p>10 states felt the change to w/e date of the first affected week would penalize states for not detecting issues over which they had no control.</p> <p>4 states felt they would need to know the new criterion before judging the measure.</p> <p>3 states support combining time lapse measures; 1 wishes to retain separate measures.</p> <p>2 states felt that w/e date could prove a disincentive to detecting potential issues.</p> <p>2 states cited concerns over Java.</p> <p>1 state said the proposed measure would be an improvement but would like “uncontrollably” undetected issues tracked separately under a different standard.</p> <p>1 state said it would be negatively impacted due to liberal backdating of claims.</p> <p>1 stated that, since w/e date requires programming changes and training, it would be costly to implement.*</p> <p>NELP said that, in view of the many states failing the current benchmark, the current standards should remain in place, and more demanding benchmarks should be adopted to ensure timely determinations of eligibility for benefits.</p>	<p><i>Because commenting states clearly prefer to retain the timeliness measure using detection date, DOL will extend the use of this measure for a period of one performance year.</i></p> <p><i>During that year DOL will examine the causes of the inaccurate reporting and determine whether reporting can be improved to an acceptable level.</i></p> <p><i>If issue detection date reporting accuracy cannot be improved, DOL will revisit the issue.</i></p> <p><i>*States currently report the week-ending date of the first affected week on the ETA 9053.</i></p>
3	<b>Nonmonetary Determinations Quality</b>  <b>On scoring separate samples for separations &amp; nonseparations:</b>	<p>3 states concur with the proposal of scoring the samples separately.</p> <p>2 states say the change will have no effect on them.</p> <p>2 states would prefer to continue using a single weighted score.</p> <p>1 state said the measure should match the time lapse measure, either combined or separate.</p>	<p><i>Scoring the samples separately and requiring that both samples independently pass validity tests will result in a clearer picture of the quality of nonmonetary determinations and help pinpoint areas that require additional attention.</i></p>

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	<p><b>On quality scoring method:</b></p> <p><b>On cross-regional reviews:</b></p> <p><b>On ALPs:</b></p> <p><b>On automation:</b></p>	<p>10 states feel that change is needed in the scoring method; most of these states make the point that the current pass/fail system causes too many states to fail the quality measure because of over-emphasis on detail.</p> <p>1 state submitted a proposal for a revised scoring method, which DOL is reviewing.</p> <p>1 state felt that the Handbook on Nonmonetary Quality [HB 301] should be revised and that written clarifications should be provided to questions brought up during tripartite reviews.</p> <p>1 state does not see any need for cross-regional reviews to overcome localized bias;</p> <p>1 state favors cross-regional reviews to develop national consistency in scoring.</p> <p>1 state proposed that the ALP for nonmonetary determination quality be adjusted annually to reflect funding levels.</p> <p>1 state proposed increased levels of automation in nonmonetary determinations.</p>	<p><i>As part of the UI Performs review, a state/federal nonmonetary determinations workgroup studied the quality review system, including the scoring system. The workgroup's recommendations were issued for comment in UIPL 29-04. Changes to the review and scoring systems will be issued separately.</i></p> <p><i>All comments received related to the quality review and scoring systems will be considered.</i></p>
4	<p><b>Lower &amp; Higher Authority Appeals Timeliness</b></p> <p><b>Average age:</b></p> <p><b>Need for change:</b></p>	<p>20 states and NELP commented on the proposed measure.</p> <p>9 states commented that the new measure provides better incentive for deciding all appeals promptly, but 1 suggested the use of the <u>median</u> age rather than <u>average</u>, and 3 requested that multi-claimant appeals be removed from the time lapse universe.</p> <p>7 states felt there was no need for a change in the measure or felt the reasons for the change were not convincing.</p> <p>1 state did not wish to comment without knowing the new</p>	<p><i>The proposed measure of average age of pending appeals provides a more comprehensive view of states' appeals programs. The current time lapse measure provides information only on decisions that have been made but no information about the number of remaining appeals nor how old those cases may be.</i></p> <p><i>The measure of average age of pending cases would create a single measure for promptness performance and the age of the inventory of pending cases. While it is important to know the percent of cases decided within certain time intervals, in the interest of</i></p>

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		<p>standard.                      1 state felt that either the current or the new measure would be acceptable.                      AFL/CIO said that current standards that apply to appeals timeliness should be strengthened.                      NELP commented that using the age of pending decisions will provide information that is more relevant to the question of the volume of undecided cases.</p>	<p><i>good customer service it is more important to know how long individuals must wait to be served.</i></p> <p><i>The new measure is contingent upon OMB approval to collect the data.</i></p> <p><i>DOL will continue to collect and monitor appeals time lapse data currently collected.</i></p>
5	<p><b>Detection of Overpayments</b></p> <p><b>Variation:</b></p> <p><b>Need for testing:</b></p>	<p>14 comments on the proposed overpayment detection measure were received from states and from the AFL/CIO and NELP.</p> <p>5 states commented that there is too much variation among states in the BAM &amp; BPC programs for the measure to be comparable; 1 felt that the difference in measurement periods for the two programs will make it impractical to implement.</p> <p>6 states suggested that the measure needs extensive testing and much more information before it is implemented. 2 states were opposed to the measure because of the unknown degree of confidence in reporting and an unpredictable range of error in calculating results</p> <p>2 states said they approve the measure, and 1 other would approve if it were expanded to include underpayments and wrongful denials</p> <p>2 states would attempt to apply the measure if they were given adequate budgetary allotments to do so.</p> <p>1 state withheld comment because the measurement criterion is unknown.</p>	<p><i>DOL will be examining the data for the next year to determine whether the proposed measure can be refined. Due to anomalies found in current data, careful scrutiny will be maintained to assure the correctness of BAM data.</i></p> <p><i>Also being considered is the possibility of applying this measure to a rolling three-year performance period, to bring BAM and BPC data into focus for the same time frame.</i></p>

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	<b>Employer audit:</b>	<p>1 state is uncertain what corrective action could be taken should their performance be judged inadequate.</p> <p>1 state feels it should be allowed to use collection agencies to pursue overpayments.</p> <p>1 state suggests that the emphasis should be much more on prevention of overpayments.</p> <p>1 state recommends that the measure not be enacted until software is available to track performance in a timely manner.</p> <p>AFL/CIO feels DOL has not focused sufficiently on employer fraud as a cause of OP and that DOL should do more to establish standards related to underpayments due to improperly denied benefits. NELP feels that the “Proposed Program Integrity Standards Are Unbalanced Against Workers. . . DOL [should] require states to do a better job reducing the hundreds of millions of dollars in benefits that are <u>underpaid</u> today’s worker, and more aggressively address the problem of program integrity as applied to employers who fail to pay their fair share of unemployment taxes. . . “</p>	<p><i>The proposed measure is the <b>detection</b>, not the collection, of overpayments. The first step toward prevention is detection.</i></p> <p><i>DOL is in the process of making performance data available on the ETA Web site.</i></p> <p><i>Employer integrity is of great concern to DOL. Employers are subject to audit through the Tax Performance System; approximately 110,000 misclassified employees are discovered and corrected through the states’ audit program annually.</i></p> <p><i>BAM currently tracks and reports underpayments and also samples denied claims for correctness.</i></p>
6	<b>Facilitate Reemployment</b>	<p>25 states commented, plus NELP &amp; AFL/CIO.</p> <p>1 state was in favor of the proposed measure.</p> <p>24 states, NELP and AFL/CIO were against the proposed measure.</p>	
	<b>Role of economy, seasonality</b>	<p>13 states commented extensively regarding the large role of the economy and of seasonality adjustments with respect to the proposed measure, saying that even ES</p>	<p><i>In addition to providing benefits to unemployed workers, the UI system has a responsibility to facilitate worker reemployment. This is evidenced in states’ “able and available” requirements that UI</i></p>

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	<p><b>A new focus for UI</b></p> <p><b>ES registration</b></p> <p><b>Outside UI Control</b></p> <p><b>How to measure</b></p> <p><b>Effect on claimants</b></p>	<p>can't get claimants reemployed when there are no jobs available.</p> <p>10 states responded that the UI role is to pay benefits when due and to collect employer contributions; that the monies funding UI are expressly devoted to those purposes and cannot be legally used to fund ES functions.</p> <p>9 states felt that claimants should be registered with ES and that there are measures of reemployment funded there.</p> <p>8 states expressed the opinion that reemployment is an activity which is totally outside UI control.</p> <p>4 states inquired about what UI function or action would be measured with reference to claimants' reemployment. 4 states added that if reemployment is to be measured with respect to UI, it should at most be a Management Information measure. 3 states asked what research information was used in the development of the proposed measurement. 1 state suggested that the measure should use the unemployment rate as a measure.</p> <p>NELP expressed concern that claimants will be forced to accept unsuitable work because of the new measure; longer unemployment is a product of the labor market and not the fault of the jobless. AFL/CIO commented similarly, that claimants would be forced into unsuitable work in a weak economy and that providing</p>	<p><i>beneficiaries be both able to work and available to work; the worker profiling requirement; and the requirement in the Social Security Act that UI benefits be paid through public employment offices. The UI system is uniquely situated to facilitate reemployment by conducting eligibility reviews and enforcing state requirements that UI beneficiaries seek and accept suitable work.</i></p> <p><i>DOL plans to continue to seek required approvals to collect reemployment data.</i></p> <p><i>The reemployment measure will take into account economic conditions when setting criteria.</i></p> <p><i>DOL disagrees that the measure will force claimants to accept unsuitable work. The measure in no way lessens claimants' benefits rights which protect claimants from losing benefits for not accepting unsuitable employment.</i></p>

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		temporary replacement income is the core purpose of UI.	
7	<p><b>First Payment Promptness</b></p> <p><b>Interstate causes problems</b></p> <p><b>Multi-claimant issues</b></p>	<p>13 states and NELP commented on the measure.</p> <p>13 states support the proposed measure, 5 with the caveat that interstate and intrastate should be measured separately due to problems with CWC and IB claims.</p> <p>2 states feel that Labor Disputes and other multi-claimant issues cause negative effects on first payments and should be excluded from the measure.</p> <p>1 state explained that high levels of UCFE &amp; UCX claims as well as interstate negatively affect time lapse.</p> <p>NELP commented that claimants often have need for immediate wage replacement or they may face extreme hardship, and the first payment timeliness requirement forces SWAs to pay quickly.</p>	<p><i>DOL acknowledges that conditions exist which make some first payments take longer than others; that is why the criterion is set at less than 100%.</i></p> <p><i>The proposed measure does not reduce incentives to pay claims quickly – it broadens the scope of the existing first payment timeliness measure to include every type of claim but workshare.</i></p>
8	<b>Effective Date for Implementing Changes</b>	2 states asked that implementation of the proposed measures not begin until all states are reporting with knowledge of the proposed standards.	<i>The first SQSP affected will be for FY 2006 that states will complete during the summer of 2005.</i>