

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Part 602****Federal-State Unemployment Compensation Program: Unemployment Insurance Quality Control Program****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Proposed rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor is proposing to issue regulations to establish a permanent quality control (QC) program in the Federal-State unemployment insurance (UI) system. The creation of a QC system has been mandated by the Secretary of Labor and the President's Fiscal Year 1986 Budget includes a provision for a UI QC program. The establishment of the UI QC program is a major initiative to improve program performance and revenue collection, and to reduce inaccurate benefit payments and claims denials, administrative errors, and abuse in the UI system.

**DATE:** Written comments must be received by the close of business on August 25, 1986.

**ADDRESS:** Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, DC 20213.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, DC 20213. Telephone: (202) 376-6636 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

Recent reviews of benefit payments and revenue collections indicate potentially serious problems in the Federal-State unemployment insurance (UI) program. A random audit of benefit payments in 46 States found a percentage of errors in making payments which needs to be reduced. In addition, audits of benefit payment control, tax accounting and cash management activities indicated the need for improvement in all of these functions. To address these needs, a program of

quality control (QC) will be initiated; QC will expand upon previous efforts, notably the random audit program, and provide the basis for diagnosing problems and taking corrective actions.

**"QC Will Be Mandatory"**

The QC program will be the principal means by which the Federal-State UI partners evaluate the administration of a State's UI law and achieve improvement in program operations. Its design relies heavily on the experience of the random audit program, which was voluntary for the States. Given the importance of ensuring the accurate and timely payment of benefits to eligible UI claimants and the accurate and prompt collection of UI contributions, however, participation of the States in the QC program will be mandatory.

The purpose and scope of the UI QC program is described in Subpart A. Subpart A explains what the QC program is designed to accomplish and defines which laws the regulations apply to in the States.

**"State Law"**

The Secretary of Labor (Secretary) has no reason to believe that a mandatory QC program will require any State to amend its law to fulfill the methods of administration requirement in section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) as the QC program is an expansion/enhancement of other Federal-State UI evaluation programs, such as the random audit and the quality appraisal, which have been operative in State agencies for some time. States are encouraged, however, to review their laws to ensure that an adequate legal basis exists for implementing QC.

**"Major Objectives"**

Subpart B, *Federal Requirements*, defines the authority under which these regulations are issued. It also explains the Secretary's interpretation of the authority allowing the Department to make the QC program mandatory. The proposed rule contains requirements for the UI QC program. It describes Federal responsibilities and State responsibilities for implementing and maintaining a QC program. Because the integrity of the data is vital to the success of the QC program, Subpart C, *State Responsibilities*, contains requirements which ensure the objectivity of the QC unit and eliminate potential conflicts of interest. Subpart C also provides:

(1) That the State shall perform sampling and case investigation in accordance with standard procedures, transmit data so obtained and other

required reports to the Department, and publish findings in a format prescribed by the Department of Labor (Department) (§ 602.21); and

(2) That the Department may determine the QC program, or a part of the program, is not necessary for the proper and efficient administration of a State law and, therefore, the State need not administer the QC program in whole or in part. The section is written broadly to allow the Department sufficient discretion in reaching a determination; however, it is not presently anticipated that the section will be implemented in cases other than those in which the costs of operating a QC program might be deemed excessive in relation to the overall results obtained (§ 602.22).

Subpart D, *Federal Responsibilities*, defines the management and oversight responsibilities that the Federal government has under these regulations. These responsibilities include establishing required methodologies and procedures, maintaining a computer data base, validation of QC methodology, and review of QC operational procedures and samples.

Subpart E, *QC Grants to States*, provides:

(1) That the Secretary has the authority to recapture QC granted funds which are expended in a manner inconsistent with the requirements of the proposed rule (602.41); and

(2) That the Secretary will withhold all grants for administration from a State that fails to implement a QC program (§ 602.42).

**Discussion of Consultations**

The Department published an Advance Notice of Proposed Rulemaking in the Federal Register on September 26, 1984, at 49 FR 38083, to inform interested persons of its intentions to establish a permanent QC program for the UI system. During the 30-day comment period the Department received five letters with comments. Prior to and after the request for formal comments the Department held numerous meetings with those involved in the UI system to solicit ideas and reactions to the proposed design of the QC system.

In June 1985, the Secretary of Labor decided to delay the planned July 1985 implementation of the UI QC program as the QC program is a major policy initiative with far-reaching and long-term implications for the UI system. These regulations reflect the decisions of the Secretary based on the contributions of reviewers.

**"Review Process"**

The Secretary directed the undertaking of wide-ranging policy review. The purpose of the review was to explore fully and formally the basic policy decisions forming the framework of the QC system and to ensure full participation of the many groups involved in UI administration.

The Secretary's review was announced in a notice published in the Federal Register on August 6, 1985, at 50 FR 31787 and a public meeting was announced to be held on August 21, 1985, 50 FR 31792, and inviting letters expressing viewpoints, suggestions, and alternative approaches from Governors, employer groups, organized labor, and State Employment Security Administrators. Each group was asked to comment specifically on nine (9) design issues which were described in the Federal Register on August 6, 1985, at 50 FR 31787. The nine design issues are described below.

**"Design Issues"**

**1. System Operations**

What should be the balance between State and Federal responsibilities in operating the system?

- (a) Total State operation.
- (b) Total Federal operations.
- (c) Mixed Federal/State division of responsibilities.

**2. Coverage**

Should State coverage under the system be optional or required?

**3. Access to Data**

Who should have access to overall findings and case related data?

- (a) Release data publicly on error rates and procedural deficiencies.
- (b) Do not release data publicly.
- (c) State option.

**4. Scope**

What should be the geographical or jurisdictional scope of the investigations?

- (a) Single national sample.
- (b) Representative State sample.

**5. Investigative Objectives**

Should the case reviews of the sample claims focus on administrative procedures, on program outcomes, or both?

**6. Purpose of the Data Collected by the System**

Should the system provide data for corrective action involving only operational and procedural problems or generate information which can be used to affect changes in Federal and State law and policy?

**7. Methodology**

Should the system feature standard definitions, procedures, and methodologies?

**8. Error Correction Strategies**

How can the system best accomplish the objective of ensuring States will take corrective action to reduce error rates or otherwise improve processes?

- (a) Encourage but do not require corrective action.
- (b) Provide incentives.
- (c) Require corrective action.

**9. Program Included**

How comprehensive should the system be?

- (a) A comprehensive system.
- (b) A partial coverage system.
- (c) Revenue collections.

**"Responses to the Nine Design Issues"**

A total of 61 written responses were received by the Department as of October 9, 1985. The distribution of these responses among the major interest groups was as follows:

- Labor—5 responses
- Business—3 responses
- SESAs—24 responses
- Governors—28 responses (including the National Conference of State Legislatures)
- Other—1 response (IAPES)

The following shows how each organization by major interest group responded to the nine QC design issues presented in the Federal Register of August 6, 1985. Some of the responses did not specifically address the nine issues.

**System Operations**

What should be the balance between State and Federal responsibilities in operating the system?

	Mixed	State only	Federal only
Labor.....	2	0	0
Business.....	3	0	0
SESAs.....	14	1	0
Governors.....	13	1	0
Total.....	32	2	0

**Coverage**

Should State coverage under this system be mandatory or voluntary?

	Mandatory	Voluntary
Labor.....	0	2
Business.....	3	0
SESAs.....	11	5
Governors.....	9	5
Total.....	23	12

**Access to Data**

Who should have access to the overall findings and case related data?

	Release to Public		Release to DOL	
	State control	Federal control	Some data	All data
Labor.....	2	0	2	0
Business.....	0	3	0	3
SESAs.....	18	0	9	3
Governors.....	15	0	6	2
Total.....	35	3	17	8

**Scope**

What should be the geographical or jurisdictional scope of the investigations?

	State representative sample	National sample
Labor.....	3	0
Business.....	3	1
SESAs.....	16	0
Governors.....	11	0
Total.....	33	1

One (1) governor and one (1) labor group also favored subState samples.

**Investigative Objectives**

Should the case reviews of the sample claims focus on administrative procedures, on program outcomes or both?

	Both	Out-come only	Proce-dure only
Labor.....	2	0	0
Business.....	3	0	0
SESAs.....	14	0	1
Governors.....	11	1	0
Total.....	30	1	1

**Purpose of the Data Collected By the System**

Should the system provide data for corrective action involving only operational and procedural problems or generate information which can be used to effect changes in Federal and State law and policy?

	Narrow (errors only)	Broad (policy/leg. analysis)
Labor.....	4	0
Business.....	1	2
SESAs.....	22	2
Governors.....	13	4
Total.....	40	8

**Methodology**

Should the system feature standard definitions, procedures, and methodologies?

	Standardize		Other State standards
	But flexible	Not flexible	
Labor.....	2	0	0
Business.....	1	2	0
SESAs.....	16	1	1
Governors.....	11	1	2
Total.....	30	4	3

**Error Correction Strategies**

How can the system best accomplish the objective of ensuring States will take corrective action to reduce error rates or otherwise improve processes?

	Corrective action		Funding	Incentives
	Voluntary	Mandatory		
Labor.....	2	0	1	0
Business.....	3	0	1	0
SESAs.....	11	1	15	0
Governors.....	6	1	12	2
Total.....	22	2	29	2

In addition, one (1) business group specifically opposed provision of additional funds for corrective action. One (1) SESA suggested technical assistance would be an incentive for corrective action. One governor suggested relaxation of staffing requirements would help.

**Programs Included**

How comprehensive should the system be?

	Partial	Comprehensive
Labor.....	1	0
Business.....	0	3
SESAs.....	9	1
Governors.....	7	4
Total.....	17	8

	Tax	Denials	IB	Appeals	EB
Labor.....	4	4	0	0	0
Business.....	2	2	1	0	0
SESAs.....	17	9	2	1	0
Governors.....	15	9	3	1	1
Total.....	38	24	6	2	1

One State specifically indicated that Interstate Benefits (IB) and Extended Benefits (EB) should be tabbed indefinitely.

In addition, the Interstate Conference of Employment Security Agencies (ICESA) presented a consensus proposal of recommendations to the Secretary on

October 11, 1985. The proposal was based on a September 5, 1985 meeting that included representatives from ICESA, the National Conference of State Legislatures, the National Federation of Independent Businesses, the Council of State Chambers of Commerce, UBA, the U.S. Chamber of Commerce, and the AFL-CIO.

*"Policy Decisions for the Nine Design Issues"*

Listed below are decisions on the nine design issues which are reflected in the proposed regulations. The Department recognizes that the design decisions deal with both regulatory and procedural subjects. More detailed procedural aspects of the issues will be contained in a QC State Operations Handbook which the Department is preparing and which will be issued separately for comment.

**1. System Operations**

The QC system will provide mixed Federal/State division of responsibilities.

**2. Coverage**

QC will be mandatory for the States.

**3. Access to Data**

States will be required to release QC results annually using a standard format, retaining the option of release by States before any national release.

**4. Scope**

QC investigations will be conducted State-wide at Federally-established sample levels. Beyond the minimum sampling effort, States will be given the flexibility to examine subjects more closely through such choices as increased sample size, augmented sampling or special studies.

**5. Investigative Objectives**

Case reviews of the QC sample claims will focus on both outcomes and process.

**6. Purpose**

The QC program will focus on correcting, not just measuring problems. Data to support operational corrections will be required and data to affect policy and legislative changes will be optional.

**7. Methodology**

QC will feature a prescribed minimum sample size specified for each State, standard definitions and methodology, and offer flexibility for State-designed sampling and special studies.

**8. Error Correction Strategies**

The Department will encourage corrective action and foster it through technical assistance, but will not mandate corrective action.

**9. Programs Included**

QC will cover both paid and denied claims under all major regular benefit programs as well as tax activities and be gradually extended to other programs such as Extended Benefits and Trade Adjustment Assistance.

**Authority**

Section 302(a) of the Social Security Act (SSA)s (42 U.S.C. 502(a)) requires the Secretary of Labor to certify payment of granted funds to States in: such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law.

Section 303(a)(1), (42 U.S.C. 503(a)(1)), stipulates that the Secretary shall make no certification for payment of granted funds unless he finds the State law includes provision for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

The proposed rule interprets section 303(a)(1) to require that States administer a QC program in accordance with Federal requirements and, therefore, QC is a condition for certification of granted funds by the Secretary.

In addition, under section 303(a)(6), (42 U.S.C. 503(a)(6)), the Secretary has authority to require States to make reports. Under this section, the Secretary has the authority to oversee implementation and operation of UI QC programs.

**Classification—Executive Order 12291**

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, no regulatory impact analysis is required.

#### Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502 *et seq.*), the reporting or recordkeeping provisions that are included in this proposed rule have been submitted to and have been approved by the Office of Management and Budget (OMB). They have been assigned OMB control number 1205-0245.

#### Regulatory Flexibility Act

This proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an internal QC program, and has no significant economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

#### List of Subjects in 20 CFR Part 602

Employment and Training Administration, Labor unemployment compensation.

#### Words of Issuance

For the reasons set out in the preamble, Chapter V of Title 20 of the *Code of Federal Regulations* is proposed to be amended as set forth below.

Signed in Washington, DC, on July 15, 1986.  
William E. Brock,  
Secretary of Labor.

Part 602 is added to 20 CFR Chapter V to read as follows:

### PART 602—QUALITY CONTROL IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION SYSTEM

#### Subpart A—General

Sec.  
602.1 Purpose.  
602.2 Scope.

#### Subpart B—Federal Requirements

602.10 Federal law requirements.  
602.11 Secretary's interpretation.

#### Subpart C—State Responsibilities

602.20 Organization.  
602.21 Sampling, study methodology, record keeping, and reporting.  
602.22 Exceptions.

#### Subpart D—Federal Responsibilities

602.30 Management.  
602.31 Oversight.

#### Subpart E—QC Grants to States

602.40 Funding.

602.41 Proper expenditure of QC granted funds.

602.42 Effect of failure to implement QC program.

Appendix A to Part 602—Standard for Claim Determination—Separation Information, Employment Security Manual (Part V, Sections 6010-6015)

Authority: 42 U.S.C. 1302.

#### Subpart A—General

##### § 602.1 Purpose.

The purpose of this part is to prescribe a quality control (QC) program for the Federal-State unemployment compensation program, which is applicable to the State unemployment compensation programs and the Federal unemployment benefits and allowances programs administered by the State Employment Security Agencies under agreements with the Secretary of Labor. QC is designed to identify errors in weeks claimed and collections, analyze causes, and support the initiation of corrective action.

##### § 602.2 Scope.

This part applies to all State laws approved by the Secretary of Labor under the Federal Unemployment Tax Act (section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance programs administered by the State Employment Security Agencies under agreements with the Secretary of Labor.

#### Subpart B—Federal Requirements

##### § 602.10 Federal law requirements.

(a) Section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), requires that a State law include provision for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6) of the Social Security Act (42 U.S.C. 503(a)(6)), requires that a State law include provision for:

The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b) of the Social Security Act, 42 U.S.C. 503(b), provides in part that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the

administration of the State law, finds that in the administration of the law there is—

\* \* \* \* \*

(2) a failure to comply substantially with any provision specified in subsection (a); the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such . . . failure to comply. Until he so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State. . . .

##### § 602.11 Secretary's interpretation.

(a) The Secretary interprets section 303(a)(1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants, and collection of unemployment taxes, with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6) of the Social Security Act to authorize the Department of Labor to prescribe standard definitions, methodologies, and reporting requirements for the QC program and to ensure accuracy of QC findings.

(c) The Secretary interprets section 303(b)(2) of the Social Security Act to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a)(1) and (6).

(d) To satisfy the requirements of sections 303(a)(1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part.

#### Subpart C—State Responsibilities

##### § 602.20 Organization.

Each State shall establish a QC unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities and to minimize organizational conflict of interest.

##### § 602.21 Sampling, study methodology, record keeping, and reporting.

(a) Each State shall:

(1) Select representative samples for QC study of at least a minimum size specified by the Department of Labor to ensure statistical validity;

(2) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the

administration of the State unemployment compensation law as to benefit claims and payment and revenue collection, and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part;

(3) Classify benefit denials, as a result of such investigations, as proper or improper denials;

(4) Classify benefit payment cases, as a result of such investigations, as proper payments, underpayments, or overpayments;

(5) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination and audit by such Federal officials as the Secretary may designate or as may be required by law;

(6) Furnish information and reports to the Department of Labor, including weekly transmissions of case data entered into the automated QC system and annual reports; and

(7) Publish the results of the QC investigations in accordance with instructions provided by the Department of Labor.

(b) Each State shall perform the requirements of paragraph (a) of this section in accordance with instructions issued by the Department of Labor, pursuant to § 602.30(a) of this part, to assure standardization of procedures and methodologies in a manner consistent with these regulations. Such procedures shall include a questionnaire, prepared by the Department of Labor, which will obtain such demographic and other data as the Department deems necessary for the QC program.

(c) Any determinations resulting from QC investigations as to the accuracy of unemployment tax or benefit payment administration shall be set forth in writing, and shall be made in accordance with State unemployment compensation law, policy and regulation. Any such determinations with respect to individual benefit claims shall also be made in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part).

(d) Each State shall inform claimants that the information obtained from a QC investigation may affect their eligibility for benefits. Each State shall inform employers that the information obtained from a QC investigation of revenue may affect their tax liability.

(e) Use of the questionnaire referred to in paragraph (b) of this section shall be a requirement of the QC program and

completion of the questionnaire by claimants shall be required by the States.

(Approved by the Office of Management and Budget under control number 1205–0245)

#### § 602.22 Exceptions.

If the Department of Labor determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law, the Department shall use established procedures to advise the State that it is partially or totally excepted from the requirements of this part.

#### Subpart D—Federal Responsibilities

##### § 602.30 Management.

(a) The Department of Labor shall establish required methodologies and procedures (as specified in § 602.21(b) of this part) for sampling, study methodology, recordkeeping, and reporting; and provide technical assistance as needed on the QC process.

(b) The Department of Labor shall maintain a computerized data base of case data which is transmitted to the Department for statistical and other analysis.

##### § 602.31 Oversight.

The Department of Labor shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department of Labor shall, for purposes of determining eligibility for grants under Subpart E of this part, annually review the adequacy of the administration of a State's QC program.

#### Subpart E—QC Grants to States

##### § 602.40 Funding.

The Department of Labor shall use established procedures to notify States of the availability of funds for the operation of a QC program.

##### § 602.41 Proper expenditure of QC granted funds.

The Secretary may, after reasonable notice and opportunity for hearing to the State, take exception to and require repayment of an expenditure for the operation of a QC program if it is found such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See sections 303(a)(8), 303(a)(9) and 303(b)(2), Social Security Act, 42 U.S.C. 503(a)(8), 503(a)(9), and 503(b)(2), and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient

administration if such expenditure fails to comply with the requirements of Subpart C of this part.

##### § 602.42 Effect of failure to implement QC program.

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under Title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), Social Security Act, 42 U.S.C. 503(a)(1), 503(a)(6) and 503(b)(2), and 20 CFR 601.5.

#### Appendix A to Part 602—Standard for Claim Determinations—Separation Information, Employment

##### *Security Manual (Part V, Sections 6010–6015)*

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . ."

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure that payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

#### 6013 Claim Determinations Requirements Designed To Meet Department of Labor Criteria

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefit is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

#### C. *Determination notices*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects<sup>1</sup> his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) There is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of

<sup>1</sup> A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) There is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

*Note.*—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) That claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit

amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

**d. Benefit year.** An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

**e. Information as to benefits for partial unemployment.** There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

**f. Deductions from weekly benefits**

**(1) Earnings.** Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1c(1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from

his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

**(2) Other deductions**

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

**g. Seasonality factors.** If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

**h. Disqualification or ineligibility.** If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or

purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

**i. Appeal rights.** The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages \_\_\_\_\_ to \_\_\_\_\_ of the

\_\_\_\_\_ (name of pamphlet or booklet) heretofore furnished to you."

**6014 Separation Information Requirements Designed To Meet Department of Labor Criteria**

**A. Information to agency.** Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon

agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

**B. Information to worker**

**1. Information required to be given.** Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure

that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

**2. Methods for giving information.** The information and instructions required above may be given in any of the following ways:

**a. Posters prominently displayed in the employer's establishment.** The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

**b. Leaflets.** Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

**c. Individual notices.** Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the

employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

**6015 Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.**

If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012; he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, § 601.5.

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