PART III:

DEPARTMENT OF LABOR

Employment and Training Administration

STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Final Regulations
Title 20—Employees’ Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Final Regulations


As proposed, the Standard in new Part 640 would require that the State laws provide for such administration of the benefit payment process as will reasonably assure the payment of unemployment compensation to eligible individuals with the greatest promptness that is administratively feasible. Criteria for first payments were specified, which if met by a State, would assure such compliance with the Standard. The criteria for intrastate claims would require that 80 percent of first benefit payments be made within 14 days of the end of the first compensable week. The criteria for interstate claims would require that 60 percent of first benefit payments be made within 14 days of the end of the first compensable week.

Comments on the new Part 640 were invited with a closing date of April 4, 1976, for receipt of comments. Within the time limit comments were received from six State agencies, one union and six legal aid and legal services groups in six States. Other comments were received after the time limit, and although the late comments cannot be considered there were no substantially different points made in the late comments that were not included in the comments received within the time limit. All of the comments received within the time limit have been considered, but the recommendations were not adopted for the following reasons.

1. Some States expressed concern with the interstate criterion because in many cases the delays are attributable to the agent State or to the postal service. It was suggested that two interstate criteria be established; one for agent State processing and one for liable State processing, or that the interstate criterion be lower.

The Department of Labor appreciates the problem involved in processing interstate claims. The establishment of two independent criteria, however, would not lend itself to a realistic assessment of the percentage rate of unemployment benefits paid within a prescribed time frame as each liable State is served by many agent States and the workloads in the agent States are widely dispersed among the liable States. The end result of having two criteria would not provide statistical data which would effectively depict the number of claimants not receiving benefits promptly.

2. A number of State agencies commented that the intrastate criterion to use the same criteria as the basis for measuring the promptness of benefit payments in both waiting week and non-waiting week States. They suggested that non-waiting week States be given 14 days instead of 14 days for making first payments, because the Department of Labor has encouraged States to eliminate the waiting week, yet those States with no waiting week requirement are penalized on time lapse.

The Department of Labor has reviewed time lapse experience for the past five years. Analysis has shown that non-waiting week States are capable of meeting the proposed time lapse criteria. The Department is of the opinion that if non-waiting week States can pay benefits within 14 days, waiting week States should be capable of paying benefits in less time. The problem to date is that many States are not able to conform to the 14-day basis. The Department has undertaken a study encompassing 16 State agencies to obtain reliable data on the number of days within which payments should be made. The Department will review the interstate criterion when the study data are available and have been analyzed. Part 640 will be republished in the Federal Register in March 1977 and will include such revisions as appear to be supported by studies and experience.

3. Several interested persons argued that the proposed criteria (80 percent intrastate and 60 percent interstate) are too low. The proposed criteria, it was pointed out, actually represented an enhancement in payment promptness in first payments than that specified in the previously established operating guidelines (85 percent intrastate and 67 percent interstate) contained in a General Administration Letter No. 1504, dated February 7, 1974. Recommendations ranged from maintaining the levels set in the operating guidelines, to requiring 100 percent of first payments to be made within the 14-day time limit. Concern also was expressed over the lack of criteria for the remaining 20 percent and 40 percent of intrastate and interstate, respectively, who did not receive first payments within the 14-day limit. Graduated criteria were suggested.

The Department of Labor shares the objective of prompt payment of unemployment benefits when due. The 80 percent intrastate and 60 percent interstate criteria do not signify any relaxation of the Department’s intrastate and interstate requirements to obtain the greatest degree of promptness in the payment of benefits that is administratively feasible. The Department of Labor established the provisions requiring at least 80 percent for the intrastate program, and 60 percent for the interstate program, based on analysis of the most recently available data. It is and has been the responsibility of the Department to determine realistic and adequate performance criteria that State unemployment agencies are expected to meet. In establishing sound and realistic criteria, the Department must be responsive to changing legal and economic conditions under which the program operates, as well as the level of claim workloads experienced. For such reasons, criteria must be under continuing review and be revised as necessary to reflect the changing conditions. The 80 percent and 60 percent criteria reflect the impact of such changes since the 1960’s when the 80 percent and 67 percent were developed.

The Department’s concern over the prompt payment of benefits has resulted in a major undertaking involving in-depth studies in 16 State agencies. Data from these studies will be analyzed and if warranted new criteria will be established and published in the Federal Register in March 1977. Data being collected will provide the Department with information which will result in the setting up of graduated criteria.

4. One comment concerned the concept of substantial compliance as a requirement for the benefit payment promptness standard. The Department believes that substantial compliance is implicit in the requirement that the State provide for full payment of unemployment compensation within the time limit provided by the law. The Department believes that the prompt payment of benefits met the standard as long as the benefits are paid within the 14-day time limit. It is the Department’s view that if the State does not pay the benefits within the required time, the State is not in compliance with the law. By using such standards, the Department believes it meets the requirements of the law.

The Department believes the concept of substantial compliance as it relates to the payment of benefits is implicit in the concept that the State provide for full payment of unemployment compensation within the time limit provided by the law. The Department views the concept of substantial compliance as a way to determine if the State is in compliance with the law rather than a legal test to determine if the State is in compliance with the law. The Department believes that the State is in compliance with the law if the State pays the benefits within the time limit provided by the law. The Department believes that the State is not in compliance with the law if the State does not pay the benefits within the time limit provided by the law.

Section 303(a)(1) requires that a State law include such methods of administration as are found by the Secretary of Labor to be reasonably calculated to ensure full payment of unemployment compensation when due. There must be complete conformity with this requirement. All State laws either specifically provide for such methods of administration or are interpreted as requiring such methods as are necessary to conform with this requirement. Section 303(b)(2) of the Social Security Act requires the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency, finds that in the administration of the law there is a failure to comply substantially with any provisions specified in 303(a) including, of course, 303(a)(1) described above. The Standard represents our best judgment in this area of what reasonably constitutes substantial compliance with the “when due” requirement. A requirement of total compliance with the requirements of section 303(a) (a document that takes no account of factors beyond an agency’s control) would not only be unrealistic, but would clearly not accord with the statute.

5. A comments expressing the need for criteria, encompassing the speed with which both eligible and ineligible monetary determinations are made was received. The process in which claims are taken and monetary determinations of

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eligibility or ineligibility are made will automatically result in speedy ineligible monetary determinations when first benefit payment promptness is adequate. This occurs automatically because there is no reasonable way to identify whether claimants are eligible or ineligible until a monetary determination is made. Therefore, by requiring prompt payment in all cases, monetary determinations of eligibility will be issued promptly as will monetary determinations of eligibility.

6. Some comments raised the issue of setting promptness criteria for subsequent benefit payments as well as first benefit payments. Past studies have indicated that: (1) first benefit payment promptness performance correlates with subsequent payment performance so that when first payment promptness is adequate so is subsequent payment performance; and (2) the variance between States with respect to subsequent payment promptness is negligible. Since such studies were conducted early in the 1980's and study data is no longer available, we believe that further studies are needed to recheck these findings and to determine whether subsequent payment promptness criteria are needed. Such studies will be conducted prior to the republication of the Standard in March 1977, and the revised Standard will reflect a determination of the feasibility of establishing subsequent payment criteria.

7. A comment was received requesting that "uncontrollable delays" as mentioned in the Background of the published Proposed Standard be defined.

Past experience shows that such things as backdating of claims when done for reasons other than agency error, claimant delay in providing required information to process the claim, and delay in postal service are factors considered to be beyond the agency's control. However, not all specific uncontrollable delays can be identified until such time as data from the previously mentioned 16-State study are analyzed.

8. A comment was received addressing the Department's requirement that annual plans for improving time lapse be submitted by States below the 80 percent and 60 percent level.

The Department receives monthly, quarterly and annual statistical reports with respect to promptness of first payments. Compilation of these reports will be required under the Standard. These reports will be continually reviewed and the trend of agency performance assessed. Whenever the statistical data show a need for Federal action to assist States in improving benefit payment promptness, such assistance will be made available. In addition to the routine submission of statistical reports for review, a State will be required to submit, during the fiscal year program budget planning process, its plan for improving benefit payment promptness when the most recent data show the State is below the 80 percent or 80 percent criteria. Federal staff will review the plan and monitor State progress in adhering to the plan throughout the fiscal year.

9. States which operate under a request reporting system (one which requires the agency to request wage data from employers on an as needed basis when a claimant files a claim) instead of the mandatory reporting systems (where employers report wage information on a quarterly basis) have requested that their system be given special recognition as it is more difficult for them to meet the 80 percent and 60 percent criteria.

A review of benefit payment promptness data from request reporting States shows that the criteria can be achieved. In addition, if a State is having difficulty in meeting the criteria due to operating procedures (even if based on State law), the State should make the necessary changes to assure that the 80 percent and 60 percent criteria are met.

10. A question was raised concerning the statutory remedy which the Department can take with respect to the withdrawal of Federal administrative funds when a State is not meeting the Standard. Such action, it was pointed out, would result in penalizing claimants who would, without funds, be unable to process claims.

State officials are as concerned about improving benefit payment promptness as the States are. The unique Department/federal relationship between the State and Federal partners has resulted over the years in a high degree of cooperation, and the Department is confident of the continued cooperation of the States in achieving the objective of the Standard.

Denial of certification of granted funds is the statutorily prescribed consequence, however, when a State law fails to conform with Federal requirements or when a State in administering its law fails to comply substantially with any provisions required by the Federal law. Prior to undertaking the steps necessary to fund a State program, the Department would, as it always has done, attempt to resolve the matter by informal discussion as set forth in §640.2(a) of Part 640. Therefore, in the case of a failure or refusal to conform with the Standard, or failure or refusal to comply substantially with its requirement, the Department would work with State officials to achieve conformity in the State law or compliance in administration of the program. The Department would make every effort to avoid implementing the sanctions prescribed by the law.

11. A comment was received concerning the application of the Standard to Federal Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemen (UCEX), Federal Supplemental Benefits (FSBP), and Special Unemployment Assistance (SUA).

The Benefit Payment Promptness Standard directly applies only to the Federal-State Unemployment Compensation Program. Its applicability to other unemployment benefits programs is by virtue of the laws and regulations governing the other programs. Therefore, to the extent that the laws and regulations for the other programs incorporate the same Standard, it applies to the other programs.

New Part 640 of Chapter V, Title 20, of the Code of Federal Regulations, accordingly is adopted without change as set forth below.

Effective date: August 23, 1976.


WILLIAM H. KOLBERG, Assistant Secretary for Employment and Training.

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Sec. 640.1 Purpose and scope of the standard.

640.2 Federal law requirements.

640.3 Secretary's interpretation of Federal law requirements.

640.4 Secretary's Standard.

640.5 Criteria for State compliance.

640.6 Review of State compliance.

640.7 Annual Benefit Payment Performance Plan.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1102); Secretary's Order No. 4-78, dated April 10, 1978; Interpret and apply secs. 303(a)(1) and 303(b)(2) of the Social Security Act (42 U.S.C. 603(a)(1), 603(b)(2))

§ 640.1 Purpose and scope of the Standard.

(a) Purpose. This Standard is responsive to the overriding concern of the United States Supreme Court in "California Department of Human Resources Development v. Java", 402 U.S. 121 (1971), and that of other courts with delays in the payment of unemployment compensation to eligible individuals. The Standard in this Part seeks to insure that unemployment compensation is paid to eligible individuals with the greatest promptness that is administratively feasible.

(b) Scope. The Standard specified in §640.4 applies to all claims for unemployment compensation. The criteria for State compliance in §640.5 apply to first payments of unemployment compensation to eligible claimants following the filing of initial claims and first compensable claims.

§ 640.2 Federal law requirements.

(a) Conformity. Section 303(a)(1) of the Social Security Act requires that a State unemployment compensation 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) Compliance. Section 303(b)(2) of the Social Security Act provides that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing
Rules and regulations

Substantially with the provision required by section 303(a)(1), as specified in paragraph (a) of this section.
§ 640.4 Secretary’s Standard.
A State law will satisfy the requirement of section 303(a)(1), as specified in § 640.3(a)(1), if, after September 30, 1976, it contains a provision requiring, or is construed to require, such methods of administration as will reasonably insure the full payment of unemployment compensation to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for State compliance.
A State will be deemed to comply substantially with the requirement set forth in § 640.4 if, for the fiscal year 1977, and for each fiscal year thereafter—
(a) It has issued 80 percent of first benefit payments on all intrastate claims within 14 days after the end of the first compensable week, and
(b) It has issued 60 percent of first benefit payments on all interstate claims within 14 days after the end of the first compensable week.

§ 640.6 Review of State compliance.
A State’s compliance will be assessed for each fiscal year on a cumulative monthly basis from data reported monthly as required by sections 3000-2699, Part III, “Employment Security Manual.”

§ 640.7 Annual Benefit Payment Performance Plan.
(a) Fiscal year 1977. Every State that has not, for the 12-month period ending on June 30, 1976, met the criteria specified in § 640.5, shall submit, no later than September 30, 1976, an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the first quarter of fiscal year 1977.
(b) Subsequent fiscal years. No later than September 30, 1977, and the 30th day of September of each ensuing year, each State that has not, for the 12-month period ending the preceding June 30, met the criteria specified in § 640.5, shall submit an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the next ensuing fiscal year.

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