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DEPARTMENT OF LABOR

Employment and Training Administration

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STANDARD FOR BENEFIT PAYMENT PROMPTNESS— UNEMPLOYMENT COMPENSATION

Revised Regulation

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[4510-30]

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

Revised Regulation

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Secretary of Labor's Standard for Benefit Payment Promptness requires that State unemployment compensation laws provide for the payment of unemployment benefits with the greatest promptness that is administratively feasible, and sets forth criteria for first payments of unemployment benefits that will be deemed to meet the Standard. Part 640 is amended so that the criteria for promptness of first payments of unemployment benefits will become progressively more stringent. Changes are made also to provide for appropriate corrective action when a State's performance falls below the criteria for promptness.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On November 22, 1977, the proposal to revise the Standard for Benefit Payment Promptness—Unemployment Compensation, in Part 640, Chapter V, Title 20 of the Code of Federal Regulations, was published in the FEDERAL REGISTER at 42 FR 59952. Corrections of errors in the publication of November 22, 1977, were published in the FEDERAL REGISTER at 42 FR 62159 dated December 9, 1977.

SUMMARY OF PROPOSED CHANGES

In the document published on November 22, 1977, the Department of Labor proposed to make the following changes in part 640:

1. Change the standard as it applies to States which do not require a waiting period.
2. Change the measurement period from the 12-month period ending June 30 to the 12-month period ending March 31.
3. Change the standard by introducing higher and graduated criteria to be achieved over a 3-year period.

COMMENTS RECEIVED

Comments were invited on the proposed revision to part 640 with a closing date of December 22, 1977. Responses were received within the time limit from 33 State agencies, two Department of Labor regional offices, five legal aid and legal services organizations in four States, and the National Governors' Association. One response was received after the time limit. While the last response cannot be considered, it did not contain comments substantially different from those received within the time limit.

All of the responses received within the time limit have been considered. Many of the comments received were similar to comments submitted when part 640 was first proposed and published on March 5, 1976. The most significant comments related to (a) the effective dates of the more stringent performance criteria, (b) the proposed higher criteria levels of performance, and (c) establishment of separate criteria applicable to agent State performance.

The comments received and changes made in the proposal are discussed below.

1. NONWAITING WEEK STATES

All parties responding to this proposal except one favored allowing nonwaiting week States 21 days instead or 14 days after the end of the first compensable week to make first payments under the intrastate and interstate criteria. The single respond- ent not favoring the extension from 14 to 21 days proposed that a nonwaiting week State that is meeting the current criteria (80 percent and 60 percent) within 14 days should be required to continue to do so. The Department does not consider it feasible nor equitable to develop and enforce separate rules for a few States.

No change is made in this proposal, except that the first measurement period for the higher criteria will, as explained below, be the period beginning with the month following the effective date of this final regulation and ending on March 31, 1979, instead of March 31, 1978.

For the measurement period ending March 31, 1978, the present criteria will apply with only a change from 14 days to 21 days in the time limits for nonwaiting week States to make first payments. Thus, although the present criteria are retained through March 31, 1978, the change with respect to nonwaiting week States is incorporated to accomplish this improvement at the earliest feasible time.

2. CHANGE OF MEASUREMENT PERIOD

Several States objected to the retroactive application of the amendment to the Standard, which set more stringent criteria for achievement beginning with the 12-month period ending March 31, 1978. The States would not have reasonable time to plan their operations or to take appropriate action to meet the goal. Accordingly, to afford States enough lead time to gear up to meet the performance criteria, the measurement period for applying the present criteria of 80 percent for intrastate first payments and 60 percent for interstate first payments is retained for the 12-month period ending March 31, 1978. The first measurement period for the new criteria of 83 percent and 65 percent, respectively, is changed from the 12-month period ending on March 31, 1978, to the 12-month period ending on March 31, 1979, but in order to avoid retroactive effect the first measurement period for the period ending March 31, 1979, will begin with the month following the effective date of this final regulation instead of April 1, 1978. In addition, the measurement period for the second step in the higher criteria (87 percent and 70 percent) is changed from the 12-month period ending on March 31, 1979, to the 12-month period ending on March 31, 1980.

3. HIGHER AND GRADUATED CRITERIA

State responses generally reflected concern with the prospect of their meeting the proposed higher criteria.

Reports of accomplishment through February 1978, show that 43 States are exceeding the current intrastate criterion of performance and 31 States are exceeding the current interstate criterion calculated with allowance of 21 days for making first payments in nonwaiting week States. These results reflect the substantial effort States are making to improve their performance. This demonstrated effort, combined with continued improvements in automated systems, strongly indicates that the proposed higher criteria are attainable goals, as is more fully explained in the proposal.

In addition, the advances in the effective dates of the higher criteria make these goals more readily attainable. Further, the increased criteria of 90 percent and 75 percent proposed for the 12-month period ending March 31, 1980, have been deleted. This deletion was made because the effective date of the increased criteria would have been advanced to March 31, 1981, and analysis of available information indicates that a valid projection so far into the future cannot be made at this time.

Studies as conducted in 17 States have been completed in the remaining States. Results of the later studies were consistent with the results of the

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earlier studies: Factors identified as uncontrollable and their adverse effect on benefit payment promptness were very similar in both series of studies.

Accordingly, no change is made in the higher criteria except as explained above.

4. ENFORCEMENT PROVISIONS

The enforcement provisions have been amended to allow the Department of Labor flexibility in applying the appropriate remedial steps to specific situations rather than applying all remedial steps to all situations of noncompliance.

The fact that a State does not meet the applicable intrastate or interstate criterion within a prescribed measurement period does not necessarily mean failure to meet the Secretary's standard.

The standard requires substantial compliance with a requirement for the greatest promptness that is administratively feasible. A State that has met the specified percentage of first payment criteria in a measurement period will be deemed to be in substantial compliance for that period. When a State has not met those criteria, however, a determination is then needed of whether or not the State has evidenced the requisite substantial compliance. Such a determination requires an inquiry into the circumstances that prevented the State from reaching the specified criteria. If that inquiry demonstrates that the State has achieved the greatest promptness reasonably attainable in its circumstances, the State may be considered to be in substantial compliance. On the other hand, when a State does not meet specified criteria due to circumstances that it could have avoided by taking corrective action and persists in such omissions, a compliance question would be presented. To clarify this, additions to § 640.3 set forth the meaning of the greatest promptness that is administratively feasible and the test of substantial compliance that will be applied.

5. OTHER COMMENTS

Comments were received recommending that the standard require 100-percent compliance within a specified number of days, and that the standard by omitting this requirement did not adequately protect the rights of individual claimants. Another commentor recommeded that the standard require States to either make payment or a determination in all cases within a specified number of days. There are various factors categorized as uncontrollable delays which make it virtually impossible for States to issue 100 percent of their first payments at a prescribed interval. Theoretically, achievement of 93 percent of intrastate first payments and 78 percent of interstate first payments in 35 days would be equivalent to near 100-percent performance as the accomplishment would include instances of uncontrollable delays. It is felt that the criteria set forth in the final rule afford adequate protection to the individual claimants. However, § 640.1 is changed to express the importance of promptness in determining eligibility.

A substantial number of States commented on the adverse effect of poor agent State performance on benefit payment promptness. The Department of Labor has made detailed recommendations to all States concerning procedures for processing interstate claims, and feels that implementation of said recommendations would produce substantial improvement in interstate benefit payment promptness. Therefore, no change is made in the regulation in this respect.

SUMMARY OF CHANGES IN FINAL RULE

Based upon comments received in response to the November 22, 1977, document, and other data accumulated since that date, the changes to 20 CFR Part 640, dated July 23, 1976, are summarized as follows:

1. The effective date of the first higher criteria will be the period ending March 31, 1979, and the second increase in the criteria will be the 12-month period ending March 31, 1980. The proposed third increase to have been effective for the 12-month period ending March 31, 1980, is deleted.

2. Nonwaiting week States are allowed 21 days to meet the criteria, effective for the period ending March 31, 1978.

3. The period over which the benefit payment promptness is to be measured is changed from the 12-month period ending June 30 to the 12-month period ending March 31.

4. Enforcement provisions are modified to allow the Department of Labor needed flexibility in the application of remedial steps.

5. Sections 640.1 and 640.3, relating to purpose and interpretation of Federal law requirements, are clarified by added provisions.

6. Other minor clarifying and technical changes are made.

NOTE.—The Department of Labor has determined that this document does not contain a major proposal requiring the preparation of an economic impact statement under Executive Order 11949 and applicable authority.

This document was prepared under the direction and control of Lawrence E. Weatherford, Adminsitrator, Unemployment Insurance Service, Employmemt and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213, telephone 202-376-7032.

Accordingly, part 640 of chapter V of title 20, Code of Federal Regulations, is revised as set forth below.

Signed at Washington, D.C., on July 25, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

Sec.
640.1 Purpose and scope.
640.2 Federal law requirements.
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AUTHORITY: Sec. 1102, Social Security Act (42 U.S.C. 1302); Secretary's order No. 4-75, dated April 16, 1975 (40 FR 18515) (5 U.S.C. 553). Interpret and apply secs. 303(a)(1) and 303(b)(2) of the Social Security Act (42 U.S.C. 503(a)(1), 503(b)(2)).

§ 640.1 Purpose and scope.

(a) *Purpose.* (1) Section 303(a)(1) of the Social Security Act requires, for the purposes of title III of that act, that a State unemployment compensation law include provision for methods of administration of the law that are reasonably calculated to insure the full payment of unemployment compensation when determined under the State law to be due to claimants. The standard in this part is issued to implement section 303(a)(1) in regard to promptness in the payment of unemployment benefits to eligible claimants.

(2) Although the standard applies to the promptness of all benefit payments and the criteria apply directly to the promptness of first benefit payments, it is recognized that adequate performance is contingent upon the prompt determination of eligibility by the State as a condition for the payment or denial of benefits. Accordingly, implicit in prompt performance with respect to benefit payments is the corresponding need for promptness by the State in making determinations of eligibility. However, applicable Federal laws provide no authority for the Secretary of Labor to determine the eligibility of individuals under a State law.

(b) *Scope.* (1) The standard in 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), and to the administration of the State laws.

(2) 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 under the State law to eligi-

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ble 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, 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) *Compliance.* Section 303(b)(2) of the Social Security Act, 42 U.S.C. 503(b)(2), 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:

(1) * * *

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

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 is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State * * *.

§ 640.3 Interpretation of Federal law requirements.

(a) *Section 303(a)(1).* 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 reasonable insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

(b) *Section 303(b)(2).* (1) 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 provision required by section 303(a)(1).

(2) The greatest promptness that is administratively feasible will depend upon the circumstances in each State that impacts upon its performance in paying benefits. Factors reasonably beyond a State's control may cause its performance to drop below the level of adequacy expressed in the table below as criteria for substantial compliance applicable to all States. Where it is demonstrated that failure to meet the criteria of adequacy is attributable to factors reasonably beyond the State's control and, in light of those factors, the State has performed at the highest level administratively feasible, it will be considered that the State is in substantial compliance with the Standard for conformity. Whether or not the State is in substantial compliance, the remedial provisions of §§ 640.7 and 640.8 will be applicable when the pertinent criteria are not met.

§ 640.4 Standard for conformity.

A State law will satisfy the requirement of section 303(a)(1), if it contains a provision requiring, or which is construed to require, such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for compliance.

The criteria in the schedule below shall apply in determining whether, in the administration of a State law, there has been substantial compliance with the provision required by section 303(a)(1) in the issuance of benefit payments to eligible claimants for the first compensable weeks of unemployment in their benefit years:

	Percentage of first payments issued—days following end of first compensable week		
	14 days, waiting week States	21 days, nonwaiting week States[1]	35 days, all States
Intrastate claims			
Performance to be achieved for the 12-mo. period ending:			
Mar. 31, 1978	80	80	.....
Mar. 31, 1979	[2]83	[2]83	[2]90
Mar. 31, 1980, and thereafter	87	87	93
Interstate claims			
Performance to be achieved for the 12-mo. period ending:			
Mar. 31, 1978	60	60	.....
Mar. 31, 1979	[2]65	[2]65	[2]75
Mar. 31, 1980, and thereafter	70	70	78

[1]A nonwaiting week State is any State whose law does not require that a non-compensable period of unemployment be served before the payment of benefits commences.

[2]Beginning with the month following the effective date of this revised regulation.

A State will be deemed to comply substantially, as set out in §§ 640.2(b) and 640.3(b), if its average performance, for the period of review, meets or exceeds the applicable criteria set forth above.

§ 640.6 Review of State compliance.

(a) *Annual reviews.* The administration of each State law shall be reviewed annually for compliance, as set out in §§ 640.2(b) and 640.3(b). Annual reviews shall be for the 12-month period ending on March 31 of each year. An annual review with respect to any State shall be based upon the monthly reports of performance submitted to the Department by the State agency, any special reports of performance submitted to the Department by the State agency, any benefit payment performance plan applicable to the period being reviewed, any study or anylysis of performance relevant to the period being reviewed, and any other audit, study, or analysis as directed by the Department of Labor.

(b) *Periodic review.* The administration of any State law may be reviewed at any other time, when there is reason to believe that there may be failure of compliance as set out in §§ 640.2(b) and 640.3(b). Such a review shall be based upon the same elements as may be required for an annual review.

§ 640.7 Benefit payment performance plans.

(a) *Annual plan.* An annual benefit payment performance plan shall be submitted by a State agency to the Department of Labor when average performance over a 12-month period ending on March 31 of any year does not meet the criteria specified in § 640.5. An annual plan shall be submitted by July 31 following the applicable March 31, and shall be a plan for the fiscal year that begins on the succeeding October 1. An annual plan shall be subject to continuing appraisal during the period it is in effect, and shall be subject to modification from time to time as may be directed by the Department of Labor after consultation with the State agency.

(b) *Periodic plan.* A periodic benefit payment performance plan shall be submitted by a State agency when directed by the Department of Labor. A periodic plan may be in addition to, or a modification of an annual plan and may be required even though an annual plan covering the same period is not required. A periodic plan shall be subject to continuing appraisal during the period it is in effect, and shall be subject to modification from time to time as may be directed by the Department of Labor.

(c) *Content of plan.* An annual plan or periodic plan shall set forth such corrective actions, performance and evaluation plans, and other matters as the Department of Labor directs, after consultation with the State agency.

§ 640.8 Enforcement of the standard.

(a) *Action by the Department of Labor.* When a State agency fails, for an extended period, to meet the standard set forth in § 640.4 or the criteria specified in § 640.5, or fails to show

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satisfactory improvement after having submitted a benefit payment performance plan of action, the Department of Labor shall pursue any of the following remedial steps that it deems necessary before considering application of the provisions of § 640.2:

(1) Initiate informal discussion with State agency officials pursuant to § 601.5(b) of this chapter.

(2) Conduct an evaluation of the State's benefit payment processes and analyze the reasons for the State's failure to meet the standard.

(3) Recommend specific actions for the State to take to improve its benefit payment performance.

(4) Request the State to submit a plan for complying with the standard by a prescribed date.

(5) Initiate special reporting requirements for a specified period of time.

(6) Consult with the Governor of the State regarding the consequences of the State's noncompliance with the standard.

(7) Propose to the Governor of the State and on an agreed upon basis arrange for the use of expert Federal staff to furnish technical assistance to the State agency with respect to its payment operations.

(b) *Action by the Assistant Secretary.* If, after all remedial steps have been exhausted, a State fails to take appropriate action, or otherwise fails to meet the standard specified in § 640.4, the Assistant Secretary for Employment and Training shall, after taking all factors into consideration, recommend to the Secretary of Labor that appropriate notice be sent to the State agency and that an opportunity for a hearing be extended in accordance with section 303(b) of the Social Security Act.

§ 640.9 Information, reports and studies.

A State shall furnish to the Secretary of Labor such information and reports and make such studies as the Secretary decides are necessary or appropriate to carry out this part.

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