

## CHAPTER VI

### INVESTIGATIVE PROCEDURES

1. **Introduction**. The investigation is the mechanism for intensively reviewing payments to determine if they were made to eligible claimants and, if so, whether payments were made in the proper amounts. Each case selected for BAM is an original payment for a specific week of unemployment, referred to as a "Key Week". Each Key Week is investigated to verify that all information pertaining to eligibility and payments is treated in conformity with state written law and policy. The data obtained from the investigations will be used to draw inferences about the claimant population as a whole. It is important, therefore, that the investigative requirements are adhered to for each case.

The investigation also involves gathering data about the claimants and claims sampled for entry into an automated database. These data, in combination with the classification of the case findings, will be used for state analysis and corrective action.

These investigative procedures apply equally to BAM and DCA investigations. For more information on where DCA investigations differ, see Chapter VIII pages 2 and 3.

2. **Standard Forms**. Each SWA must develop a standard BAM form to be used in investigations for:

- Claimant Questionnaire - see required format in Appendix B
- Work Search Verification - Employer
- Work Search Verification - Labor Organization
- Employment/Wage/Earnings Verification
- Disqualifying/Deductible Income Verification
- Authorization to Release Information (where required)
- Fact-finding Statement
- Dependency Eligibility Verification (if applicable)
- Summary of Investigation
- Interstate Request

The questions on all forms that address eligibility must be adequate to obtain information that the SWA requires to determine adherence to provisions of law and written policy. All forms used for interviews must provide space for the name/signature of the person being interviewed, the SWA investigator's signature, the method used to obtain the information, and the date of the interview.

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In states where an "Authorization to Release Information" form is required, the investigator must have this form signed and dated by the claimant.

3. **Investigative Requirements.** Investigators must adhere to the minimum requirements presented in the Investigative Guide (Appendix C) that summarizes the data sources, initial action, and documentation required for each data item gathered during the investigation. The following general requirements must also be adhered to during the course of BAM investigations:

a. **Investigative Method.** Investigations are comprised of reviews of SWA records and interviews of claimants, employers, and third parties. Initially all BAM investigation interviews were conducted in person. In 1993, alternative methodologies were implemented which allowed states the option to substitute telephone, FAX and mail for in-person verification of contacts with employers, third parties, and on some work search verifications.

Regardless of the method used, it is intended that states obtain the information needed to complete their BAM cases. States must attempt to obtain the information required for investigations using any and all of the following methods: in-person, telephone, FAX or mail. States have the option of using any of these methods that it determines to be the most efficient and effective based on the circumstances of each case. States are to document all attempts made in procuring needed information in each case's summary.

b. **Investigative Focus.** Investigations begin with the assumption that the Key Week was properly paid; however, all areas of eligibility are explored that could directly affect the Key Week and the establishment of the initial claim. This is distinguished from issues arising during weeks claimed prior to the Key Week that could potentially involve a disqualification that would not affect the Key Week. Disqualifying issues of this type must be pursued if discovered, but the SWA need not structure the investigation to uncover such issues (e.g., refusal of suitable work results in 10-week disqualification) which would not include the Key Week.

c. **Factfinding.** Investigators must conduct new and original factfinding in accordance with the Secretary's Standard for Claim Determinations as prescribed in sections 6010-6015, part V of the ES Manual on all issues that have not been detected previously. In addition, the facts of previously resolved issues affecting the Key Week must be verified. State laws or policy which might make an issue moot (e.g., when a decision becomes final by virtue of the expiration of the appeal period without an appeal being filed) must not preclude pursuit of issues for BAM purposes.

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The issues must be pursued until a supportable conclusion is reached. (Non Key Week issues should be referred to other SWA staff for pursuit and resolution unless adjudication by BAM staff would only involve incidental time and resources).

d. Evidentiary Facts. Investigations of new issues must be conducted by obtaining evidentiary facts, as distinguished from ultimate conclusions. Open-ended questions must be asked, and, if the contact is made in-person, employer records should be reviewed and may be copied by the investigator.

e. Information/Source Documentation. Where information is obtained in-person, the signature of the person providing the information must be obtained on the verification and/or factfinding statement. Where information is obtained using mail or telephone/FAX, the name of the person providing the information should be printed in the signature block by the BAM investigator. In some instances, the forms developed for the remaining sections of this chapter will provide ample space to record the statements. In other instances, it will be more convenient to utilize separate documents. For these latter situations, SWAs must either develop formats to use exclusively for BAM or utilize forms already in use for other purposes.

f. State Law and Policy. States' written laws and policies are the bases for all determinations. Written policy is that policy that is distributed SWA-wide and, upon request, may be made available to the public.

g. Conclusions and Agency Actions. All conclusions pertaining to the Key Week that are drawn from the BAM process must be formalized in official agency actions if errors are found, except where prohibited by SWA provisions such as finality.

h. Supporting Documentation. All determinations made as a result of BAM investigations must have supporting documentation.

i. Non-English Speaking Claimants. All requirements that SWAs normally apply to contacts with non-English speaking claimants must also be applied to contacts for BAM.

4. **Investigative Methodology**. Investigative methodology is a system of principles, procedures and practices that have been designed to obtain the information necessary to classify the propriety of benefit payments. The investigator must interview claimants, employers, and third parties to: (1) verify the information originally used in the claim and (2) to gather information to determine if there are undetected issues or issues that were improperly treated. The methods of contact to be used are: in-person,

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telephone, FAX, and/or mail, and a combination of methods may be used in a case.

States should structure the investigation in a manner that will permit them to obtain the best information possible. Studies have shown that in claimant interviews and work search verifications, the in-person method of contact provides the best quality of information, while the use of telephone, FAX and/or mail appears to work equally well for prior employer and third party verifications.

a. Claimant Interview. The claimant interview anchors the BAM investigation and is a major detection point for a number of overpayments and underpayments. The claimant questionnaire is a required standard form (see Appendix B) to be completed by the claimant. States must alter the questionnaire to satisfy unique aspects of their laws. States cannot introduce conditions of eligibility not reasonably related to the fact or cause of unemployment. Department approval must be obtained prior to making any change to the questionnaire that alters the content. Such approval may be obtained by sending a copy of the requested changes to the appropriate Regional Office. All requirements that SWAs normally apply to contacts with non-English speaking claimants must also be applied to contacts for BAM. If the claimant questionnaire is translated into another language, a copy must be sent to appropriate Regional Office for approval.

States with dependency allowance provisions in their laws must develop a section of the questionnaire for determining eligibility for dependency allowances. Advance Department approval for the section must be obtained by sending a copy to the appropriate Regional Office.

The questionnaire must be signed by the investigator in the space provided to certify the information was obtained in accordance with the SWA requirements. If the questionnaire was not completed, an explanation signed by the investigator must be entered on (or attached to) the signature page, in which case it will be sufficient to retain this page only in the case folder, in lieu of retaining the entire questionnaire. A claimant's return to work or exhaustion of benefits is not, in and of itself, adequate justification for failure to conduct the interview or obtain the questionnaire.

b. Employer Interviews. Contact with all prior or current employers, with whom employment could affect the Key Week, must be made by the investigator to verify the facts of separation, base period wages, and benefit year earnings. In situations where the employer uses an agent or representative, BAM should also contact the agent to verify any information received from that source.

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All Employer verifications may be conducted using the method determined by the state to be the most appropriate given the circumstances of the case. When changes in wages, earnings, or separations are detected, state law and policy should be the catalyst in determining the method of follow-up contact to be utilized. For example, in cases where there is potential fraud, SWA law and policy may require an in-person visit to obtain signatures or other documentation necessary to effect official determinations. In verifying separation information, all contacts must be made in accordance with accepted SWA fact-finding procedures. Regardless of the method of contact used, the name and position of the person providing any information must be obtained.

c. Work Search Interviews. The investigator must investigate all Key Week work search contacts, including any referrals by union halls, Job Service, and private employment agencies, to verify that the contact satisfied state requirements and to uncover any potential issues bearing on eligibility and payment of benefits. While the method of contact to be used is at the state's discretion, this is also an area similar to the claimant interview where tests have shown a significant loss in quality when methods other than in-person were used to obtain information.

If state law and/or policy permits job contacts made during other weeks to be applied to the Key Week, then all such contacts must be verified. These verifications are to be made following the same guidelines as Key Week contacts. In states where law and/or policy permits work search contacts to be made by e-mail, Internet, or other electronic methods, these contacts may be verified using these same methods.

If SWA records or the investigation indicates that the claimant is a union member and obtains work through that union, verification must be made with the union following the general guidelines for verifying work search contacts. This is done to detect potential issues resulting from union referrals to employers, referral refusals, or job refusals and to confirm that any deferrals from Job Service registration and/or work search requirements have been properly granted.

d. Third-Party Verifications. Third-party verifications are required when issues arise that could affect a claimant's eligibility.

Potential able and available issues related to medical condition, school attendance, etc. must be verified. The method of contact to be used is at the discretion of the state. Registration with Job Service may be verified and documented by obtaining a printout or a copy of the Job Service records that indicate whether the claimant is actively registered for referral during the Key Week. State written law, policy, and procedures govern whether

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claimants are required to be registered with the Job Service and what constitutes registration. BAM coding should be consistent with such law, policy, and procedures.

Prior verification by the state of alien status will be acceptable for BAM purposes if properly documented. If SWA records are inadequate to verify alien status, BAM must conduct verification.

Interstate third-party verifications should be completed by the state using the method of telephone and/or FAX to the extent possible. Assistance may be requested from the state where the third party is located, if necessary.

Section 453(i) of the Social Security Act [42 U.S.C 653(i)] directs the Secretary of Health and Human Services to maintain an automated database of the State Directory of New Hires records in the National Directory of New Hires (NDNH). P. L. 108-295, Section 3, authorizes state workforce security agencies to access the NDNH "for purposes of administering an unemployment compensation program under Federal or State law". BAM must utilize this resource as part of the audit of paid claims to detect and investigate claimant employment during the benefit year to determine its affect on the claimant's eligibility for UI.

~~The potential for claimant employment during the benefit year should be verified using the State Directory of New Hires where available. This new hire directory is mandatory under section 453A of the Social Security Act, and BAM should access this resource when possible.~~

5. **Disqualifying/Deductible Income Verifications.** Verifications must be made of receipt of all remuneration that could directly affect the Key Week for which claimants could be disqualified or have benefits reduced. States should verify this income by using the method of contact determined by the state to be the most appropriate.

6. **Dependency Eligibility Verifications.** In states with dependency allowance provisions in their laws, the investigator must verify the dependents that were claimed. This verification must, at a minimum, consist of the methods prescribed by state law and/or policy.

7. **UCFE.** To better integrate federal program with states' claims processing systems, procedures for obtaining wage and separation information for both the UCFE and UCX programs have been automated to the extent possible. For the UCFE program, Lockheed Martin developed an ICON application that states use to generate electronic and/or hardcopy requests to federal Agencies, as appropriate, and to receive electronic responses. For the UCX and UCFE programs, the Claim Control File System maintained by the FCCC has been redesigned to support a more effective exchange of information and for integrity purposes.

BAM staff should work with the SWA's Federal Programs Coordinator to determine the most expedient way of obtaining wage, separation, earnings, and work search information from federal installations. If an in-person verification is deemed necessary by the state, the Federal Programs Coordinator may be able to assist BAM investigators in gaining access to federal installations. Additionally, the BAM review of the original claim file must include examination of the response from the Federal Claims Control Center (FCCC) and any subsequent state reconciliation actions to ensure that the federal wages were not used more than once to pay a claim. If no documentation is on file to indicate that the FCCC was notified of the claim, the BAM unit is to initiate a request as specified in the UCFE Handbook (No. 391) and examine the response from FCCC when it is received.

8. **UCX.** As mentioned above, procedures for securing UCX information has changed. UIPL 47-01 describes the key changes in procedures for the electronic exchange of wage and separation information for the UCFE/UCX programs. Key changes to UCX procedures include the following:

- the Department of Labor's copy of the DD Form 214, maintained at the FCCC, is now the official source of wage and separation information for use in establishing UCX entitlement and eligibility;
- the FCCC will calculate the claimant's UCX employment and wages and provide the information to SWAs; and
- the state is authorized to determine UCX eligibility under an affidavit process, using the claimant's copy four (4) of his/her DD Form 214, upon receipt of a notice from the FCCC that there is no DD Form 214 on file. This procedure will eliminate any potential

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delay in the determination of UCX eligibility pending receipt of the Department's copy of the DD Form 214.

In-person employer contacts are not to be made with the military. Verifications of military wages and separations are accomplished through review of claim documents.

When a UCX claim is taken, the SWA sends an inquiry to the FCCC. The FCCC response to each inquiry enables the SWA to (1) validate the legitimacy of the DD-214 that the claimant used to establish the claim and (2) detect potential duplicate claims. The response contains the following data:

- beginning and ending dates of military service,
- tabulation of net amount of time served,
- number of days of accrued leave paid,
- character of service, pay grade, and
- date of receipt by FCCC of any previous notice of claim filed.

BAM must compare the DD-214 to the response from the FCCC to verify that the wages have not been previously assigned. The pertinent information on the DD-214 must be compared with the corresponding information on the FCCC response to ensure that the DD-214 has not been altered. Ensure that the information on the claims documents has been accurately copied from the DD-214. Also, ensure that the monetary determination was based on the appropriate Federal Schedule of Remuneration, i.e., the one in effect at the time the claim was filed.

Copies of the DD-214, the response from the FCCC, and the Federal Schedule of Remuneration should be retained in the BAM case file. If the FCCC has not been contacted, or if potential issues have not been resolved, they must be pursued by BAM.

9. **Interstate Requests**. Some investigations require contacting claimants, employers, or other parties in another state. The same procedures apply to interstate that apply to intrastate verifications. Interstate contacts may be conducted using the method of contact determined by the state to be the most appropriate given the circumstances of the case. If unable to obtain adequate information, assistance may be requested of the other state where necessary. However, each state has the final responsibility of obtaining all the necessary data to complete the case investigation.

10. **Summary of Investigation**. Each completed case must contain a Summary of Investigation. Each SWA must develop a format which includes, at a minimum, a narrative that explains the pertinent facts of the case: the basis for any decision that an error was made and any complexities of the

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case, e.g., difficulty obtaining information, evaluation of statements taken, reasons for delay, or any special circumstances that occurred. Alternately, this may be satisfied by appropriate reference to explanations elsewhere in the case file. In order for each case to be able to stand on its own, the Summary must be substantiated by documentation in the case file.

11. **Appeals.** All appeals hearings resulting from BAM determinations affecting the Key Week must be attended by the BAM investigator responsible for obtaining the information that led to the determination. The investigator will provide testimony concerning any questions on the BAM process and the facts upon which the determination was based. When an appeals hearing is not attended by a BAM staff member, an explanation must be provided in the BAM case file.

12. **Completion of Cases and Timely Data Entry.** Prompt completion of investigations is important to ensure the integrity of the information being collected by questioning claimant and employers before the passage of time adversely affects recollections. Prompt entry of associated data is necessary for both the SWA and the Department to maintain current databases. Therefore, the following time limits are established for completion of all cases for the year. (The "year" includes all batches of weeks ending in the Calendar Year.):

- a minimum of 70 percent of cases must be completed within 60 days of the week ending        date of the batch, and 95 percent of cases must be completed within 90 days of the week ending date of the batch; and

- a minimum of 98 percent of cases for the year must be completed within 120 days of the ending date of the Calendar Year.

A case is complete when the investigation has been concluded as required, all official actions for the Key Week (except appeals) have been completed, the supervisor has signed off, and the results have been entered into the computer.

If a SWA's rates for completion of cases sampled for investigation for the year are less than the requirements, and it believes that such failure was attributable to reasons beyond its control, the SWA may submit a documented analysis to the Department (Regional Office) requesting a relief from Departmental actions (i.e., requirement to submit a corrective action plan and a footnote in the BAM Annual Report). The analysis must demonstrate that all time limits would have been met had the uncontrollably delayed cases been timely.

13. **Reopening Cases.** Cases may be reopened for the following:

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- to correct errors (detected by either the SWA or federal reviewers) *or*
- to update information, e.g., as a result of appeal decisions.

Case completion timeliness will be recalculated when a case is reopened to either correct errors detected by the SWA or to update information. Therefore, it is important to minimize reopening by ensuring that, to the extent possible, the data are complete and correctly entered initially.