

SUPPORTING STATEMENT

A. Justification

1. Legal Authority.

The Employment and Training Administration (ETA) of the Department of Labor has issued a final rule concerning the confidentiality and disclosure of information in state unemployment compensation records. The final rule sets forth statutory disclosure requirements in Title III of the Social Security Act (SSA), the Federal Unemployment Tax Act (FUTA), and the Wagner-Peyser Act. It also establishes safeguards for information disclosed under those provisions, as directed by sections 303(a)(1), (d), (e), and (h) of the SSA. (The disclosure requirements are contained in: sections 303(a)(7), (c)(1), (d), (e), (h), and (i), SSA, section 3304(a)(16) of FUTA, and section 3(b) of the Wagner-Peyser Act.)

This rule expands upon the regulations governing the Income and Eligibility Verification System (IEVS), a system of information sharing primarily among state and local agencies administering several Federally-assisted programs that was established by the Deficit Reduction Act of 1984 (P.L. 98-369). The IEVS is required under section 1137 (and section 303(f)) of the SSA and the establishment of safeguards associated with IEVS is required by section 1137(a)(5)(b), SSA. Agencies participating in the IEVS are required to exchange information to the extent it is useful and productive in verifying eligibility and benefit amounts.

Finally, this rule sets forth the Secretary's interpretation of section 303(a)(1), SSA, with regard to the general rule of confidentiality of information in state unemployment compensation records, and the general requirements, with respect to disclosures unrelated to unemployment compensation program administration, for safeguards (including acknowledgments and releases for optional informed consent disclosures (and audits thereof)), notifications of claimants and employers, and agreements. These are necessary to ensure the responsible use of confidential unemployment compensation program information.

Requirements of the Deficit Reduction Act of 1984 that necessitated the development of the Confidentiality Rule include:

- As a condition of eligibility for participating programs, applicants and recipients must furnish their Social Security Numbers (SSN). States must use the SSNs to associate the individual's records;
- Effective September 30, 1988, employers were required to make quarterly wage reports to a state agency unless the state had an alternative system that was effective and timely;
- Adequate safeguards must be in effect to assure that (1) data exchanged by state agencies is made available only to the extent necessary to assist in the administrative needs of the program receiving information, (2) IRS data is exchanged only with agencies authorized to receive information, and (3) data is adequately protected against unauthorized disclosure for other purposes;
- All applicants and recipients must be notified at the time of application and periodically thereafter that data available through the system will be requested and used; and

- Accounting systems must be used to assure that programs providing data receive appropriate reimbursement from the programs requesting and using the data.

An interdepartmental task force chaired by the Department of Health and Human Services (HHS) was established to develop and publish regulations implementing the Deficit Reduction Act. Each Department published regulations under a joint preamble supplemented to the extent necessary. Accordingly, this justification covers only the Department of Labor's final rules at 20 CFR Part 603.

2. *Use of Information.* As reflected in this regulation, many public officials utilize wage and claim information from the state unemployment compensation agencies to verify eligibility and benefits amounts payable under their respective programs. State unemployment compensation agencies themselves conduct a within-agency cross match of quarterly wage information and claim information for the same quarter to detect unreported or improperly reported earnings. In addition, under Subpart C of this regulation, state agencies are expected to use information available from the Social Security Administration to the extent it is needed in verifying eligibility and benefit amounts. This information is needed because the receipt and amount of pensions may affect the amount of unemployment compensation payable to an individual.

States are required to use data sharing agreements when making disclosures to provide some assurance that recipients of disclosed information follow safeguards protecting confidentiality, to provide an enforcement mechanism against any recipients that breach those safeguards, and to show that they have complied with this rule. When opting to make a disclosure on the basis of informed consent, states are required to audit the recipients of information to ensure that such recipients actually have a written release on file from each individual or employer to whom the disclosed information pertains. Such recipients must obtain releases to show informed consent.

State UC agencies are required to provide notice to both employers and claimants about the uses to which information they provide IEVS. ETA does not, under this regulation, receive any of this collected information.

3. *Information Technology.* The quarterly wage and benefit cross match identified above is an automated match. The match with Social Security records is also an automated match by computer tape or direct inquiry through Social Security Administration offices in the states. The Social Security record matching activity is being enhanced through grants to 38 states to develop interactive systems that will link to the Social Security Administration during its normal working hours (6:00 am to 9:00 pm) and provide responses to requests immediately. Requests outside of this time frame will be batch processed and thus will be less expedient. These systems will process requests for verification for all claimants as a means to improve program integrity. The automated system will return information about Social Security benefit payments, if applicable, as a by product of the verification of the claimant's SSN. Requests from other agencies utilizing unemployment compensation wage and benefits information will be largely automated matches.

Notification to claimants and employers will be included on automatically generated forms.

4. *Duplication.* The quarterly unemployment compensation wage and benefit cross match is not duplicative of any other techniques the state agency utilizes to detect improper payments. This is evidenced by the fact that state unemployment compensation agencies have utilized this

detection technique routinely for a number of years. Social Security benefit information is available only from the Social Security Administration and the individual applicant. We are not aware of any other similar information available which could be utilized in place of quarterly wage information or Social Security benefit information. States are not required to obtain a separate agreement, written release, or notification form to satisfy the requirements in this rule. Existing state notification forms, releases, and agreements can be modified to meet the Federal requirements in this rule.

5. Small Business. The rule applies to states, which are not small entities or businesses.

6. Consequences of Less Frequent Collection. Agencies participating in the IEVS may be in danger of overpayment of benefits and the collection of child support payments would be negatively impacted if the wage and income information is not shared as required by the Deficit Reduction Act of 1984. The final confidentiality rule does not stipulate the frequency of collection and use of information.

Quarterly wage records must be used by state unemployment compensation agencies to verify eligibility and benefit amounts, but the rule does not state how frequently. The frequency with which other agencies request information from the state unemployment compensation agencies is largely dictated by the other agencies' needs and the regulations promulgated by the other Departments.

Notification of claimants and employers, and audits of informed consent disclosures must be "periodic." States must obtain written agreements and/or written releases when disclosures are made. However, the timing of all these collections is under the control of state agencies.

7. 5 CFR 1320.5. Collection is consistent with 5 CFR 1320.5.

8. Public Consultation.

In accordance with the Paperwork Reduction Act of 1995, the public will be allowed 60 days to review and comment through the Federal Register process as part of the request for extension.

9. Payment of Gifts. No payments or gifts are provided to respondents other than remuneration of contractors and grantees.

10. Assurances of Confidentiality. This regulation provides no assurance of confidentiality to respondents, which include state agencies and informed consent requesters, concerning the information required by this rule to be collected (such as agreements, informed consent releases, acknowledgments, required audits). However, this rule sets forth the requirements for the confidentiality of information in state unemployment compensation records. Also, to the extent that Social Security information is used, state unemployment compensation agencies will have to abide by the Social Security Administration's rules on disclosure of information.

11. Questions of a Sensitive Nature. This rule does not include information collection requirements relating to questions of a sensitive nature.

12. Respondent Burden Hour and Cost.

(a) Agreements and Contracts = 3,604

The number of agreements in place for data matching varies from state to state. A study by the National Governors' Association of 47 state agencies indicated that states have an average of 17 agreements. There is burden associated with such agreements in terms of state agency record keeping. The estimated time involved is, on average, 4 hours per year per contract, producing an estimated 3,604 burden hours.

53 states x 17 contracts x 4 hours = 3,604 hours

Cost: 3,604 x \$35.77/hr* = \$128,915.00

* \$35.77 per hour, throughout this document, is the average hourly salary of state unemployment compensation personnel, taken from information supplied by states to ETA.

(b) Disclosure of Information

A number of sections in these regulations implement provisions in the SSA, the FUTA, and the Wagner-Peyser Act that require state unemployment compensation agencies to disclose information to other state or Federal agencies upon request as part of the IEVS. The agencies requesting information under those provisions will address the Paperwork Burden since those agencies are the initiators of the information collection burden. State UI agencies must request payment for information disclosed that does not serve UI purposes (603.8 of the Confidentiality Rule).

(c) Obtaining Information from Other Agencies

1. Social Security Administration = 20,500 hours

Under section 1137(a)(2) of the SSA and Subpart C of these regulations, state unemployment compensation agencies must obtain information from the Social Security Administration, or another agency already having access to Social Security data, that is needed in verifying eligibility and benefit amounts. This is largely an automated process. Inquiry is limited to those cases where the individual cannot provide documentation of pension amounts or there is a question regarding receipt of a pension. Of the approximate 16.4 million new initial claims filed in CY 06, only about 7.5% are applicants 60 and over retirement age. It is estimated that no more than 1,123,000 claimants will need to be checked with the SSA.

Each case checked should take an average of one minute, which includes cases involving no further follow-up action and those requiring subsequent interview and issuance of a written determination. The time required for a written determination would be funded through normal nonmonetary determination expenditures. The total burden activity is estimated at 20,500 hours.

Total Burden:

1,230,000 x 1 min./60 min. = 20,500 hours

Cost: 20,500 x \$35.77*/hr = \$896,253

* \$35.77 per hour, throughout this document, is the average hourly salary of state unemployment compensation personnel, taken from information supplied by states to ETA.

2. Wage Record Cross match

All states maintain or have access to wage record information. They already do or will conduct quarterly cross matches between benefit payments and wages paid as part of regular operations. Therefore, under 5 CFR 1320.3(b)(3), the burden for the states is not claimed.

(d) Payment of Costs

Several sections of this rule require states to obtain reimbursement for the costs associated with making optional or required disclosures of information. In order to be able to request and receive such reimbursement, states obviously must keep track of the costs associated with making disclosures. Since states already undertake this activity as part of their regular program operations, no additional burden is claimed for this requirement (see 5 CFR 1320.3(b)(3)).

(e) Acknowledgment

Section 603.9(b)(1)(v)(B) of this rule requires a state agency that chooses to make an optional disclosure to require the recipient agency or entity to sign an acknowledgment that all personnel having access to the disclosed information have been instructed of the safeguards required by this rule and will adhere to the state's or state agency's confidentiality requirements and procedures, and agreeing to report any infraction of these rules to the state agency fully and promptly. Because this acknowledgment may be part of the agreement described in paragraph (a), above, no additional burden is claimed for this requirement (the burden is already claimed in paragraph (a)).

Summary:

A summary of the estimate burden hours being claimed for the collection information in this rule is:

Total burden hours = 24, 104 hours

Total respondent costs = \$862,200

13. Cost Burden. No cost burden is reported as this process is paid for by monies allocated to states for administration. The activities are part of the process for nonmonetary determinations.

There are no breakouts for specific reports. This is a well-established reporting system and there are no start-up costs.

14. Cost to the Federal Government. There are no costs to the Federal government.

15. Burden Changes.

This information collection request originally related only to IEVS. In 2004, OMB approved a modification to the IEVS information collection to include the requirements of the rule making on the Confidentiality and Disclosure of State Unemployment Compensation Information. The current information collection request continues to address both IEVS and the confidentiality and disclosure requirements that OMB approved in 2004.

The changes to the burden reflect changes in the UI claimant population and established state operational changes; they do not reflect programmatic changes.

The change in the number of annual responses reflects the reduced number of UI claimants over 60 from 1,327,007 to 1,230,000.

The burden hour estimate has been reduced as a result of two factors:

- 1) A change in the number of claimants to be checked with SSA.
- 2) Claimant and employer notices have already been incorporated into the existing program operations.

State partners report that notices have been incorporated into existing communications with claimants through the Benefits Rights packages that are part of the claims process (claimants are required to read and sign off on the information provided in the package). Employer notification is incorporated into quarterly contribution and wage reports and/or the annual Experience Rating Statement. Therefore, burden hours for claimant and employer notices have been eliminated from the burden estimate for this extension.

A summary of the hourly burden changes includes:

Burden item	2004	2007	Explanation
Agreements	3,604	3,604	No change
Employer/Claimant Notices	106	0	Notices have been incorporated into existing communications
Social Security Cross matches	22,100	20,500	Reduction in claimant caseload from 20.4 million to 16.4 million & an increase in claimants over 60 (6.5% to 7.5% of the caseload)

This request will count as a reduction of 1706 hours towards ETA's Information Collection Budget.

16. Publication. Statistical data will not be published relating to this activity.

17. Display of OMB Expiration Date. This request is seeking approval to display the expiration date for OMB approval of the information collection. The OMB approval information will be displayed on an ETA Directive along with the expiration date for OMB approval. The ETA Directive is attached.

18. Exceptions to the Certification Statement. There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.