

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

(1) (2) (3) (4) **CONTENTS** (7) (8) (9) (10) (11)

- A. Facsimile of Form**I-4-2
- B. Purpose**.....I-4-3
- C. Due Date and Transmittal**.....I-4-3
- D. General Reporting Instructions**.....I-4-3
- E. Definitions**.....I-4-3
 - 1. Nonmonetary Determination.....I-4-3
 - 2. Present, Past, or Future Benefit Rights.....I-4-5
 - 3. Nonmonetary Determination Issues.....I-4-5
 - 4. Nonmonetary Redetermination.....I-4-11
 - 5. Single-Claimant Nonmonetary Determination.....I-4-12
 - 6. Multi-Claimant Nonmonetary Determination.....I-4-12
 - 7. Denial of Benefits.....I-4-12
- F. Item by Item Instructions**.....I-4-12
 - 1. Section A. Determinations, Redeterminations, and Denials.....I-4-12
 - 2. Section B. Determinations Involving Separation Issues, Single Claimant.....I-4-13
 - 3. Section C. Determinations Involving Nonseparation Issues, Single Claimant.....I-4-13
 - 4. Comments.....I-4-13
- G. Special Program Reporting**.....I-4-14
 - 1. Reporting Under the Extended Benefits Program.....I-4-14
 - 2. Reporting Under the Short Time Compensation (STC) Program.....I-4-15

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

A. Facsimile of Form (3) (4) (5) (6) (7) (8) (9) (10) (11)

ETA 207 – NONMONETARY DETERMINATION ACTIVITIES

STATE:		REGION:		REPORT FOR PERIOD ENDING:					
SECTION A. DETERMINATIONS, REDETERMINATIONS and DENIALS									
		Single Claimant Totals			Multi-Claimant Totals				
		Total Determinations and Redeterminations	Total Determinations	Total Redeterminations	Total Multi-claimant	Labor Dispute	Multi-claimant Other		
		(1)	(2)	(3)	(4)	(5)	(6)		
State UI	Determinations	101							
	Denials	102							
UCFE No UI	Determinations	103							
	Denials	104							
UCX Only	Determinations	105							
	Denials	106							
SECTION B. DETERMINATIONS INVOLVING SEPARATION ISSUES, SINGLE-CLAIMANT									
		Line No.	Total Separation Issues	Voluntary Leaving	Discharge	Other			
			(7)	(8)	(9)	(10)			
State UI	Determinations	201							
	Denials	202							
UCFE No UI	Determinations	203							
	Denials	204							
SECTION C. DETERMINATIONS INVOLVING NONSEPARATION ISSUES, SINGLE -CLAIMANT									
		Line No.	Total Nonseparation Issues	Able, Available, Actively Seeking	Disqualifying/ Deductible Income	Refusal of Suitable Work	Reporting Requirement Call-ins and Other	Refusal Profiling Referrals	Other (Aliens, Athlete School)
			(11)	(12)	(13)	(14)	(15)	(16)	(17)
State UI	Determinations	301							
	Denials	302							

Comments:

OMB No.: 1205-0150

OMB Expiration Date: 11/30/2010

OMB Burden Hours: 4 Hours

OMB Burden Statement: These reporting instructions have been approved under the Paperwork reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submission is required to retain or obtain benefits under SSA 303(a)(6). Respondents to this report have no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Unemployment Insurance, Room S-4231, 200 Constitution Ave., NW, Washington, DC, 20210.

B. Purpose

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

The data reported on the ETA 207 provides current information on the volume and nature of nonmonetary determinations and denials under state UI, and Federal UCFE and UCX unemployment insurance programs. Agencies use the data to budget workloads, evaluate law changes, appraise disqualification processes and relate to benefit appeals. The National Office uses it to determine workload counts, to analyze the ratio of disqualifications to determinations, and to examine and evaluate the program effect of nonmonetary activities. The regular report will include data from the regular program and the Short Time Compensation (STC) Program also known as Workshare. The regular report will not include workload under the Additional Benefits (AB) program.

C. Due Date and Transmittal

The report is due in the ETA National Office on the 15th day of the month following the quarter to which it relates. Both the regular and EB versions will be submitted electronically. Each report should include only those determinations, redeterminations, and denials dated during that calendar quarter. For reporting purposes, the date of determination is defined as the date printed on the determination notice, or, if no notice is required, the date payment is authorized, waiting week credit is given, or an offset is applied.

D. General Reporting Instructions

Classify nonmonetary determinations by the eligibility issue involved. A count will be taken for each issue determined. Exclude conditions described in E.1.b.

Multiple issues may be raised and addressed by the same set of facts. The same or different facts may or may not be needed to resolve the issues. If the state issues multiple determinations based on the same set of facts, then each determination shall be reported because each one represents an official action taken by the state agency. (See E.5. Single Claimant Determination).

Entries must be made for all required items. Enter a zero when the item is not applicable or no activity corresponding to the items occurred during the report period. A report containing missing data cannot be sent to the National Office but can be stored on the state's system. See Handbook 402, Appendix C for detailed edits.

E. Definitions

1. Nonmonetary Determination. A determination of eligibility made by the initial authority based on facts related to an "issue" detected:
 - which had the potential to affect the claimant's past, present, or future benefit rights; and
 - for which a determination of eligibility was made.

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

a. (1) The following situations do constitute nonmonetary determinations and should be reported:

- (1) Determinations made because of misrepresentation or fraud reportable on form ETA 227, Overpayment Detection and Recovery Activities.

Note: Overpayment notices on uncontested earnings detected by any method (e.g., crossmatch) are not reportable.

- (2) A claimant's separation for any reason other than a genuine "lack of work" which results in a nonmonetary determination. "Other than lack of work" includes such reasons as "laid off-too slow" or "failed to perform" and should be reported.
- (3) A disagreement exists as to whether the claimant satisfied the conditions of an indefinite disqualification (i.e., until reemployed for a specific period or has earned a specific sum of money) that resulted in a nonmonetary determination.
- (4) Investigation of a claimant's explanation for late reporting that results in a nonmonetary determination.

b. The following situations do not constitute nonmonetary determinations and should not be reported:

- (1) Determinations made solely for deciding whether charges should be made to an employer's experience-rating account.
- (2) Routine exploration of facts or questioning claimants in association with the claimstaking process except under circumstances of disagreement. Examples of routine questioning or decisions not giving rise to a nonmonetary count are:
 - (a) Claimant's acceptance of the claimstaker's conclusion that the week's earnings require a reduction in the benefit amount for that week.
 - (b) Claimant's acceptance of benefits for only a portion of a week claimed when the state law provides for reduced benefits in cases where the claimant was ill or otherwise unavailable for work during part of the week.
 - (c) A determination on whether or not a stated period of time elapsed since a disqualifying act, satisfying the disqualification. This is part of the function of taking claims.

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

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- (d) A determination on whether or not the claimant meets the minimum wage and employment requalifying requirement to establish a benefit year. This is part of the monetary determination function and under no circumstances should be reported as a nonmonetary determination.
 - (e) A determination on the existence of and/or number of dependents. This is part of the monetary determination function and under no circumstances should be reported as a nonmonetary determination.
 - (f) A determination on whether the claimant meets state requirements for establishing a subsequent benefit year (e.g., 30 days of bona fide work since exhausting a benefit series). This is part of the monetary determination function.

(3) Overpayment notices resulting from fraud, misrepresentation, uncontested earnings, etc. that were detected by any method (e.g. wage/benefit crossmatch, IB crossmatch, national directory of new hire).

2. Past, Present, or Future Benefit Rights. The following are examples explaining the requirement that the issue must have the potential to affect present, past, or future benefit rights.

- a. In response to a charge statement, an employer protests that the claimant recently refused a job. A determination is made on the issue of refusal of suitable work. This meets the criterion of affecting past, present, or future benefit rights if the maximum period of disqualification which could be imposed has not elapsed and/or the claimant has not exhausted benefit rights.
- b. The claimant states the reason for separation is "layoff" and the employer does not furnish any contradictory information on the separation notice. As a result, the claimant receives benefits for four weeks before ceasing to file. The employer protests the charge notice for the four weeks of benefits, stating that the claimant quit. The state agency determines that the claimant, in fact, voluntarily quit his/her job without good cause and is disqualified until reemployed for at least four weeks. This determination meets the requirement of affecting past, present, or future benefit rights whether or not the claimant was filing at the time.

3. Nonmonetary Determination Issues. The following situations constitute "issues" for the purpose of reporting nonmonetary determinations:

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- a. Voluntary Leaving Work. ~~(Leaving work without good cause is reason for disqualification.~~ There are two broad provisions for leaving work with good cause. In some states, good cause for leaving must be connected to the work. In other states, good cause for leaving may be either personal or work connected. For reporting purposes, include under this category all voluntary leaving issues including those involving marital, paternal, filial, or other domestic or personal circumstances, and attendance at school or training.
- b. Discharge. Employer initiated separations occurring for reasons other than lack of work must be adjudicated to determine if the claimant was discharged for reasons that constituted misconduct in connection with the work. Misconduct is defined as a willful or controllable breach of a claimant's duties, responsibilities or behavior that the employer has a right to expect. It is a deliberate or substantially negligent act or an omission which adversely affects the employer's legitimate business interests. Simple negligence with no harmful intent, inefficiency, unsatisfactory conduct beyond the claimant's control, or good faith errors of judgment or discretion are not misconduct. However, for reporting purposes, all determinations involving discharge including those resulting in a finding of no misconduct should be reported. Also include under this category issues involving a discharge for "gross" or "aggravated" misconduct, as defined under some state laws.
- c. Able - Available - Actively Seeking Work. Being able to work means that an individual has the physical and mental capacity to perform work. Being available for work means that an individual has potential for employment and is ready (e.g., has child care, transportation, necessary licenses, etc.) and is willing to accept employment. Each worker falls somewhere between available, that is, willing and able to perform any job, at any time, under any conditions and being unavailable, that is, being unwilling, not ready, or unable to accept or perform any job, under any conditions.

Availability is lessened by circumstances that decrease an individual's chances of becoming employed, and is increased by circumstances that enhance chances for becoming employed. Ineligibility occurs when there are undue problems, unreasonable or unrealistic restrictions regarding wages, hours of work or travel that are a barrier to accepting work or there is a lack of significant interest in employment.

Numerous states have specific provisions in their laws that require a search for work, while others consider a search for work as part of the availability consideration. Actively seeking work includes contacting potential employers and generally attempting to find work in ways that any reasonably prudent person attempts to secure work.

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- (1) For reporting purposes, (include) under this category all (able-available-actively seeking work issues including those involving marital, parental, filial or personal obligations and attendance at school or training. Only one nonmonetary count may be taken for a given week for an able/available issue.
- d. Disqualifying or Deductible Income. This category includes determinations relating to the effect upon benefit entitlement of payments such as workers' compensation, Old Age and Survivors Insurance (OASI) benefits, unemployment benefits under another state or Federal law, dismissal payments or wages in lieu of notice, vacation or holiday pay, and payments made under an employer's pension plan. This issue is reportable if properly documented.
- e. Suitable Work Refusals. A claimant's refusal of suitable work or an offer of referral to a job without good cause is reason for disqualification. For an issue to exist, it must first be established that a bona fide job offer or an offer of referral to a job existed.
- f. Reporting Requirements. Issues involving reporting requirements relate to requests for backdating of new or additional claims, late filing of continued claims, and failure to report as required to provide claims information.

Example: The claimant requested his initial claim be backdated to allow benefits for the prior four weeks. When questioned as to the reason for the delay in filing, the claimant stated he thought he would be recalled to work and would not need the benefits. The state determined the claimant had not established good cause for the delay in filing and issued a nonmonetary determination denying the request.

- g. Labor Disputes. These are issues arising from state law on unemployment resulting from labor disputes and are generally multi-claimant. Therefore, **all** labor dispute determinations should be reported in the multi-claimant category, even though some can be construed as single claimant determinations or the proper category is initially indiscernible (e.g., some interstate claims). In these cases, a notice issued to one claimant is usually based on a set of labor dispute facts which inherently has potential applicability to other claimants involved who may file later.

For reporting purposes, labor dispute issues are always reported as multi-claimant determinations in column 5.

- h. Refusal of Referral to Profiling Services. Section 4 of the Emergency Unemployment Compensation Amendments of 1993 established a program to profile UC claimants as to their likelihood of exhausting benefits and to refer to reemployment services those most likely to

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

(1) exhausted benefits. Refusal to accept referral to services without justifiable cause is grounds for denial of benefits. Determinations made because of a claimant's refusal to be referred to services and any resulting denials will be reported in column 16 of the report. Failure to report to referred training, without evidence of refusal, should be counted in "Reporting Requirements," not in "Refusal of Profiling Referral to Services."

- i. Alien Legal Status. Section 3304(a)(14), FUTA, provides that compensation shall not be payable on the basis of services performed by an alien unless the alien was in one of three eligibility categories at the time such services were performed. The categories include aliens who were lawfully admitted for permanent residence at the time the services were performed, lawfully present for purposes of performing the services, or permanently residing in the U.S. under color of law at the time the services were performed.

An alien must also be "able and available" for work while claiming benefits. This means the claimant must have current work authorization during the claim series. This is a separate issue from legal status during the base period and such determinations should be reported in column 12, Able, Available, Actively Seeking.

Determinations concerning an alien's legal status during the base period will result in a nonmonetary determination which may affect the claimant's monetary determination. Refer to the ETA 218, Benefit Rights and Experience, report for instructions relating to reporting the monetary determination.

- j. Professional Athlete Claimant. Section 3304(a)(13), FUTA, requires that compensation shall not be payable to any individual on the basis of services, substantially all of which consist of participating in sports or athletic events (or training or preparing to participate), for any week between two successive sport seasons, if the individual performed services in the first season and there is reasonable assurance that the individual will perform services in the second season. The term "athlete" may include, at state option, ancillary personnel involved with the team or event such as managers, coaches, and trainers employed by professional teams, and referees and umpires employed by professional leagues or associations. This section of Federal law requires the state to determine whether substantially all the athlete's base period services were earned from participating in sporting events and whether the athlete is "between seasons." "Substantially all" is defined as 90% or more of the total base period wages.

Determinations concerning a professional athlete's status during the base period could result in a nonmonetary determination which may affect the claimant's monetary determination. Refer to the ETA 218, Benefit Rights

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

(1) and Experience, report for instructions relating to reporting the monetary determination.

- k. Educational Employee Claimant "Between" and "Within" Terms. Section 3304(a)(6)(A), FUTA, requires that a state law provide that benefits be payable based on services performed for state and local government entities and certain nonprofit organizations in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered service. The only permitted exceptions to the "equal treatment" requirement are specified in clauses (i) through (v) of the same paragraph. These exceptions are referred to as the "between" and "within" terms denial provisions.

These exceptions provide that employees of educational institutions, educational service agencies, and certain other entities are ineligible for benefits based on such services between academic years or terms and during vacation periods and holiday recesses within terms if they have a "reasonable assurance" of performing in the same or similar capacity in the following year, term, or remainder of the term. This section of Federal law requires a state to apply these denial provisions also to employees of state and local governments and nonprofit organizations if they provide service to or on behalf of an educational institution.

In applying this section of Federal law, a state agency must first issue a monetary determination containing all the claimant's covered services during the base period. A nonmonetary determination must then be made as to whether the "between" and "within" terms educational denial provisions apply, and if so, the agency must also issue a monetary redetermination excluding such non-allowable services.

Therefore, determinations regarding whether or not the "between" and "within" terms educational denial provisions apply will result in a nonmonetary determination which may affect the claimant's monetary determination. Refer to the ETA 218, Benefit Rights and Experience, report for instructions relating to reporting the monetary determination.

Separation and/or nonseparation issues which occur at times other than between academic years or terms, during vacation periods, or holiday recesses within terms involving employees of educational institutions, educational service agencies, and certain other entities should be adjudicated under the regular provisions of state law and reported accordingly.

- i. Miscellaneous. Miscellaneous circumstances (unemployment status, seasonality and removal of all or part of a disqualification) are issues only when a disagreement arises on facts or application of the law. In the

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- (1) ~~absence of disagreement, these situations generally only require action~~ of a clerical nature such as reducing that particular week's benefit amount, noting earnings used to lift a disqualification, or changes in circumstances that might remove or satisfy a previous denial. In these cases, the claimant agrees to the facts and the situation does not constitute an issue.

If, however, after a discussion of the facts, benefits are denied through a written determination, then the resulting determination should be counted as a nonmonetary determination for the following issues:

- (1) Unemployment Status. A nonmonetary determination may be counted when there is a question on whether for a particular week: a) the claimant's activities or status constitutes "service" or "employment," or b) the claimant earns "wages" or receives "remuneration," resulting in ineligibility as "not unemployed," or only partially unemployed. Note, however, that determinations concerning the effect of payments such as worker's compensation, OASI benefits, unemployment benefits under another state or Federal law, dismissal payments or wages in lieu of notice, vacation or holiday pay, and payments made under an employer's pension plan come under the category of disqualifying or deductible income. See Section E.3.d.

Example: Based on the employer's statement of earnings, a claimant is awarded only partial benefits for a specified week. The claimant objects to the reduction in benefits on the grounds that the employer's statement is incorrect. Because of disagreement over the accuracy of the employer's statement, the state issues a nonmonetary determination based on the information obtained. The resulting determination is reportable (provided the other nonmonetary requirements in this section are met). If the claimant had agreed with the employer's information, a determination would not be needed and, therefore, not reportable.

- (2) Seasonality. A nonmonetary determination may be counted when there is a question on whether special statutory provisions under which seasonal workers may be denied benefits should apply.
- (3) Removal of All or Part of a Disqualification. A nonmonetary determination may be counted when there is a question on whether specific requalifying requirements are met, e.g., until employed for a specified period of time or until specified amounts are earned.

Example: The claimant is required to earn \$500 to lift a disqualification, but presents evidence of earning \$450. The claimant contends there were more earnings, but has no evidence. A question exists; further inquiry with the employer and/or the claimant

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- (1) ~~may be necessary.~~(5) After ~~resolving the issue and~~ making the determination, the determination should be reported.

Nonmonetary determinations made under these circumstances are reported in column 17, "Other," of the ETA 207.

4. Nonmonetary Redetermination. A determination made under statute, regulation, or well defined policy specifically requiring reconsideration of a nonmonetary determination prior to the administrative appeal stage, and which affirms, reverses, or modifies a determination.

Nonmonetary Redeterminations are reportable under the following conditions: (All conditions must be met.)

- a. The need for reconsideration arises as the result of a protest by an interested party requiring actual review of all facts on which the determination was based or from the agency's own initiative based upon new or additional information;
- b. All pertinent evidence and records are actually re-examined; and
- c. A written redetermination notice is issued to the claimant and any other interested party and is recorded.

A redetermination will always relate to the benefit period applicable to the original determination. (Facts concerning a different period or different circumstances may raise new issues calling for a new nonmonetary determination).

Redeterminations do not include determinations which are changed due to periodic supervisory reviews in which errors may be corrected. These corrected determinations are not based on new or additional information or protest and should not be reported as redeterminations. Also, if the claimant objects to a nonmonetary determination, listening to a repeated earlier statement and explaining the determination does not constitute a redetermination. A redetermination can only be made as a result of either the receipt of new or additional information or a protest by the employer or claimant and must always result in a written determination upon reconsideration of the original determination which affirms, reverses, or modifies the original determination.

5. Single-Claimant Nonmonetary Determination. A nonmonetary determination based upon facts which relate to an individual situation and issued to a single claimant. If two or more issues were raised and determined, based on the same set of facts, report each determination as a separate single-claimant nonmonetary determination.

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

~~Example(2) A claimant voluntarily quits a job and files for unemployment.~~ A statement is taken regarding the separation issue. During the interview, the claimant reveals that he/she quit due to a lack of transportation. Two issues have now been raised by the same set of facts. Two nonmonetary determinations, one separation issue and one nonseparation issue, may be reported based on the one set of facts if all the facts to support each determination are contained in the statement.

6. Multi-Claimant Nonmonetary Determination. A nonmonetary determination based upon a set of facts which apply to two or more similarly situated individuals and which may result in the issuance of one or more notices, depending upon the number of individual claimants involved.

Example: In a labor dispute involving 500 persons, three claims were filed each representing a different worker. Nonmonetary determination notices were issued disqualifying all three claims. One multi-claimant determination should be reported since identical notices were issued to, or applied to, two or more claimants in a labor dispute. Note: If different classes or grades of workers are involved in the same labor dispute, one multi-claimant count may be taken for the first notice issued for each class or grade of worker.

7. Denial of Benefits. Action imposed by a nonmonetary determination which cancels, reduces, or postpones a claimant's benefit rights. Under a multi-claimant determination, the count is reflective of the number of individuals impacted by the one multi-claimant determination. A denial is counted for each claimant whose claim is canceled, benefits reduced, or payments postponed. Therefore, the number of denials on line 102, columns 4, 5, and 6 can be greater than the number of determinations on line 101 for the same columns.

F. Item by Item Instructions

1. Section A. Determinations, Redeterminations, and Denials

- a. Single-Claimant Totals

- (1) Column 1 - Total Determinations and Redeterminations. Enter the total number of single-claimant nonmonetary determinations, redeterminations and denials by appropriate program (UI, UCFE, UCX). For UI claims, this is the sum of columns 2 and 3.
- (2) Column 2 - Total Determinations. Enter the number of single-claimant nonmonetary determinations as defined in section E. This total is the sum of columns 7 and 11.
- (3) Column 3 - Total Redeterminations. Enter the number of single-claimant redeterminations, as defined in Section E. A

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- (1) ~~redetermination of a single-claimant nonmonetary determination~~ should be counted only once. The count of denials imposed in redeterminations should consist only of those imposed for the first time through the redetermination process. Thus, if a redetermination merely upholds a denial initially imposed in an initial determination, do not include the denial in the count in columns 1 and 3, line 102, or in the case of UCFE and UCX, column 1, lines 104 and 106.
- b. Multi-Claimant Totals
 - (1) Column 4 - Total Multi-Claimant Determinations. Enter the number of determinations which actually or potentially involve benefit rights of more than one claimant as defined in section E. Count a denial for each claimant disqualified under a multi-claimant determination. This total is the sum of columns 5 and 6, Labor Dispute and Other.
 - (2) Columns 5 and 6 - Labor Dispute and Other. Enter the number of determinations which result from a labor dispute issue in column 5 (see section E.6.). Enter the number of multi-claimant determinations which do not involve a labor dispute issue in column 6.
2. Section B. Determinations Involving Separation Issues, Single Claimant
 - a. Lines 201 and 203. Enter the number of determinations for state UI and UCFE respectively for the appropriate issue.
 - b. Lines 202 and 204. Enter the number of denials for state UI and UCFE respectively for the appropriate issue.
3. Section C. Determinations Involving Nonseparation Issues, Single Claimant
 - a. Line 301. Enter the number of determinations made for each of the various issue types. (See section E.)
 - b. Line 302. Enter the number of denials made for each of the various issue types. (See section E.)
4. Comments. Describe in the Comments section, any administrative, legal, or economic factors which may result in data that lack comparability with data submitted on prior reports. Include changes in procedure, administrative policies, precedent appeals determinations, or mass or prolonged unemployment factors which may significantly increase or decrease the number of denials. For example, in describing mass unemployment or prolonged unemployment, give the cause, number, size of establishments, industry(s), and area(s) involved.

G. Special Program Reporting

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

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1. Reporting Under the Extended Benefit Program. When a SWA begins an extended benefit period, submit separate electronic reports for nonmonetary determinations relating to claims filed under the EB provisions of the state law. Continue reporting for as long as activity is likely to occur. Due dates and submittal instructions are the same as for the regular report. Include in each EB report the following items:
 - a. Column 1, lines 101 through 106. Definitions are the same as for the regular report.
 - b. Column 7, lines 201 and 202. Enter the total number of determinations and the denials which involve separation issues under state provisions and the sum of columns 8, 9, and 10. Columns 8 plus 9 plus 10 should be equal to column 7.
 - c. Column 8, lines 201 and 202. Enter the total number of determinations and denials under the EB program, as appropriate, that resulted due to a disqualification during the regular benefit period for voluntary quit which was terminated for reasons other than employment. (i.e., state law did not require employment to remove the disqualification).
 - d. Column 9, lines 201 and 202. Enter the total number of determinations and denials under the EB program, as appropriate, that resulted due to a disqualification during the regular benefit period for discharge for misconduct which was terminated for reasons other than employment. (i.e., state law did not require employment to remove the disqualification).
 - e. Column 10, lines 201 and 202. Enter the total number of determinations and denials under the EB program, as appropriate, that resulted due to a disqualification during the regular benefit period for refusal of suitable work which was terminated for reasons other than employment. (i.e., state law did not require employment to remove the disqualification).
 - f. Column 11, lines 301 and 302. Enter the total number of determinations and denials which involve nonseparation issues under state provisions and the sum of columns 12, 14, and 17. Columns 12 plus 14 plus 17 should be less than column 11.
 - g. Column 12, lines 301 and 302. Enter the number of determinations and denials under the PL 96-499 Federally required provisions for active search for work.
 - h. Column 14, lines 301 and 302. Enter the number of determinations and denials for refusal of work deemed suitable under the PL 96-499 Federally required definition of suitable work.

UI REPORTS HANDBOOK NO. 401

ETA 207 Nonmonetary Determination Activities

- i. ~~(1) Column 17, line 302.~~ Enter the total number of denials of EB due to the agent state of an interstate claim not being in an EB period.
2. Reporting Under the Short Time Compensation (STC) Program. Nonmonetary determination activity under the Short Time Compensation program, also known as Workshare, is not to be reported separately but is to be included on the regular version of this report.