

**Justification for Non-substantive Changes
to the ET Handbook No. 395 (OMB control number 1205-0245)**

The Benefit Accuracy Measurement (BAM) program is designed to determine the accuracy of paid and denied claims in three major Unemployment Insurance (UI) programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). State Workforce Agencies (SWAs) select weekly random samples of these program payments and denied claims. State BAM investigators audit these paid and denied claims to determine whether the claimant was properly paid or denied eligibility. The results of the BAM statistical samples are used to estimate accuracy rates for the populations of paid and denied claims. In addition, BAM is a diagnostic tool for Federal and SWA staff to use in identifying systemic errors and their causes and in correcting and tracking solutions to these problems. Therefore, the U.S. Department of Labor (Department) requires SWAs to review their BAM improper payment data and report their planned activities to prevent, detect, reduce, and recover improper payments in an UI Integrity Action Plan.¹

The Improper Payments Information Act (IPIA) of 2002 and subsequent amendments in the Improper Payments Elimination and Recovery Act (IPERA) of 2010 require agencies to examine the risk of erroneous payments in all programs and activities they administer. Furthermore, IPERA requires that the agency shall produce a statistically valid estimate, of the improper payments made and include those estimates in the accompanying materials to the annual financial statement of the agency (required under section 3515 of title 31, United States Code). The BAM program is the Department's method for achieving this requirement. Therefore, the Department reports the annual report and operational overpayment rates, as well as the underpayment rate to the Office of Management and Budget (OMB), as part of its IPIA reporting.

Finally, IPERA requires that the agency shall include in its scope of review:

- (i) whether the program or activity reviewed is new to the agency;
- (ii) the complexity of the program or activity reviewed;
- (iii) the volume of payments made through the program or activity reviewed;
- (iv) whether payments or payment eligibility decisions are made outside of the agency, such as by a State or local government;
- (v) recent major changes in program funding, authorities, practices, or procedures;
- (vi) the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate; and
- (vii) significant deficiencies in the audit report of the agency or other relevant management findings that might hinder accurate payment certification.

States make all payment eligibility decisions and payment accuracy determinations. A recent analysis of state data revealed significant inconsistency in the coding of paid claims cases, used

¹ Unemployment Insurance Program Letter (UIPL) No. 21-11;
http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3050

in estimates, for which the claimant did not respond to the required survey questionnaire. These inconsistencies have generated concerns about whether BAM units are complying with state law, administrative code/rules, and official policy in instances of claimant nonresponse, and whether BAM investigators are obtaining necessary information to determine eligibility for improper payment estimates. This is particularly true when dealing with work search verification and enforcement procedures when the claimant does not respond to the survey questionnaire².

This UIPL reminds the states of the requirements and responsibilities established in 20 CFR 602:

- The regulation in 20 CFR 602.21(c)(2) requires states to use standard [paid and denied] questionnaires prescribed by the U.S. Department of Labor (Department) and require claimant completion of it in accordance with the eligibility and reporting authority under state law.
- The regulation in 20 CFR 602.21(c)(4) requires each state to conclude all findings of inaccuracy as detected through BAM investigations with appropriate official actions, in accordance with the applicable State and Federal laws, and make any determinations on individual benefit claims in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the Employment Security Manual.
- The regulation in 20 CFR 602.21(d) requires each state, in accordance with the BAM State Operations, to classify benefit case findings resulting from BAM investigations as: (1) proper payments, improper payments, underpayments, or overpayments, in benefit payment cases, or (2) proper denials, improper denials, or underpayments in benefit denial cases.

This regulation has been historically included in and interpreted throughout the ET Handbook No. 395. This UIPL clarifies the historic language used -- "BAM investigators must exhaust all avenues in obtaining information" -- by providing a step-by-step strategy, restating established investigative procedures communicated and enforced through national reviews of state certifications of payment accuracy. In conclusion, the UIPL reinforces the existing state requirement for appropriate classification of payments as proper or improper when the claimant fails to respond to the survey questionnaire. (The reference to 20 CFR 602, referred to in the supporting statement, was added to the ICs in 1205-0425.)

² The Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96), enacted on February 22, 2012, added a new paragraph (12) to section 303(a), Social Security Act, to require that a state's law, as a condition of UC administrative grants, provide that "as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." (http://www.ssa.gov/OP_Home/ssact/title03/0303.htm#). The most recently approved OMB reporting burden included an upward time adjustment to account for this work search verification activity (OMB No.: 1205-0245; OMB Expiration Date: 11/30/2012; OMB Burden Hours: 9.11 hours per investigation versus the current OMB Expiration Date: 12/31/2015 with OMB Burden Hours: 10.09 hours per investigation).