

**JUSTIFICATION FOR
NON-MATERIAL CHANGE FOR OMB CONTROL NO. 1205-0245**

**ET Handbook No. 395, 5th Edition;
State Operations Handbook for the Unemployment Insurance (UI)
Benefit Accuracy Measurement (BAM) Program**

**Unemployment Insurance Program Letter (UIPL) No. 05-13, Change 1
Unemployment Compensation (UC) Work Search Requirements**

BACKGROUND:

Federal law (42 U.S.C. 503(a)(12)) requires state unemployment compensation (UC) law provide that, as a condition of eligibility for regular compensation for any week, an individual claiming UC must be actively seeking work. One of the elements that the Benefit Accuracy Measurement (BAM) audit verifies is whether claimants met the actively seeking work requirement.

The BAM Program is a statistical survey designed to determine the accuracy of paid and denied claims in the unemployment insurance (UI) program. State agencies select weekly random samples of paid and denied claims. State BAM investigators audit these claims to determine whether the week claimed by an individual was properly paid or denied. The results of the BAM statistical samples are used to estimate accuracy rates for the populations of paid and denied claims. Employment and Training (ET) Handbook No. 395 contains the instructions for conducting and recording the results of the audits required to provide for reporting the improper payments information under the Improper Payment Information Act.

Based on a legal opinion from the Office of the Solicitor (SOL), the US Department of Labor (Department) has determined that a state does not meet the requirements of Federal law if it has a law or policy allowing the issuance of a formal warning while paying UC for a week during which the work search requirement was not met. As a result, this Unemployment Insurance Program Letter (UIPL) informs states that they may no longer code BAM cases as “technically proper” due to formal warnings for work search. The UIPL provides instructions for coding BAM cases when the audit finds that the individual did not meet the work search requirement. The guidance clarifies what can constitute an acceptable work search activity and that such activities must be verifiable. This UIPL also expands on the guidance provided in UIPL No. 05-13 to update definitions, identify additional exceptions to the work search requirement, and identify best practices for reducing work search errors.

NON-MATERIAL CHANGE REQUEST:

This UIPL explains that states are not required to have claimants submit documentation of their work search as part of the continued claim process. However, if work search information is not required at that time, the UIPL provides that, at a minimum, states must require claimants to maintain a record of their work search activities and provide the information to the state agency upon request for verification purposes. This requirement is derived from 42 U.S.C. 503(a)(1), which requires states to pay benefits “when due” and prohibits states from paying UC to claimants who are not entitled to benefits. As part of a BAM audit, an investigator requests the claimant’s work search activities to verify that the state’s work search requirement has been met. This requirement is not new, but the guidance reinforces that states must inform claimants of the requirements and how to meet them. Further, it explains the minimum procedures to meet the documentation and verification requirements. The existing burden hours reported for the BAM program under OMB Approval No. 1205-0245 already includes the burden for an investigator requesting a claimant’s work search activities for the sample week and verifying that the claimant has met the states’ work search requirement. Because the guidance does not change the requirement that states document and validate work search activities, but instead provides for a minimum procedure to do so, there is no additional burden for state reporting.

State investigators classify the results of the BAM audits as proper or improper and include codes for the reasons for the classification. Currently, states can code cases as “technically proper” due to law/rules requiring formal warnings for unacceptable claimant work search efforts.

However, as required by an opinion of the SOL, the Department has determined a state does not meet the requirements of Federal law if it has a law or policy allowing the issuance of a formal warning while paying UC for a week during which the work search requirement was not met. This UIPL informs states of this interpretation of Federal law and requires states to stop coding BAM cases as “technically proper” due to formal warnings. The UIPL includes instructions on which currently existing code(s) states should use in place of the code previously used to report when a state had issued a formal warning for failure to conduct a work search. Because this instruction does not create a new reporting requirement, but clarifies how an existing element should be coded in specific situations, there is no material change to the BAM program or additional burden to states for reporting.