

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 33-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
Assistant Secretary *Jane Oates*

SUBJECT: Identification of "Improper Payment High Priority States" for Unemployment Insurance (UI)

1. Purpose. To announce the launch of the "Improper Payment High Priority States" initiative to reduce the unacceptably high levels of improper UI payments in those states.

2. References. Recovery Auditing Act (Section 831, Defense Authorization Act, for Fiscal Year 2002: P.L. 107-107); Improper Payments Information Act (IPIA) of 2002 (31 U.S.C. 3321 note); Improper Payments Elimination and Recovery Act (IPERA) of 2010 (31 U.S.C. 3321 note); Executive Order (E. O.) 13520, 74 Fed. Reg. 62,201 (November 20, 2009); Unemployment Insurance Program Letter (UIPL) No. 17-11; UIPL No. 19-11; UIPL No. 21-11; and UIPL No. 26-11.

3. Background. The U.S. Department of Labor (Department) has been working aggressively with states to develop and implement strategies to address improper UI payments. The Office of Management and Budget (OMB) has designated the UI program as one of the major benefit entitlement programs with an unacceptable level of improper benefit payments. The level of improper UI payments (overpayments plus underpayments) rose to 11.2 percent for the 2010 reporting period and continues to climb. The UI program is out of compliance with IPERA, which amended the IPIA and generally repealed the Recovery Auditing Act (Section 831, Defense Authorization Act, for Fiscal Year 2002: P.L. 107-107). The IPERA is designed to help reduce improper benefit payments and significantly increases payment recapture efforts requiring all Federal programs to conduct payment recapture audit programs. Programs with improper payment rates above 10 percent are considered out of compliance, which triggers additional oversight by Congress, OMB, and the Office of the Inspector General (OIG). Remaining out of compliance with IPERA could result in significant changes to the UI program.

Through UIPL No. 19-11, the Department issued a *call to action* to all states to implement strategies to reduce improper UI payments. The Department also conducted an all-state webinar in which states were strongly encouraged to focus attention on program integrity as a top priority and to develop state-specific strategies to bring down the UI improper payment rate. The Department has undertaken a number of measures to ensure that states have the necessary

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information to identify program areas with unacceptable improper payment rates and identify remedial actions that will have an immediate impact to bring the improper payment rate down.

The level of improper payments has created a critical situation that demands focused attention by the Department and by states; in particular, those states with chronic integrity issues and high improper UI benefit payments.

4. State Selection. The Department will identify states that have an improper payment rate greater than 10 percent using a three-year average of the annual report overpayment rates and root causes, as determined by the Benefit Accuracy Measurement (BAM) program. Initial identification of these states will be based on the period of April 1, 2008 through March 31, 2011, which is the most recent rate period available. The Department also anticipates identifying those states with improper payment rates significantly above the 10 percent threshold established for the UI program nationally in IPIA. For Fiscal Year (FY) 2012, the Department has identified six "Improper Payment High Priority States" with the highest annual report overpayment rates, with consideration to their root causes, for additional technical assistance measures. The process to identify the "Improper Payment High Priority States" is underway and the Department plans to begin offering technical assistance to these six states immediately upon notification.

5. Consequences for "Improper Payment High Priority States". An "Improper Payment High Priority State" will be required to work aggressively to develop and implement strategies that bring down the state's improper UI payments. The Department will work closely with these states to identify impediments to achieving reduction of improper payments; to identify actions designed to improve performance; and to identify technical assistance strategies to support each state's successful implementation of the action strategies and achieve an outcome of improved performance.

The Department will work with each "Improper Payment High Priority State" in the following ways:

- a) **High-level Engagement.** The Department's leadership, including the Office of the Assistant Secretary for Employment and Training, Regional Administrators, and the Employment and Training Administration's Office of Unemployment Insurance (OUI) will engage in discussions with state agency heads and the Governor's office to focus attention on the state's unacceptably high improper payment rate and to reinforce the need for performance improvements.
- b) **Cross-Functional Task Force.** All states will be expected to convene an improper payment Cross-Functional Task Force and develop a strategic plan with action strategies, milestones, and targeted reductions to bring down the state's UI improper payment rate. The development of the state plan will occur in a structured format over a two-week period in late September, similar to the Virtual Integrity Institute that was developed for the High Impact states, as outlined in UIPL No. 19-11. Through this process, the Department's staff will be more involved with the six "Improper Payment High Priority States." Senior subject matter experts (SMEs) from OUI and UI staff from the respective regional offices will work with each state on data analysis before the strategic planning session. For the "Improper Payment High Priority State," SMEs will work on-site with each state for the first week of the session to further support the analysis of each state's root causes and development of a strategic plan.

- c) Strategic Plan. Each “Improper Payment High Priority State” will develop an improper payment Strategic Plan that is expected to include the following steps:
- Data Analysis. Each state, along with the Department, will review and analyze state data, including data from programs such as BAM, Benefit Payment Control (BPC), and the Resource Justification Model. The goal of the data analysis is to identify root causes and potential areas of opportunity to improve integrity. The data analysis will also include reviewing and identifying any data validation issues.
 - Process Review. Each state will be expected to engage in a business process analysis to identify areas of weakness and to set the stage for reengineering processes that will improve performance. As one of their action strategies, the states will be required to include an operational business process review of their benefit systems with a focus on integrity. The review will be conducted collaboratively by staff from the state and the Department. Recommendations from the review will be assessed with consideration of priorities and resource availability and included in the state’s strategic plan to the extent feasible.
 - Technical Assistance. The state’s plan should also identify technical assistance that the Department can provide to support state implementation. The Department may facilitate support for a mentoring relationship between those “Improper Payment High Priority States” and states that have maintained improper payment rates well below 10 percent; provide targeted training of state staff; and/or may develop other strategies identified in collaboration with the state.
- d) State Improper Payment Strategic Plan and State Quality Service Plan. States will incorporate the strategic plans into their annual State Quality Service Plan as an addendum in FY 2012.

6. Enhanced Monitoring and Follow-up. The “Improper Payment High Priority States” will remain subject to additional monitoring and technical assistance until they achieve an improper payment rate under 10 percent and sustain that performance for at least two quarters. Any state that fails to make significant progress in meeting the milestones in their strategic plan and reducing the state’s UI improper payment rate will be subject to an intensive audit by the Department. If deemed necessary or appropriate, the Department may request assistance from and/or an independent review by the OIG. Audits will be tailored to state specific circumstances and may include one or more of the following activities;

- a) A broad-based program review with a targeted focus on benefit and integrity function;
- b) Quality reviews of core activities impacting integrity, such as non-monetary determination processes;
- c) An audit of the state’s BAM and BPC functions;
- d) An in-depth business process analysis of targeted functions;
- e) A review of resource allocation and staffing for key program functions impacting integrity; and/or
- f) A review of the state’s technology infrastructure as it impacts integrity.

7. Enhanced Resources. The Department may solicit, subject to fund availability, Supplemental Budget Requests for performance improvement in targeted areas, which may include procuring contractor support for process analysis and mapping, or may require a state to use a portion of its administrative grant for targeted performance improvement activities.

8. Failure to Improve. Integrity improvements by the “Improper Payment High Priority States” are important to the UI system overall. If the UI system as a whole fails to reduce the UI improper payment rate below 10 percent, the Department will be required to consider additional actions to bring the program into compliance, as required under IPERA Guidance, Appendix C, *Requirements for Effective Measurement and Remediation of Improper Payments*, which includes the following:

For agencies that are not compliant for three consecutive fiscal years for the same program or activity, within 30 days of the determination of non-compliance, the agency will submit to Congress:

- *Reauthorization proposals for each (discretionary) program or activity that has not been in compliance for three or more consecutive fiscal years; or*
- *Proposed statutory changes necessary to bring the mandatory program or activity into compliance.*

9. Action Requested. State Administrators are requested to:

- a) Make this information available to appropriate staff;
- b) Prepare to participate in the activities described above, if the state is selected as one of the six “Improper Payment High Priority States”; and
- c) Participate in the new Community of Practice Integrity Web site and to obtain or share successful state actions to control improper payments.

10. Inquiries. Questions should be directed to the appropriate Regional Office.