ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 34-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
Assistant Secretary

SUBJECT: Performance Measure for Unemployment Insurance (UI) Integrity

1. **Purpose.** To provide information on the definition and implementation of the UI Performs Core Measure for UI Integrity.

2. **References.** Improper Payments Information Act of 2002 (31 U.S.C. 3321 note); Improper Payments Elimination and Recovery Act 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; Employment and Training (ET) Handbook No. 395, 5th Edition, Benefit Accuracy Measurement (BAM) State Operations Handbook; U.S. Department of Labor (Department) Fiscal Year (FY) 2010 Agency Financial Report (AFR) (November 15, 2010), http://www.dol.gov/_sec/media/reports/annual2010/2010annualreport.pdf,

3. **Background.** UIPL No. 17-11 described and solicited comments on a proposed UI Performs Core Measure for UI Integrity. The performance measure is one of the strategies of the Integrity Strategic Plan developed by the Department, which includes several other initiatives to address the root causes of UI improper payments. The Department is required by the Improper Payments Information Act of 2002 (IPIA) to estimate and report the annual rates and amounts of improper payments in the UI program. The Improper Payments Elimination and Recovery Act of 2010 (IPERA), which amended the IPIA, established several criteria that Federal agencies must meet in order to be in compliance with the law, including the requirement that the agency must have an improper payment rate of less than 10 percent for each program for which an improper payment estimate was obtained and published in the agency's AFR. For the 2010 IPIA reporting period (July 1, 2009 to June 30, 2010), the Department reported an improper payment rate of 11.2 percent (10.6 percent overpayment rate and 0.6 percent underpayment rate) in its FY 2010 AFR, page 179. In response, the Department developed an Integrity Strategic Plan to bring the UI program into compliance with IPERA.

| RESCISSIONS None | EXPIRATION DATE Continuing |

The Integrity Strategic Plan also addresses the requirement of E.O. 13520, "Reducing Improper Payments," which directs Federal agencies "to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries."

The new performance measure addresses the leading cause of UI improper payments -- claimants who return to work, fail to report earnings, and who continue to claim and collect UI benefits. In calendar year (CY) 2010, these benefit year earnings (BYE) overpayments totaled nearly $2 billion, which represented 3.4 percent of total UI benefits paid and nearly 30 percent of all overpayments.

4. Comments Submitted and Department Responses.

Fourteen states submitted comments in response to UIPL No. 17-11, which proposed reducing the UI BYE fraud overpayment rate from the CY 2008 to CY 2010 baseline level by 35 percent at the end of the first year of implementation and by 50 percent by the end of the second year of implementation. Three states requested clarification of definitions or the methodology used to compute the BYE fraud rates. Most states generally supported the concept of a UI integrity performance measure. However, several states raised issues concerning the proposed definition and implementation of the proposed measure. The Department has carefully considered these comments and has revised the UI integrity performance measure as indicated below.

Performance Measure Defined in Terms of BYE Fraud or Five or More Weeks of Overpayments.

Five states expressed concern about how fraud would be defined or felt that the measure should not be limited to BYE fraud or BYE overpayments of five weeks or more. These states generally pointed out that the definition of fraud varies among states and, consequently, the measure may reflect definitional differences rather than performance. Also, if a state changes its fraud definition to meet the reduction target, the definition in the measurement period will differ from the baseline period. In addition, some states emphasized the importance of reducing all overpayments, not just fraud or overpayments of five weeks or more (see Attachment B of UIPL No. 17-11 for a technical discussion of defining the proposed performance measure in terms of fraud versus the number of weeks that were overpaid), and urged the definition of the measure be broadened to include all BYE overpayments.

Department Response:

There is merit in many of the state comments with respect to interstate differences in the definition of fraud and the need to ensure the Department is measuring state performance on a level playing field. There is a legitimate concern that a measure limited to fraud overpayments could have the unintended consequence of encouraging states to relax their definitions of fraud in order to artificially reduce their fraud rates, while total BYE errors are not reduced.

In addition, the Department's further analysis of BYE overpayments indicates a more complex relationship between the number of overpaid weeks established and type of overpayment (fraud / nonfraud), which is discussed in Attachment A.

The integrity performance measure will be defined to include both fraud and nonfraud BYE overpayments, regardless of the number of weeks of benefits that were overpaid.

Reduction Targets

Eight states felt that the proposed reductions in the BYE fraud rates of 35 percent in the first year of implementation and 50 percent in the second year were too ambitious. Four of these states requested that implementation be stretched out to three years with alternative reduction targets.

Department Response:

The Department recognizes that the proposed reduction targets of 35 percent in the first year of implementation and 50 percent by the end of the second year are very aggressive. However, the magnitude of UI improper payments and the need to reduce these overpayments expeditiously requires ambitious targets within the proposed two-year period. Extending the reduction period to three years would adversely affect the ability of the Department to meet the 10 percent improper payment rate criterion in IPERA. Nevertheless, the Department recognizes the many demands on state agencies with respect to administering the UI program in a way that balances integrity with performance. **Consequently, the Department has relaxed the first year reduction target to 30 percent.**

Low Error Rate States

Six states felt that applying the same percentage reduction to all states unfairly penalizes states with current low rates. These states pointed out that it would be very difficult for states with low baseline rates to reduce their rates further. States that have already taken steps to reduce fraud would be penalized, while states with high error rates that have taken few actions will be able to achieve large initial reductions by adopting some basic measures, including redefining fraud to include fewer overpayments.

Department Response:

The Department agrees that applying a single percentage reduction standard may penalize states that have already implemented integrity measures to reduce their BYE error rates. Because Benefit Accuracy Measurement (BAM) is a statistical survey, results are subject to both sampling and nonsampling error (variation). As noted in UIPL No. 17-11, because this measure initially would be based on sample data, the Department will follow appropriate statistical procedures to take into account sampling error in determining whether a state meets its Acceptable Level of Performance (ALP). Consequently, it may be difficult to detect statistically significant changes in states with low baseline BYE rates.

To address the issue of low baseline error rates, a state will meet the ALP if: 1) its total BYE overpayment rate decreases during the performance period by the percentage decrease specified for the period, or 2) its BYE overpayment rate decreases during the performance period and the rate is below the national BYE overpayment rate by the target percentage decrease.

For example, for the CY 2008 through CY 2010 baseline period, the national BYE rate was 2.92 percent. A 30 percent reduction for the first performance year would reduce the national BYE rate to 2.04 percent. The following table summarizes several scenarios using these performance criteria.

				Performance Criteria			
State	State BYE Baseline Rate	State BYE 30% Reduction Target	State BYE Rate for Performance Period	State BYE Rate Decreased?	State Met Reduction Target?	State BYE Rate <= U.S. BYE Reduction Target (2.04%)?	Status
A	6.5%	4.55%	4.95%	Y	N	N	Fail
B	5.2%	3.64%	5.34%	N	N	N	Fail
C	3.5%	2.45%	2.12%	Y	Y	N	Pass
D	1.9%	1.33%	1.39%	Y	N	Y	Pass
E	1.3%	0.91%	1.48%	N	N	Y	Fail

Following each performance period, a new baseline BYE rate will be computed based on the three most recent years, and a new national threshold will be announced in a UIPL based on the target reduction for the subsequent performance period.

Other Comments

Several states commented on other aspects of the proposed performance measure, including:

- A concern about the adequacy of the sample sizes in the BAM survey to provide accurate statistics on state performance.

  Department Response: BAM is a methodologically sound statistical survey. The Department will compute the sampling error of each state's BYE overpayment rate for the reporting period and conduct the appropriate statistical tests to account for sampling variance in evaluating state performance.

- A recommendation to use Benefit Payment Control (BPC) data to define a measure in terms of reducing overpayments established that are classified as BYE fraud or reducing the duration of fraud overpayments.

  Department Response: BPC data collection cannot currently support the evaluation of performance for this measure. State agencies report BPC data to the Department on the Employment and Training Administration 227 Overpayment Detection and Recovery Activities Report. This report does not provide the level of detail required to classify overpayments by cause (BYE) or by the number of weeks that were overpaid. The Department will seek authority under the Paperwork Reduction Act to implement the collection of more detailed population integrity data.

- A recommendation to postpone implementation of the measure until a more accurate data collection can be implemented.

Department Response: The current improper payment rate exceeds the statutory requirement of IPERA. The Department is required to proceed expeditiously to implement strategies to reduce improper payments.

- A statement of the need for additional consultations with the state workforce agencies to discuss the proposed definition of the performance measure and state best practices.

  Department Response: The Department is committed to maintaining close communication and consultation with the state workforce agencies to implement this performance measure through webinars, workgroups, and other collaborative efforts. The Department will provide states the opportunity to share best practices through the UI Communities of Practice (CoP) Website: http://uiworks.workforce3one.org.

- A request that the Department conduct a cost/benefit study of the state burden to meet the proposed ALP and an analysis of the impact of the measure on claimants and the public.

  Department Response: Such studies would require a significant commitment of time and resources that cannot be supported given the need, as expressed by Congress and the President as explained above, to move expeditiously to address integrity issues.

- A request for the Department to work with state agencies and employers to improve the reporting of wage record information.

  Department Response: The Department will continue to work with state agencies and employers to facilitate the timely and accurate reporting of all claimant information, including wage record and new hire data.

- A recommendation that the measure include additional causes of improper payments other than BYE overpayments.

  Department Response: While the Department supports state efforts to address all root causes of improper payments, the Department believes there is a particular need to focus state efforts on reducing BYE overpayments because it is the single leading cause of improper payments.

- A concern that states could confront potential resource and programming issues when a data collection system for the number of weeks and amounts of overpayments established is implemented.

  Department Response: As part of the authorization process for new data collection, the Department is required under the Paperwork Reduction Act to justify any additional cost and reporting burden and will design data collection requirements that minimize development costs.

- A recommendation that state overpayment recovery efforts be taken into account in any measure.

Department Response: The Department is required by IPERA to develop improper payment recovery targets. As part of this development process, the Department will evaluate the need for a measure of overpayment recovery performance.

5. Performance Standard.

After careful consideration of the comments received in response to UIPL No. 17-11, the Department has established the following UI Performs Core Measure for UI Integrity.

Acceptable Level of Performance (ALP): Reduce the percentage of UI benefits overpaid due to BYE from the baseline level by 30 percent at the end of the first year of implementation and by 50 percent by the end of the second year of implementation. As described in section 4 of this UIPL, a state will meet the ALP if: 1) its BYE overpayment rate decreases during the performance period by the percentage decrease specified for the period, or 2) its BYE overpayment rate decreases during the performance period and the rate is below the national BYE overpayment rate by the target percentage decrease.

Performance will be measured by the state's BYE overpayment rate, estimated by the BAM survey, rather than the amount overpaid, to control for year-to-year changes in benefit outlays. A table of ALP targets by state is provided in Attachment B.

Benchmark Period: The benchmark period for the state's average BYE rate is the previous three calendar years. This will result in more accurate estimates than using a single year due to the larger samples and will smooth out year-to-year variances due to macroeconomic factors. A table of BYE rates by state for the CY 2008 through CY 2010 baseline period is provided in Attachment B.

Calculation: The measure will be calculated from BAM data using the following data elements:

- Dollar Amount of Key Week Error: BAM data element ei1 - defines the overpayment amount for the key (sampled) week of benefits.
- Key Week Action: BAM data element ei2 - 10 (fraud), 11 (nonfraud recoverable), 12 (nonfraud nonrecoverable), 13 (overpayment – finality), 15 (overpayment – other than finality).
- Error Cause: BAM data element ei3 - 100-119 and 150-159 – defines BYE overpayments.
- Original Amount Paid: BAM data element f13 - defines amount paid to claimant in key week.

The rate is the ratio (expressed as a percentage) of the estimated amount of UI benefits that were overpaid due to BYE issues to the total amount of UI benefits paid. Both the numerator and the denominator are weighted (by the number of paid UI weeks in the BAM survey population) estimates.

$$\frac{\text{Amount overpaid due to BYE}}{\text{Amount of UI benefits paid}} \times 100$$

Performance Period: In order to include the state results for this measure in the State Quality Service Plan (SQSP), the performance period will be based on BAM data for the CY. As explained in the BAM State Operations Handbook (ET Handbook 395, 5th edition), 98 percent of BAM cases must be completed within 120 days after the end of the CY (April 30, or April 29 in leap years). The first measurement period will be CY 2012.

Sampling Error: Because this measure is based on sample data, the sampling error of the state's estimated BYE overpayment rate will be taken into account in determining whether a state meets the ALP.

Failure to Meet the ALP: States failing to meet the ALP will develop a Corrective Action Plan as part of the SQSP. Performance for CY 2012 will be addressed in the FY 2014 SQSP.

Future ALPs: As states reduce their BYE overpayment rates, percentage reductions for performance periods after CY 2013 will be adjusted to reflect ALPs that are cost effective for state agencies to achieve.

Initially, this measure will be defined in terms of the percentage of BYE overpayments estimated by the BAM survey. However, the Department plans to request authorization from the Office of Management and Budget under the Paperwork Reduction Act to collect enumerative data of UI overpayments established by state BPC activities, which will support evaluating performance for BYE overpayments by type (fraud/nonfraud) and/or the number of weeks that were overpaid.

Data Collection Costs: Because the performance measure will initially use data collected through the BAM survey, there are no data collection start-up costs for this performance measure.

6. Action Requested. State Administrators are requested to provide the information in this advisory to the appropriate staff.

7. Inquiries. All inquiries should be directed to the appropriate Employment and Training Administration Regional Office.

8. Attachments.

Attachment A –Additional Analysis of Benefit Year Earnings (BYE) Weeks Overpaid
Attachment B – State Benefit Year Earnings Rates and Acceptable Levels of Performance Baseline Period CY 2008 to 2010

**Additional Analysis of Benefit Year Earnings (BYE) Weeks Overpaid**

BYE overpayments are the leading cause of UI overpayments, accounting for nearly 30 percent of all overpayments. In terms of the amount overpaid, for the period calendar year (CY) 2008 through CY 2010, nearly 52 percent of UI benefits overpaid due to BYE issues were for overpayments of five weeks or more.

Distribution of Number of Weeks Overpaid
BYE Dollars Overpaid - CY 2008 - CY 2010

- 3 Weeks 7.8%
- 4 Weeks 5.8%
- 2 Weeks 9.7%
- 1 Week 19.4%
- < 1 Week 5.4%
- 5+ Weeks 51.9%
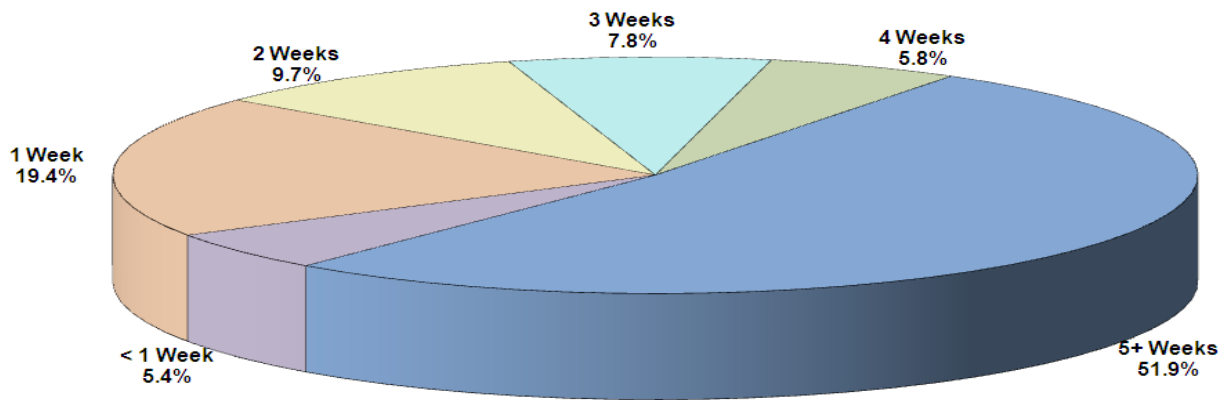
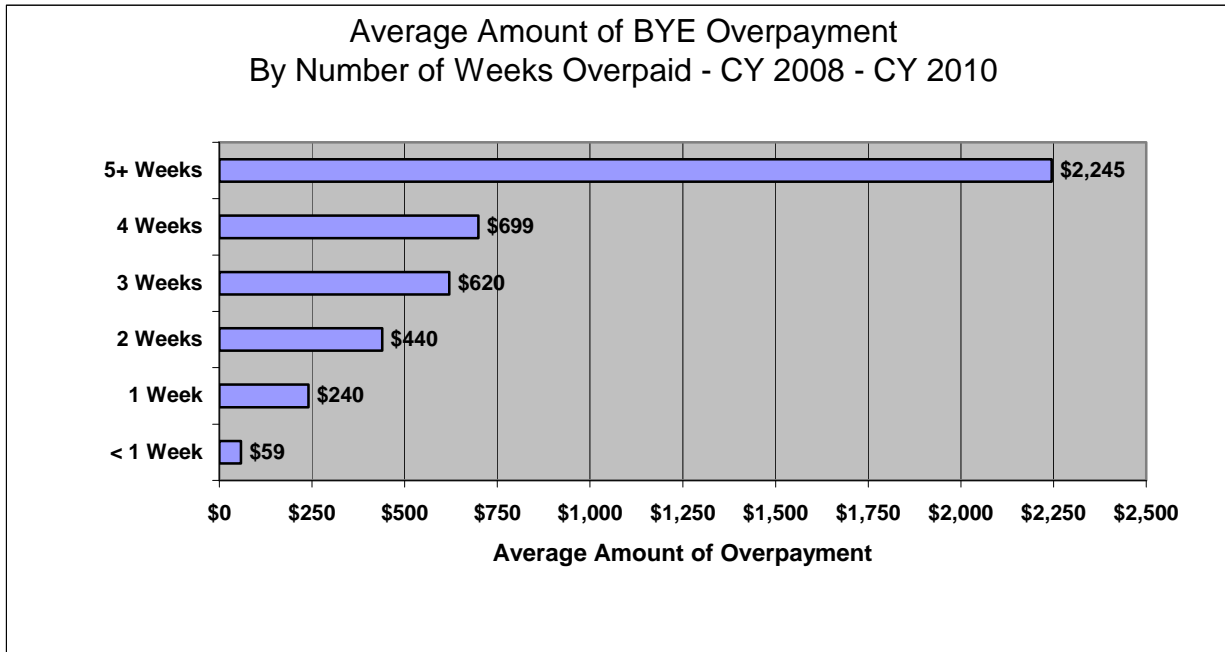However, the distribution of BYE overpayment <u>cases</u> established is quite different. Over 70 percent of BYE overpayment cases are for one week or less, and less than 12 percent of the BYE cases are for five weeks or more.
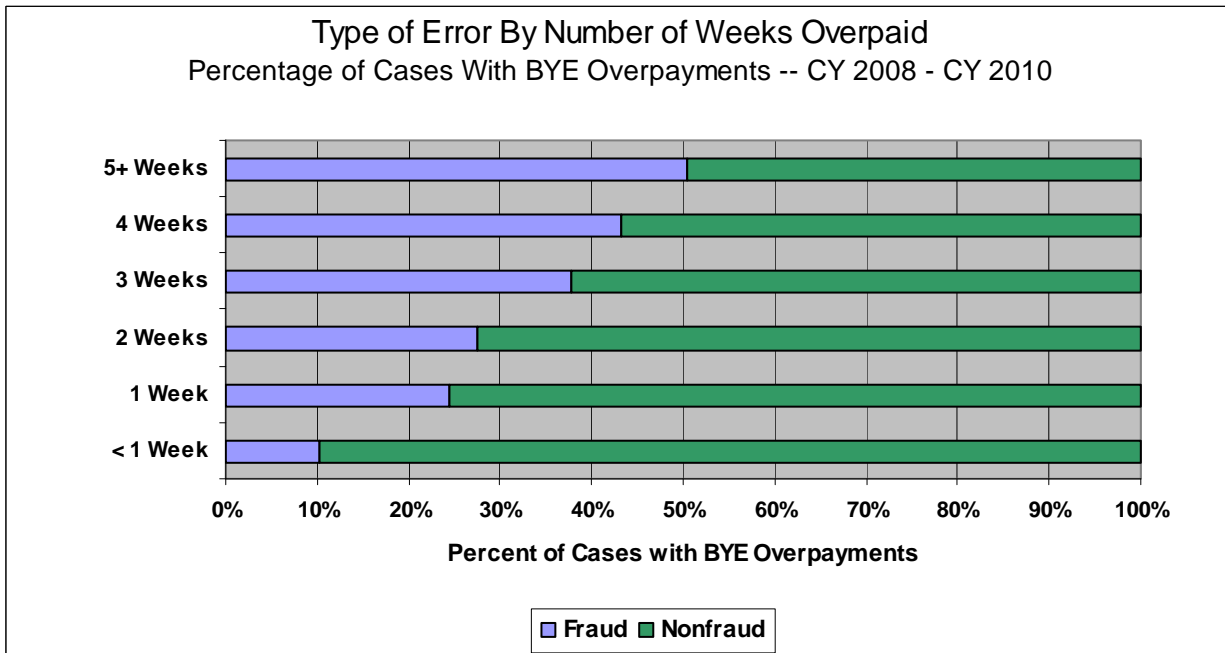
Distribution of Number of Weeks Overpaid
BYE Overpayment Cases - CY 2008 - CY 2010

- 1 Week 33.2%
- < 1 Week 37.6%
- 2 Weeks 9.4%
- 5+ Weeks 11.8%
- 4 Weeks 3.3%
- 3 Weeks 4.8%
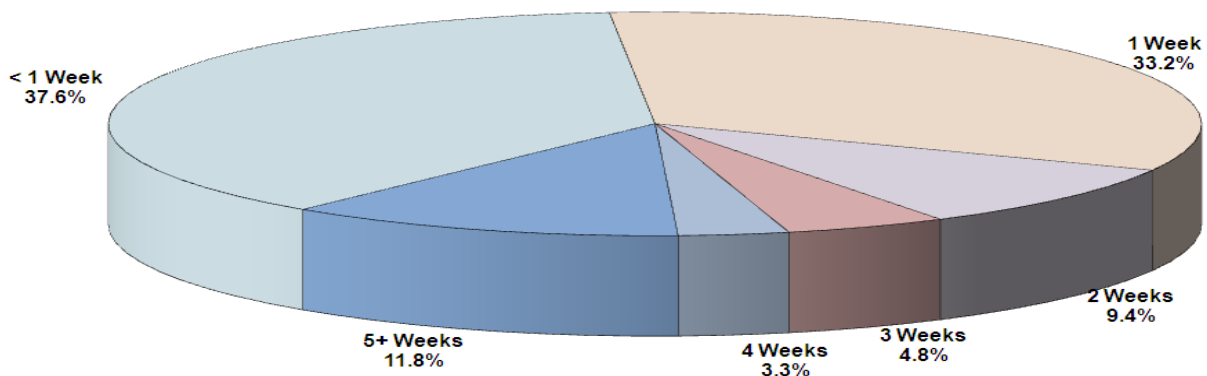
This disparity is explained by the large differences in average overpayments, which range from $59 for overpayments of less than a week to $2,245 for overpayments of five weeks or more.

Average Amount of BYE Overpayment
By Number of Weeks Overpaid - CY 2008 - CY 2010

Weeks Overpaid	Average Amount
5+ Weeks	$2,245
4 Weeks	$699
3 Weeks	$620
2 Weeks	$440
1 Week	$240
< 1 Week	$59

Average Amount of Overpayment

The following two charts show the distribution of overpayment type (fraud/nonfraud) by the number of weeks overpaid. Roughly half of the cases established with five or more weeks of overpayments were classified as fraud.

Type of Error By Number of Weeks Overpaid
Percentage of Cases With BYE Overpayments -- CY 2008 - CY 2010

Weeks Overpaid	Fraud	Nonfraud
5+ Weeks	~50%	~50%
4 Weeks	~43%	~57%
3 Weeks	~38%	~62%
2 Weeks	~28%	~72%
1 Week	~24%	~76%
< 1 Week	~10%	~90%

Percent of Cases with BYE Overpayments

☐ Fraud ☐ Nonfraud

In terms of benefits, approximately 70 percent of the amounts overpaid for overpayments of five weeks or more were fraud.

Type of Error By Number of Weeks Overpaid
Percentage of BYE Benefit Overpayments -- CY 2008 - CY 2010
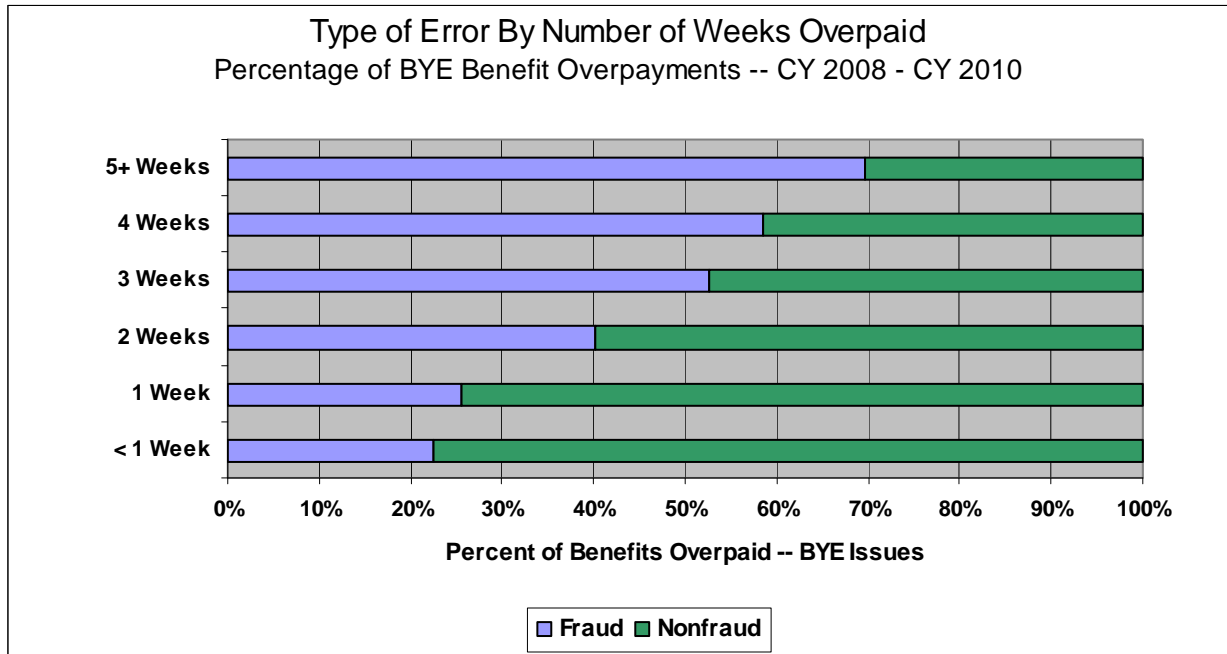
Looking at it another way, nearly one-third of fraud BYE overpayments are for fewer than five weeks, and just over one-third of nonfraud BYE overpayments are for five weeks or more.

Distribution of BYE Amounts Overpaid
By Type of Error and Fraud Weeks Distribution
CY 2008 - CY 2010

**Distribution of BYE Amounts Overpaid
By Type of Error and Nonfraud Weeks Distribution
CY 2008 - CY 2010**

Fraud
53.7%

Nonfraud
46.3%

< 1 Week - 9.0%

1 Week - 31.3%

2 Weeks 12.6%

3 Weeks 8.0%

4 Weeks 5.2%

5+ Weeks - 34.0%
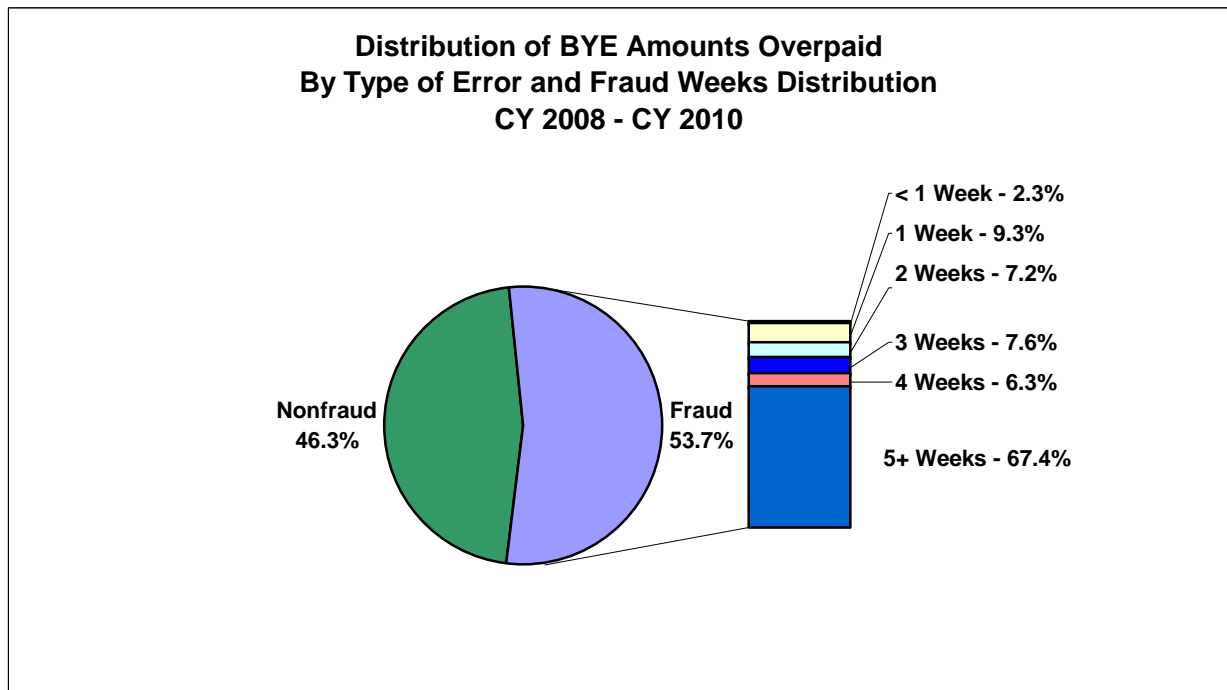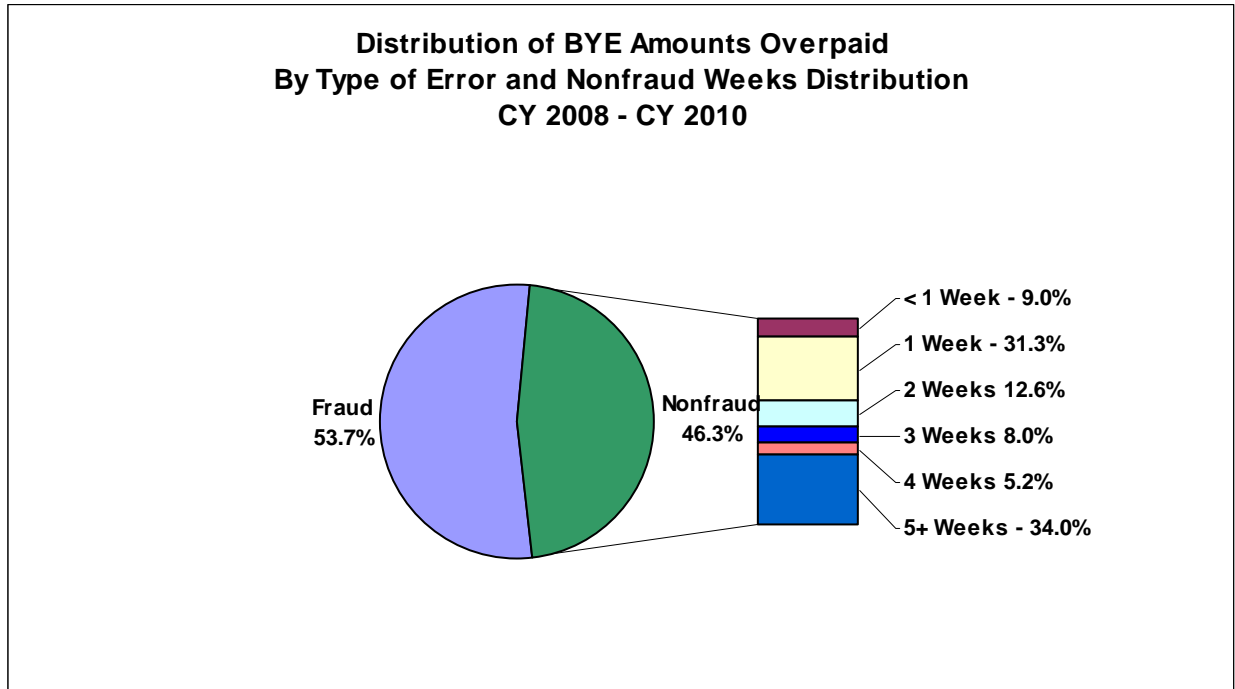
Estimated Effect on Annual Report and Operational Rates

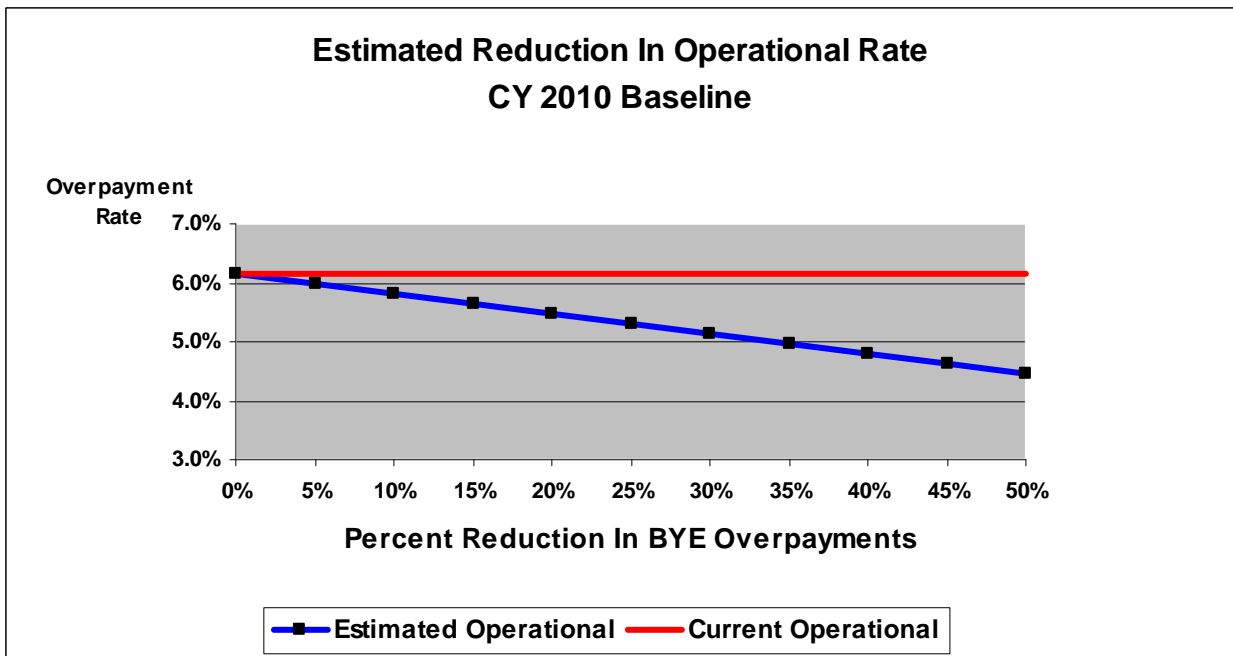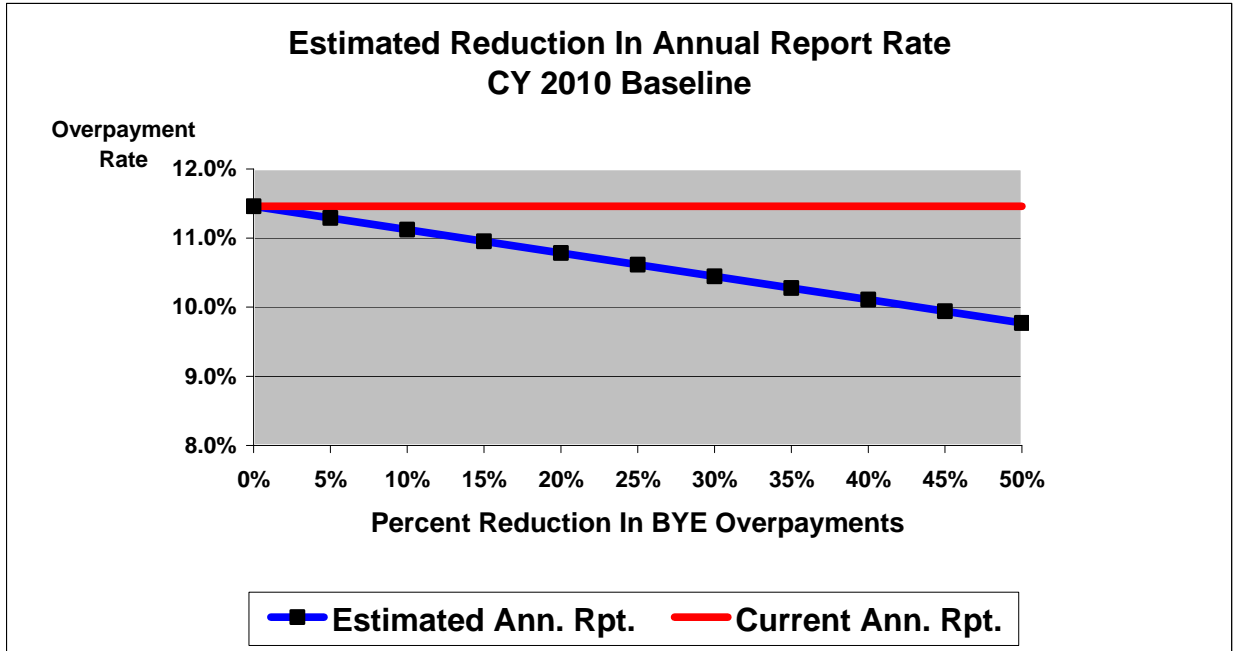The following charts show the reduction in the Annual Report and Operational rates for various levels of reduction in the BYE rate, using the CY 2010 Annual Report rate of 11.46 percent and the CY 2010 Operational rate of 6.15 percent as the baselines. BYE overpayments represent 29.5 percent of the overpayments included in the Annual Report rate and nearly 55 percent of the overpayments included in the Operational rate. If all states meet their reduction targets, the U.S. BYE rate would decrease by 30 percent in the first year, and both the Annual Report and Operational rates would decrease by approximately 1.0 percentage point. After two years of implementation, the U.S. BYE rate would decrease by 50 percent, and both the Annual Report and Operational rates would decrease by approximately 1.69 percentage points.

Estimated Reduction In Annual Report Rate
CY 2010 Baseline

Overpayment Rate

Percent Reduction In BYE Overpayments

Legend: ■ Estimated Ann. Rpt. — Current Ann. Rpt.

Estimated Reduction In Operational Rate
CY 2010 Baseline

Overpayment Rate

Percent Reduction In BYE Overpayments

Legend: ■ Estimated Operational — Current Operational

State Benefit Year Earnings Rates and Acceptable Levels of Performance
Baseline Period CY 2008 to 2010

ST	BYE Rate	Amount OP	30% Reduction	50% Reduction
AK	2.89%	$14,560,615	2.02%	1.45%
AL	3.41%	$50,471,092	2.39%	1.71%
AR	6.63%	$96,466,657	4.64%	3.32%
AZ	3.72%	$77,653,369	2.60%	1.86%
CA	2.40%	$642,197,838	1.68%	1.20%
CO	2.53%	$40,835,305	1.77%	1.27%
CT	2.24%	$68,341,772	1.57%	1.12%
DC	5.80%	$29,623,978	4.06%	2.90%
DE	3.79%	$18,136,378	2.65%	1.90%
FL	2.49%	$178,709,153	1.74%	1.25%
GA	1.85%	$44,877,741	1.30%	0.93%
HI	1.07%	$10,338,979	0.75%	0.54%
IA	2.37%	$42,632,597	1.66%	1.19%
ID	3.59%	$32,261,408	2.51%	1.80%
IL	3.23%	$325,448,799	2.26%	1.62%
IN	3.07%	$121,901,218	2.15%	1.54%
KS	3.35%	$53,777,732	2.35%	1.68%
KY	1.48%	$32,751,057	1.04%	0.74%
LA	9.50%	$104,672,070	6.65%	4.75%
MA	1.81%	$116,577,547	1.27%	0.91%
MD	3.42%	$91,194,789	2.39%	1.71%
ME	1.36%	$8,424,729	0.95%	0.68%
MI	2.74%	$214,892,752	1.92%	1.37%
MN	3.09%	$105,443,697	2.16%	1.55%
MO	2.59%	$62,698,280	1.81%	1.30%
MS	3.69%	$27,770,864	2.58%	1.85%
MT	3.38%	$9,949,616	2.37%	1.69%
NC	3.59%	$217,902,731	2.51%	1.80%
ND	2.07%	$4,299,636	1.45%	1.04%
NE	2.73%	$12,819,192	1.91%	1.37%
NH	1.96%	$10,727,978	1.37%	0.98%
NJ	4.42%	$389,858,962	3.09%	2.21%
NM	3.75%	$30,380,832	2.63%	1.88%
NV	5.49%	$133,465,318	3.84%	2.75%
NY	2.36%	$275,813,151	1.65%	1.18%
OH	2.70%	$152,476,434	1.89%	1.35%
OK	2.51%	$28,758,390	1.76%	1.26%
OR	3.05%	$103,390,978	2.14%	1.53%
PA	3.91%	$442,626,347	2.74%	1.96%
PR	4.15%	$33,979,236	2.91%	2.08%

RI	2.58%	$25,259,159	1.81%	1.29%
SC	5.18%	$103,275,387	3.63%	2.59%
SD	1.22%	$1,685,253	0.85%	0.61%
TN	3.60%	$75,691,824	2.52%	1.80%
TX	1.88%	$152,403,147	1.32%	0.94%
UT	1.94%	$21,248,022	1.36%	0.97%
VA	2.36%	$58,326,909	1.65%	1.18%
VT	2.05%	$9,016,328	1.44%	1.03%
WA	1.37%	$71,476,936	0.96%	0.69%
WI	3.38%	$138,114,296	2.37%	1.69%
WV	1.51%	$11,208,796	1.06%	0.76%
WY	3.99%	$12,397,151	2.79%	2.00%
US	2.92%	$5,139,212,425	2.04%	1.46%

Source: Benefit Accuracy Measurement CY 2008 – CY 2010 results.