

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DPM
	DATE January 29, 2013

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 09-13

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Integrity Performance Measures for Unemployment Insurance (UI)

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

2. **References.**

- Executive Order (E.O.) 13520, *Reducing Improper Payments* (November 20, 2009);
- *Improper Payments Information Act of 2002* (IPIA), Public Law (Pub. L.) 107-300 (31 U.S.C. 3321 note);
- *Improper Payments Elimination and Recovery Act of 2010* (IPERA), Pub. L. 111-204 (31 U.S.C. 3301 note and 3321 note);
- *SSI Extension for Elderly and Disabled Refugees Act*, Pub. L. 110-328 (8 USC 1601 note);
- *The Claims Resolution Act of 2010*, Pub. L. 111-291 (42 USC 1305 note);
- *Notice Requesting Public Comment on Two Proposed Unemployment Insurance (UI) Program Performance Measures to Meet Requirements in the Improper Payments Elimination and Recovery Act of 2010 (IPERA)*, 77 FR 7604;
- U.S. Department of the Treasury Interim Rule with Request for Comments – *Offset of Tax Refund Payments To Collect Delinquent State Unemployment Compensation Debts*, 76 FR 5070;
- 20 CFR Part 602 -- *Quality Control in the Federal-State Unemployment Insurance System*;
- Office of Management and Budget (OMB), Parts I and II (Revised) to *Requirements for Effective Measurement and Remediation of Improper Payments*, Appendix C to Circular No. A-123, and *Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123*, Memorandum for Heads of Executive Departments and Agencies from Jacob J. Lew, M-11-16;
- Benefit Accuracy Measurement (BAM) State Operations Handbook (ET Handbook No. 395, 5th edition);
- Unemployment Insurance Reports Handbook (ET Handbook No. 401, 4th edition);

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

- U.S. Department of Labor (Department) Fiscal Year (FY) 2010 Agency Financial Report (AFR), http://www.Department.gov/_sec/media/reports/annual2010/2010annualreport.pdf;
- Department FY 2011 AFR, (http://www.Department.gov/_sec/media/reports/annual2011/2011annualreport.pdf);
- Department FY 2012 AFR, (http://www.dol.gov/_sec/media/reports/annual2012/2012annualreport.pdf);
- Unemployment Insurance Program Letter (UIPL) No. 11-11, *The Claims Resolution Act of 2010 (P.L. 111-291)*, and *the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) – Provisions Affecting the Federal-State Unemployment Compensation Program*; and
- UIPL No. 02-09, *Recovery of Unemployment Compensation Debts Due to Fraud or to Working while Claiming Benefits from Federal Income Tax Refunds*, and UIPL No. 02-09, Change 2.

3. **Background.** The IPIA requires agencies of the executive branch, including the Department, in accordance with guidance from the OMB, to review their respective programs and activities to identify those that may be susceptible to significant improper payments, estimate the amount of those improper payments (overpayments and underpayments) using a standardized method of reporting to be determined by OMB, and report to Congress on those estimates and on corrective actions the agency is taking to reduce these improper payments. In 2010, IPERA amended IPIA to clarify and enhance the responsibilities of federal agencies. Under the combined requirements of IPIA (as amended), IPERA (apart from its amendments to IPIA), and the governing OMB guidance, each covered agency must comply with a number of obligations, among them:

- Conducting “periodic” reviews (at least once every three FYs) of programs and activities susceptible to significant improper payments, with “significant” meaning gross annual improper payments by a program during the preceding FY that exceeded either: (1) \$10 million and 2.5 percent of program outlays (\$10 million or 1.5 percent starting with FY 2013), or (2) \$100 million (IPIA sec. 2(a)(3)(A), and OMB Circular No. A-123, Appendix C, Part I, p.5). The statute and OMB guidance outline the factors each agency must consider in its risk assessment (IPIA secs. 2(a)(2), 2(a)(3)(B), and OMB Circular No. A-123, Appendix C, Part I, pp. 5-6, 10-11);
- Including in its annual financial statement an estimate of the improper payments made by each program or activity it identifies; the estimate must be either statistically valid or otherwise appropriate using an OMB-approved methodology (IPIA sec. 2(b), and OMB Circular No. A-123, Appendix C, Part I, pp. 7-14); and
- Including with its estimate: (1) a report on actions it is taking to reduce improper payments; and (2) for programs or activities expending \$1 million or more annually, a report on actions to recover improper payments that have been identified in recovery audits that agencies are now required to conduct, when such audits are determined to be cost-effective (IPIA secs. 2(b), 2(d), IPERA sec. 2(h), and OMB Circular No. A-123, Appendix C, Part I, pp. 8-9, 15-18). When compiling its plan to reduce improper payments, an agency must set reduction targets, to be approved by OMB, and a timeline for future levels of improper payments (IPIA sec. 2(c)(4), and OMB Circular No. A-123, Appendix C, Part I, p. 9).

The IPERA requires, in relevant part, that the Inspector General (IG) of each agency report annually on whether the agency is in compliance with the amendments and requirements put in place by the statute (IPERA sec. 3(b)). To be “in compliance” with the law, for purposes of this requirement, the IPERA and OMB guidance establish – and the Department’s Office of Inspector General makes a determination on – seven separate elements (IPERA sec. 3(a)(3), and OMB Circular No. A-123, Appendix C, Part II, p. 29). Among these compliance elements, the Department, like other agencies, must be able to report an annual improper payment rate of less than 10 percent for each program or activity for which it publishes an estimate (IPERA sec. 3(a)(3)(F)). That is, for all programs and activities that meet the threshold of improper payments above 2.5 percent / \$10 million or, alternatively, \$100 million, an agency will be deemed in compliance with the law if each of those programs or activities keeps improper payments below 10 percent.

Against this standard, for the 2010 IPIA reporting period (using data covering July 2009 through June 2010), the Department reported an improper payment rate for the federal-state UI program of 11.2 percent (10.6 percent overpayment rate and 0.6 percent underpayment rate) (FY 2010 AFR, pp. 23-24, 178). For the 2011 IPIA reporting period (using data covering July 2010 through June 2011), the Department reported an improper payment rate for the UI program of 12.0 percent (11.35 percent overpayment rate and 0.65 percent underpayment rate) (FY 2011 AFR, pp. 28, 204). For the 2012 IPIA reporting period (using data covering July 2011 through June 2012), the Department reported an improper payment rate for the UI program of 11.42 percent (10.81 percent overpayment rate and 0.61 percent underpayment rate) (FY 2012 AFR, pp. 29, 171).

With limited exceptions, the IPERA requires agencies, when cost-effective, to conduct recovery (or payment recapture) audits for programs and activities that expend \$1 million or more annually (IPERA sec. 2(h)(2), OMB Circular No. A-123, Appendix C, Part I, pp. 15-16, 19-28). An agency must conduct these audits to ensure the greatest financial benefit to the Government, and must give priority to the most recent payments and to payments in programs identified as susceptible to significant improper payments (IPERA sec. 2(h)(2)). OMB guidelines require agencies to establish annual performance targets for these recovery activities, and that these targets be based on the “rate of recovery,” which OMB defines as the amount of improper overpayments recovered divided by the amount of improper overpayments identified (OMB Circular No. A-123, Appendix C, Part I, p. 20). Agencies must set different targets for each type of payment, must submit them for review and approval by OMB, and strive to meet recapture targets of at least 85 percent within three years (with FY 2011 being the first reporting year) (OMB Circular No. A-123, Appendix C, Part I, p. 20).

In response to the requirements of the statute and corresponding guidance, the Department developed statistical models, based on historical performance data and the Administration’s economic assumptions, to set recovery targets at 64 percent for FY 2012 and 72 percent for FY 2013. It also developed national improper payment reduction targets of 9.7 percent for FY 2012 and 9.6 percent for FY 2013. The Department obtained OMB approval and published these targets in its FY 2011 AFR (pp. 28, 215).

The Department developed two proposed performance measures and solicited public comments in a Federal Register Notice (FRN) (citation above under “References”) published February 13, 2012:

- Improper payments measure, defined as the combined percentage of UI benefits overpaid and underpaid, estimated from the results of the BAM survey of paid UI claims in the state UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX) programs; and
- UI overpayment recovery measure, defined as the amount of improper overpayments recovered divided by the amount of improper overpayments identified, expressed as a percentage.

These measures, when final, will apply to the 53 jurisdictions participating in the UI program. The Department has determined, under 20 CFR part 602, the regulation establishing Quality Control in the federal-state UI system, that it is not cost effective for the Virgin Islands (VI) to operate the BAM program (20 CFR Part 602.22). Therefore, VI is exempt from the improper payments measure. States that fail to meet the Acceptable Levels of Performance (ALP) for the measures would be expected to develop a Corrective Action Plan (CAP) as part of the State Quality Service Plan (SQSP) process.

Public comments received by the March 14, 2012, deadline are summarized in section 4 of this advisory.

4. **Summary of Comments to the FRN.** Six state workforce agencies and one public interest organization responded to the FRN. These comments have been posted for public view on the Federal eRulemaking Portal, <http://www.regulations.gov>, identified by Docket ID Number [Employment and Training Administration] ETA-2012-0001.

UI Improper Payments Measure

The BAM program (called Benefits Quality Control before 1996), overseen by the Department but administered day-to-day by states, is designed to determine the accuracy of paid and denied claims in three major UI programs. Every week, each state reviews samples of payments made and claims denied under its UI claims process to evaluate the accuracy of those determinations using data verified by trained investigators. For claims that were overpaid, underpaid, or improperly denied, BAM determines the cause of and the party responsible for the error, the point in the UI claims process at which the error was detected, and actions taken by the agency, claimants, and employers before the error. For improperly paid claims (overpayments and underpayments), BAM determines the amount of benefits the claimant should have received.

BAM covers the three largest permanently authorized UI programs: state UI, UCFE, and UCX. BAM data for paid claims are available for the 50 states, the District of Columbia, and Puerto Rico from January 1988 through the present. BAM Denied Claims Accuracy, which investigates the accuracy of denied UI claims, began in August 2001. 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 state workforce agency staff to use in identifying systemic errors and their causes and in correcting and tracking solutions to these problems. Information on the BAM program and detailed results from calendar year (CY) 2011 are available at: <http://oui.doleta.gov/unemploy/bqc.asp>.

Two states and the public interest group expressed concern with the use of BAM data to measure state performance. These commenters felt that the measure, as proposed, applied a uniform standard to all states, which they argued conflicts with the Department's caution against using the BAM Annual Report rate to compare performance across states. One commenter argued that the use of the Annual Report overpayment rate "punishes states with stringent or complex [UI] provisions and creates a perverse incentive for states to adopt less stringent provisions."

The Department defines the Annual Report rate to include fraud, nonfraud recoverable overpayments, nonfraud nonrecoverable overpayments, official actions taken to reduce future benefits, and payments that are technically proper due to finality or rules other than formal warnings. The rate excludes payments determined to be "technically" proper due to law/rules requiring formal warnings for unacceptable work search efforts. All improper payment causes and responsible parties are included in the Annual Report rate.

As an argument against applying a uniform standard to all states, two commenters cited the Department's admonition, included in the publication of BAM results, that "Readers are strongly cautioned that it may be misleading to compare one state's payment accuracy rates with another state's rates. No two states' written laws, regulations, and policies specifying eligibility conditions are identical, and differences in these conditions influence the potential for error."

One state noted that the operational overpayment rate provides a more comparable standard, in that it includes overpayments states may reasonably be expected to detect, whereas the Annual Report rate includes overpayments that states have little or no control over. This state also noted that a weakness in the proposed measure was that it does not take into account overpayment recoveries, which reduce the total amount lost to the UI Trust Fund.

The public interest group argued that BAM does not represent operational reality, and overstates nonfraud overpayments, such as those based on lack of documentation for work search or lack of Employment Service (ES) registration, that rarely become an issue at the operational level. The group also stated that, while the proposed measure properly recognized underpayments in the operation of the UI program, it failed to take into account improperly denied UI benefits.

One state raised several concerns about the BAM methodology, particularly about the separate fact-finding process, and the amount of time dedicated to BAM audits, compared with initial agency processing and adjudication; potential problems with including certain BAM categories in the calculation, since it would require states to redefine technically proper payments as improper for purposes of the Annual Report rate; and problems associated with the lack of uniformity in BAM coding across jurisdictions.

One state suggested that the Department allow states more time to meet the requirement of an improper payment rate of less than 10 percent. This state argued that, in its own case, the "less than 10 percent" goal was not attainable in CY 2012, and noted that although the Department is coordinating state efforts to reduce improper payments, information has not yet been shared with states about which state efforts are the most successful and have the greatest impact on reducing improper payment rates. This commenter argued that there is a correlation between number of claims and level of improper payments and that, given the

still elevated workload resulting from extended and temporary unemployment compensation programs and the short time since new strategies have been implemented, states should not be held to an aggressive standard so soon. Under such pressure, this commenter contended, some states may consider taking drastic actions to attain the required rate that would also undermine the effort to maintain stringent standards for integrity.

Response:

The Department has made two significant changes with respect to the UI improper payments performance measure:

- The definition will be changed to take into account the effect of UI overpayment recoveries.
- The performance period will be aligned with the IPIA reporting period (the twelve-month period ending June 30 in the IPIA reporting year).

With respect to the metric used to measure state performance, the Department has been required by OMB to report UI integrity rates using the BAM Annual Report overpayment and underpayment rates. Section 2(f) of IPIA, as amended by IPERA, defines an improper payment as “any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments). . . .” The Department has established improper payment reduction targets in accordance with OMB guidance. These targets are published in the Department’s FY 2012 AFR (p. 170). The 2012 UI improper payment rate target was 9.7 percent, compared to the actual error rate of 11.42 percent (10.81 percent overpayment rate plus 0.61 percent underpayment rate) for the period July 2011 to June 2012, the most recent period for which BAM data are available for publication in the FY 2012 AFR (p. 177).

During 2012, the Department developed an alternative metric to measure improper payments that takes into account the “net” effect of UI overpayment recoveries. The alternative rate includes the two components in the rate that are currently reported annually as part of IPIA reporting requirements -- total overpayments plus total underpayments -- and subtracts the amount of overpayments recovered by state workforce agencies.

- Overpayments include fraud, non-fraud recoverable, and non-fraud non-recoverable overpayments.
- Underpayments include benefits payable to the claimant and underpayments not payable due to state finality rules or other disqualifying issues.
- Both the overpayment and underpayment rates include all causes.
- Currently, the Department reports overpayment and underpayment rates estimated from the results of the BAM survey. The alternative measure includes two components -- improper payments, which will continue to be estimated from BAM, and overpayment recoveries, which are based on actual amounts reported by the state workforce agencies on the ETA 227 Overpayment Detection and Recovery reports for UI, UCFE, and UCX.

Effective with the FY 2012 AFR (p. 172), the Department began publishing the net UI improper payment rate in addition to the IPIA rate. The following table summarizes the current IPIA rate and the net rate for the 2012 IPIA reporting period (July 2011 to June 2012).

UI Improper Payment Rates	2012 IPIA Rate
Current IPIA Rate: Overpayment rate (OP) + Underpayment rate (UP)	11.42%
Net Improper Payment Rate: OP + UP – Overpayments Recovered	9.22%

Application of the BAM methodology uniformly by the states is an important objective. BAM is established in regulations at 20 CFR Part 602, Quality Control (QC) in the Federal-State Unemployment Insurance System. Section 602.21(c)(4) requires the BAM program to:

Conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions, in accordance with the applicable state and federal laws; make any determinations with respect to individual benefit claims in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, part V, sections 6010-6015[.]

With respect to the issue of the lack of uniformity in BAM coding across jurisdictions, a recent analysis of state data showed significant inconsistency in the coding of paid claims cases (referred to as the "key week") for which the claimant did not respond to the questionnaire provided by the state BAM unit. These inconsistencies have generated concerns as to whether BAM units are complying with state law, administrative code or rules, and official policy in instances of claimant nonresponse.

In CY 2011, 1,577 claimants failed to respond to the BAM questionnaire. This represented a little over six percent of the 24,676 of the completed paid claims cases. State claimant nonresponse rates ranged from less than one percent to nearly 13 percent. These results are consistent with previous years. In response, the Department established a federal-state workgroup to examine the issue of claimant nonresponse. The Department has drafted an advisory to provide guidance to address the specific issues of adjudicating work search and reporting errors when the claimant fails to respond to the BAM audit questionnaire.

In addition, the Department will continue to conduct training for BAM supervisors and investigators and hold federal-state peer reviews of completed BAM audits to ensure that coding accurately reflects state law and policy and that states are following the BAM methodology.

We appreciate that states have launched several initiatives to address improper payments. We believe that the two performance measures implemented in this advisory complement these state activities by providing metrics by which states can measure progress.

Although many of these state initiatives have been in effect for less than a full year, we have already seen improvement in the improper payment rates for certain overpayment causes. For example, we have aggressively targeted those states that account for the majority of ES

registration errors. We informed targeted states by letter of plans for the Employment and Training Administration (ETA) to work with them to reduce ES registration errors. The Assistant Secretary for Employment and Training completed calls with Administrators in seven states with high ES registration errors in April 2011. The Department's UI Administrator and ETA Regional Administrators followed up with the targeted states to examine state-specific causes for the problem and to request formal plans from the states to address the issue. Several of these states have made significant progress in reducing overpayments due to ES registration issues, and the national ES registration overpayment rate has decreased from 1.43 percent in the 2010 IPIA reporting period to 0.74 percent in the 2012 IPIA reporting period.

The FRN (77 FR 7604) requesting public comment on the UI Improper Payments Measure proposed that, "States failing to meet the ALP would be expected to develop a CAP as part of the SQSP. Failures to attain an ALP in the first measurement period would be addressed in the 2014 SQSP (OMB No. 1205-0132, Expiration Date 10/31/2014)."

The Department will align the performance period for the UI improper payments measure with the IPIA reporting period. Due to the lag in BAM reporting (BAM audits are conducted according to a 90-day completion standard), the most recent data available for publication in the Department's AFR is for the twelve-month period ending June 30 in the IPIA reporting year. Therefore, states that fail to reduce their net improper payment rates to less than 10 percent for the 2013 IPIA reporting period will be expected to prepare a CAP as part of the FY 2015 SQSP.

UI Overpayment Recovery Measure

The UI Overpayment Recovery Measure requires states to meet performance targets developed by the Department, as required by the IPERA. Appendix C of OMB Circular A-123 (Part I(B)(3), as revised) defines the recovery rate as the "amount of improper overpayments recovered divided by the amount of improper overpayments identified." This ratio will be expressed as a percentage.

While generally supportive of the proposed measure, states raised concern that, as with the improper payment rate measure, the proposed schedule may be too aggressive for states to attain. Three states recommended more incremental targets. One state opposed the measure outright, arguing the 64 percent and 72 percent targets for FY 2012 and FY 2013, respectively, were not achievable.

States noted that the proposed targets reflect the expected impact of the Treasury Offset Program (TOP) and that achieving the targets on the proposed schedule will present a challenge for states unable to implement TOP immediately. The "SSI Extension for Elderly and Disabled Refugees Act" (Pub. L. 110-328) amended Internal Revenue Code section 6402 to permit states to recover certain UI debts due to fraud from federal income tax refunds under TOP. The Claims Resolution Act of 2010 (Pub. L. 111-291) further amended section 6402 to permit a state's recovery of nonfraud overpayments if the UI debt is due to failure to report earnings. ETA issued UIPL No. 11-11 on March 8, 2011, to notify states of these changes. On January 28, 2011, the U.S. Department of the Treasury (Treasury) published an interim rule, effective upon publication, implementing the authority added by these two statutes and expanding TOP to offset tax refunds to collect covered UI debt. The Department

issued Change 2 to UIPL No. 02-09 on May 26, 2011, which informs states of amendments to the procedures to implement TOP to recover UI debt and provides the most current and accurate information on those procedures.

As of October 2012, 19 states have implemented TOP (Alabama, Arizona, Arkansas, Connecticut, the District of Columbia, Georgia, Illinois, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Hampshire, New York, Pennsylvania, South Dakota, Tennessee, West Virginia, and Wisconsin). In addition, several other states are in various stages of implementation.

One specific obstacle cited by some commenting states was the Internal Revenue Service (IRS) regulation precluding state information technology contractors from accessing federal tax return information obtained from TOP for any purpose. Another state felt it would be particularly difficult for small states to meet the Treasury's information safeguard requirements in the short term, although it suggested it could start participating in the TOP program sooner if its state UI agency could sign on to the existing TOP agreement between its state revenue agency and the IRS.

One state felt that this measure, as proposed, did not take into account differences in state law that could make reaching the targets easier for some states. Also, the commenter stated, TOP recoveries may not meet expectations, which are based on preliminary estimates; UI overpayments would have to "stand in line" with other claimant obligations such as child support and student loan debt. According to this commenter, targets may also be unrealistic due to changing economic conditions. Because an overpayment may be recovered some time after it is initially established, and economic conditions may differ at those two stages, as the economy improves and benefit levels fall, there will be fewer benefits against which to offset overpayments and, consequently, states will have a harder time meeting these targets.

Another state did not agree with the methodology, arguing that matching overpayment amounts with overpayments established all from the same CY was not a valid indicator of recovery rate because recovery of overpayments, when it occurs, is often years after the original overpayments are established. This commenter recommended, instead, comparing data for the most recent five-year period.

The public interest organization expressed serious concern with this measure and what it stated were aggressive targets. It noted that although the proposed formula accounted for overpayments waived by states in certain nonfraud cases, it did not account for other state policies to limit recovery in other appropriate cases. The commenter noted a number of states take other measures to treat workers more fairly who are facing nonfraud overpayment determinations, and urged the Department to take into account those state measures, in addition to waivers. In addition, according to this commenter, the proposed targets were too high, and threatened to create "a prejudicial rush on the part of the states to recover overpayments without adequate regard for worker protections." Finally, the organization noted that the Department's enforcement mechanism relies on corrective actions taken by the states as part of their SQSP. The commenter urged the Department to incorporate worker protections into the SQSPs and to "strictly regulate employer abuses that contribute to improper payments." Specifically, the commenter recommended that the Department should issue "strong state guidelines defining the due process and 'fair hearing' rights of workers in

overpayment proceedings,” and require that the SQSPs document the state’s compliance with federal worker rights protections.

Response:

The Department has made two significant changes with respect to the UI overpayment recovery performance measure:

- The recovery target for the 2013 performance period will be revised from 72 percent to 55 percent and the target for the 2014 will be set at 58 percent.
- The performance period will be aligned with the IPIA reporting period (the twelve-month period ending June 30 in the IPIA reporting year).

With respect to the proposed metric, as noted in the FRN, the Department is constrained by the definition provided in OMB Circular No. A-123, Appendix C, defining the recovery rate for purposes of implementation of IPERA. While the OMB guidelines allow agencies some flexibility to set recovery targets, they set the definition of overpayments established and recovered. It should be noted that the exclusion of overpayment waivers noted in the comments was accepted by OMB as consistent with the guidelines.

As required by the IPERA implementing guidance issued by OMB, in 2011 the Department developed UI overpayment recovery targets for FY 2012 and FY 2013. The methodology developed to produce the targets is based on statistical (regression) models that use the historical recovery data reported on the ETA 227 report and the FY 2011 and FY 2012 data available from the U. S. Department of the Treasury for the states participating in TOP. The Department published the recovery targets of 64 percent for FY 2012 and 72 percent for FY 2013 in the Department’s FY 2011 AFR (p. 215).

Based on more recent data reported on the ETA 227, additional information available from Treasury regarding the TOP adoption by states, and considering the estimated recovery rate for FY 2012 (50.34 percent), the Department revised the target for FY 2013 and set the FY 2014 target based on the revised model. These targets are published in the FY 2012 AFR (p. 181). The following table summarizes the UI overpayment recovery targets.

IPIA Period	2012 IPIA Recovery Rate*	UI+EB+EUC Targets +
2012	50.34%	64%
2013	--	55%
2014	--	58%

* Amount Recovered / (Amount Established - Amount Waived); estimated for FY 2012 based on data reported on the ETA 227 report for the period July 2011 through June 2012.

+ Includes estimated TOP recoveries; excludes overpayment waivers.

The Department recognizes that the recovery targets are aggressive and are, in large part, contingent on state implementation of TOP. The Department has been working with IRS staff to resolve the issue of state contractor access to TOP. States should continue to pursue TOP implementation and work with the IRS to achieve a resolution of the issues preventing

access. States that conclude that there is no feasible solution to the contractor issue should inform the Department, which will work with the state to consider available options. States should make every effort to meet the target using all of their available tools. If a state fails to meet the ALP solely because it was unable to implement TOP, the Regional Office will decide whether to waive their requirement for a CAP.

With respect to the protection of workers’ rights, the Department is addressing worker protection issues in separate guidance that is currently in development. State regulation and monitoring of employer responsibility for integrity is promoted by the use of the State Information Data Exchange System (SIDES). The Department intends to strongly encourage state implementation of SIDES as part of its efforts to promote UI program integrity. States are currently required to provide action plans for reducing improper payments as part of the SQSP and all states are encouraged to address root causes that are employer caused, such as failure to provide timely or accurate separation information.

The Department also notes that section 3(b)(iii) of E.O. 13520 specifically requires that each federal agency with a program that OMB has identified as “high priority” under the E.O. submit a plan to the agency’s IG that includes “the agency’s plan, together with supporting analysis, for ensuring that initiatives undertaken pursuant to this order do not unduly burden program access and participation by eligible beneficiaries.”

In response to this requirement of the E.O., the Department has identified several access measures, which it reports to the Department’s IG in its annual report. The following table summarizes the key UI access measures for the last three FYs.

Access Measure	FY 2009	FY 2010	FY 2011	Change FY 2009-11	Change FY 2010-11
Reciprocity Rates					
Regular Programs	42.00%	32.00%	28.00%	-14.00	-4.00
All Programs	59.00%	65.00%	59.00%	0.00	-6.00
Improper Denials Rates*					
Monetary	9.58%	6.89%	6.65%	-2.93	-0.24
Separation	6.27%	5.89%	6.40%	0.13	0.51
Nonseparation	13.90%	13.92%	12.65%	-1.25	-1.27
Timeliness Measures					
UI First Payment	82.60%	81.90%	84.10%	1.50	2.20
Nonmonetary Determinations	58.10%	62.90%	68.80%	10.70	5.90
Claimant Appeals Reversals	36.27%	36.20%	35.76%	-0.51	-0.44

* Rates are adjusted to exclude denials that were subsequently reversed through agency redetermination or appeal.

In addition, the SQSP requires state agencies to meet minimum performance standards for several measures under the UI Performs management system that ensure that state agencies maintain timeliness and quality standards with respect to claimant service. States are required to address failure to meet these performance standards through the SQSP process. These measures include:

UI Performs Core Measures	Criteria
First Payment Promptness	87%
Nonmonetary Determination Time Lapse	80%

	(combined score)
Nonmonetary Determination Quality - Nonseparations	75%
Nonmonetary Determination Quality - Separations	75%
Detection of Overpayments	<50%
	≥95%
Average Age of Pending Lower Authority Appeals	30 days
Average Age of Pending Higher Authority Appeals	40 days
Lower Authority Appeals Quality	80%
New Employer Status Determinations Time Lapse	70%
Effective Audit Measure*	Score ≥7; and exceed all 4 factors
Tax Quality (Part A: No more than three tax functions failing Tax Performance System (TPS) in a year)	←
Tax Quality (Part B: The same tax function cannot fail for 3 consecutive years)	←
TPS Sample Reviews**	
Facilitate Reemployment	Varies by State
UI Integrity Measure – Benefit Year Earnings (BYE)	Varies by State
	Criteria
Secretary’s Standards in Regulation	
First Payment Promptness (Intrastate 14/21 Days)	87%
First Payment Promptness (Intrastate 35 Days)	93%
First Payment Promptness (Interstate 14/21 Days)	70%
First Payment Promptness (Interstate 35 Days)	78%
Lower Authority Appeals (30 Days)	60%
Lower Authority Appeals (45 Days)	80%

*The Effective Audit Measure will be implemented with the FY 2015 SQSP. States will be expected to submit a CAP if their performance for the 2013 calendar year does not meet the ALP. A description of the measure is in UIPL No. 03-11.

** To ensure compliance with federal oversight and reporting requirements, a CAP will also be required if a state does not conduct one or more of the 13 TPS sample reviews during the performance period. Tax functions that could not be sampled because the sample universe was invalid/corrupt (the sample contained less than 53 valid cases) will be counted as a failure. A CAP is not required if a state identifies a universe that is too small to support a valid sample, or the Experience Rate sample, which is examined once every four years, is not required. States can also request a temporary waiver from the Regional Office under certain circumstances. For example, a waiver may be granted if Information Technology modernization efforts have temporarily affected a TPS universe.

The Department will align the performance period for the UI Overpayment Recovery Measure with the IPIA reporting period. Although the FRN requesting public comment on the UI Overpayment Recovery Measure proposed that states failing to meet the ALP in the first measurement period would be expected to develop a CAP as part of the FY 2014 SQSP, the Department has determined that for the first performance period (2013 IPIA), states failing to meet the 55 percent recovery target for the 2013 IPIA reporting period will be expected to prepare a CAP as part of the FY 2015 SQSP.

5. **Performance Standard - Improper Payments Measure.** This section provides the definition of the measure, ALP, calculation of the measure, performance period, and requirements for failure to meet the performance standard.

Measure Definition: UI benefits overpaid plus UI benefits underpaid (estimated from the results of the BAM survey of paid UI claims in the state UI, UCFE, and UCX programs) minus the amount of state UI, UCFE, and UCX program overpayments recovered (reported on the ETA 227 Overpayment Detection and Recovery Report).

ALP: Section 3(a)(3)(F) of IPERA requires “an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under [the IPIA].” Section 2(f) of IPIA, as amended, defines an improper payment as “any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments). . . .”

In accordance with IPIA and IPERA requirements, the Department is establishing an ALP of “less than 10 percent,” first applicable to the 2013 IPIA performance period. State performance for the 2012 IPIA period is reported in Attachment A. This ALP will be effective beginning with the 2013 IPIA reporting period (BAM sampling weeks 201227 through 201326, which coincide with the period July 1, 2012 to June 29, 2013).

Calculation:

The net Improper Payment (NET IP) rate is:

$$\text{NET IP} = \frac{\text{Amt. Overpaid} + \text{Amt. Underpaid} - \text{Amt. Recovered}}{\text{Amount Paid}} \times 100$$

The overpayment, underpayment, and amount of UI benefits paid components of the measure will be calculated from BAM data using the following data elements:

- Total Overpayment Amount for Key Week (the paid week selected for the BAM audit) (BAM data element h5 - defines the amount overpaid to a claimant in the key week).

Overpayments for improper payments caused by another state’s workforce agency, which are identified by Prior Agency Action codes 90 through 99, are excluded. These are defined as:

Errors affecting the key week payment or the agency’s determination to deny eligibility that were the result of another state’s workforce agency’s procedural error or incorrect information provided to the claimant, employer, the liable state’s workforce agency or other party.

- The amounts coded in h5 include overpayment codes 10, 11, 12, 13, and 15 in data element ei2 (Key Week Action), excluding those overpayments attributable to a state workforce agency other than the state agency that selected and audited the payment (Prior Agency Action (ei6) codes 90 to 99).

- Total Underpayment Amount for Key Week (BAM data element h6 - defines the amount underpaid to a claimant in the key week, excluding underpayments for improper payments caused by another state's workforce agency).
- The amounts coded in h6 include underpayment codes 20, 21, and 22 in data element ei2 (Key Week Action), excluding those overpayments attributable to a state workforce agency other than the state agency that selected and audited the payment (Prior Agency Action (ei6) codes 90 to 99).
- Original Amount Paid (BAM data element fl3 - defines the amount paid to the claimant in the key week).
- Estimated overpayments and underpayments are derived from the weekly BAM samples; each week's sample result is weighted by the number of paid UI weeks in the BAM survey population.
- The overpayment recoveries component of the measure will be calculated from the ETA Overpayment Detection and Recovery (ETA 227) report:
- Total Overpayments Recovered - section C, the sum of line 302, columns 11, 12, 13, and 14.

Performance Period: The performance period will be based on BAM data for the IPIA reporting period: BAM sampling weeks (referred to as batches) YYYY27 to (YYYY+1)26. The 2013 IPIA performance period will include BAM batches 201227 to 201326. Per the BAM State Operations Handbook (ET Handbook No. 395, 5th edition), 95 percent of BAM cases must be completed within 90 days after the week ending date of the BAM sampling batch. Therefore, state performance will be based on BAM sample cases completed (that is, closed by the BAM supervisor) by close of business September 27, 2013 (90 days after the June 29, 2013, ending date for batch 201326).

Sampling Error: Because the BAM component of this measure will be based on sample data, the sampling error of the estimated BAM improper payment rate will be taken into account in determining whether a state meets its ALP. All estimates from samples are characterized as a distribution of values around the expected value of the universe. The sampling error is used to measure the variability of that distribution, and it is used to determine the probability that the value calculated from a particular sample drawn from a universe that meets the ALP may be below (or above) the true value (universe).

Because values of the net IP rate less than 10 percent will "meet" the ALP, we are interested only in determining if net IP rates greater than or equal to 10 percent are unlikely, given the sampling error. We define unlikely as a probability of 5 percent or less ($p \leq .05$). The Department will compute the sampling errors of the estimated overpayments and underpayments and perform the appropriate statistical tests to determine if the net improper payment rate meets the less than 10 percent ALP.

Failure to Meet the ALP: States failing to meet the ALP for the 2013 IPIA reporting period will be expected to develop a CAP as part of the FY 2015 SQSP.

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

6. Performance Standard - UI Overpayment Recovery Measure.

This section provides the definition of the measure, ALP, calculation of the measure, performance period, and requirements for failure to meet the performance standard.

Measure Definition: Appendix C of OMB Circular A-123 (Part I(B)(3), as revised) defines the recovery rate as the “amount of improper overpayments recovered divided by the amount of improper overpayments identified.” This ratio will be expressed as a percentage.

ALP: The Department conducted an analysis of the UI payment, overpayment detection, and recovery data and established recovery targets of 55 percent for the 2013 IPIA reporting period, and 58 percent for the 2014 IPIA reporting period. These targets were reviewed by OMB and published in the Department’s FY 2012 AFR (p. 181). The underlying methodology was published in the FRN. The Department will use this methodology to compute future recovery targets based on the most recent recovery and other performance data available. State performance with respect to overpayments established and recovered for the 2012 IPIA period is reported in Attachment B.

Calculation: The measure will be calculated from the ETA Overpayment Detection and Recovery reports (ETA 227 and 227 Emergency Unemployment Compensation (EUC)):

ETA 227 Report:

- Total Overpayments Recovered - section C, the sum of line 302, columns 11, 12, 13, 14, 22, and 23.
- Total Overpayments Established Minus Overpayments Waived - section A, the sum of line 101, columns 4, 5, and 21, and line 103, columns 4, 5, and 21, minus section C, the sum of line 308, columns 13, 14, and 23.

ETA 227 EUC Report:

- Total Overpayments Recovered - section C, the sum of line 302, columns 11, 12, 13, and 14.
- Total Overpayments Established Minus Overpayments Waived - section A, the sum of line 101, columns 4 and 5, and line 103, columns 4 and 5, minus section C, the sum of line 308, columns 13 and 14.

$$\text{Recovery Rate} = \frac{\text{Amount of UI Overpayments Recovered}}{\text{Amt. of (UI Overpayments Established - Waived)}} \times 100$$

Performance Period: The performance period will be based on the ETA 227 and ETA 227

EUC data for the IPIA period (July 1 to June 30 of the IPIA reporting year). Per the UI Reports Handbook (ET Handbook No. 401, 4th edition), the June quarter ETA 227 reports are due August 1st. The first measurement period will be July 1, 2012 to June 30, 2013.

Sampling Error: Not applicable; this measure will be based on population data reported on the ETA 227 and ETA 227 EUC reports.

Failure to Meet the ALP: States failing to meet the ALP for the 2013 IPIA reporting period will be expected to develop a CAP as part of the FY 2015 SQSP.

Data Collection Costs: Because the performance measure will use data collected through the ETA 227 and ETA 227 EUC reports, there will be no data collection start-up costs for this performance measure.

7. **Action Requested.** State Administrators are requested to provide the information in this advisory to the appropriate staff.
8. **Inquiries.** All inquiries should be directed to the appropriate ETA Regional Office.
9. **Attachments.**
Attachment A - State 2012 IPIA Overpayment and Underpayment Rates
Attachment B - State 2012 IPIA UI Overpayment Establishment and Recovery Data