

§ 625.17

the United States Department of Labor promulgated thereunder.

§ 625.17 **Announcement of the beginning of a Disaster Assistance Period.**

Whenever a major disaster is declared in a State, the State agency shall promptly announce throughout the major disaster area by all appropriate news media that individuals who are unemployed as the result of the major disaster may be entitled to DUA; that they should file initial applications for DUA as soon as possible, but not later than the 30th day after the announcement date; the beginning date of the Disaster Assistance Period; and where individuals may obtain further information and file applications for DUA.

§ 625.18 **Public access to Agreements.**

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 625.19 **Information, reports and studies.**

(a) *Routine responses.* State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this part.

(b) *Final Report.* In addition to such other reports as may be required by the Secretary, within 60 days after all payments of Disaster Unemployment Assistance as the result of a major disaster in the State have been made, the State agency shall submit a final report to the Secretary. A final report shall contain a narrative summary, a chronological list of significant events, pertinent statistics about the Disaster Unemployment Assistance provided to disaster victims, brief statements of major problems encountered, discussion of lessons learned, and suggestions

20 CFR Ch. V (4-1-01 Edition)

for improvement of the program during future major disasters.

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§ 625.20 **Saving clause.**

The regulations in this part do not apply to applications, determinations, hearings, or other administrative or judicial proceedings, with respect to any major disaster declared prior to November 23, 1988, and such applications, determinations, hearings, or other administrative or judicial proceeding shall remain subject to the Act and the Regulations in this part issued thereunder which were in effect prior to that date.

[42 FR 46712, Sept. 16, 1977, as amended at 55 FR 557, Jan. 5, 1990]

§ 625.30 **Appeal Procedures for Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.**

(a) *Designation of referee.* The Director of the Unemployment Insurance Service shall designate a referee of a State agency to hear and decide appeals under this section from determinations and redeterminations by the State agencies of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands.

(b) *Appeals to referee.* (1) A DUA applicant may appeal from a determination or redetermination issued by the State agency of the Territory of Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, or the Trust Territory of the Pacific Islands within 60 days after the mailing of notice and a copy of such determination or redetermination to such applicant's last known address, or in the absence of mailing within 60 days after delivery in

person thereof to such applicant. The appeal shall be in writing and may be filed with any office of the State agency.

(2) Notice that an appeal has been filed may be given or mailed, in the discretion of the referee, to any person who has offered or is believed to have evidence with respect to the claim.

(3) An appeal shall be promptly scheduled and heard, in order that a decision on the appeal can be issued within 30 days after receipt of the appeal by the State agency. Written notice of hearing, specifying the time and place thereof and those questions known to be in dispute, shall be given or mailed to the applicant, the State agency, and any person who has offered or is believed to have evidence with respect to the claim 7 days or more before the hearing, except that a shorter notice period may be used with the consent of the applicant.

(c) *Conduct of hearings.* Hearings before the referee shall be informal, fair, and impartial, and shall be conducted in such manner as may be best suited to determine the DUA applicants' right to compensation. Hearings shall be open to the public unless sufficient cause for a closed hearing is shown. The referee shall open a hearing by ascertaining and summarizing the issue or issues involved in the appeal. The applicant may examine and cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded such applicant, and such argument shall be made part of the record. The referee shall give such applicant, if not represented by counsel or other representative, every assistance that does not interfere with the impartial discharge of the referee's duties. The referee may examine such applicant and other witnesses to such extent as the referee deems necessary. Any issue involved in the claim shall be considered and passed upon even though such issue was not set forth as a ground of appeal.

(d) *Evidence.* Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence, may be accepted. Any official record of the State agency, including reports submitted in connection with adminis-

tration of the DUA program, may be included in the record if the applicant is given an opportunity to examine and rebut the same. A written statement under oath or affirmation may be accepted when it appears impossible or unduly burdensome to require the attendance of a witness, but a DUA applicant adversely affected by such a statement must be given the opportunity to examine such statement, to comment on or rebut any or all portions thereof, and whenever possible to cross-examine a witness whose testimony has been introduced in written form by submitting written questions to be answered in writing.

(e) *Record.* All oral testimony before the referee shall be taken under oath or affirmation and a transcript thereof shall be made and kept. Such transcript together with all exhibits, papers, and requests filed in the proceeding shall constitute the record for decision.

(f) *Withdrawal of appeal.* A DUA applicant who has filed an appeal may withdraw such appeal with the approval of the referee.

(g) *Nonappearance of DUA applicant.* Failure of a DUA applicant to appear at a hearing shall not result in a decision being automatically rendered against such applicant. The referee shall render a decision on the basis of whatever evidence is properly before him/her unless there appears to be a good reason for continuing the hearing. An applicant who fails to appear at a hearing with respect to his/her appeal may within seven days thereafter petition for a reopening of the hearing. Such petition shall be granted if it appears to the referee that such applicant has shown good cause for his/her failure to attend.

(h) *Notice of referee's decision and further review—(1) Decision.* A copy of the referee's decision, which shall include findings and conclusions, shall promptly be given or mailed to the applicant, the State agency, and to the Regional Administrator, Employment and Training Administration, for Region IX (San Francisco). The decision of the referee shall be accompanied by an explanation of the right of such applicant or State agency to request review by the Regional Administrator and the

time and manner in which such review may be instituted, as provided in paragraph (a)(2) of § 625.10.

(2) *Time limit for decision.* A decision on an appeal to a referee under this section shall be made and issued by the referee not later than 30 days after receipt of the appeal by the State agency.

(3) *Further review.* Further review by the Regional Administrator or the Assistant Secretary with respect to an appeal under this section shall be in accordance with paragraphs (c) and (d) of § 625.10.

(i) *Consolidation of appeals.* The referee may consolidate appeals and conduct joint hearings thereon where the same or substantially similar evidence is relevant and material to the matters in issue. Reasonable notice of consolidation and the time and place of hearing shall be given or mailed to the applicants or their representatives, the State agency, and to persons who have offered or are believed to have evidence with respect to the DUA claims.

(j) *Representation.* A DUA applicant may be represented by counsel or other representative in any proceedings before the referee or the Regional Administrator. Any such representative may appear at any hearing or take any other action which such applicant may take under this part. The referee, for cause, may bar any person from representing an applicant, in which event such action shall be set forth in the record. No representative shall charge an applicant more than an amount fixed by the referee for representing the applicant in any proceeding under this section.

(k) *Postponement, continuance, and adjournment of hearings.* A hearing before the referee shall be postponed, continued, or adjourned when such action is necessary to afford a DUA applicant reasonable opportunity for a fair hearing. In such case notice of the subsequent hearing shall be given to any person who received notice of the prior hearing.

(l) *Information from agency records.* Information shall be available to a DUA applicant, either from the records of the State agency or as obtained in any proceeding herein provided for, to the extent necessary for proper presen-

tation of his/her case. All requests for information shall state the nature of the information desired as clearly as possible and shall be in writing unless made at a hearing.

(m) *Filing of decisions.* Copies of all decisions of the referee shall be kept on file at his/her office or agency for at least 3 years.

[55 FR 557, Jan. 5, 1990, as amended at 56 FR 22805, May 16, 1991]

APPENDIX A TO PART 625—STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES

Employment Security Manual (Part V, Sections 5000-5004)

5000 *Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services*

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for: "Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law provide for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 303(a)(1) of the Social Security Act requires that the State law provide for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

B. *Secretary's interpretation of federal law requirements:* 1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for: a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such State law.

5001 Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation

A. *Claim filing—total or part-total unemployment.* 1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person: a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

- (1) The conditions or circumstances of his separation from employment;
- (2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;
- (3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or
- (4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances: a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person; b. Condi-

tions make it impracticable for the agency to take claims in person; c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment; d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

B. *Claim filing—partial unemployment.* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A 3, filing by mail must be permitted, and in the circumstances set forth in section A 2 b, filing in person may be required.

5002 Requirement for Job Finding, Placement, and other Employment Services Designed to Satisfy Secretary's Interpretation

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency: 1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; or

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him in which case the claims personnel in the office in which the claimant files his claim are

to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel are required to so arrange and coordinate the contracts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or coun-

seling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) his failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 *Evaluation of Alternative State Provisions*

If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated affect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

[55 FR 558, Jan. 5, 1990]

APPENDIX B TO PART 625—STANDARD FOR CLAIM DETERMINATIONS—SEPARATION INFORMATION

Employment Security Manual (Part V, Sections 6010-6015)

6010-6019 *Standard for Claim Determinations—Separation Information*

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for: "Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for: "Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for: "Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation"

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that: A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements.* In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria.*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the in-

formation obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his application identification card or otherwise in writing.

c. Any other determination which adversely affects¹ his rights to benefits, except

¹A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any

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that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2 f (1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2 f (2) and 2 h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification

of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c(1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or

purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

1. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ___ to ___ of the _____ (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agen-

cy request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information of worker.* 1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency

should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

[55 FR 559, Jan. 5, 1990]

APPENDIX C TO PART 625—STANDARD FOR FRAUD AND OVERPAYMENT DETECTION

Employment Security Manual (Part V, Sections 7510-7515)

7510-7519 *Standard for Fraud and Overpayment Detection*

7510 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

“Such methods of administration * * * as are found by the Secretary to be reasonably

calculated to insure full payment of unemployment compensation when due.”

Section 1603(a)(4) of the Internal Revenue Code and section 3030(a)(5) of the Social Security Act require that a State law include provision for:

“Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *”

Section 1607(h) of the Internal Revenue Code defines “compensation” as “cash benefits payable to individuals with respect to their unemployment.”

7511 *The Secretary's Interpretation of Federal Law Requirements.* THE SECRETARY OF LABOR INTERPRETS THE ABOVE SECTIONS TO REQUIRE THAT A STATE LAW INCLUDE PROVISION FOR SUCH METHODS OF ADMINISTRATION AS ARE, WITHIN REASON, CALCULATED (1) TO DETECT BENEFITS PAID THROUGH ERROR BY THE AGENCY OR THROUGH WILLFUL MISREPRESENTATION OR ERROR BY THE CLAIMANT OR OTHERS, AND (2) TO DETER CLAIMANTS FROM OBTAINING BENEFITS THROUGH WILLFUL MISREPRESENTATION.

7513 *Criteria for Review of State Conformity With Federal Requirements.* IN DETERMINING STATE CONFORMITY WITH THE ABOVE REQUIREMENTS OF THE INTERNAL REVENUE CODE AND THE SOCIAL SECURITY ACT, AS INTERPRETED BY THE SECRETARY OF LABOR, THE FOLLOWING CRITERIA WILL BE APPLIED:

A. *Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?*

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both;

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or non-covered work) and claiming of benefits (including benefit payments in which the agency acted as agency for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so-called "post-audit" is a matching of central office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for pay-roll information to be checked against concurrent benefit lists. A plan

A. of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. *Are adequate records maintained by which the results of investigations may be evaluated?*

Explanation: To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basis for drawing a clear distinction between fraud and error.

C. *Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?*

Explanation: To meet this criterion, the State agency must issue adequate material on claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

[55 FR 562, Jan. 5, 1990]

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

626.1 Scope and purpose of the Job Training Partnership Act.

626.2 Format of the Job Training Partnership Act regulations.

626.3 Purpose, scope, and applicability of the Job Training Partnership Act regulations.

626.4 Table of contents for the Job Training Partnership Act regulations.

626.5 Definitions.

AUTHORITY: 29 U.S.C. 1579(a).

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