

within 120 days of such acceptance. If not so decided, the decision of the ALJ shall constitute final agency action.

**PART 646 [RESERVED]**

**PART 650—STANDARD FOR APPEALS PROMPTNESS—UNEMPLOYMENT COMPENSATION**

Sec.

- 650.1 Nature and purpose of the standard.
- 650.2 Federal law requirements.
- 650.3 Secretary's interpretation of Federal law requirements.
- 650.4 Review of State law and criteria for review of State compliance.
- 650.5 Annual appeals performance plan.

AUTHORITY: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302; Secretary's Order No. 4-75, dated April 16, 1975. Interpret and apply secs. 303(a)(1), 303(a)(3), and 303(b)(2) of the Social Security Act (42 U.S.C. 503(a)(1), 503(a)(3), 503(b)(2)).

SOURCE: 37 FR 16173, Aug. 11, 1972, unless otherwise noted.

**§ 650.1 Nature and purpose of the standard.**

(a) This standard is responsive to the overriding concern of the U.S. Supreme Court in *California Department of Human Resources v. Java*, 402 U.S. 121 (1971), and that of other courts with delay in payment of unemployment compensation to eligible individuals, including delays caused specifically by the adjudication process. The standard seeks to assure that all administrative appeals affecting benefit rights are heard and decided with the greatest promptness that is administratively feasible.

(b) Sections 303(a)(1) and (3) of the Social Security Act require, as a condition for the receipt of granted funds, that State laws include provisions for methods of administration reasonably calculated to insure full payment of unemployment compensation when due, and opportunity for a fair hearing for all individuals whose claims for unemployment compensation are denied. The Secretary has construed these provisions to require, as a condition for receipt of granted funds, that State laws include provisions for hearing and deciding appeals for all unemployment insurance claimants who are parties to

an administrative benefit appeal with the greatest promptness that is administratively feasible. What is the greatest promptness that is administratively feasible in an individual case depends on the facts and circumstances of that case. For example, the greatest promptness that is administratively feasible will be longer in cases that involve interstate appeals, complex issues of fact or law, reasonable requests by parties for continuances or rescheduling of hearings or other unforeseen and uncontrollable factors than it will be for other cases.

(c) In addition, the Secretary has construed section 303(b)(2) of the Social Security Act as requiring States to comply substantially with the required provisions of State law. The Secretary considers as substantial compliance the issuance of minimum percentages of first level benefit appeal decisions within the periods of time specified in § 650.4.

(d) Although the interpretation of Federal law requirements in § 650.3 below applies to both first and second level administrative benefit appeals, the criteria for review of State compliance in § 650.3(b) apply only to first level benefit appeals.

**§ 650.2 Federal law requirements.**

(a) 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 of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) 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.

(c) Section 303(b)(2) of the Social Security Act provides that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) \* \* \*

(2) A failure to comply substantially with any provision specified in subsection (a)

### § 650.3

[303(a)]; the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such denial or failure to comply. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State \* \* \*

#### § 650.3 Secretary's interpretation of Federal law requirements.

(a) The Secretary interprets sections 303(a)(1) and 303(a)(3) above to require that a State law include provision for—

(1) Hearing and decision for claimants who are parties to an appeal from a benefit determination to an administrative tribunal with the greatest promptness that is administratively feasible, and

(2) Such methods of administration of the appeals process as will reasonably assure hearing and decision with the greatest promptness that is administratively feasible.

(b) The Secretary interprets section 303(b)(2) above to require a State to comply substantially with provisions specified in paragraph (a) of this section.

#### § 650.4 Review of State law and criteria for review of State compliance.

(a) A State law will satisfy the requirements of § 650.3(a) if it contains a provision requiring, or is construed to require, hearing and decision for claimants who are parties to an administrative appeal affecting benefit rights with the greatest promptness that is administratively feasible.

(b) A State will be deemed to comply substantially with the State law requirements set forth in § 650.3(a) with respect to first level appeals, the State has issued at least 60 percent of all first level benefit appeal decisions within 30 days of the date of appeal, and at least 80 percent of all first level benefit appeal decisions within 45 days. These computations will be derived from the State's regular reports required pursuant to the Unemployment

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Compensation Manual, part III, sections 4400-4450.<sup>1</sup>

[37 FR 16173, Aug. 11, 1972, as amended at 41 FR 6757, Feb. 13, 1976; 71 FR 35517, June 21, 2006]

#### § 650.5 Annual appeals performance plan.

No later than December 15 of each year, each State shall submit an appeals performance plan showing how it will operate during the following calendar year so as to achieve or maintain the issuance of at least 60 percent of all first level benefit appeals decisions within 30 days of the date of appeal, and 80 percent within 45 days.

(Approved by the Office of Management and Budget under control number 1205-0132)

(Pub. L. No. 96-511)

[41 FR 6757, Feb. 13, 1976, as amended at 49 FR 18295, Apr. 30, 1984; 71 FR 35517, June 21, 2006]

## PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

#### § 651.10 Definitions of terms used in parts 651-658.

*Administrator, Office of Workforce Investment (OWI Administrator)* means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

*Affirmative action* means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other nonoccupationally valid purposes has been discouraged from entering certain occupational fields.

<sup>1</sup>The Unemployment Compensation Manual is available at each regional office of the Department of Labor and at the headquarters' office of each State unemployment compensation agency.