

the parties identified in §639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

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AUTHORITY: Sec. 1102, Social Security Act (42 U.S.C. 1302); Secretary's order No. 4-75, dated April 16, 1975 (40 FR 18515) (5 U.S.C. 553). Interpret and apply secs. 303(a)(1) and 303(b)(2) of the Social Security Act (42 U.S.C. 503(a)(1), 503(b)(2)).

SOURCE: 43 FR 33225, July 28, 1978, unless otherwise noted.

§ 640.1 Purpose and scope.

(a) *Purpose.* (1) Section 303(a)(1) of the Social Security Act requires, for the purposes of title III of that Act, that a State unemployment compensation law include provision for methods of administration of the law that are reasonably calculated to insure the full payment of unemployment compensation when determined under the State law to be due to claimants. The standard in this part is issued to implement section 303(a)(1) in regard to promptness in the payment of unemployment benefits to eligible claimants.

(2) Although the standard applies to the promptness of all benefit payments and the criteria apply directly to the promptness of first benefit payments, it is recognized that adequate performance is contingent upon the prompt determination of eligibility by the State as a condition for the payment or denial of benefits. Accordingly, implicit in prompt performance with respect to benefit payments is the corresponding need for promptness by the State in making determinations of eligibility. However, applicable Federal laws provide no authority for the Secretary of Labor to determine the eligibility of individuals under a State law.

(b) *Scope.* (1) The standard in this part applies to all State laws approved by the Secretary of Labor under the Federal Unemployment Tax Act (section 3304 of the Internal Revenue Code of 1986, 26 U.S.C. 3304), and to the administration of the State laws.

(2) The standard specified in §640.4 applies to all claims for unemployment compensation. The criteria for State compliance in §640.5 apply to first payments of unemployment compensation under the State law to eligible claimants following the filing of initial claims and first compensable claims.

[43 FR 33225, July 28, 1978, as amended at 71 FR 35516, June 21, 2006]

§ 640.2 Federal law requirements.

(a) *Conformity.* Section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), 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) *Compliance.* Section 303(b)(2) of the Social Security Act, 42 U.S.C. 503(b)(2), provides in part 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) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of

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Labor is satisfied that there is no longer any such * * * failure to comply.

Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State * * *.

§ 640.3 Interpretation of Federal law requirements.

(a) *Section 303(a)(1)*. The Secretary interprets section 303(a)(1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonable insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

(b) *Section 303(b)(2)*. (1) The Secretary interprets section 303(b)(2) of the Social Security Act to require that, in the administration of a State law, there shall be substantial compliance with the provision required by section 303(a)(1).

(2) The greatest promptness that is administratively feasible will depend upon the circumstances in each State that impacts upon its performance in paying benefits. Factors reasonably beyond a State's control may cause its performance to drop below the level of adequacy expressed in the table below as criteria for substantial compliance applicable to all States. Where it is demonstrated that failure to meet the criteria of adequacy is attributable to factors reasonably beyond the State's control and, in light of those factors, the State has performed at the highest level administratively feasible, it will be considered that the State is in substantial compliance with the Standard for conformity. Whether or not the State is in substantial compliance, the remedial provisions of §§ 640.7 and 640.8 will be applicable when the pertinent criteria are not met.

§ 640.4 Standard for conformity.

A State law will satisfy the requirement of section 303(a)(1), if it contains a provision requiring, or which is construed to require, such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for compliance.

The criteria in the schedule below shall apply in determining whether, in the administration of a State law, there has been substantial compliance with the provision required by section 303(a)(1) in the issuance of benefit payments to eligible claimants for the first compensable weeks of unemployment in their benefit years:

	Percentage of first payments issued—days following end of first compensable week		
	14 days, waiting week States	21 days, non-waiting week States ¹	35 days, all States
Intrastate Claims			
Performance to be achieved for the 12-mo. period ending on March 31 of each year	87	87	93
Interstate Claims			
Performance to be achieved for the 12-mo. period ending on March 31 of each year	70	70	78

¹ A nonwaiting week State is any State whose law does not require that a non-compensable period of unemployment be served before the payment of benefits commences.

A State will be deemed to comply substantially, as set out in §§ 640.2(b) and 640.3(b), if its average performance, for the period of review, meets or exceeds the applicable criteria set forth above.

[43 FR 33225, July 28, 1978, as amended at 71 FR 35516, June 21, 2006]

§ 640.6 Review of State compliance.

(a) *Annual reviews*. The administration of each State law shall be reviewed annually for compliance, as set out in §§ 640.2(b) and 640.3(b). Annual reviews shall be for the 12-month period ending on March 31 of each year. An annual review with respect to any State shall be based upon the monthly reports of performance submitted to the Department by the State agency, any special reports of performance submitted to the Department by the State agency, any benefit payment performance plan applicable to the period being reviewed, any study or analysis of performance relevant to the period being reviewed, and any other audit,