

evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record. In ordering relief, the ALJ may exercise the full authority of the Secretary under the OAA.

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01-2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

[75 FR 53812, Sept. 1, 2010, as amended at 82 FR 56886, Dec. 1, 2017; 85 FR 13028, Mar. 6, 2020; 85 FR 30614, May 20, 2020; 86 FR 1777, Jan. 11, 2021]

**§ 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?**

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 (a), (c), and (d) may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the

stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) Unless the parties agree in writing to extend the period, the waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as the final agency decision.

**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,

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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) [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

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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 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 WAGNER-PEYSER ACT EMPLOYMENT SERVICE

AUTHORITY: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

### § 651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in parts 652, 653, 654, and 658 of this chapter:

*Act* means the Wagner-Peyser Act (codified at 29 U.S.C. 49 *et seq.*).

*Administrator, Office of Workforce Investment (OWI Administrator)* means the

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

*Agricultural employer* means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

*Agricultural worker* see *Farmworker*.

*Applicant holding office* means a Wagner-Peyser Act Employment Service (ES) office that is in receipt of a clearance order and has access to U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

*Applicant Holding State* means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

*Bona fide occupational qualification (BFOQ)* means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin, or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

*Career services* means the services described in sec. 134(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and § 678.430 of this chapter.

*Clearance order* means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

*Clearance system* means the orderly movement of U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES offices in different labor market areas and/or States.

<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.