

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* State Police Traffic Stop Data Collection Procedures, 2000.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is SP-1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* State government.

*Other:* None.

42 U.S.C. 3711, *et seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will complete a 30-minute data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 25 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: January 3, 2001.

**Brenda E. Dyer,**

Department Deputy Clearance Officer, United States Department of Justice.

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its rule in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

#### UIPL 12-01

UIPL 12-01 provides the Department of Labor's interpretation of Federal law concerning the outsourcing (or contracting out) of UC administrative functions. It is being issued in response to numerous inquiries from States and agencies involved in the administration of the UC program. It also provides answers to questions raised by State Employment Security Agencies and other interested parties.

Dated: January 3, 2001.

**Raymond Bramucci,**  
Assistant Secretary of Labor.

#### Classification: OWS

#### Correspondence Symbol: TEUL

December 28, 2000.

*Directive:* Unemployment Insurance Program Letter No. 12-01.

*To:* All State Employment Security Agencies.

*From:* Grace A. Kilbane,  
Administrator, Office of Workforce Security.

*Subject:* Outsourcing of Unemployment Compensation Administrative Functions

*1. Purpose.* To inform States of the Department of Labor's (Department) interpretation of Federal law concerning the "outsourcing" of unemployment compensation (UC) administrative functions.

*2. References.* Sections 303(a)(1), (3), and (8) of the Social Security Act (SSA); the Intergovernmental Personnel Act of 1970 (IPA); 5 U.S.C. Section 2301(b); 42 U.S.C. Sections 4701 and 4728; 5 CFR Sections 900.603, 900.604; 20 CFR Part 602; 20 CFR Section 652.3; 26 CFR Section 31-3306(i)-1; Office of Management and Budget (OMB) Circular No. A-76 (Revised) (48 Fed.

Reg. 37110 (August 16, 1983); 64 Fed. Reg. 33927 (June 24, 1999)); OMB Office of Federal Procurement Policy (OFPP) Policy Letter No. 92-1 (57 Fed. Reg. 45096 (September 30, 1992)).

*3. Background.* The Department has received numerous inquiries concerning the outsourcing (or contracting out) of functions related to the administration of the UC program. This UIPL is issued in response to these inquiries. As this issuance applies only to the outsourcing of UC administrative functions, it is not to be construed as applying to, permitting, or prohibiting the outsourcing of non-UC functions. Further, where outsourcing is permitted, this UIPL neither encourages nor discourages the outsourcing of UC administrative functions.

A longstanding tenet in the administration of public programs is the desirability of using merit systems. In the IPA, Congress declared that the quality of public service is maintained and improved by the development and maintenance of systems of personnel administration consistent with merit principles. (42 U.S.C. 4701.) A basic merit principle is that governmental employees are responsible to the public as represented by the elected officials who head the executive branch of government (for example, the President or Governor). A second merit principle is that public employees covered by a merit system are able to administer the law in an unbiased, professional manner without undue outside influence. Because many decisions made by public employees affect the rights and property of individuals, these decisions must be made in a fair and unbiased manner that is consistent with the rule and intent of the law.

Impartiality in administering the UC program is especially important because UC is a major economic stabilizer. It is often the only source of income during a worker's period of involuntary unemployment. Further, employers are charged for UC paid to their former employees. The lack of impartiality could lead to individuals being improperly paid or denied UC due to outside pressures. In addition, because employers' experience rates are calculated based on the payment of UC to their former workers, impartiality is needed to assure not only that eligibility is determined properly, but that charges to the employer are proper. For reasons such as these, Congress included a specific merit staffing requirement in Federal UC law. This requirement, and other Federal law requirements affecting outsourcing, are discussed below.

#### 4. Federal Requirements.

a. *Merit Staffing*. Section 303(a)(1), SSA, contains the merit staffing requirement for the UC program. This section requires, as a condition of States receiving UC administrative grants, that State law include provision for:

(1) Such methods of administration (including after January 1, 1940, *methods relating to the establishment and maintenance of personnel standards on a merit basis*, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; [Emphasis added.]

Interpretive authority for this merit system requirement was transferred to the U.S. Office of Personnel Management (OPM) in 1970 by the IPA. (42 U.S.C. Section 4728.) However, the enforcement authority for this merit system requirement remains with the Department, and this requirement is a condition for receipt of UC administrative grants.

No specific merit system standards are contained in the SSA. Instead, Section 208(b) of the IPA assigns OPM responsibility for prescribing personnel standards that are to be followed by States which must operate merit-based personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. OPM has implemented these standards at 5 CFR Section 900.603, and OPM, as explained more fully below, prohibits outsourcing of administrative functions in programs to which the standards apply if outsourcing would compromise these standards. Since Section 303(a)(1), SSA, conditions receipt of administrative grants on the provision of a merit system, 5 CFR Section 900.603 applies to the administration of the Federal-State UC program.

The merit system standards at 5 CFR Section 900.603 include: (1) the recruitment, selection, and advancement of employees on the basis of their relative ability, knowledge, and skills, including the open consideration of qualified applicants for initial appointment; (2) providing equitable and adequate compensation; (3) training employees, as needed, to assure high quality performance; (4) retaining employees on the basis of the adequacy of their performance; (5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national

origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens; and (6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

b. *Guidance Pertaining to Outsourcing*.

In determining what functions may be outsourced in State offices where Federal merit-staffing requirements apply, States are to rely on guidance in OMB Circular No. A-76 (Revised) and OFPP Policy Letter 92-1. These documents offer guidance on what functions may be outsourced by the Federal government. While these issuances, by their terms, apply only to the Federal government, their guidance, combined with the merit system standards listed above, are considered to be persuasive concerning what functions a State may outsource under a program where a Federal merit-staffing requirement applies. Also, the Department values consistency between what functions may be outsourced by a State and what functions may be outsourced by the Federal Government, as it would be illogical to prohibit a State from outsourcing a function that the Federal Government is permitted to outsource. Therefore, these OMB issuances will also serve as the interpretative guides for the merit-staffing requirement of Section 303(a)(1), SSA, and the Secretary of Labor will use the guidance provided by these documents in determining whether outsourcing a UC administrative function is consistent with the merit system requirement under Section 303(a)(1), SSA, for purposes of certifying a State's law under the SSA.

These OMB issuances distinguish between "inherently governmental functions," which must be carried out by merit-staffed governmental employees and may not be outsourced, and "commercial activities," which may be outsourced. OPM directs Federal grantor agencies to use these two categories as a tool for determining whether a grant-recipient State may outsource a specific function. An "inherently governmental function" may not be outsourced as doing so would evade the merit requirements as non-governmental employees would be performing governmental functions.

OFPP Policy Letter 92-1 defines an inherently governmental function as a function "that is so intimately related to the public interest as to mandate performance by Government

employees." Such functions include those activities that require "the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government." An inherently governmental function involves, among other things, the interpretation and execution of law so as to: (1) bind the Government to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise; (2) determine, protect, and advance its economic, political, or property interests by civil or criminal judicial proceedings, contract management, or otherwise; (3) significantly affect the life or property of the individual; or (4) exert ultimate control over the acquisition, use, or disposition of the property of the Government, including the collection, control, or disbursement of appropriated or other funds.

According to OFPP Policy Letter 92-1, inherently governmental functions do not normally include gathering information for, or providing advice, opinions, recommendations, or ideas to, Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as (but not limited to) building security, mail operations, housekeeping, or facilities operations and maintenance.<sup>1</sup>

Section 6(a) of OMB Circular No. A-76 (Revised) defines a commercial activity as one which is operated by an "executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity is not a Governmental function" \* \* \* \* A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract." The application of this test is illustrated below in Section 5 of this directive.

c. *Additional Federal Law Requirements*.

Sections 303(a)(3) and (8), SSA, also contain requirements applicable to the outsourcing of UC activities. These sections require, as a condition of States receiving UC administrative grants, that State law include provision for:

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for

<sup>1</sup> Much of the guidance on inherently governmental functions contained in OFPP Policy letter 92-1 was codified in the Federal Activities Inventory Reform (FAIR) Act at FAIR Act § 5(2). However, OPM has advised the Department that because the FAIR Act only codified and did not modify the guidance in OMB Circular A-76 (Revised) and OFPP Policy Letter 92-1, OPM's analysis has not changed.

unemployment compensation are denied;

\* \* \* \*

(8) \* \* \* the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law;

Impartiality is explicit in the requirement of Section 303(a)(3), SSA, that individuals whose claims have been denied be given the opportunity for a fair hearing before an "impartial tribunal." Impartiality may be achieved only when the deciding official is free from partisan political purposes as required by the OPM regulations discussed in section 4.a. of this UIPL. The Department interprets this provision to have been met as long as the first level of appeal available to the individual is merit staffed.

The requirement of Section 303(a)(8), SSA, that amounts received for the administration of the UC program be used solely "in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of State law" also restricts outsourcing. Any moneys expended to outsource UC functions that are required to be merit staffed, or any moneys spent on outsourcing UC functions which could be performed more efficiently by governmental personnel, would not be necessary for the proper and efficient administration of the State's UC law.

Also, the "methods of administration" requirement of Section 303(a)(1), SSA, beyond the merit staffing requirement, is applicable here. The Department has interpreted Section 303(a)(1), SSA, as requiring that eligibility decisions be accurate. (See 20 CFR part 602.) It follows that the individuals making these decisions must have the knowledge and training necessary to make the correct decisions. Advancement for UC administrative staff based on knowledge, and the provision of training for such staff as needed, are requirements found in the OPM regulations discussed in section 4.a. of this directive.

Finally, outsourcing is not permitted when it otherwise creates a conflict with Section 303(a)(1), SSA, or any other Federal law requirement. For example, Section 303(a)(1), SSA, is interpreted to require that States keep UC information with personal identifiers confidential. An outsourcing arrangement that jeopardizes the confidentiality of the UC information would be impermissible.

5. *Application of Federal Requirements.* This section indicates UC

functions which may or may not be outsourced. The items identified in this discussion constitute some of the major functions involved in administering the UC program. It is not necessarily an exhaustive list of functions. For functions that are not identified or discussed in this program letter or its attachments, the Department, in consultation with OPM, will review and decide the permissibility of outsourcing on a case-by-case basis, applying the principles in this issuance.

a. *Functions Which May Not Be Outsourced.* Many functions relating to the UC program are inherently governmental and, therefore, may not be outsourced.

Determining whether to pay (or not pay) UC is an inherently governmental function. Because one of the major functions of the UC program is to act as an economic stabilizer, these decisions ultimately involve the interpretation and execution of law in a manner which affects general economic interests. In addition, decisions made by employees who administer the UC system bind the State government to make payments to individuals based on applicable law and regulation, significantly affect the life of the individual, and affect disbursement of unemployment funds with respect to the individual. These types of decisions are identified specifically in OMB Circular A-76 (Revised) and OFPP Policy Letter 92-1 as inherently governmental.

Whether an individual will receive UC is determined through a process which involves taking claims, determining the facts of the individual's situation, and if necessary, adjudicating issues and hearing and deciding first-level appeals. These three basic functions involved in determining eligibility for UC also are inherently governmental in nature, as they require the exercise of discretion in applying governmental authority.

Claims taking involves providing claimants with an understanding of their rights to UC and with advice concerning when to file as well as what type of claim to file (e.g., intrastate, interstate, or combined-wage). Discretion must be exercised as to what advice is given. Fact-finding is extremely dependent upon the exercise of discretion as it involves asking the necessary questions and establishing the proper facts in order to ensure that a correct eligibility determination be made.

The adjudication of issues cannot be conducted without the adjudicator exercising discretion in the interpretation of the State law. In response to our inquiry, which arose

from a request for guidance concerning the merit system requirement as it related to appeals referees, OPM advised the Department that appeals referees must be covered by a merit system, meaning the position must be filled by a merit staffed government employee. This determination was based on the need to insulate hearing officers and adjudicators from political or other extraneous pressures. The need for this requirement is illustrated at the Federal level by the fact that Administrative Law Judges (ALJs) were specifically excluded from the Senior Executive Service (SES) at its creation, because the greatly relaxed merit staffing principles applied to members of the SES are not sufficient to assure the impartiality that is required of ALJs. Requiring adjudicators to be merit-staffed governmental employees is necessary to meet the impartial hearing requirement of Section 303(a)(3), SSA.

While the management of the Unemployment Trust Fund (UTF) is primarily a function of the United States Treasury, each State manages the clearing and benefit payment accounts in the State's unemployment fund. As stated in section 4.b of this directive and in OFPP Policy Letter 92-1, inherently governmental functions include all those where the individual interprets or executes the law so as to "exert ultimate control over the acquisition, use, or disposition of the property of the Government, including the collection, control, or disbursement of appropriated or other funds." Section 6(e)(2) of OMB Circular No. A-76 (Revised) specifically defines monetary transactions and entitlement, such as tax collection and revenue disbursements, control of the treasury accounts and money supply, and the administration of public trusts, as inherently governmental functions. As such, they must be performed by merit-staffed governmental employees.

Determination of employer liability and experience rates are also inherently governmental functions. To determine an employer's experience rate, determinations have to be made concerning noncharging of benefits paid (if allowed under the State law), determinations of successions, rate transfers, and whether penalty rates will be used. Employer monetary liability also includes determinations about whether to assess penalties and interest. Because these decisions have an affect on the amount owed by an employer, they have the potential to significantly affect the property of an individual. Decisions concerning coverage determine the employers who are liable for contributions and workers who accrue benefit rights under State law,

and as such, significantly affect the property of individuals. For these reasons, all these functions must be performed by merit-staffed governmental employees.

Most aspects of the collection of contributions also must be performed by governmental employees. OMB Circular No. A-76 (Revised) specifically identifies monetary transactions and entitlement, such as tax collection and revenue distribution, as "functions so intimately related to the public interest as to mandate performance by governmental employees." Therefore, with the exception of the functions described in section 5.b of this directive, which follows, the functions involved in the collection of contributions must be performed by merit-staffed governmental employees.

*b. Functions for Which Outsourcing is Permitted.* As noted in Section 4.b of this directive, for purposes of the merit system provisions of Section 303(a)(1), SSA, based on OPM's guidance, if a function may be outsourced by the Federal government, it may be outsourced by State governments, if it also does not conflict with State or other Federal law. We note, however, that further limitations on outsourcing, even where it otherwise would be permitted, are explained below in Sections 5.c and 5.d of this directive. The following discussion of permissible outsourcing is illustrative of the types of functions which may be outsourced and is not an exhaustive list of such functions.

One aspect of functions related to the collection of contributions where merit staffing is not required is the collection of *delinquent* contributions which have been determined to be uncollectible by the State agency. In the case of such delinquent contributions, the determination as to the amount owed and the propriety of the decision already have been made by governmental employees. Moreover, the governmental agency will have taken all the actions required by law to collect the contributions due.

The requirement, discussed in section 5.a of this directive, that only merit-staffed governmental employees may collect, control, or disburse funds does not prohibit the use of commercial banks as depositories for clearing and benefit payment accounts, provided that the decisions concerning those accounts (that is, when checks are written, the amount of money to be transferred or drawn down from the UTF, etc.) are made by merit-staffed governmental employees. These banking functions are ministerial in nature and, therefore, are not required to be merit-staffed.

Similarly, States are not prohibited from

using a commercial bank as the collection point for contributions (that is, a clearing account) because lockbox collection functions are ministerial functions as they involve no judgement.

Audits do not have to be performed by governmental employees. OMB Circular A-76 (Revised) specifically identifies financial auditing as an example of a commercial activity. Because this function involves the gathering of information rather than the determination of liability, the function may be outsourced if doing so is not inconsistent with State and Federal laws relating to procurement of services. The basic UC tax audit function, as well as certain program audit functions (such as workload validation) may be outsourced, to the extent they do not involve the exercise of discretion in applying governmental authority, but rather, involve only the investigation and verification of past actions taken by governmental or contract employees. (See section 5.c of this directive for additional discussion.)

Automated data processing (ADP) functions also are identified in OMB Circular A-76 (Revised) as commercial activities that may be outsourced. ADP functions do not require the use of discretion in applying governmental authority, nor do they impact the decisions concerning whether or not an individual is eligible to receive UC. Therefore, ADP functions may be outsourced.

In all cases where outsourcing is contemplated, safeguards must be in place to ensure that any confidential data available to the contractor is not disclosed. Otherwise, outsourcing would not be appropriate, as it would be inconsistent with the confidentiality requirements of Section 303(a)(1), SSA.

*c. Determinations Concerning Outsourcing Must be Based on the Function, Not the Title of the Position to be Outsourced.* The Department recognizes that many UC staff positions entail the performance of multiple functions. A given UC staff position may include some duties that must be performed by merit-staffed governmental personnel, and some duties that may be outsourced. A decision as to whether it is permissible and/or appropriate to outsource an activity must be made by determining the function(s) performed, and must not be based on the title of the position charged with performing the function(s). If the function involves the application of governmental authority, it may not be outsourced, even if the title of the position suggests the absence of governmental authority. For example, as is usually the case for UC field audits,

determining when audits are to be performed and decisions made as a result of the audit (for example, whether the employer owes back taxes, determinations of coverage, etc.) are inherently governmental functions that are an integral part of the UC audit function. Therefore, if auditors have the responsibility for making determinations of monetary liability or coverage decisions based on their audit findings, as is normally the case with tax auditors and in the various quality control programs, the auditors must be merit-staffed governmental employees and not contractors. If the ministerial functions can be separated out from the inherently governmental functions, the ministerial functions may be outsourced. However, a legal prerequisite still applies, as explained in section 5.d.2 of this directive, that doing so must not be less cost effective than having the entire function performed by merit-staffed governmental employees.

When deciding whether to outsource a position, States first should determine whether any inherently governmental functions are included in the duties of the position. If inherently governmental functions are included in the duties of the position, and they cannot be separated from the other function(s) to be performed, the position must be filled by a merit-staffed, governmental employee. If the inherently governmental function(s) can be separated from the position, and performed by merit-staffed governmental employees, then the rest of the function which is not inherently governmental may be outsourced, provided all other requirements for outsourcing are met. The Department will advise States on a case-by-case basis when requested to do so or when issues are identified regarding the outsourcing of specific functions and positions.

*d. Further Limitations on Outsourcing.* The above discussions of outsourcing relate to whether a particular function may be outsourced. However, other factors must be taken into account before outsourcing the function is permissible. These factors relate to whether a *de facto* employer-employee relationship exists between a contractor and governmental employees, and whether the government can perform the function in a more cost effective manner than a contractor.

(1) *Functions, even if commercial activities, may not be outsourced if doing so would create an employer-employee relationship between government and contract employees.* As noted above, commercial activities may

be outsourced. However, even if a function is deemed to be a commercial activity, its outsourcing is impermissible if it creates a *de facto* employer-employee relationship between government and contract employees. A *de facto* employer-employee relationship, where contract employees are under the direction, supervision, and evaluation of government employees, but without merit system protections, would circumvent the Federal merit system requirements. In this case, the *de facto* employer-employee relationship would serve to achieve in a backhanded manner that which could not be achieved otherwise: performance of the work by *de facto* government employees *without* merit system protections. This would undermine the very basis for requiring merit system protections in the first place, and is, therefore, impermissible.

Conversely, under no circumstances may governmental employees be under the direction and control of contract employees. If governmental employees are subject to direction, supervision, and evaluation by contract personnel, the chain of governmental responsibility to the public would be broken. In this case, the contractor, who is not accountable to the public, would exert major influence over the employees, rather than government officials who are directly accountable to the public.

OPM has advised the Department that the existence of a *de facto* employer-employee relationship, in the context of government contractors, is determined under the Federal common law test (as opposed to the State law tests) for determining the existence of an employer-employee relationship. The determination whether an employer-employee relationship exists must be made on a case-by-case basis. Federal regulations defining the employer-employee relationship are found at 26 CFR Section 31.3306(i)-1.

(2) *Functions, even if commercial activities, may not be outsourced if they can be performed in a more cost effective manner by the government.* As noted above, Section 303(a)(8), SSA, requires that a State's law provide for the expenditure of all moneys received by the State under Section 302, SSA, "solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration" of the State's UC law. If a UC function can be performed more efficiently and cost effectively by the Government than by a contractor, outsourcing of the function, even if it is a commercial activity, would be inconsistent with Section

303(a)(8), SSA, as it would not constitute "efficient administration" of the State's UC law.

(3) *Outsourcing may not be used to circumvent personnel or salary ceilings.* OMB Circular A-76 (Revised) states that the circular shall not be used to justify the outsourcing of functions solely to avoid personnel ceilings or salary limitations. In applying this principle to the States, if such ceilings or limitations exist, granted funds must be used in a manner consistent with the ceilings or limitations in order to insure the "proper administration" of the State's law under Section 303(a)(8), SSA.

6. *Frequently Asked Questions.* While developing this directive, the Department received several questions concerning its contents. The following Questions and Answers respond to questions which have not already been addressed.

Q. States frequently hire additional staff to handle temporary workload increases. These staff are let go when the workload decreases. In some cases, these staff may be retirees who return to work. Are these actions inconsistent with merit-staffing?

A. The Department recognizes that it is necessary on occasion to bring on temporary employees to handle temporary workload increases. To ensure that these temporary employees are competent to perform the tasks for which they are hired, they must have been hired through a merit system. If a retiree was hired and trained under a merit system in the first place, the merit system requirement is maintained. No issue is created when these temporary employees are laid-off due to a workload reduction.

Q. Members of Boards of Review which administer the second level of appeals are not required to be merit-staffed. Why is this so? May the higher appeals authority be outsourced?

A. The higher appeals authority may not be outsourced as it performs an inherently governmental function that requires discretion in applying Government authority or the making of value judgements in making decisions for the Government. However, the Department has long held that Boards of Review need not be merit-staffed. Boards exist to provide an independent analysis of, and ensure consistency of, first-level appeals decisions. Board members typically represent both employer and employee interests and as such are chosen for their representation of those groups. This position was stated as early as 1963 in Section 0595(B), Part I, of the *Employment Security Manual*. (This section is now obsolete.)

7. *Action Required.* Administrators are requested to provide this information to the appropriate staff. States should take appropriate action to assure that they meet the requirements of Federal law as explained by this UIPL.

8. *Inquiries.* Questions concerning the outsourcing of UC functions should be directed to the appropriate Regional Office.

9. *Attachments.* OMB Circular No. A-76 (Revised) and OFPP Policy Letter 92-1.

**Note:** The attachments, both of which have been published in the **Federal Register** previously, are not being published again. They can be obtained in electronic format at the following URL addresses.

OMB Circular No. A-76—<http://www.whitehouse.gov/OMB/circulars/a076/a076.html>  
OFFP Policy Letter 92-1—[http://www.arnet.gov/References/Policy\\_Letters/PL92-1.html](http://www.arnet.gov/References/Policy_Letters/PL92-1.html)

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## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2001-1 CARP DSTRA2]

### Adjustment of Rates and Terms for the Digital Performance of Sound Recordings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of negotiation period and request for notification.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing the 6-month negotiation period for the adjustment of royalty rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio radio services. The Office is also requesting those parties participating in the negotiations to so notify the Office.

**DATES:** The 6-month negotiation period commences on January 9, 2001. Notification of participation in the negotiation period is due by January 31, 2001.

**ADDRESSES:** An original and five copies of notification of participation in the settlement negotiations may be hand delivered to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20559-6000; or mailed to: Copyright Arbitration Royalty