

University of Michigan Journal of Law Reform

Volume 28

1995

Timeliness of Appeals: Improved Federal Oversight Is Needed

Cynthia L. Rice

California Rural Legal Assistance

Sharon M. Dietrich

Community Legal Services of Philadelphia

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Labor and Employment Law Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Cynthia L. Rice & Sharon M. Dietrich, *Timeliness of Appeals: Improved Federal Oversight Is Needed*, 28 U. MICH. J. L. REFORM 47 (1995).

Available at: <https://repository.law.umich.edu/mjlr/vol28/iss5/14>

This Symposium Abstract is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TIMELINESS OF APPEALS: IMPROVED FEDERAL OVERSIGHT IS NEEDED

Cynthia L. Rice
Sharon M. Dietrich

The Social Security Act's mandate that the states shall adopt "[s]uch methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation *when due*"¹ has been construed to require that the states administer their appeals systems so that decisions are rendered "with the greatest promptness that is administratively feasible."² In this Abstract and the Article which will follow, the authors analyze the extent to which this goal of timely appeals decisions has been achieved, along with the roles which federal timeliness standards and enforcement efforts have played in these results. The Article concludes with recommendations for revised federal standards, improved federal monitoring, and technical assistance to states which have fallen out of compliance with the standards.

The Article reviews data reflecting the states' performances on the timeliness of first- and second-level appeals during the most recent recession, during which substantial backlogs of pending appeals developed throughout the country. The causes of these backlogs also will be explored. These include:

- Increased numbers of appeals because of increased numbers of initial claims, resulting from the recessionary economy and the Emergency Unemployment Compensation program.
- Increased numbers of appeals because of changes in claims processing at the initial determinations level, implemented in an effort to cope with the larger numbers of initial claims (i.e., determining claims solely on telephone contacts or without obtaining documentary evidence supporting employer's positions, eliminating pre-appeal review).

1. 42 U.S.C. § 503(a)(1) (1988) (emphasis added).
2. 20 C.F.R. § 640.3(a) (1994).

- Inadequate personnel to resolve the cases, exacerbated by state government hiring freezes.
- Deficiencies in the existing federal timeliness standards, which contain a built-in lag time before reflecting non-compliance by counting completed, rather than pending, appeals and which permit manipulation by the states by not requiring that appeals be decided in the order in which they have been filed.

In addition, the Article shows a relationship between states' appeals backlogs and untimely and insufficient responses by the United States Department of Labor (DOL) to noncompliance with the timeliness standards. We take issue with the following deficiencies in DOL's oversight of some of the states in which serious backlogs existed:

- Inadequate and untimely warnings concerning lack of compliance and failure to indicate possible punitive measures.
- Almost no genuine attempt to enforce the statutory requirement that the Secretary of Labor not recertify a state for payment of administrative expenses unless the state administer its appeals program in compliance with the "when due" mandate.
- No independent monitoring of the causes of the state's backlog or projection of numbers of future appeals—bearing upon attempts to catch up with the pending inventory of appeals.
- Failure to require states to provide meaningful "corrective action plans" and "appeals performance plans," despite regulations requiring such plans to be submitted to DOL.
- Failure to establish performance standards or apply any sanctions to states who repeatedly fail to meet goals established in "corrective action plans."
- A lack of technical assistance to states with backlogs of pending appeals.

Early review of data suggests that when DOL promptly warned a state that it had fallen out of compliance and required that it submit a detailed corrective action plan, the state was more likely to return to compliance quickly. Conversely, when DOL did not promptly warn a state that it was out of compliance and insist upon a meaningful remedial plan, the state was more likely to develop a large backlog of pending appeals which prevented compliance for a much longer period of time.

We suggest that the federal appeals timeliness regulations be revised to correct for deficiencies which have become apparent since they were developed more than twenty years ago. Among our anticipated recommendations are the following:

- Promulgate timeliness regulations for second-level appeals. These regulations should be flexible enough to accommodate the different types of review utilized by the states.
- Require states to track numbers of claims filed as a method of projecting significant increases in numbers of appeals, which may require adjustments in staff.
- Require states to report on timeliness of pending appeals, in lieu of the current practice of reporting completed appeals.
- Incorporate more time period gradations in the regulations and monitoring reports, especially for cases decided after more than seventy-five days, so that the amount of delay for the latest appeals decisions is not hidden.
- Require states to use a “first in–first out” approach to their appeals inventory, so that the oldest cases are not neglected in the quest for compliance with the federal standards.
- Create a maximum time limit for resolution of every appeal, absent good cause for further delay.
- Require states to maintain data for substate regions, as well as statewide, and indicate that a state’s performance in a particular region can undermine apparent statewide compliance with the federal standards. This would prevent

states from masking a timeliness problem in a particular region in which staff is in particularly short supply, especially if the shortage is a result of a political allocation of resources.

- Indicate that where there is a backlog, priority should be given to claimant, rather than employer, appeals, based on the statutory command of “payment when due.”

The Article concludes with a discussion of how DOL’s enforcement efforts can be improved to avoid a recurrence of the backlogs encountered during the last recession. We expect to make the following recommendations:

- DOL should immediately acknowledge that a state has, or is poised to, fall out of compliance with the timeliness regulations. This should be done both by a corrective letter to the state and by making the situation known to the public.
- DOL should assign an individual to monitor and work with the state until the timeliness problem is corrected.
- The monitor should initiate an on-site compliance review, at which he would evaluate articulated factors for claims and appeals processing efficiency.
- After the review, the monitor would provide technical assistance to the state concerning changes needed to eliminate the backlog. Among the changes to be considered include: need for additional personnel, including clerical staff and record transcribers, as well as decision makers; reemployment of existing staff—reassigning claims examiners, authorizing overtime; equipment needs; efficiency measures; productivity measures and goals for staff; and computerization of the system.
- DOL promptly should demand a meaningful corrective action plan from the state, which would include specific goals and performance standards for elimination of the backlog, including projected time to elimination and numbers of cases to be decided.

- DOL should facilitate expansions of state staff upon an increase in the number of appeals by providing administrative funds before the work is performed, rather than afterward, as is the current practice.