Federal-State Relations

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Almost sixty years after its inception, following over 340 million first payments of unemployment insurance (UI) to individuals, significant problems with benefit fund solvency in many states,\(^1\) and after substantial growth in program complexity, the UI program continues to be the initial point of contact for someone who becomes unemployed. Although the program has experienced a number of pivotal problems, some inherent in its basic structure and some beyond its control, it continues to be a model of federal-state interaction and cooperation. The purpose of this chapter is to examine the dynamics that established the original federal-state UI system and to discuss how this unique relationship has evolved over the last sixty years. Some of the issues that will be discussed, notably administrative financing, are shared by the employment service program that works to find jobs for UI claimants; however, this chapter will be limited to UI.

**Program Inception**

The initial discussions involving the development of the UI program in the United States focused on three primary issues: (1) whether an exclusively national system was appropriate, (2) to what extent state legislatures should have discretion about program requirements, and (3) the degree to which states should be required to meet minimum
federal standards. The federal-state UI program came about as a result of the need for income protection in the political and economic climate of the Great Depression of the 1930s. Attempts in 1916 and again in 1921 to pass federal UI legislation had failed. Between 1917 and 1933 thirteen unemployment benefit or guaranteed employment plans were developed by individual companies. President Franklin D. Roosevelt had hoped that either private insurance programs or individual states would provide for temporary income coverage to help offset the unpredictability of unemployment. Although private insurance programs had developed slowly in the early 1930s, many had failed and, prior to 1935, only Wisconsin had enacted a UI law. States were reluctant to enact UI laws at their level since they would be at a competitive disadvantage relative to states without UI programs. The Wagner-Lewis bill of 1934 solved some of the state concerns by proposing a federal tax with an offsetting credit for employers if the state met certain requirements. Although President Roosevelt supported the proposal, he requested that consideration be delayed until further study could be completed.2

To examine the matter, President Roosevelt created the Committee on Economic Security which eventually recommended a federal-state system calling for a federal tax with provisions for credit against that tax, similar to that put forward in the Wagner-Lewis proposal. With its recommendation for a federal-state system, the committee also expressed its apprehension about the compromise:

A federally administered system of unemployment compensation is undoubtedly superior in some respects, particularly in relation to employees who move from state to state. . . . We recognize also that in other respects State administration may develop marked inadequacies. Should these fears expressed by the champions of a federally administered system prove true, it is always possible by subsequent legislation to establish such a system . . . . Accordingly, the Congress can at any time increase the requirements which state laws must fulfill and may, as it sees fit, at some future time, substitute a federally administered system for a cooperative Federal-state system we recommend (Report of the Committee on Economic Security 1935).

The arguments used to support a totally federal system involved uniformity of protection and coverage, consistency for employers who had
multistate operations, the ability to pool trust fund resources and collect taxes centrally, and less administration. Those who favored a federal-state system countered with the following: a national system would be cumbersome to operate; the decision process would function better if states could enact laws complying with broad federal requirements; there would be more accountability of state and local officials under a federal-state system to develop a program responsive to individual state needs and conditions; and, rather than proposing changes to the federal laws which may not work throughout the country, a federal-state system would mean that states could experiment with new ideas, which could then be exported to other states.

The committee’s unanimous recommendation for a federal-state system was made primarily for three reasons: (1) it was known that President Roosevelt preferred that approach, (2) there was a significant question as to whether a wholly federal system was constitutional, and finally (3) Congress was apparently unwilling to relinquish all state authority over this issue to the U.S. government. Although the committee’s report did not detail federal or state duties, it did outline general recommendations for incentives to states to enact laws adopting minimum state standards, providing for the control of trust fund reserves, establishing substantive program provisions, and providing effective administration. In most cases the responsibilities were to be shared and collaborative.

The 1935 Social Security Act (SSA), which created the federal-state system, did not end discussions about the basic structure of the program. By the end of 1937, concerns about the constitutionality of the federal-state system were resolved by the U.S. Supreme Court. Even by then, states had developed their own vested interest in the program and were prepared to strongly resist any attempts to change it to an exclusively federal system. With the possibility of an exclusively federal system reduced, proponents for more uniformity switched their attention to active support for federal benefit standards. Although benefit standards have been proposed by a number of different administrations, they have never been adopted.

The 1935 SSA addressed UI in two ways. First, Title III provided for grants to states for the administration of their UI programs. The receipt of these grants was conditioned on state law meeting the requirements of Title III and Title IX of the SSA. Second, certain sec-
tions of Title IX (since recodified as that part of the Internal Revenue Code called the Federal Unemployment Tax Act [FUTA]) created the cornerstone of the federal-state system: a federal tax with a significant tax credit offset for employers in states with UI laws meeting federal law requirements. Although the basic concept of a gross versus a net FUTA rate has remained the fundamental incentive feature in the system, the amounts of the gross and net rates have changed. (When the program began, the gross FUTA rate was 3 percent with a net FUTA rate of 0.3 percent. In 1996, the gross FUTA rate was 6.2 percent, including a temporary tax of 0.2 percent). Employers who have paid their full state unemployment tax obligations can receive a 5.4 percent offset credit on their FUTA rate if their state law meets federal requirements, provided the state has had no outstanding loans from the federal government for more than two years and provided the services are covered under state law. Based on a taxable wage base of $7,000, most employers pay no more than $56 (0.8 percent of $7,000) per employee. However, if the state is ruled out of conformity or compliance with federal law, then an employer’s cost per employee would increase to $434 (6.2 percent of $7,000).4

The Federal-State Partnership

Rather than a simple federal-state partnership, the UI system embodies a whole host of interested parties, with each affecting the operation of the program at both the state and national level. Although within the UI program the federal government is referred to as the “federal partner,” this federal partner is really comprised of the U.S. Congress and the executive branch, including the U.S. Department of Labor, at both the national and regional office levels, and the Office of Management and Budget. Not surprisingly, the federal partner will not always present a consistent view on issues relating to the UI system, primarily because different interests in the program are represented. Congress has several times rejected efforts by different administrations to impose benefit standards on states. As federal UI law involves other federal agencies, the U.S. Department of Labor may disagree with those agencies and has sometimes participated in judicial action, as friend of the court on behalf of the states in cases concerning whether states have complied with federal requirements.
The "state" partner is comprised of the fifty different states, the District of Columbia, Puerto Rico, and the Virgin Islands. Each has its own legislature, UI advisory councils, business and labor organizations that protect the interests of their constituents, and state courts. Like the federal partner, the state partner is comprised of different entities with widely divergent interests and opinions.

As the UI program has evolved since the 1930s, the state UI agencies have served to explain both the mechanics and history of the program to state legislatures. State agency staff also commonly assist the legislatures in explaining how proposals to change state law might conflict with federal law, which could result in the loss of federal tax credits and the ability of the state UI agency to receive administrative grants. Similarly, staff members at the U.S. Department of Labor are called upon to provide the explanations of program administration to Congress, to testify regarding economic shifts that necessitate program modifications, and to estimate the impact of legislative changes. Without this institutional knowledge, legislative changes could not be made at either the state or federal level.

The federal-state partnership ranges from a system that functions as a model of cooperation to a contentious program with widely divergent problems and proposed remedies. An example of how the federal-state partnership works cooperatively in accomplishing its basic mission can be shown in the programs enacted by Congress to address prolonged spells of unemployment during national recessions. A permanent Extended Benefits (EB) program was required of the states by Congress in 1970 to provide for a "second tier" of income protection for individuals exhausting entitlement to regular state unemployment benefits during a period of high state or national unemployment. Unlike regular state UI, the federal government pays about one-half the cost of EB payments. Congress has also authorized a number of "third tier" programs (these programs are sometimes referred to as "emergency benefit programs"), usually on short notice and usually 100 percent federally funded, either in the midst of or towards the end of a national economic downturn. These third tier programs may involve a variety of triggering mechanisms, qualifying requirements and complex "reach-back" provisions which provide additional income protection to individuals who have exhausted both regular state benefits and all available EB prior to the creation of the new program. Such initiatives are gener-
ally implemented with very little time to develop the administrative procedures necessary to pay benefits to millions of workers. Without cooperation at the federal and state levels, these third tier benefits might never come into existence, much less reach the unemployed.

The U.S. Department of Labor works with the states to formulate program operation, to provide access to both the program dollars and administrative grants for the states, and to provide guidance on program administration. States generally have the responsibility to announce eligibility, to contact individuals who have exhausted entitlement, and to develop reporting and payment systems accommodating these program requirements.

By contrast, as discussed later in this chapter, the problems associated with administrative financing in the 1980s and 1990s have caused many states to advocate more state control over funding and program issues. These discussions result in disagreements among states and between states and the federal partner; these controversies, while sometimes divisive, highlight state problems and provide an opportunity for strengthening the system. However, since states represent their individual interests, the solutions proposed by some states could be detrimental to others.

Conformity and Compliance

Two types of issues exist when the U.S. Department of Labor believes a state UI program does not meet the requirements of federal law: conformity and compliance. A conformity issue arises when the state law does not agree with federal law. This may occur because the state law contains a provision inconsistent with federal law or because it does not contain a provision required by federal law. The conflict may be created by the law itself, or by administrative or judicial interpretation. A compliance issue exists when actual state practice conflicts with federal law. Whereas conformity is directed at the state law itself, compliance is directed at the proper administration of state law. Put another way, conformity relates to law while compliance relates to performance. Conformity and compliance issues arise under both the SSA and the FUTA. If the state does not conform and comply with the pro-
visions of the FUTA, employers in the state will lose tax credits, and
the state will not be eligible for administrative grants under the SSA.
Failure to meet the requirements of the SSA, however, results only in
the loss of administrative grants.

Federal Law Requirements

Originally, there were few federal requirements. The President’s
Committee on Economic Security (1935) in its report to the President,
recommended that federal standards apply only to matters on which
uniformity was absolutely essential and that states share in the devel-
opment of those standards. Another recommendation was to require
that the federal government grant administrative funds to states “under
conditions designed to insure competence and probity” (President’s
Committee on Economic Security 1935). This approach ensured some
uniformity among states while providing sufficient latitude for states to
enact provisions suitable for their area. The intent was to avoid inter-
state competition by requiring, as a condition for the credit, that all
states have the same basic structure.

The Senate Finance Committee’s 1935 report on the legislation that
eventually was enacted emphasized that the legislation “does not set up
a federal unemployment compensation system” and that “[e]xcept for a
few standards which are necessary to render certain that the state
unemployment compensation laws are genuine unemployment com-
pensation acts and not merely relief measures, the states are left free to
set up any unemployment compensation system they wish, without
dictation from Washington.” The 1935 SSA followed the pattern of the
Tenth Amendment to the Constitution by implicitly providing that all
UI responsibilities not expressly delegated or implied to the federal
government are reserved for the states (Rubin 1983, p. 64).

The original SSA created 12 requirements:

1. Methods of administration reasonably calculated to insure full
payment of UI when due. This provision has become perhaps the
most important in the federal-state relationship due to its broad-
ness and its litigation in federal courts.

2. Payment of UI through public employment offices or other agen-
cies that the Secretary of Labor may approve. This assures that UI
claimants receive any employment services that may assist their return to work.

3. A fair hearing for all claimants who have been denied UI. Since this requirement was added prior to the explosion in administrative law, one might question whether this stipulation would be included if the SSA were created today. The first requirement listed would appear to mandate a fair hearing as a basic element of determining whether payment of UI is made when due.

4. All receipts for the unemployment fund must be immediately transferred to its account in the Unemployment Trust Fund in Washington. This requirement assures that UI monies are immediately turned over to the federal government for investment in federal, rather than in state securities. This system was given impetus by fears that mass liquidation of state-held securities on a falling market would further an economic downturn and cause the value of a state fund to decline.

5. All amounts withdrawn from the state unemployment fund may be used only for the payment of UI, i.e., cash payments to individuals with respect to their unemployment. This requirement assures that trust monies are used only for the purpose of the trust, which is the payment of UI. Along with the stipulation that payments be made through public employment offices, it is the basis of the “able and available” requirement.

6. States must make reports required by the U.S. Secretary of Labor.

7. States must provide information to any agency of the United States charged with the administration of public works or assistance through public employment. This provision is obsolete.

8. States are prohibited from denying benefits to individuals entitled to UI. In hindsight, this provision seems superfluous given that states follow their laws, and, if they do not, the state courts would become involved.

9. UI may not be paid until two years after the first day of the first period with respect to which contributions are required. This
assured that states had adequate reserves on hand prior to commencing the payment of UI. Once a state commenced its UI program, it was no longer affected by this provision.

10. UI may not be denied due to a failure to accept a job if the position is vacant because of a strike or lockout; if the wages, hours, or other conditions of work offered are substantially less favorable than those prevailing in the locality; or if, as a condition of employment, the individual is required to join or to refrain from joining any bona fide labor organization. These provisions were added to assure that UI would not be used to deflate wages as well as to keep the UI program neutral in matters of labor-management relations.

11. All the rights, privileges or immunities conferred by state law shall exist subject to the power of the state legislature to repeal the power of the law at any time. This provision was included as the creation of an entirely federal UI system still appeared possible in 1935. It provides protection to states in the event their laws are repealed and replaced with a federal system.

12. To receive the additional credit against the federal unemployment tax, any reduced rate of contribution assigned an employer must be based on the employer's experience with unemployment. Although states do not have to receive the additional credit, this provision has the effect of a requirement, since early in the history of the program, almost all states chose to adopt experience rating. Currently, all states use experience rating.

The preceding requirements merely established a skeletal framework for the system. They did not mention base periods, benefit years, or waiting weeks. They did not mandate anything in terms of eligibility except that the individual be able and available for work and that the individual may not be denied benefits due to certain refusals of work. They did not compel states to have provisions relating to voluntary quits, discharges for misconduct, or the individual's suitability for refused work. They did not address duration of benefits. A state need not cover services if choosing to lose tax credit on those services. Conversely, nothing prohibited states from having broader coverage.
This lack of specificity may be surprising since current state UI programs are similar in many ways. Such commonality results from a consensus concerning what constitutes an effective UI program. For example, in 1945, ten years after the enactment of the SSA, twenty-three states did not have any provisions relating to quits, misconduct or refusals of suitable work; today, all states have these provisions. As another example, in 1940, most states had maximum durations of 16 or fewer weeks. By 1955, most states had durations of around 20 weeks. Today, fifty-one states have maximum durations of 26 weeks.

Following the enactment of the SSA, thirty-five years went by with few changes in federal law. In 1939, those provisions of the SSA relating to federal tax credits were moved to the FUTA, a part of the Internal Revenue Code. In the early 1940s, two requirements were added concerning the use of UI-granted funds. In the 1950s coverage was broadened. However, in 1970 and 1976, many new requirements were created. Since 1980, new requirements have been added through the budget reconciliation process rather than through legislation concerned with the UI system itself. Although this approach has sped up legislation, it also means that laws are enacted without hearings or much deliberation and that UI program decisions are made due to budgetary instead of program concerns.

Some of the requirements added since 1970 are matters of national interest probably appropriate for the federal partner to address. Among these requirements are the following:

1. States may not deny or reduce UI to individuals who live in or filed from another state. This provision assures equal treatment by prohibiting state law provisions discriminating against such individuals.

2. States must participate in a combined-wage plan created with their participation and approved by the Secretary of Labor. Prior to this amendment, there were several combined-wage plans, with the result that some individuals still could not establish eligibility.

3. States must cover services performed for state and local governments and certain religious, charitable, and educational nonprofit organizations. Under this extension of coverage, UI must be paid
on the same terms and conditions as other services covered under state law. These provisions were added since the governmental and nonprofit entities were not subject to the federal tax. Therefore, states did not have the incentive to cover these services, and large numbers of unemployed individuals might never have received UI. The amendment changed this. (Two other provisions related to this coverage provision were not quite as clearly a matter of national interest. First, states were required to give the governmental and nonprofit entities the option to reimburse the state unemployment fund rather than to pay taxes. Second, certain school services may not be used to establish UI eligibility between and within academic periods.)

4. States must pay UI to claimants in training approved by the states. The notion here was that UI should not act as an impediment to training that may help the individual return to employment.

5. States must participate in the federal-state EB program. This assured that no state would be discouraged from extending the duration of UI during periods of high unemployment. Further, it presumably would obviate the need for Congress to create special benefit programs during recessions.

6. States were prohibited from using services performed by an alien in establishing a claim unless the alien was in one of three specified categories. Since the federal government oversees efforts related to aliens such as admission and granting of work authorization, this interest was integrated into the UI program. The notion behind the amendment was to deny UI to "illegal" aliens who should not have been working and who were, in some cases, replacing Americans.

Other requirements added since 1970 are more difficult to characterize. For example, due to the way state eligibility criteria were structured, it was possible for an individual with only one separation from work to exhaust the first benefit year and to later establish a second benefit period. Congress amended FUTA to require that UI could not be paid in a second benefit year unless the claimant had worked since the beginning of the first benefit year. Congress did not say how much work was required. As a result, states could require as little as one hour
of work. It is not clear why Congress felt this area had to be addressed nor is it clear why the provision was left open to manipulation due to the lack of a minimum standard. On the other hand, leaving the minimum standard to the states was entirely appropriate to the federal-state system.

Purely political considerations seem to have been the rationale for some requirements. As the result of a television show depicting individual abuses of the UI program, Congress amended federal law to require states to deny benefits to certain athletes between sports seasons and to reduce UI due to receipt of pensions and other retirement pay. Both of these provisions were, in effect, statutory assumptions of unavailability. Since many retirees were in fact looking for work, the original pension provision was later amended to apply only to pensions 100 percent financed by base-period employers. This creates a situation where only a relatively few pension recipients are prohibited from simultaneously collecting a pension and UI. Although the athlete provision has been less controversial, it has served to deny UI to low-income minor league athletes who are looking for work during the off-season. To the states, the pension and athlete provisions symbolize inappropriate federal intervention since neither seems to address any national concern.

Further requirements came about in an effort by Congress to save money. For example, as part of the reconciliation process in 1980 and 1981, the EB program was amended. Whereas state eligibility conditions had previously applied to EB claims, federal requirements were created concerning work search, suitable work, monetary qualifying requirements, and requalifying following a disqualification. Federal sharing was denied for any amount that was rounded up to the next whole dollar and for the first week of EB unless the state had a non-compensable waiting week. Finally, the amendments changed the trigger levels in such a way that the program has not since served to pay EB even during recessionary times. Under more recent amendments, Congress attempted a legislative fix to this trigger problem by giving the states the option of paying EB when the total unemployment rate in a state reached a certain level.

The two most recent requirements are also attempts to help balance the budget. Public Law (P.L.) 103-6 encourages the creation of a system of profiling all new claimants for regular UI to determine those
claimants most likely to exhaust UI and to need reemployment services. In P.L. 103-152, Congress changed this to a mandate. The congressional history of this mandate indicates concern that individuals were not fully utilizing available reemployment services. Full utilization would presumably reduce UI costs by accelerating reemployment. However, from the perspective of the federal unified budget, the UI costs savings attributable to profiling were actually used to pay some of the costs of prolonging the Emergency Unemployment Compensation program.

The second example of budgetary concerns resulting in a conformity requirement is found in P.L. 103-465. In this legislation, Congress requires states to withhold federal income taxes from UI when the claimant so elects. The purported reason was that taxpayers found it burdensome to make quarterly estimated tax payments. While there was merit to that argument, the immediate impetus was accelerated tax collection, thereby helping to pay for costs of implementing the General Agreement on Tariffs and Trade, which was generally unrelated to the UI program.

This mixing of what is purportedly an expansive benefit program with restrictive eligibility conditions, reduced federal sharing of benefit costs, and high state triggers sends conflicting signals since the UI program works only when it pays benefits. States generally view federally mandated restrictive eligibility provisions as being inappropriate to the federal-state relationship and sometimes as being just plain wrong. For example, some states waive work search requirements for regular benefits when there are no jobs during a recession. However, the EB work search provision takes exactly the opposite approach by requiring claimants to search for work that does not exist.

Another issue in the relationship is that, as the years have gone by, Congress has grown more specific in legislating in most areas. This, of course, has the result of limiting state discretion. One example of these limitations is the self-employment program. As a rule, states may withdraw amounts from their unemployment funds only for payment to unemployed individuals. This means that self-employed persons normally will not collect UI. As a result, Congress amended federal law to permit withdrawals to pay for self-employment assistance programs. The authorizing provision in federal law lays down, by our count,
eleven restrictions that states must follow. This is compared with only twelve requirements for the entire original UI program!

In other cases, Congress has granted the U.S. Department of Labor wide authority in implementing new requirements. For example, the profiling legislation stipulates that states must “meet other requirements” that the department determines to be appropriate. The Labor Department issued extensive operational direction and required states to submit detailed plans in order to obtain start-up funding. Similarly, when Congress compelled states to give individuals the option of having federal income tax withheld, it required approval of a state plan by the Labor Department. This time the department took a different approach: any state following the department’s broad draft legislative language would automatically have its plan approved.

It should be noted that changes in federal law have not been limited only to conformity and compliance matters (Hight 1982, pp. 617-618). Prior to 1970, there were sixteen changes to federal UI provisions. Since then, there have been forty-four separate changes to UI provisions, including eighteen separate ones involving extending duration, such as EB, Emergency Unemployment Compensation, Federal Supplemental Benefits, and Federal Supplemental Compensation. Although these programs respond to the needs of the jobless during periods of high national unemployment, they also add to the complexity of the system and often create confusion when they are extended or expire. More important, the ability of states to deal with these changes exemplifies the strength of the partnership in making frequent adjustments. This collaborative adaptability is essential to the operation of the UI system in a dynamic economy.

We will now put aside the question of whether current federal requirements are appropriate to the federal-state relationship or even appropriate for the UI program itself. In this section, we will look at these requirements to determine how provisions are administered and which, in terms of the federal-state system, are more easily administered than others. For this purpose, we group federal law requirements into three categories: “methods of administration,” minimums, and absolutes.
Methods of Administration

The SSA requires state law to provide 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" (42 U.S. Code § 503[a][1]). This provision is unique in that, on its face, it requires nothing unless the U.S. Department of Labor sees fit to create a requirement. Looking back on this 1935 provision in 1982, a longtime department employee concluded that it "is sufficiently broad to permit virtually any federal control over administration that USDOL sees fit to impose" (Rubin 1983, p. 42). On the other hand, if the Labor Department chooses not to determine a method of administration, states need do nothing. It has been argued that the department has exercised considerable restraint in applying this provision, coming out with few major interpretations since about 1950.9

The discretionary nature of this provision has made it the subject of litigation for advocacy groups representing UI claimants. Indeed, it seems that, notwithstanding the considerable federal legislation enacted since 1970, this litigation has rechanneled the efforts of the U.S. Department of Labor mainly into performance oversight. The issues of litigation and performance oversight are sufficiently important that they will be treated in more detail later.

Minimum Requirements

Minimum requirements recognize the original spirit of the federal-state relationship: states are free to develop their own requirements within a framework set by federal law. The degree of flexibility, of course, varies with each minimum requirement. Examples are the pension, alien, and approved training provisions. The U.S. Department of Labor follows two general rules in interpreting and applying these minimums: (1) if the requirement impinges on areas otherwise left to the states, it is construed as narrowly as possible while reasonably effectuating its purpose, and (2) any language that may be construed as leaving discretion to states is broadly construed, unless there are compelling reasons for a narrow construction.10 Of course, unless the requirement is completely clear, there will be disagreement as to what reasonably effectuates its purpose.
Some minimum requirements create little or no tension in the federal-state relationship. For example, the "double dip" provision gives states such latitude that, once the provision is placed in state law, there will likely be no conformity or compliance issues raised. Similarly, the approved training provision allows the states to determine what training will be approved. Again, once the state has an approved training provision, few issues will be raised.

Other minimum federal requirements are not as easily administered. To illustrate, the alien provision uses a very broad phrase—"permanently residing in the United States under color of law"—to describe certain aliens. States are not required to have this phrase in their laws and states that do have the provision can interpret it more restrictively than does the U.S. Department of Labor. The problem with administering the provision is that the phrase invites differing interpretations. Based on federal court decisions in other programs such as Supplemental Security Income, claimant advocacy groups have in many cases successfully argued that aliens who have made themselves known to the Immigration and Naturalization Service (INS) are permanently residing in the United States under color of law. The Labor Department and the INS, however, take the position that only aliens with written acknowledgment from the INS meet this definition. Since state UI agencies do not control state courts or advocacy groups, the Labor Department almost always has an issue concerning the alien provision pending with at least one state.11

**Absolute Requirements**

The third and last category involves the absolute requirements. These requirements are framed in such a way that they provide no latitude to the states or the U.S. Department of Labor in administering them. Some absolute requirements are so clear that they create little friction in the federal-state system. For example, if federal law sets a numeric standard such as the 20 weeks of work requirement for EB, then states simply incorporate that standard into their laws. Another example involves the mandatory coverage and equal treatment requirements for services performed for state and local governments and certain nonprofit organizations. States either cover the services and provide equal treatment, or they do not. Perhaps the most important examples are the "immediate deposit" and "withdrawal" standards.
The between and within terms denial of UI benefits for services performed for these governmental and nonprofit schools is, in part, an absolute. UI may not be paid based on services performed by a teacher, researcher, or administrator if the individual has a contract or reasonable assurance of performing services in the following period. States must deny UI based on these services. Administration of this denial has been a problem. The provision assumes that, given the same set of facts, all states would reach the same conclusions. This, of course, simply will not happen. Even two UI appeals referees from a given state will not always reach the same conclusion given the identical set of facts. As a result, differences between the U.S Department of Labor and the states will inevitably arise. Although many times the issues are significant, other times the problematic state interpretation concerns a very minor point and affects very few individuals. The U.S. Department of Labor frequently does not know about situations that it should address until states, due to timeliness considerations, have already made a determination. In short, this ostensibly "absolute" requirement is not entirely absolute.12

Some absolute requirements are needed in the federal-state system. For example, the deposit and withdrawal standards frame the nature of the entire system and implement its trust fund aspect by assuring that monies are used only for the payment of UI. The requirements relating to interstate and combined-wage claims assure equal treatment of claimants and cooperation between states. Others likely exist due to political considerations. For example, without the between and within terms denial, Congress might have been unable to extend coverage to governmental entities and nonprofit organizations. Regardless of the reason for its existence, when an absolute requirement assumes that every state eligibility determination in a given area is consistent with federal law, it places heavy burdens on both the U.S. Department of Labor and the states. The Labor Department often cannot effectively monitor such requirements; the monitoring that does occur is after the fact, with the result that states must amend their laws or ignore their own administrative decisions. Such requirements are better framed as minimum requirements, which give states considerable latitude. For example, the between and within terms denial could simply require states to have a denial provision relating to school services. The schools, the employees and the state agency could negotiate the appro-
appropriate denial, perhaps using any draft legislative language provided by the Labor Department. Similarly, the EB work search could mandate that states require EB claimants to have a more stringent work search than that stipulated for regular benefits; the details of this policy could be left to the states.

This approach is not new. Haber and Murray (1966) discussed the degree of strain new requirements might place on the federal-state relationship:

> If the standards are specific and conformity with them can be easily verified, no difficulties in the federal-state relations should arise. If the standards are subject to different interpretations or compliance with them is difficult to verify, strained relations could result (Haber and Murray 1966, p. 446).

**The Federal Courts Move In**

**Timeliness**

Starting with the U.S. Supreme Court’s 1970 decision in the *Java* case, the federal courts have played a major role in the federal-state program. The *Java* decision addressed a provision of California law that stopped payment of UI to otherwise eligible individuals when an appeal was filed. In other words, the possibility of a reversal of an individual’s eligibility was used as the basis for suspending payments. The Court interpreted the “methods of administration” provision to require payment at the time “when payments are first administratively allowed as a result of a hearing of which both parties are permitted to present their respective positions.” As a result of the *Java* case in effect creating a new conformity requirement, forty-seven states had to amend or reinterpret their laws. Although *Java* had many implications, the emphasis on timeliness is probably its primary legacy.

Although the U.S. Department of Labor had always stressed promptness, it became an overwhelming concern following *Java*. Suits concerning the timeliness of appeals and first payments were frequent in the 1970s and suits regarding payment on continued claims continue into the 1990s. The promptness of first level appeals was also an issue in another case decided by the U.S. Supreme Court. While this case was being litigated, the Labor Department issued regulations concern-
ing the timeliness of appeals. Regulations concerning the timeliness of first payments followed.

**State Eligibility Criteria**

Since the inception of the UI program, the U.S. Department of Labor has, in the absence of a federal law requirement, left all eligibility matters to the states. In the department's view, *Java* stands for the limited proposition that a state law provision that does nothing but delay payment of benefits is an administrative consideration inconsistent with federal law.

The U.S. Court of Appeals in the Seventh Circuit took a different view in the *Pennington* case. In Illinois, as in all states, employment performed during the base period determines whether the individual has sufficient attachment to the labor force to qualify for UI. As do most states, Illinois uses a base period consisting of the first four of the last five completed calendar quarters. In most states, employment during the "lag" quarter between the end of the base period and the filing of the claim is not used to establish a claim, even if its use would qualify the individual.

In the *Pennington* case, the court said that, since the base period was founded on administrative considerations related to the method used by the state of obtaining employment history, it was subject to the federal "methods of administration" requirement. The court only briefly addressed the fact that the only reason the base period exists is for eligibility purposes and did not reconcile the tension between administrative and eligibility provisions. In any event, *Pennington* effectively creates a new conformity requirement for the states in the Seventh Circuit.

Court decisions such as *Pennington* cause sharp disruptions in state UI programs when state laws, acceptable for sixty years, must be amended. Since the U.S. Department of Labor is often in agreement with state provisions, even to the extent of filing friend of the court briefs, it should be no surprise when the department does not embrace such decisions. As a result, sometimes federal law may be interpreted and applied differently in different areas of the country. The Labor Department is, however, required to treat all decisions handed down by federal courts located in the District of Columbia, including the U.S. Supreme Court, as conformity requirements.
Oversight

The nature of federal oversight has changed considerably over the years. In the early decades of the program, the federal partner approved furniture acquisition, salary levels for administrators, and state organizational structure. Those days are long gone. States are free to spend their UI grants as they see fit without direction from the U.S. Department of Labor. The only restriction is that the grant be necessary for the proper and efficient administration of state UI law. The Department of Labor now only very rarely advises a state that its grant may not be spent for a specific UI activity.

To some extent, the changing nature of oversight is driven by shifts in staffing patterns of the Labor Department. For fiscal year 1994, there were only about 310 federal staff members nationwide compared to over 40,000 state staff members. In the national office, there were fewer than 100 individuals on staff whereas, about ten years earlier, there were over 130. Despite this shrinkage, the U.S. Department of Labor has had to pick up additional responsibilities whenever Congress enacts new legislation. One might question whether staffing is sufficiently low to constrain the ability of the department to adequately perform its activities.

In the 1970s, as a result of the action occurring in federal courts, the main concern of the U.S. Department of Labor with the states shifted to the performance of UI activities. Promotion of timeliness was institutionalized in the late 1970s, when the department, in consultation with the states, created a performance measurement system, called the “Quality Appraisal,” to the present day. States not meeting designated performance levels are required to submit corrective action plans as a condition of receiving the following year’s UI grant.

The Department of Labor believed that, if it did not establish an oversight system emphasizing timeliness, the federal courts probably would. Since there are many types of UI claims (intrastate, interstate, UI for ex-military personnel, UI for ex-federal employees, and combined-wage), the department created performance levels for each. In some cases, two different performance levels were created. For example, timeliness for first payments was measured 14 days following the end of the first compensable week (21 days for states with no waiting week) and then again after 35 days. The department also measured the
timeliness of certain combined-wage functions, the handling of unemployment fund monies, and the determination of whether an employing unit was an "employer" subject to state UI law.

The bulk of the performance levels emphasizes timeliness. Although Java is one reason, the main factor is that timeliness is objective and easy to assess, unlike quality and accuracy. Quality performance measures exist for nonmonetary determinations and appeals and for some tax functions.

The nature of the performance measures differs in another regard. Numeric criteria for first payment promptness (for both intrastate and interstate claims) and for the disposition of lower authority appeals are found in regulations. Meeting these criteria indicates that state programs comply with federal law. Other measures do not have criteria in regulations. They have "desired levels of achievement," (DLAs), which by definition are merely "desired." Still other measures do not have any numeric goal attached to them.

Has this measurement approach had an impact on the UI system? If statistics alone are any indicator, the answer is yes. From the early to mid-1970s first payments made within 14/21 days fluctuated around 80 percent of total first payments. When the timeliness criteria of the U.S. Department of Labor became effective, there was a dramatic improvement in performance. There were, however, periods when timeliness dropped below 70 percent. (See figure 13.1.) On April 1, 1979, the current criterion of 87 percent paid timely came into effect. Since then, the national average has more often than not been above 87 percent. In fact, the national average has not dipped below that level since early 1979. Only a small number of states have had chronic problems, as shown in table 13.1.

Federal oversight is certainly one reason for this consistent performance. Another is that automation allows first payments to be made more rapidly and allows the states to better handle the increases in UI workloads occurring during recessions. (There is, however, a continued need for more claimstakers when workload increases. This is generally accommodated through overtime, moving workers from support to frontline work, and hiring temporary employees.) Also, since the mid-1980s, almost all states have converted to systems using employer quarterly wage reports to determine eligibility. As a result, few claims are delayed due to an employer's failure to respond.
Figure 13.1 Timeliness of First Payments, Impact of Standards Created by Secretary of Labor, 1971-1995
U.S. Average, All States

NOTE: 80% SS effective 4/1/77 to 3/31/78, 83% SS effective 4/1/78 to 3/31/79; 87% SS effective 4/1/79 forward
This level of sustained performance is not always matched in other areas. For example, states are required to dispose of 60 percent of all lower authority appeals within 30 days of the date of appeal. In the early 1970s, the national average was only 20 percent. (See figure 13.2.) From calendar year 1977, two years after the 60 percent criterion first took effect, through 1994, there was a decided and permanent rise in the national average. Even so, this average has not consistently met the 60 percent criterion. As shown in table 13.2, the failure to meet the criterion is persistent for some states.

On the other hand, for the 1994 performance year, thirty states exceeded the 60 percent criterion by 10 percent or more. This suggests that the criterion should be raised. Even for the 1992 performance year,
Figure 13.2 Promptness of Disposition of Lower Authority Appeals: Introduction of Standards Created by U.S. Secretary of Labor, 1971-1995, U.S. Average, All States

NOTE 50% SS effective calendar year 1974, 60% SS effective
when recessionary effects resulted in most states not meeting the criterion, this number was seventeen.

Part of the problem in achieving the 60 percent criterion is that appeals referees have very specialized skills. When vacancies exist or increases in workload create the need for additional positions, most new referees cannot immediately be shunted into hearings. Instead, considerable training is necessary. Also, the appeals process itself is not greatly amenable to automation. Even so, automation has assisted in scheduling appeals, in easing research by making precedent decisions available, and by speeding the issuance of decisions once the appeal is heard. While this performance measure results in a rapid conclusion to the contested issue, it may mean that the parties are required to participate in a hearing process even if they are not fully prepared. It may also mean that the hearings are abbreviated in order to achieve a prompt disposition of the next scheduled case.

Although there have been concerns in some states about the effect of timeliness on accuracy of payment and on due process, others have exceeded the federal performance levels without the perception that accuracy and due process have been compromised. Some states seem overwhelmed by workload changes; others seem better equipped to handle such changes.

The preceding timeliness standards are almost without exception viewed as being beneficial to the UI program. However, this is not the case with all measures. According to a U.S. General Accounting Office report (1989, p. 44), some of the performance levels “may be inappropriate and provide misleading indications of service quality.” The report noted the “overemphasis on promptness of service” and said “some DLAs measure inappropriate or misleading aspects of service quality, wherein an improvement in the measure could actually be indicating a decline in service quality.” The DLA specifically targeted in the report was for field audit effectiveness. Meeting the DLA may require states to divert staff that might otherwise be used to collect delinquent tax payments. Another example is the DLA for recovery of overpayments to claimants. Since the DLA measures the percentage of overpayments recovered, states may meet the goal by concentrating on collecting dollars instead of on detecting overpayments. As a result, the state’s performance will look good, even though relatively few overpayments are established.
The Quality Appraisal never claimed to measure the entire system. Consequently, it is not surprising that Burgess and Kingston found that the approach did not constitute a comprehensive or valid way of measuring the total quality of the program (Burgess and Kingston 1987, p. 137). Not assessed are how long claimants must wait for service or how far they must travel to file a claim. On the employer side, there are no measurements involving the length of time needed to resolve a tax dispute or to calculate new tax rates when the experience of a business is transferred to a successor employer. Surveys are not widely used to assure that both claimants and employers are being served in a professional, consistent, efficient, and fair manner. Changes to the DLAs have been relatively minor even though the U.S. Department of Labor has always had the ability to unilaterally add or delete both performance measures and DLAs. Recently, however, work on updating the benefit measurements found in the Quality Appraisal has been completed. There is an ongoing effort to revise the measures related to the handling of unemployment funds by the states, from the moment the monies are received until they are used for the paying of UI.

In the 1980s, the U.S. Department of Labor developed a Quality Control program, independent of its Quality Appraisal system. Originally, Quality Control consisted of an exhaustive postaudit of payments for purposes of determining accuracy. Every year, the Department of Labor publishes the results, including an error rate for each state. Since the procedures and laws differ in each state, it is difficult to draw any comparisons between them, with the result that no performance level has been established. Beginning in 1996, all states are also required to operate a revenue Quality Control program to measure state UI functions related to collecting employer contributions. This program replaces some of the revenue measures in the Quality Appraisal.

A workgroup made up of federal and state UI program managers has developed a new approach to performance measurement. The goal of this approach is to improve performance over the long run by emphasizing program outcomes and customer service. All measures would exist under a single measurement and oversight system called “UI Performs.”

With the exception of the original benefit Quality Control program, all of these measurement efforts have had heavy participation from the states. State input helps the U.S. Department of Labor to determine
whether a proposed measurement is necessary or useful as well as the
effort in implementing the measurement in each state. The UI Performs
workgroup operated on the assumption that its members would reach
consensus on each point. At the time of this writing, most of these
endeavors are in the implementation stage; we should soon be able to
look at the new oversight system and, a little later, to consider what
effect it has on state performance and federal-state relations.

Enforcing Federal Law Requirements

States often view the federal presence in the state legislative process
as a mixed blessing. Federal law requirements are often seen as intru-
sive, and both state legislatures and state agencies resent having to
implement provisions without the opportunity to debate their merits.
The U.S. Department of Labor hears these objections each time Con-
gress adds new federal requirements. However, the state agencies also
recognize that the federal presence has prevented many undesirable
state proposals from being enacted. As a result, the UI program is less
subject to passing state legislative whims than are other state programs,
such as workers' compensation.

Each year, the U.S. Department of Labor reviews hundreds of pro-
posed state bills. Also reviewed are procedures, regulations and court
cases. In most instances, the bills do not create any problems with fed-
eral law. In fact, many of the areas covered by the bills do not fall
under any federal requirement. The problems that do exist are gener-
ally resolved prior to enactment. Certain such initiatives are enacted,
however, and the federal partner is required to take some steps to cor-
rect the problem. Most issues that arise are resolved through negotia-
tion rather than direct confrontation (Haber and Murray 1966, pp. 450-
451). At any given time, the Labor Department unit responsible for
conformity tracks between thirty and sixty issues.

Issues not resolved through negotiation result in conformity and
compliance hearings. An oral hearing before a U.S. Department of
Labor administrative law judge may be requested by the state(s). The
judge issues a recommended decision which the Secretary of Labor
may adopt, modify or reverse. If the Secretary determines that a state is
not in conformity/compliance, the state may appeal to the U.S. Court
of Appeals in the circuit in which the state is located or with the U.S. Court of Appeals for the District of Columbia.

Since 1982, there have only been three conformity hearings involving the regular UI program. In the first proceeding, the Secretary decided against the Department of Labor by finding that an appeals practice used by the District of Columbia was consistent with federal law. Specifically, the District of Columbia automatically ruled in favor of the claimant when the employer failed to appear at an appellate hearing involving a discharge for misconduct. In the second hearing, the Secretary found that the use of hypothetical, rather than actual, experience by the State of Washington for a certain group of employers was inconsistent with federal law. In the third hearing, the Secretary found that Minnesota law was inconsistent with federal law when it allowed reduction of an individual’s UI to offset amounts the individual owed the unemployment fund in unpaid taxes due to his or her previous status as an employer. The unfavorable decisions were not appealed to the courts, and in neither case were administrative grants or tax credits actually withheld.

In one instance, there was an actual withholding of administrative grants where the state did not request a hearing. The Virgin Islands lost several days worth of administrative grants due to a late payment of interest on amounts borrowed from the federal government to pay UI.

The most recent experience in conformity/compliance hearings is that clear issues, such as the late payment of interest by the Virgin Islands, are resolved informally. Issues that go to hearing address areas where states feel that the federal law does not clearly prohibit state practice. In one of the preceding cases, the state was proven right. In addition to giving states an opportunity to air their views, the hearing process helps assure that the U.S. Department of Labor does not interpret federal law to create requirements not inherent in that law.

Concerning performance issues detected through its measurement systems, such as timely payment of UI and timely disposition of appeals, the U.S. Department of Labor has never initiated steps to withhold certification. The reason most frequently offered is an unwillingness to hold back administrative grants since that would only increase performance problems. (This seems somewhat at odds with the department’s regular reminders to states that withholding of grants/tax credits will occur if a state law is inconsistent with federal law.)
Another reason is that performance does not change overnight. The Department of Labor, through its regional offices, tends to emphasize incremental improvements in performance. Slightly enhanced performance or the taking of steps that should lead to better performance indicates that eventually the problem may be resolved without initiating withholding actions.

A mixed blessing for both the federal and state partners is created by the potential loss of the FUTA tax credit or the total withholding of administrative funds as an enforcement tools. On the one hand, even when they feel their position is correct, states may yield due to their own political situations, to avoid litigation, and to avoid any risk of losing credits or grants. On the other hand, for political, economic, and programmatic reasons, the U.S. Department of Labor is reluctant to initiate withholdings. As a result, tax credits have never been withheld, and grants only rarely. Sometimes states believe that withholdings will never occur and have become belligerent or have failed to respond to the Labor Department's conformity efforts, even on obvious conflicts. Although lesser enforcement measures have been suggested from time to time, no such measures have been adopted. A lesser measure may have no additional effect if it requires the same amount of Labor Department time and effort to enforce as withholding grants/employer tax credits. This is because providing notice for opportunity and hearing, documenting a case, and facing the prospect of appeals to the courts require the department to undertake a major effort. However, if lesser enforcement measures can be more easily carried out, states and employers may resist their use.

The principal question in discussing the nature of conformity and compliance is the following: Do they work for the betterment of the system? In the main, the answer is "yes." Although one might question the need for some of the federal requirements, or the lack of others, the system has assured that UI monies are protected and that it fulfills its fundamental purpose of providing income support for individuals unemployed through no fault of their own. The hearing process assures that the U.S. Department of Labor takes state concerns seriously. That only three matters have gone to hearing since 1982 suggests that, more often than not, the states and the Labor Department are in agreement about how federal law should be applied to the states.
Administrative Financing

The conformity and compliance requirements establish the framework for the UI system and, as a result, have perhaps been the primary focus of the federal-state relationship during the first fifty years of the program. However, state concerns about the adequacy of administrative funding have resulted in many skirmishes in the relationship and now is perhaps the primary issue.

Since administrative funding affects both the quality and timeliness of services, it is of great importance and has been an issue for states since the inception of the program. The debate that occurred during the 1930s about the basic structure of the system also included questions about how state programs should be funded. Since then, discussions regarding funding problems have resulted in debates about whether the UI program would operate better as a federalized system, whether it should be "devolved" to state control, or whether the original structure works best.

As noted in the first section, the FUTA tax pays for state administrative costs. The basic premise, shared by employers and states, is that these revenues should pay the full costs of the UI program. The result is that costs of administration are pooled and redistributed according to state need. Some states receive more in administrative grants than their employers paid in, while others receive less. Federal administrative monies not appropriated by Congress are transferred to other federal accounts in the Unemployment Trust Fund, primarily to the account paying for the federal share of EB.

The first step in distributing money to the states is the appropriation by Congress of monies from the Unemployment Trust Fund for administrative purposes. The next step is the allocation of monies to the states by the U.S. Department of Labor. We will discuss each separately and then consider whether the system should be changed.

The Federal Appropriation

When the UI program was first created, the FUTA tax was deposited into and UI administrative funds were paid from federal general revenues, apparently to address constitutional concerns. However, not all FUTA revenues were appropriated, as Congress was using these
receipts to help balance the federal budget. In 1952, a comparison of the revenues generated from the FUTA tax with the administrative appropriation showed a difference of between $500 million and $1.1 billion, depending upon which estimates were used.19

In response, the Employment Security Administration Financing Act (P.L. 83-567) of 1954 was passed. It provided for earmarking federal unemployment taxes. Although the taxes continued to be deposited into general revenues and appropriations were paid out of general revenues, any excess tax collections (the difference between revenues and expenditures) would be credited to the Federal Unemployment Trust Fund. The legislation established a loan fund of $200 million for states and also provided that when that fund’s ceiling was reached, the states would share in the surplus collections. States could then use the funds for the payment of UI, or a state legislature could under certain conditions appropriate them for administrative purposes. In 1960, Congress required the deposit of the FUTA tax in a specific account in the Unemployment Trust Fund and provided for appropriations from this fund. This ostensibly meant that UI appropriations would not be subject to budget balancing or other fiscal policies.

This was in fact the case for several years. Then, in 1967, a Commission on Budget concepts, appointed by President Johnson, recommended a single unified budget that included the transactions of all trust funds.20 As a result, in 1969 Congress enacted the Unified Budget Act, which placed all federal trust funds, including the Unemployment Trust Fund, within the federal budget process. UI appropriations became subject to the budget-balancing preoccupation of Congress, and state UI administrative appropriations suffered.

The Balanced Budget and Emergency Deficit Control Act of 1985, generally known as Gramm-Rudman-Hollings, established an automatic process to reduce federal deficits by “sequestering” funds from all federal programs not specifically exempted. These actions resulted in reductions in administrative funding for federal fiscal years 1986, 1987, 1989, and 1990. (Regular UI benefits were not affected because they are state funds held in trust by the U.S. Treasury. The federal share of EB was, however, reduced.) Even though the assets of the Unemployment Trust Fund are dedicated under federal law, these amounts are classified as “discretionary” for federal budget purposes. This means that UI grants can be used in reconciling the federal budget.
Ironically, the administrative costs of other entitlement programs (e.g., medicaid and food stamps) are treated as “mandatory” even though these costs are funded through general revenues. UI, with its dedicated trust fund, would seem to be in a better position to claim mandatory status.

Still another problem in the process was created when, in the 1980s, Congress appropriated amounts based on inaccurate low estimates of unemployment. As a result, insufficient funds were available to administer the system, and Congress sometimes enacted a supplemental appropriation. This approach has fortunately been eliminated by the creation of an automatic funding provision (called “contingency reserve” language) built into current appropriation bills.

In sum, the UI program has frequently received across-the-board spending reductions without regard to program need. This has happened even during periods of rising unemployment, when additional administrative funds are normally provided to states to process the increase in claims. Except for a brief period, the history of administrative financing has been a chapter in the history of balancing the federal budget.

Allocation of the Appropriation to the States

Under the Social Security Act, the U.S. Department of Labor (USDOL) provides, out of appropriated funds, amounts “necessary for the proper and efficient administration” of state UI law. The state allocations are to be based on an estimate of the cost of proper and efficient administration using: (1) the state population, (2) an estimate of the number of persons covered by the state law, and (3) other factors that the Secretary of Labor considers relevant.

Initially, state UI programs were funded using a “line item” budget justification for each staff person and piece of equipment needed. By 1941, budgeting was accomplished by estimating the workload and functions necessary to support that workload (Haber and Murray 1966, p. 402). The state allocations were made on the basis of a “work load time factor” system that required work measurement studies for routine activities such as processing tax returns, and national averaging for nonstandard activities such as benefit appeals. By 1963, the allocation process had evolved into “position allocations based on functional
areas." In the first twenty-five years of the program, the determination of administrative resources involved an inexact method that used historic funding experience to establish the annual administrative grant for each state (Haber and Murray 1966, pp. 402-403).

A new system developed in the 1970s, called the Cost Model, measured the amount of time required to complete various units of work. The Cost Model used 700 different activity codes and seventeen separate workload measurements. Each state was allocated a specific amount of time to complete a certain activity. For example, a given state might be allotted five minutes to process each continued claim. These "minutes per unit" (MPUs) would be multiplied by the anticipated workload and ultimately converted to a certain number of staff-year positions based on the annual number of hours worked in each state. Each state would be assigned a different time factor based on the actual time necessary to complete the workload item. The Cost Model program was designed to be updated every three years so that state efficiencies and changes in the law could be factored into the time allocations. However, in 1984, the restudies were discontinued because of their cost and because of questions as to whether the MPUs derived from the studies were being used to inflate costs.

Perhaps the most basic criticism of the Cost Model was the lack of incentives for states to improve operations. That is, if a state were to implement new procedures that resulted in increased administrative efficiencies and, consequently, lower program costs, the state grant would be reduced by the amount of savings. In the late 1980s, changes were made by the U.S. Department of Labor, giving states more bottom line authority over determinations of spending of administrative resources. These actions shifted more responsibility for controlling costs to the states and also signaled that future state allocations would focus more on workload changes rather than on the actual costs of processing the workload.

Even so, more than twenty years after the initial application of the model, states continue to be primarily compensated for their administrative costs on the basis of Cost Model MPUs. These MPUs may, however, be prorated downward by the U.S. Department of Labor to balance the workload with the congressional appropriation. The MPUs in use in the mid-1990s are based on the studies completed more than ten years earlier, with the result that the MPUs do not bear a strong
relationship to current state administrative costs. However, states now have “bottom-line authority” to use their administrative grants. For example, where once amounts received for initial claims had to be used for initial claims, they can now be used for any UI task, including appeals and tax functions. This method of allocation, therefore, bears less relationship to actual program costs but gives states more flexibility to initiate their own costs savings.

State Treatment of Federal Administrative Grants

Employers pay the FUTA tax primarily to support the administrative costs of UI and the employment service and to obtain labor market information at the national, regional, and state levels. Congress appropriates administrative funds annually, and those resources are allocated to states by the U.S. Department of Labor. However, there are two additional steps in the process before the administrative grants are actually spent on direct employer and claimant services. These activities bring a variety of “state partners” into the process of deciding state priorities and methods of determining service delivery.

In most states, the legislatures must also appropriate the federal administrative grants before the state agency can spend the funds on services. Although the legislatures generally approve the grants with minimal review as part of legislative oversight activities, state agencies are required to justify their expenditures in terms of service delivery and performance. In theory, the federal grant can only be expended for “proper and efficient administration”; however, in practice state agencies are subject to some political pressures involving the use of federal grants.

When a state has satisfied all the federal and state requirements, it can address the budgetary allocation to the local level. Employers may want to know why the FUTA taxes that support administrative costs are unavailable to provide more local services. Claimants (who often erroneously believe that their taxes pay for both benefit and administrative costs) want to know why local staff is unavailable to respond to concerns about the complexity of the UI system or to provide assistance with problems. Finally, local agency personnel want to know why they are impacted by decisions made at the federal level, which affect their ability to provide the service that they believe is justified locally.
The state allocation of administrative resources results in many difficult choices between direct service delivery, central support and overhead expenditures. Sometimes states must manage declining administrative resources by implementing new technologies. Although these strategies make sense in the long run, there are initial capital investment choices and resistance to changes in service delivery which must be factored into the short-term decisions.

Should the Administrative Funding System be Changed?

Since states are unhappy with both the appropriation process and the allocation methodology of the U.S. Department of Labor, some are questioning, at least with regard to administrative financing, whether the federal-state partnership is the best approach. Proposals to revise the 100 percent federal funding concept were made as early as the 1940s, and today the original concept has been modified without any federal law change, as many states rely on state resources to supplement their federal UI grants. Even more have been relying on state resources to fund their employment service programs. For example, in 1980, eight states received supplemental state funds amounting to $1.1 million for administrative purposes (U.S. General Accounting Office 1989). Although some states obtained funds from general revenues or new taxes, the most frequent source was state “penalty and interest” funds consisting of amounts employers pay when they are delinquent in making tax payments and reports. By 1987, thirty-three states were using $54 million in state funds for UI or the employment service. A survey of states showed that although the number of states receiving state funds for administration was about the same in 1993 as it was in 1987, the aggregate funding exceeded $162 million. At that level (and there are some indications that the reported use of state funds is understated), states were providing approximately 5 percent of their administrative resources. Since the distribution of funds bore little resemblance to the taxes that employers in a given state paid or to the actual costs of operating the program in that state, employers felt that they were paying for administrative costs twice.

All of these factors indicated that the system was ripe for a change in funding methods. A number of bills introduced in 1982, known as the Bliley-Warner bills, would have allowed a state, subject to agree-
ments with the Secretaries of Labor and Treasury, to collect FUTA taxes and to retain a portion to fund the administrative costs of its UI program. Although the bills never received a hearing, they were indicative of growing state discontent with the federal appropriation and allocation system.

In the 1986 Budget of the United States Government, the devolution of administrative financing was discussed:

> Working with the states, the Administration will develop and propose legislation to devolve to the states the responsibility for managing and financing their employment services and unemployment insurance services. The federal unemployment tax will be reduced accordingly, freeing tax resources for the states . . . This proposal would encourage efficiency in state administration by increasing the flexibility with which states carry out their programs (Executive Office of the President 1986, section 5, pp. 5-98 to 5-99).

This proposal was based on the theory that, although under the current UI program states can legislate their own policy, federal appropriations for administration may not meet state needs.

The discussions that developed, which involved the federal government and many states, brought out complaints that the existing appropriation mechanism had two major deficiencies: underfunding (insufficient resources) and cross-subsidies (inadequate return of FUTA taxes to some states). Proponents argued that devolving the system would create self-insurance for purposes of administrative costs, requiring states to do everything possible to reduce program costs. The opponents of devolution argued that the national system would not survive. Their concerns were that (1) states would effectively compete by offering lower cost services, which would result in wide variations in service delivery from state to state, and (2) states would be unable to fund their programs through the full economic cycle, which was very unpredictable in many states and which occurred more frequently in some states than in others. In other words, the pooling of risk was desirable.

In 1986, a proposal known as the Equity Act was developed by a group of thirteen states, but was never introduced. This plan would have resulted in the collection of federal UI tax by states and their retention of 0.5 percent of their taxable payrolls to operate their pro-
grams. Each state would be required to abide by a “maintenance of effort” provision to ensure that state programs would conform to minimum federal requirements. The National Governors’ Association also developed a proposal that increased the overall federal appropriation and guaranteed that a state would receive a minimum return of the taxes that employers in that state pay to the federal government to operate UI, the Employment Service and Labor Market Information programs (Committee on Ways and Means 1988, pp. 324-328).

The theory behind allowing states to receive a guaranteed percentage of state revenues is that FUTA revenues are really taxes paid by employers in that state for administration of UI within the state. This assumption divides the states into two groups: the “winner” states, which currently receive more in administrative funds than employers in that state pay in FUTA taxes for administrative costs, and the “loser” states, which receive less. In theory, if the “loser” states were able to retain a larger share of the FUTA taxes paid by employers in their state, their administrative funding problems would be resolved.

This theory is not new and will likely never completely vanish. We share the view of Haber and Murray, who addressed the issue of administrative funds not being returned to the states where the employers paid the FUTA taxes:

We are not impressed with the argument that federal unemployment taxes are state money that should be returned to the state. The federal unemployment tax, like all federal taxes, is a national tax, to be used for national purposes. ...The pooling of the tax on a national basis and allocation of funds on the basis of needs for proper and efficient administration meets the state needs better than if each state were given what their employers contributed. Actually, most of the complaints as to allocation of state grants are due to inadequacy in the total federal appropriations (Haber and Murray 1966, p. 417).

Administrative funds are pooled and allocated to states on the basis of need, using workload as the primary factor. If the congressional appropriation were greater and if the Unemployment Trust Fund were not part of the unified federal budget, the problems of states would perhaps be resolved.

Although the appropriation is the main problem, the method of allocating resources is also significant. Recognizing this, in 1991, Con-
gress required the Secretary of Labor to undertake an “Administrative Financing Initiative” (P.L. 102-164, Section 304). As a result, the U.S. Department of Labor began discussing with states a proposal that attempted to equalize state funding by using more objective criteria to increase predictability and facilitate budget planning. By using its own experience, combined with the application of national cost factors, a state could be in a better position to develop multi-year budget plans. On the negative side, the total funds appropriated would be approximately the same, so about half the states would be worse off, while half the states would be better off.

When discussing allocation, several issues arise. One is the lack of a consistent relationship between the actual cost of administering state programs and the amounts received. On the one hand, the SSA provides that the Secretary of Labor allocate funds to states for “proper and efficient administration” of state UI law. What is “proper and efficient” is debatable. While most states desire more administrative funding, even they do not agree among themselves on what is proper and efficient. If state A argues that its law is more expensive to administer, then state B, looking out for its own appropriation, will respond that state A is inefficient and should, therefore, receive a smaller allocation. UI programs are far from homogeneous. Some are large, some small, some are susceptible to high unemployment, and some are more insulated from economic downturns.

Because administrative funds are obtained from federal grants, state legislatures and interest groups often do not focus on the costs of administering new state provisions, but on the provisions themselves. Employers and state legislators share the view that to the extent that employers pay FUTA taxes to support the costs of program administration, they should be able to structure state provisions as they wish, as long as there is no conflict with federal law.

However, does this mean that a state should expect federal grants for administration of its law regardless of complexity or cost? For example, if a state chooses to enact a very complex approach involving benefit disqualifications, is it reasonable to anticipate that the costs of processing will be paid by federal grants regardless of the cost as compared with other states? Alternatively, should the U.S. Department of Labor pay only “normal processing costs” for basic provisions, with the states paying for more complex or cumbersome provisions? With
state legislatures passing benefit and tax provisions that do not necessarily reflect administrative efficiency and static or declining federal appropriations, state UI agencies are caught in the middle. Also caught in the middle is the Department of Labor, which must still make determinations on how an appropriation is allocated. That a state chooses to enact a costly new provision does not mean Congress will increase the appropriation, nor does it mean that another state's allocation should be reduced.

The administrative funding issue has an obvious and significant impact on the federal-state relationship. States have noted that without adequate administrative resources, they must struggle in their ability to deliver services. To the extent that Congress does not appropriate sufficient funds for the system to operate, states have less discretionary authority. As a result, states view the administrative funding issue as increasing the power of the federal partner to influence program delivery. Alternatively, if states are able to argue that adequate administrative resources must be granted to support provisions enacted at the state level, irrespective of their cost-effectiveness, then the balance shifts towards the states. Until the Unemployment Trust Fund is removed from the federal Unified Budget, Congress will continue to limit expenditures, even though employers will continue to pay taxes dedicated to a specific use and even though the program suffers in states with inadequate funding.

**Federal-State Interaction: Fund Solvency**

Conformity issues define the basic structure of the federal-state UI program, and the administrative financing provisions make the resources available to deliver the services. This section will review the involvement and interaction of the federal-state partnership in addressing and settling the problems of state Unemployment Trust Fund insolvency. The U.S. Department of Labor provides oversight, and financial and program support. States have the responsibility and authority through their legislatures to decide benefit and tax levels and to provide direct services to both employers and claimants consistent with the basic objectives of the program.
Before the 1970s, insolvency was not a recurring problem, and fund reserves were generally adequate, with only a handful of states borrowing. However, the severe recession in the mid-1970s required twenty-five states to secure loans from the federal partner in order to continue to pay state unemployment benefits. (Although some of this loan money came from a loan account in the Unemployment Trust Fund, the federal partner was also required to borrow from general revenues.) At the end of 1982, twenty-three states still had outstanding loans amounting to $10.6 billion. During that eight-year period, state insolvency became a significant problem that influenced the direction of the program (Rubin 1983, pp. 240-241). This problem also exemplifies how Congress, the U.S. Department of Labor, state legislatures, and state UI agencies address and resolve new challenges on a collaborative basis as the issues arise.

In the early 1980s, the magnitude of the loans, which in a few states exceeded $1 billion, and the condition of the national economy necessitated congressional action. At first, Congress responded with the elimination of most interest-free loans by imposing interest charges on new borrowing. However, Congress later adopted less restrictive terms for loan repayment if certain states made changes to improve their solvency. These incentives to reduce federal loans influenced state legislative changes to lower benefit costs and to increase state taxes, as a condition of getting the relief on debt repayment and interest charges. Efforts to eliminate insolvency sometimes resulted in more stringent state qualifying requirements for benefits, lower wage replacement percentages, and freezes in benefit increases. These efforts to restore solvency also contributed to the declining percentage of persons receiving benefits as compared to the total number of unemployed (U.S. General Accounting Office 1993, p. 4). Clearly, the magnitude of the insolvency problem mandated that states initiate major changes in the benefit financing schemes in order to repay prior loans, pay current benefit obligations, and begin accumulating some cash reserves as a buffer against future downturns.

A report by the House Ways and Means Committee (1989, p. 296) noted that funding for state benefits had significantly improved since the recession in 1981-1982. This was partly due to long periods of economic growth and partly due to federal incentives for states to improve their fund balances. However, the report indicated that there will be
One central issue in the federal-state partnership is the degree of responsibility of the federal partner in maintaining state solvency. Congress could regulate state balances in one of three ways. First, states could be compelled to maintain certain reserves. However, there would be considerable difficulty in establishing a single standard that would minimize borrowing and reflect efficient measurements for all state situations. For example, the ability of a state to maintain a solvent fund cannot be defined in terms of reserve levels only. Consideration must also be given to the responsiveness of the tax system to increased benefit payments, the potential to recover the benefits paid, the nature of the economy, and the ability to build reserves before the next recession causes a new drain on the fund. Even if it were possible to develop reasonable reserve standards, some would advocate that the standards themselves would compromise the ability of states to control their own system.

Secondly, Congress can change the taxable wage base to encourage all states to adjust a powerful component of the state experience-rating systems. The problem with increasing the taxable wage base is that it also forces uniformity among states, which runs contrary to the original intent to make states accountable for their own tax provisions and schedules. Efforts to increase the federal taxable wage base can impact the balance within the state experience-rating systems by changing the share of UI costs borne by low-wage-paying employers (who have most of their payrolls taxed) relative to that of high-wage employers.

As a third possibility, Congress could adopt a method of benefit financing that addresses economic situations that are clearly beyond the ability of a state to fund. For example, when national recessions have a prolonged impact on certain regions of the country, it is reasonable to support a catastrophic insurance program. These national insurance proposals have been considered in the past under the names of "reinsurance" or "cost-equalization." The difference in those philoso-
phies involves whether the individual experience of the state is the triggering mechanism or whether some absolute level of unemployment determines eligibility. One problem with these proposals is that they result in a redistribution of federal taxes that would cause some states to qualify, while others would not. As a result, discussions break down for the same reasons that certain states object to the administrative funding idea of devolution.

Since states have the responsibility to decide on both tax and benefit provisions for their citizens, it is logical that the primary responsibility for benefit financing should rest with the states. The problem of state benefit financing raises three issues in the federal-state relationship:

• First, states must insure their own unemployment risks. However, to a large extent, unemployment is beyond the ability of the state to control.

• Second, states can determine their own tax and benefit levels based on local needs. On the other hand, confrontations will develop between local business and labor groups as businesses try to lower UI tax costs while organized labor struggles to maintain benefit levels that adequately replace wages.

• Third, if state funds become insolvent, monies can be borrowed from the Federal Unemployment Account which in turn is funded through FUTA revenues. However, if states rely too heavily on the federal loans, the interest on the loans becomes a general obligation of the state. Although the prospect of finance charges on outstanding loans gives states the option to either maintain solvency or to face the consequences by paying interest, requiring such payments in the midst of an economic downturn can be viewed as an additional tax due to high levels of unemployment.

Who then bears the primary burden for fund solvency? The answer is that, as with other provisions, there must be a shared responsibility. State decision making must balance benefit levels and eligibility criteria for the regular UI program with the degree of taxation and experience rating that a state accepts and with its overall solvency philosophy. Meanwhile, the federal partner needs to continue to bear a portion of the burden for extended benefits or other continuations of benefits. The responsibility of the U.S. Department of Labor would include guidance, training of state staff, and the development of sol-
vency measurements that are more comprehensive than those currently available. With the establishment of interest on federal loans to states, Congress has required states to be more responsible in maintaining solvency. Although the incentive approach used in the early 1980s to encourage states to repay their loans and to accumulate necessary reserves worked in restoring state solvency, Congress, the Labor Department, and the states must exercise care to ensure that the basic program objectives are not compromised for the sake of solvency concerns.

**Summary**

The UI program has the advantage of being self-financing and of being based on a workload-driven formula. As a result, it has survived during periods when the lack of program funding in other areas has resulted in extreme reduction or outright elimination of services. It has a proven record of responding to social and economic need by providing temporary wage replacement for those who have lost their jobs through no fault of their own. By means of mutual cooperation at the federal and state levels, the system has survived many challenges: a series of regional recessions, which tested the ability of states to finance benefit costs; recurring budget reductions unrelated to either program needs or to the dedicated revenues paid; criticisms of benefit payments to some groups of workers (such as those receiving retirement pay); and state delivery systems that are sluggish or that pay benefits to ineligible claimants. In 1995, debates raged in Congress over whether programs such as Aid to Families with Dependent Children or food stamps should be substantially modified or entirely replaced. Meanwhile, congressional discussions of UI were close to nonexistent. (Although it should be noted that, in 1996, the governor of Virginia presented a devolution plan to the National Governors’ Association, and a congressional hearing on devolution and a variety of other issues occurred in mid-1997.) Even if it has not been an outright success in every regard, neither can the UI program and the federal-state system be considered as having failed.
Some of the disagreements that existed when the program was established in the 1930s continue to be discussed. The degree of federal control, the extent of state flexibility, and issues concerning administrative funding are still debated. Almost every state cites shortages of administrative dollars as a reason for closing local offices. The lack of benefit standards raises questions about the national equity of the program. It has been criticized for inaccurate and delayed benefit payments and for failure to collect taxes from delinquent employers. There is a considerable duplication of effort. For example, UI computer systems differ between states; sometimes this results in inefficient programming and in systems that have been frequently modified but never redesigned to function well.24

The system is administratively complex and difficult to explain to claimants, employers, and the general public. It is also debatable whether the federal partner has exerted too much or too little influence over states or whether the federal partner has abdicated its responsibility to ensure that states are administering their laws consistent with federal requirements.

Most of the original architects of the program, both in Washington, D.C., and in the states, are now gone. Millions of individual recipients of unemployment benefits do not know about the nature of the federal-state system. Although UI is a major concern to employers, labor unions, and legal aid groups, there is no specific “UI lobby” for all individuals who might become unemployed. As a result, the UI program does not always seem focused nor does it receive the political or moral support that it once did. Compared to other programs, such as social security, medicare, and medicaid, it is infrequently in the public eye.

State UI and employment service agencies have responded to this situation by continuing to support an organization that, since 1937, has acted as an institutional memory, serves as a historical bridge, and strives to maintain the balance between the state and federal partners. The Interstate Conference of Employment Security Agencies (ICESA) acts as the advocate for states to Congress and the U.S. Department of Labor and has performed an essential role in preserving the federal-state partnership. On an ongoing basis, ICESA facilitates networking and the exchange of information between all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. ICESA provides an
essential link between the federal and state partners in assisting the development of UI policy and in acting as a liaison between the states, the Labor Department, and Congress. Although ICESA is a positive force, it should be noted that ICESA is not a lobbyist organization. ICESA is not chartered to advocate the interests of either employers or claimants.

The federal partner's response has been less apparent. Into the 1950s, it was not unusual to find the Secretary of Labor actively involved in UI program decisions. Today, this is uncommon. The federal UI service resides in the Employment and Training Administration (and previously in the Manpower Development Administration), which mainly focuses on job training programs. (This aspect is mirrored at the state level, as UI agencies are combined with other agencies having distinctly different missions.) Decisions by the U.S. Department of Labor concerning the UI program are often made by individuals relatively inexperienced with UI and with greater interest in other programs. Meanwhile, congressional UI determinations are frequently made on the basis of budget balancing and politics, and not on what makes program sense.

In spite of those concerns, the system continues to pay benefits each year while maintaining generally solvent funds for the state. There are differing philosophies that result in varying laws and procedures, and there are points of contention with the U.S. Department of Labor, but the existing infrastructure is well-positioned to provide service to employers and claimants in the future. The system will function best if there is a continuing dialogue between the federal and state partners that fully acknowledges the fundamental mission of the UI system. Both partners will be better able to develop innovative approaches to service delivery by incorporating the efficiencies of data processing systems and other developing technologies and by taking human ecology into account. It is vitally important that states focus on eliminating all barriers to getting UI payments to those who are qualified.

No doubt the system will meet a variety of new challenges in the future. Its strength and its ability to respond to such challenges, are in the dialogue and interaction that occur between the federal and state partners. We hope the federal-state partnership will find ways to resolve its current problems. An individual in need of income support depends on the program and on its fulfillment of the vision established
by its original architects—that there be a system that provides temporary income support to those who lose their jobs through no fault of their own.

NOTES

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1. For purposes of this chapter, the terms "state" or "states" refer to the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands.

2. Haber and Murray (1966) provide a complete description of the discussions in their chapters 6, 7, and 20.


4. Failure by a state to cover FUTA-taxable services means that employers in that state could not claim the FUTA credit on those services. As a result, most states currently have "recapture" provisions, which extend coverage to services defined in federal law, to avoid employers having to pay additional FUTA taxes.

5. A complete list of federal law requirements and the year in which they were first added may be found in the appendix.

6. The legislative history indicates that UI is only to be paid to individuals "who cannot find other work" (Senate Reports No. 628, 74th Congress, 1st Sess., 1935, 11).

7. The U.S. Department of Labor has, however, encouraged states to change their laws in particular ways. For example, in 1962, it issued a book entitled Unemployment Insurance Legislative Policy Recommendations for State Legislation.

8. This requirement did not take its final form until 1976.


11. A more basic issue is whether the "permanently residing in the United States under color of law test" is appropriate for the UI program. Congress established this test for several programs, including Supplemental Security Income, Aid to Families with Dependent Children, and medical aid. That the UI program is uniquely employment based is lost in this definition.

12. As it has learned about factual situations not covered by the original between and within terms denial, Congress has often amended the denial with the consequence that the statute is clumsily written and sometimes leads to unexpected results. In the case of "nonprofessional" services—that is, those services not performed by a teacher, researcher, or administrator—Congress seems completely at sea. At first, denials for those services were optional on the part of the states, than they became mandatory; currently, they are again optional. Now that the provisions are once more optional, states have considerable latitude in implementing them, as the U.S. Department of Labor views them as the outer limit of what is permissible. States did not have this latitude when the provisions were mandatory.


14. Java also stood for the proposition that, even though federal UI law does not purport to require anything of the states since it is an incentive-based system, the federal courts will still find jurisdiction.

17. 20 C F R , parts 640 and 650
19. Haber and Murray (1966, p. 404)
23. The General Accounting Office analysis concluded that state concerns about declining or insolvent trust funds resulted in state changes making it more difficult for claimants to qualify for benefits.
24. This problem is not unique to the UI system. According to the U. S. General Accounting Office (1995, p. 17), federal administrative funding to a variety of means-tested programs encourages state automation, but no innovation.
Appendix to Chapter 13
Federal Law Requirements

Approval for Tax Credits

Sections 3303 and 3304 of the Internal Revenue Code of 1986 (also known as FUTA) contain the minimum federal requirements that states must meet for employers to obtain the normal and additional tax credits. The year the requirement was first added to federal law is in parentheses.

• Compensation is paid through public employment offices or other approved agencies (1935).

• No compensation is paid until two years after the first period with respect to which state contributions are payable (1935).

• All of the funds collected under the state program are deposited in the federal Unemployment Trust Fund (UTF). Title IX of the Social Security Act prescribes the distribution of the tax among the various accounts of the UTF (1935).

• All of the money withdrawn from the UTF is used to pay unemployment compensation, to refund amounts erroneously paid into the fund, or for other specified activities (1935).

• Compensation is not denied to anyone who refuses to accept work because the job is vacant as the direct result of a labor dispute, or because the wages, hours, or conditions of work are substandard, or if, as a condition of employment, the individual would have to join a company union or resign from or refrain from joining any bona fide labor organization (1935).

• Compensation is paid to employees of state and local governments; there are required limitations on benefit entitlement during vacation periods for certain employees in education (1935).

• Compensation is paid to employees of FUTA tax exempt nonprofit organizations, including schools and colleges that employ four or more workers in each of 20 weeks in the calendar year (1970).

• State and local governments and nonprofit organizations may elect to pay regular employer contributions or to finance benefit costs by the reimbursement method (1970).

• Compensation is not payable in two successive benefit years to an individual who has not worked after the beginning of the first benefit year (1970).
Compensation is not denied to anyone solely because the individual is taking part in an approved training program (1970).

Compensation is not denied or reduced because an individual's claim for benefits was filed in another state or Canada (1970).

The state participates in arrangements for combining wages earned in more than one state for eligibility and benefit purposes (1970).

Compensation is not denied by reason of cancellation of wage credits or total benefit rights for any cause other than discharge for work-connected misconduct, fraud, or receipt of disqualifying income (1970).

Extended compensation is payable under the provisions of the Extended Unemployment Compensation Act of 1970 (extended benefit program).

No individual is denied compensation solely on the basis of pregnancy or termination of pregnancy (1976).

Compensation is not payable to a professional athlete between seasons who is under contract to resume employment when the new season begins (1976).

Compensation is not payable based on services performed by an alien unless the alien was (1) lawfully admitted for permanent residence, (2) legally available to work in the United States, or (3) permanently residing under color of law (1976).

The benefit amount of an individual is reduced by that portion of a pension or other retirement income (including income from social security and Railroad Retirement) funded by a base-period employer (1976).

Wage information in the agency files is made available, upon request and on a reimbursable basis, to the agency administering transitional assistance to needy families (1977).

Wage and claim information is disclosed to the Secretary of Health and Human Services for the National Directory of New Hires and for child support and other purposes (1996).

Any interest required to be paid on advances is paid in a timely manner and is not paid, directly or indirectly (by an equivalent tax reduction in such state) from amounts in the trust fund of the state (1983).

Federal individual income tax is withheld if a claimant so requests (1995).

All the rights, privileges, or immunities conferred by state UI law exist subject to the power of the state legislature to amend or repeal such law at any time (1935).
• Reduced tax rates for employers are permitted only on the basis of their experience with respect to unemployment (1935).

Approval for Grants for Costs of Administration

Title III of the SSA provides for payments from the federal UTF to the states to meet the necessary costs of administering the unemployment compensation programs in the states and the major proportion of the cost (97 percent) of operating their public employment offices. Under this title, the grants are restricted to those states that have a UI law approved under the FUTA and that have been certified by the Secretary of Labor as providing the following provisions (some are also included in the FUTA):

• methods of administration (including a state merit system) that will insure full payment of unemployment compensation when due (1935);
• unemployment compensation payment through public employment offices or through other approved agencies (1935);
• fair hearings for individuals whose claims for unemployment compensation have been denied (1935);
• payment of all funds collected to the federal UTF (1935);
• that all of the money withdrawn from the state trust fund account will be used either to pay unemployment compensation benefits, exclusive of administrative expenses, to refund amounts erroneously paid into the fund, or for other specified activities (1935);
• reports required by the Secretary of Labor (1935);
• information to federal agencies administering public works programs or assistance through public employment (1935);
• limitation of expenditures to the purpose and amounts found necessary by the Secretary of Labor for proper and efficient administration of the state law (1939);
• repayment of any funds the Secretary of Labor determines were not spent for unemployment compensation purposes or have exceeded the amounts necessary for proper administration of the state unemployment compensation law (1939);
• that, as a condition of eligibility, any claimant referred to reemployment services pursuant to the profiling system participate in such services (1993);
• information to the Railroad Retirement Board as the board deems necessary (1938);
• reasonable cooperation with every agency of the U.S. charged with the administration of any unemployment insurance law (1938);

• the stipulation that any interest on advances be paid by the date on which it is required to be paid and is not paid directly or indirectly (by an equivalent reduction in state unemployment taxes or otherwise) by such state from amounts in its trust fund account (1983);

• information to the Department of Agriculture and state food stamp agencies with respect to employee wages, UI benefits, home address, and job offers (1980);

• employee wage information to any state or local child support agency (1980);

• the requirement that a claimant disclose whether or not he/she owes child support obligations; deductions from benefits shall be made for any such child support obligations, and the amount of such deduction shall be paid by the state UI agency to the appropriate child support agency (1981);

• information for purposes of income and eligibility verification be requested and exchanged in accordance with a state system meeting the requirements of Title XI of the SSA; the UI wage record system may, but need not, be the required state system (1984);

• wage and claim information is disclosed to the Department of Health and Human Services and the National Directory of New Hires for child support enforcement and other purposes (1996);

• for establishment and use of a system of profiling new claimants of regular compensation to identify those likely to exhaust such compensation and to need job search assistance (1993).
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