

PARTNERSHIP PRINCIPLES

The Federal government and States share responsibility for the UI system and have a common goal: to provide better services to the American public by enhancing and improving the system as a whole. We believe the three following principles should form the basis for carrying out this mission:

- 1. Basing the Federal-State relationship on mutual trust and respect will improve the UI system and its service to the American public.**
- 2. Working as equal partners with complementary roles will improve the quality of service provided by, and the integrity of, the UI system.**
- 3. The UI system is only as strong as its weakest partner. By setting high standards and goals and working together as a team, the system will be strengthened and the entire nation will benefit.**

The following are examples of the actions and attitudes which are consistent with this principle:

1. Fostering a win-win relationship; advocating for and supporting one another,
2. Sharing credit, celebrating successes;
3. Being willing to acknowledge the existence of problems, and focus on fixing them instead of placing blame;
4. Mutually accepting responsibility for resolving problems and overcoming deficiencies;
5. Where there are differences between partners-
 - o Trying to resolve disputes equitably and fairly, being willing to compromise to achieve consensus;
 - o Seeking early, informal resolution;
6. Fostering open, personal communication;
7. Clearly defining partner roles, rights and responsibilities;
8. Periodically reviewing the principles and roles;
9. Promoting innovation and creativity;
10. Jointly seeking input from customers;
11. Sharing information and resources;
12. Recognizing the role and importance of other players at the State and National levels; and
13. Asserting positive and friendly influence on partners to improve performance.

Federal-State Roles in: Conformity and Compliance

L. The Basic System

The 50 States operate UI programs according to their State laws. These State programs are linked into a basic Federal-State system in a variety of ways, most fundamentally because each State UI law conforms to Federal legislation. There are strong incentives to fulfill the conditions for being a part of the system: the State's employers receive a substantial tax credit, and the States also receive administrative grants. The Secretary of Labor certifies a State's eligibility for both the tax credit and administrative grants if the State "conforms" to and "complies" with Federal law.

Tax Credits. As of 1994, Federal law imposes a tax of 6.2 percent on employers in a State. This amount may be reduced to 0.8 percent if the Secretary of Labor certifies the State for credit against the Federal tax. One certification grants credit for amounts paid into a State's unemployment fund which are then used to pay State UI benefits. A second certification concerning experience rating allows employers to receive credit as though they had paid into the unemployment fund at the State's highest rate. To receive these certifications, States must meet FUTA requirements. If a certification is to be withheld, the State must be given notice and opportunity for a hearing.

Administrative Grants. States are also eligible for grants for the administration of their UI laws. To receive these grants, States must meet Federal law requirements found in the SSA. As with the tax credit certifications, if certification is to be withheld, the State must be given notice and opportunity for a hearing.

Conformity and Compliance. "Conformity" and "compliance" issues arise when the Employment and Training Administration (ETA) believes that a State is not meeting FUTA or SSA requirements. Although ETA raises these issues, the Secretary of Labor is the final deciding administrative authority. (States may appeal to the courts.)

Conformity issues relate to whether State law is on its face consistent with the provisions and requirements of Federal UI law, and whether a State administratively and/or judicially interprets its law consistent with Federal requirements.

Compliance issues arise when actual State practices conflict with the requirements of Federal law. Noncompliance must be substantial before there is a withholding of certification(s).

The distinction between conformity and compliance is often not clear. Since it is assumed that States follow their own laws, it may be that a compliance issue cannot exist without a conformity issue. For example, failure to dispose of appeals timely indicates a performance problem and thus a compliance issue. However, the Department of Labor would also likely raise a conformity issue since there would be a question whether State law requires the timely disposition of appeals.

II. **Federal programs** include UCFE, UCX, TRA, DUA, and special Federal extensions such as EUC. Unlike the basic program, these programs are administered by the States as the Department's agent through an agreement with the Department. Therefore, the Department has a somewhat different authority for assuring proper administration. Issues arising under these programs generally relate only to the agreement, although a State's failure to administer TRA properly may also result in the loss of tax credits. Although conformity and compliance do not generally apply to these programs, the same general concepts of meeting both legal and performance requirements do apply and generally in practice the Department relates to the States in the same way regarding both Federal programs and the basic UI program. Therefore, for purposes of the following discussion, it is assumed that Federal programs are included.

m. A Discussion of Processes and Roles

1. In general. Federal laws passed by the Congress make assessing conformity and compliance a solely Federal function and give the Department responsibility for interpreting the laws. In practice, however, the process through which laws are interpreted and issues are resolved is usually complex and interactive. The State may challenge DOL's decisions in Federal court. Claimants represented by legal advocacy groups may initiate action directly against a State in Federal court, whose decision may affect DOL's interpretation.

A narrow reading of the basic Federal law may give the impression that the Department of Labor exists solely as an enforcement agency. DOL does have enforcement authority, but only to help it discharge its ultimate responsibility of helping ensure that the purpose of Federal UI law--the prompt and accurate payment of UI benefits to involuntarily unemployed workers--is achieved. The Department's ultimate customers are the same as the States'-claimants and employers. Unfortunately, using the law's ultimate enforcement mechanism--the withdrawal of tax credits and grants, or termination of a Federal program agreement in a State--may negate the law's purpose. For this reason, the Department has always tried (usually successfully) to avoid using it by acting first to prevent both conformity and compliance issues from arising, and then giving States adequate time to resolve any issues that have arisen.

1. Conformity.

a. Federal Role and Responsibilities:

1. Interpret Federal law and its requirements, taking into account, where appropriate, current judicial interpretations and State input.
2. Inform States of all relevant current interpretations on a timely basis.
3. Work informally with States, especially SESAs, in the development and formulation of their legal provisions to head off potential

conformity issues. 4. Review State laws, regulations, court decisions, etc., for conformity. 5. Initiate conformity action as required; advise States of results when decisions are made.

b. State Agency Role and Responsibilities:

1. Understand Federal law, its requirements, and current judicial interpretations and assist Federal partner where appropriate by consulting on interpretations. 2. Work with legislatures to ensure conformity. 3. Promptly provide DOL with information on pending UI legislation, rules, etc., and copies of enacted laws.

3. Compliance. Not only must State law language conform to the requirements of Federal law, but in action the State must also "substantially comply" with the requirements of Federal and State law. This feature of the law places a special responsibility for oversight on DOL. DOL must have ways of determining whether States are complying substantially, and if not, whether they have taken remedial actions to resolve a compliance issue.

This process involves at least the following steps: (1) determining what Federal and State law requires; (2) developing ways of measuring the performance; (3) for each measurement, establishing some kind of criterion of substantial compliance; (4) establishing procedures (which may be in regulation) covering steps to be taken by States and the Department when performance does not meet the applicable criterion; and (5) ultimately combining all relevant performance information to determine whether substantial compliance is occurring or not.

Although Federal law is generally clear as to what it requires, it does not always plainly mandate which State functions to measure, how to measure the function, or what the standard or numeric criterion for the measure should be. The Secretary of Labor has broad authority in this area, which he or she exercises in consultation with the States. For example, the law is clear that UI must be paid "when due." Although the Supreme Court in Java established a standard on "when due" when it stated that UI must be paid "as soon as administratively feasible", neither the law nor the court was clear what time frame is administratively feasible for all claims or what measurement should be used. The Department, in consultation with the States, developed the measures and criteria which are currently in place.

a. Federal Role and Responsibilities:

1. In consultation with the States, determine what Federal & State law requires and what kind of performance is implied for the system.
2. Establish priorities, based on administrative resources and other factors, among Federal requirements which will influence how they will be measured and whether measures will have formal criteria indicating appropriate performance.
3. On a timely basis, inform States/offer interpretations as required.
4. Devise measures/measurement systems, or other means of determining whether the requirements of Federal law are being met, in consultation w/ States and in light of State experience.
5. promulgate measures/measurement systems both to assess adequate performance and monitor performance improvement.
6. In consultation w/ States, establish criteria or standards if appropriate to assessing most important Federal requirements.
7. Assist States with TA, information, recognition of accomplishments, and funding of regular actions to maintain/improve performance and so to prevent compliance from becoming an issue.
8. Formulate internal rules for deciding whether action is needed, and if so, what actions, and in what order-by both Federal and State-whenver performance is inadequate.
9. Formulate strategies and tools to ensure that parties work together in accomplishing needed tasks:
 - o Strategies for State UI programs;
 - o Strategies for Federal programs.
10. Seek/provide additional adequate funding as required. 11. Make compliance decision and initiate legal enforcement action as last resort when a State fails to comply substantially.

b. State Role and Responsibilities

1. Understand Federal law requirements; assist Federal staff in drawing appropriate performance implications for State UI environments.
2. Work with Feds to develop appropriate measures, criteria, and assessment systems as required.
3. Devise related ancillary measures for own use.
4. Implement necessary measurement systems.
5. Accurately report findings as required.

6. Monitor own performance continuously; take process improvement actions as needed when performance is inadequate.
7. Obtain TA from Feds or other States if needed to ensure that actions taken will be most effective; provide TA to other States when needed.
8. Take regular steps to maintain/improve performance, not only when criteria are not met.

**Federal-State Roles in:
Conflict Resolution**

I. Background

Issue: Frequently parties with different responsibilities or different points of view disagree on an issue of policy or practice. We should employ the principles of trying to resolve differences equitably and fairly, starting as early as possible after an issue surfaces, and relying as heavily as possible on informal means.

Process:

Both parties should attempt to follow these steps in addressing any issue:

1. Determine what kind of a "problem" it is. Is it an issue of fact or technical problem which better information can solve? Is it a policy problem? A legal problem? Organizational problem? Is there an established mechanism available (e.g., in law or regulation) for resolving the problem if informal means are insufficient?
2. What are the facts and the history? How did it originate?
3. Seek to understand the perspective of the other party.
4. Begin resolution at the lowest appropriate level.
5. Rely on informal and person-to-person means.
6. Assume the other party is acting in good faith.
7. Try to resolve issues jointly, e.g., RO-NO, Fed-State, State-State work groups.
8. Try to reach agreement before resolving through authority.
9. If law or regulations provide legal procedures, make them the means of last resort; try alternative dispute resolution vehicles to resolve serious impasses before legal procedures.
10. Don't assume there should/will be a legal remedy for every conflict or problem.

II. An Outline of Roles and Responsibilities

a. Federal Role and Responsibilities:

1. Assure RO and NO policy interpretations are consistent with one another.
2. Make sure policy directions and interpretations to States are clear and timely.
3. Start at the lowest appropriate staff or organizational level to address problems and conflicts.
4. Be willing to reexamine policies.
5. Respond quickly to requests for information, interpretation, or review of proposals.
6. Examine all relevant data and request additional information where necessary.
7. Establish appropriate authority and accountability at both Regional and National levels.

b. State Agency Role and Responsibilities:

1. Seek clarifications to legal and policy interpretations where necessary.
2. Report required information timely and accurately.
3. Work at the lowest appropriate staff or organizational level to address problems and conflicts.
4. Make sure Federal partner understands the roles of other State entities or organizations in all conflicts.

**Federal-State Roles in:
Technical Assistance**

L Background

Technical sophistication and competency vary considerably between Federal and State partners, among the national office and various regional offices, and between the States themselves, depending on the area involved. Performance can often be improved considerably by the sharing of these competencies. The Federal partner, because of its responsibilities for the health and improvement of the UI system as a whole, should have a leadership role in providing or organizing the provision of technical assistance (TA). This does not imply that it has a monopoly on the technical competency involved. The provision of TA is regarded as a major means of resolving conflict, for routinely improving performance, and as a first response to improving performance when benchmarks are missed. Technical assistance should be provided to States/Regions continuously, as a means of improving performance and minimizing future performance problems and conflicts. The party requesting TA should have made a serious effort to determine it cannot solve the problem itself; this will enable the providing party to know TA is truly needed and it should respond promptly.

II. An Outline of Roles and Responsibilities

a Federal Role and Responsibilities:

1. Exercise lead responsibility in the sharing of information among all the States.
2. Provide clearinghouse facilities for technical information.
3. Compile and share an inventory of technical competencies within the system.
4. Ensure that NO and RO front-line staff have appropriate technical competencies.
5. Organize teams of DOL and State staff to address technical problems in States where needed, or teams of staff from other States alone, as appropriate.
6. Organize its budget resources, e.g., travel resources, to enable the provision of TA by DOL and/or State personnel.
7. Seek TA from SESA specialists when Federal expertise is lacking or States have superior knowledge.
8. Ensure that the UI system participates in ETA's capacity-building effort-that UI obtains its fair share of these resources and that the State partners are fully involved in the effort.

b. State Agency Role and Responsibilities:

1. Seek TA where needed from State peers, Regional Office, and National Office.
2. Examine available informational materials compiled and disseminated by DOL; they often summarize or provide a guide to expertise, experience and techniques available throughout the system.
3. Be willing to provide own technical specialists to other States for TA purposes.
4. Participate in the ETA capacity-building effort by working with ETA to determine areas where SESA staff training is needed, developing training materials, and training SESA employees.

**Federal-State Roles in:
Program Advocacy**

L Background

To be a program advocate is to promote and explain its principles to the public, including the media, business, labor, the Congress, State legislatures, and other branches of State and Federal government.

II. An Outline of Roles and Responsibilities

a Both Parties:

1. Aggressively advertize system successes.
2. Coordinate advocacy efforts and develop consistent approaches.
3. Recognize that negative statements about the program or other partners can be detrimental to the whole system.
4. Provide input to Congress when legislative initiatives are being considered that would change or establish UI programs.
5. Articulate the role of the UI program in the work force development system.

b. Federal Role and Responsibilities:

1. Represent the UI program in national forums--before Congress, OMB, and watchdog agencies such as GAO, the OIG, et al.--and within DOL.
2. Aggressively seek the resources needed to administer UI activities.
3. Help SESAs advance their agendas before their own legislatures, State treasurers, etc.
4. Solicit State input on national legislative issues.

c. State Agency Role and Responsibilities:

1. Support DOL in representing the UI system in national forums, as needed.
2. Help other SESAs advance their agendas before their legislatures, State treasurers, etc., as requested.
3. Provide input to DOL on Federal and State legislative initiatives that would affect the UI program.
4. Take lead in promoting their system locally.

Federal-State Roles in: Problem Resolution

L Background

Issue: A problem can be defined as a situation in which the UI system is not working properly, or there is a risk that it will not be able to work properly. Operational performance may not be adequate, Trust Fund solvency may be weak, or a change in the environment may threaten current operations (e.g., the rise in employee leasing companies) or create a need for new services (e.g., the increase in permanently laid-off workers.) We should try to resolve all problems systematically and constructively, handling them at the lowest appropriate level, starting as early as possible after the problem is identified and with the greatest possible reliance on informal means.

Process:

Both parties should attempt to follow these steps in addressing any problem:

1. Determine how it was identified.
2. Determine what subject area it falls in. Does the Federal or State partner normally have lead responsibility in the areas involved?
3. What are the facts and the history? How did it originate?
4. Use a systematic approach involving:
 - o Clearly defining the problem;
 - o Gathering data about the problem;
 - o Assessing the root cause;
 - o Identifying optional solutions;
 - o Selecting and implementing a solution.
5. Begin resolution at the lowest appropriate level and through the party having the primary responsibility.
6. If the primary party cannot solve it, or the problem involves many States, try a joint approach, e.g., RO-NO, Fed-State, State-State work groups.
 - o Rely on informal and person-to-person means.
 - o Seek to understand the perspective of the other party.
7. Share responsibility for system deficiencies

II An Outline of Roles and Responsibilities

a. Federal Role and Responsibilities:

1. Assure RO and NO policy interpretations are consistent.
2. Make sure policy directions, interpretations and measurement definitions to States are clear and timely.
3. When a State problem is identified through reports data, a performance measurement system, etc., cross check with other indicators if available and contact State staff to obtain confirming data.
4. Start at the lowest appropriate level to address problems and conflicts.
5. Respond quickly to requests for information, interpretation, or review of proposals.
6. When a problem cannot be solved by State staff alone, or is a multiState problem, be ready to provide technical assistance either by Federal staff or contract staff, or by coordinating the efforts of other SESAs.
7. Be willing to take joint ownership of problems where warranted, devoting resources to help analyze and fund solutions.
8. Be willing to reexamine policies in the light of changed circumstances.
9. Be willing to take explicit account of State differences in assessing problem causes and solutions.
10. Be responsive to State requests for help.

b. State Agency Role and Responsibilities:

1. Ensure that measurement systems are current and produce valid assessment data.
2. Monitor operations regularly so that problems can be detected as soon as possible.
3. Seek clarifications to legal and policy interpretations where necessary.
4. Work at the lowest possible level to address problems.
5. Seek Federal help sooner rather than later if it appears to be needed.
6. Be willing to provide TA to other SESAs when necessary.
7. Be responsive to Federal urgings to undertake corrective actions.