Fraud and Abuse

in the

Federal-State Unemployment Insurance System

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I. INTRODUCTION

The depression of the early 1930's and the resulting economic hardship suffered by millions led to the enactment of the Social Security Act of 1935. Among other objectives, the Act provided for a system of social insurance covering the personal economic hazards caused by unemployment and old age. As a social insurance system, benefits under the system are paid as a matter of right, rather than need, to eligible individuals. The concept of a social system based on right instead of need was seen as a desirable substitute for general relief programs and the social stigma attached to such relief or "dole" programs.

Unemployment insurance was not a new type of social legislation in other parts of the world. Its history dates back to the mid-19th century in Europe when trade unions organized private unemployment insurance systems to protect members against the risk of job loss. By the time the Social Security Act was passed in the United States, 10 foreign countries had compulsory programs.

Prior to the enactment of the Social Security Act, unemployment insurance bills had been introduced in various State legislatures, beginning in 1916 in Massachusetts. However, these bills were defeated largely on the ground that passage of such a bill, with benefits financed from payroll taxes, would put the State's employers at a disadvantage in competition with employers in other States that did not have such laws. In a special session in 1931, Wisconsin passed the first unemployment insurance law in the United States. The law was approved in 1932. The effective date for benefits was deferred until 1936.

The American system of unemployment insurance is unique because of its Federal-State concept. An exclusively Federal system was considered but rejected for a number of reasons, one of which was the fear that a Federal system might be declared unconstitutional.

As enacted, the Social Security Act provided for a payroll tax on subject employers of 3 percent. The Act provides that employers subject to the Federal tax would receive credit for contributions they paid under an approved State unemployment insurance law. The maximum credit was 90 percent of the Federal tax, or an amount equal to 2.7 percent of taxable wages. In addition, employers contributing under an approved State law are entitled to an "additional tax credit." Under the additional credit allowance, an employer can take the

full 2.7-percent credit even though his State unemployment insurance tax rate is less, provided it was reduced below that level through experience rating. Taxes collected under the State unemployment insurance law would be used solely for the payment of benefits while the net Federal tax would be used to pay the costs of administering the program.

The tax credit concept was adopted to encourage States to enact unemployment insurance laws. By the end of 1937, all States had enacted unemployment insurance laws.

In 1939, the taxing provisions of the Social Security Act were repealed and reenacted as the Federal Unemployment Tax Act of the Internal Revenue Code. Over the years, there have been numerous amendments to the Federal unemployment insurance laws affecting employer coverage, tax rates, the taxable wage base and Federal requirements. However, the basic tax credit system has remained intact.

The original Federal requirements, or standards, contained in the Social Security Act were very broad, thus, giving the States wide latitude in developing their unemployment insurance programs. For example, Federal requirements for certification of State laws required that a State law must provide that all compensation be paid through public employment offices. The funds collected by each State must be immediately transferred to the Secretary of the Treasury to the credit of that State's account in the unemployment trust fund of the United States. The money collected must be used solely in the payment of unemployment compensation. Moreover, no law could receive Federal approval if it denied compensation to a claimant for refusing to accept new work where the position offered was vacant because of a labor dispute; for refusal of a job in which the wages, hours, or working conditions are substantially less favorable than those prevailing for similar work in the locality; or for refusing a job which would require him to refrain from joining a bona fide union or to join a company union.

In addition, Title III of the Social Security Act provided for administrative costs to be borne by the Federal Government, if the State law were administered properly. In order to receive administrative grants, a State law had to provide:

(1) "Such methods of administration as are calculated to insure full payment of benefits when due;

(2) "Opportunity for a fair hearing before an impartial tribunal for all whose claims to benefits have been denied; and,

(3) "Full and complete reports to the Social Security Board on activities under the States' laws, and requested information to other Federal agencies engaged in the administration of public works or assistance."

Since the enactment of the Social Security Act, amendments to the Federal law have expanded the Federal requirements for State unemployment insurance programs. However, these additional requirements still allow the States considerable latitude in determining the content of their unemployment insurance laws.

As can be expected, the unemployment insurance laws vary greatly among the States. For instance, although all States require substantial labor force attachment to qualify for benefits, the specific qualifying requirements vary from State to State as do the methods for computing the weekly benefit amount and the minimum and maximum benefits payable. In addition, all State laws provide for disqualification from benefits when a claimant's unemployment is the result of his/her own action. However, there is no uniformity among the States as to the period of disqualification or even under what conditions they are applied. The few variations mentioned above are characteristic of the entire Federal-State unemployment insurance system. In effect, it is not 1 program but rather 52 programs operating separately but bound together by broad Federal requirements and a common source of administrative funding.

With the dramatic increase in the number of unemployed workers in late 1974 and 1975 the unemployment insurance system faced the most difficult test in its 40-year history. Congress acted quickly to meet this development by extending benefits for regular claimants and by extending benefit protection to millions not previously protected.

Because of the system's expanded role in the recent recession, it has come under close public scrutiny. Questions have arisen about the system's effectiveness in assuring that improper payments are held to an absolute minimum. Undoubtedly, the pressures of coping with the dramatically increased workloads adversely impacted the States' systems for quality controls. However, it should be noted that many of the alleged abuses are not actually improper payments under existing statutory authority. Rather, it is a fundamental question of who should be entitled to benefits. As such, it is a question that can be answered only by the Congress and the various State legislatures, not by the State agencies charged with the responsibility for administering the law.

The National Commission on Unemployment Compensation, created by the Unemployment Compensation Amendments of 1976, Public Law 94-566, is charged with the responsibility for studying a variety of issues relating to the unemployment insurance program in order to assess the long-range needs of the program, to develop alternatives, and to recommend changes in the program. Among issues the Commission will examine are the eligibility requirements and disqualification provisions, thereby helping to resolve the questions of who is entitled to unemployment benefits. In addition, the Commission will be studying the problems of claimant fraud and abuse and the adequacy of present laws and administrative procedures to protect the program against fraud and abuse.

The following sections discuss a number of the current issues concerning eligibility for benefits, the effectiveness of quality controls in maintaining the integrity of the system and some recent problems concerning quality controls and implemented or planned solutions.

II. DEFINING ABUSE AND DISPELLING COMMON MISCONCEPTIONS

There are differing views as to who should receive jobless benefit protection, what is needed to draw benefits, what amounts to a disqualifying act, etc. The answers to these and other similar questions depend primarily on which State law governs and how it is interpreted and applied. Certainly, an individual cannot be charged with abusing the program if benefits are properly paid pursuant to the law that governs the case.

Benefits might be payable under one State law but denied by another under substantially the same facts. Thus, it is not surprising that there are misconceptions in some quarters as to what constitutes an abuse of the program.

The following points out some of the similarities and differences in State laws that have contributed to these misconceptions:

A. Benefits Are A Right--Irrespective of Need

Some have the opinion that unemployment insurance benefits should be paid only to the indigent. Stories, intended to discredit the program, have been published of a well-dressed individual driving a Cadillac to the claims office each week to draw benefits; implying, perhaps correctly, that such an individual is not destitute and

that the benefits, in this case, contribute only to luxurious living. That description does not apply to the great majority of unemployment insurance claimants, but an individual's affluence is never a reason for denying benefits.

Unemployment benefits are payable as a matter of right to an individual who has worked in covered employment, is unemployed through no fault of his own, as defined by the State law, and is genuinely attached to the labor market. This feature distinguishes unemployment insurance from welfare or relief programs where eligibility is based solely on need. No State denies benefits because of the absence of need.

B. Qualifying For Benefits

Only those unemployed workers with recent and substantial attachment to the covered labor force are entitled to benefits. To qualify for benefits, each State unemployment insurance law requires that a claimant must have earned a specified amount of wages or must have worked in a certain number of weeks or quarters in covered employment within a recent base period, usually 52 weeks. The purpose of such qualifying requirements is to limit the payment of benefits to those workers who have demonstrated genuine attachment to the labor force. Accordingly, not all individuals who claim benefits are eligible.

Following the filing of a claim the State agency normally issues a written determination to the individual specifying his monetary benefit rights. The total number of such determinations compared to the number ineligible is shown below.

Monetary Determination Activity
Under Regular State UI Programs
Fiscal Years 1974-1976

Fiscal year	Number of monetary determinations (000's)	Number ineligible (000's)	Percent ineligible
1974	9,423	1,270	13.5
1975	15,631	2,252	14.4
1976	13,532	2,795	20.7

C. Disqualifications

"A person can quit a job, be fired for misconduct, or refuse a job and still collect unemployment benefits. If there is a penalty at all, it's only for a brief period." This statement is often heard; but is it true or is it another of the commonly held misconceptions of the program? If it is true, is this an abuse? These questions are extremely difficult, if not impossible, to answer. However, the issue can be clarified by examining the various State disqualification provisions and the theories behind them.

Since unemployment insurance is intended to compensate individuals for involuntary unemployment, it seems clear that benefits should not be paid to individuals who are voluntarily unemployed. In fact, all States provide for denial of benefits to individuals who voluntarily quit their jobs without good cause, refuse suitable work without good cause, or who are discharged for misconduct connected with the work. However, what constitutes "suitable work," "good cause" and "misconduct connected with the work" varies from State to State as does the period of denial. Thus, an individual may be denied benefits under one State law while under another State law the same individual would not be denied benefits.

As indicated, State law disqualification provisions vary considerably. They include one or a combination of the following: A denial of benefits for a fixed number of weeks; a denial of benefits for a variable number of weeks; a denial for the duration of the unemployment; a denial for the duration of the unemployment plus specified earnings; and a reduction (or possibly a cancellation in the case of misconduct) of benefit rights. Here is a summary of how the States treat the various disqualifying acts.

Number Of States With Specified Types Of Disqualification Provisions*

Disqualification provision	Number of States
Voluntary leaving:	
Benefits denied for:	
Fixed number of weeks	15
Variable number of weeks	17
Duration of unemployment	29

* As of January 1975; some States are counted more than once because the variations in their laws provide for different disqualifications depending on circumstances.

Benefits reduced	17
Discharge for misconduct:	
Benefits denied for:	
Fixed number of weeks	16
Variable number of weeks	23
Duration of unemployment	19
Benefits reduced or cancelled	17
Refusal of suitable work:	
Benefits denied for:	
Fixed number of weeks	17
Variable number of weeks	19
Duration of unemployment	20
Benefits reduced	13

The conditions under which a disqualification is imposed also vary greatly. For instance, many States consider only a claimant's separation from his last employer while others consider separations from earlier employers during a specified past period as well. Also, good cause for voluntarily leaving work in a number of States includes good personal cause. In others, it is restricted to cause connected with the work. Whether an individual is disqualified for refusing work depends upon the State law's definition of suitable work, the individual's circumstances and the conditions of the labor market.

The reasons for these variations can be attributed, to a large extent, to the differing theories of the purpose of a disqualification. As was indicated, some States deny benefits for a fixed or variable number of weeks, based on the theory that a disqualification is not a penalty. Rather, the purpose of a disqualification is to deny benefits for that period during which the unemployment originating with the claimant's own action continues to be due to that action. Following this reasoning, the initial period of unemployment following a disqualifying act is the result of the act and, therefore, not a risk that is intended to be compensated by unemployment insurance. However, after allowing for a reasonable period of time to look for work, the claimant's unemployment is no longer caused by the disqualifying act but is the result of labor market conditions beyond the claimant's control. Therefore, the disqualification should be for the period within which a claimant would normally be able to find suitable work with the help of the employment service.

On the other hand, "duration of unemployment" disqualifications are founded on the theory that if a claimant commits an act causing his own unemployment, such an act has implication relating to his eligibility that may continue more or less indefinitely. When a disqualification extends for the duration of a claimant's unemployment it becomes, in a sense, an availability provision (see below). The claimant who is disqualified for the duration of his unemployment is barred from benefits until he demonstrates his labor force attachment by a new period of employment.

A third theory is that in addition to a postponement of benefits there should be a monetary reduction in benefit entitlement. In the case of misconduct, the penalty may be a total cancellation of benefit rights. (Federal law prohibits total cancellation of benefits for causes other than misconduct connected with the work, fraud in connection with a claim for benefits or disqualifying income.)

From the above discussion, it is evident that there is no simple answer to the question of whether a person can leave a job, be discharged, or refuse work and still draw benefits. It always depends on State law provisions, the circumstances of the individual claimant, and the State's application of its law to the facts of each case. In this connection, it is important in discussing abuse of the program, to distinguish between statutory provisions with which the critic does not agree and faulty administration of those provisions relating to the eligibility or denial of benefits to an individual claimant.

D. The Work Requirements

"There are plenty of jobs available. A claimant could find work if he wanted to." This often-heard statement implies that unemployment insurance claimants are not required to look for work or to accept work offered to them.

A work requirement is fundamental to the unemployment insurance program. Because the purpose of the program is to insure against wage loss beyond the worker's control, beneficiaries are required to remain in the labor force and accept suitable work which is offered to them.

All States require that claimants must be "able to work," "available for work," and must accept "suitable work" unless they have "good cause" to refuse it. In addition, 34 States require some evidence that a claimant is actively seeking work; i.e., names of employers with whom he has applied for

work. While the objective of the work requirement is clear, its application is extremely complex. It is certainly one of the most difficult components of the program to administer.

Availability for work is essentially a requirement that a claimant be ready, willing and able to work. An individual's willingness to work cannot be observed directly. Indications of willingness to work include registration at the employment service office, stated efforts to find work, and past employment history. Of course, the best test of availability is to offer the claimant a suitable job. But, when there are no suitable jobs available through the public employment service, as is frequently the case, the agency must rely on the claimant's certification of availability and, when required, evidence of attempts to find work.

Why suitable work instead of any work? The purpose of limiting the requirement to suitable work is fourfold. First, it protects workers from having to accept jobs which pose too great a risk to their health, safety or morals or for which they are not physically fit. Secondly, it serves to maintain the wage and skill levels of workers who experience temporary unemployment. Thirdly, it permits the employer to maintain his skilled work force during temporary layoffs. And finally, it protects the unemployment insurance program from being used to exert pressures on the labor market to depress wages and other working conditions.

Most State statutes spell out what should be considered in determining whether a job offer is suitable. To protect labor standards, the Federal law requires that benefits cannot be denied to anyone who refuses to accept a job which is vacant as the direct result of a labor dispute; which would require that the worker join a company union, or resign from or refrain from joining a labor union; or where the wages, hours or working conditions are substantially less favorable to the individual than those prevailing for similar work in the locality.

The States vary as to the criteria by which the suitability of a work offer is tested. The usual criteria include the degree of risk to a claimant's health, safety and morals; his physical fitness and prior training; experience and earnings; the length of unemployment, and the prospects for securing local work in his customary occupation; and the distance of available work from his residence.

In addition, as the period of the claimant's unemployment lengthens, all States expect the individual to lower his

sights in terms of the kinds of job offers he will accept. In other words, for unemployment insurance purposes, suitable work for a claimant broadens as his unemployment lengthens, and prospects for a job in his or her customary work decrease. A job not considered suitable work for a claimant in the early stages of that individual's unemployment, perhaps because it requires lower skills than the claimant has, may well be considered suitable after a substantial period of unemployment, and it becomes clear that the claimant's prospects are remote for obtaining work wholly in line with his or her training, experience and prior wages.

We recognize that there will always be individuals who will attempt to abuse the system by certifying to the fact that they are available for work or looking for work when, in fact, they aren't. When the State agency detects such a case, the individual is liable to repay any benefits improperly claimed, and if the agency determines the misrepresentation was willful, the claimant is subject to an administrative and/or a criminal penalty.

The disqualification provisions and the work test requirements just discussed are administered through the nonmonetary determination process. A nonmonetary determination is a written notice stating how the agency has decided an issue affecting a claimant's eligibility for benefits. It is the vehicle used to notify a claimant when he is disqualified from benefits and includes the period of disqualification, the reason for the disqualification and his rights to appeal the determination. The following table shows the level of nonmonetary determination activity during the last 3 years:

Nonmonetary Determination Activity
Regular State UI Programs
Fiscal Years 1974-1976

Separation Issues*

Fiscal year	Number in thousands of-- Initial claims	Issues	Denials	Denials as % of-- Issues	Initial claims
1974	14,767	2,528	1,387	54.9	9.4
1975	24,631	3,300	1,773	53.7	7.2
1976	20,894	3,643	2,002	55.0	9.6

*Includes voluntarily leaving and misconduct issues.

Nonmonetary Determination Activity
Regular State UI Programs
Fiscal Years 1974-1976

Nonseparation Issues**

Fiscal year	Number in thousands of-- Weeks claimed	Issues	Denials	Denials as % of-- Issues	Weeks claimed
1974	97,419	3,704	1,399	37.8	1.4
1975	177,799	4,936	1,861	37.7	1.0
1976	171,754	5,581	2,087	37.4	1.2

E. Eligibility of Retirees

There are basic philosophic differences as to the proper relationship between unemployment insurance and the various differing types of public and private retirement plans.

Many are of the opinion that an individual drawing retirement pay should not also be paid unemployment benefits. Some holding this view maintain that retirees have left the active labor force or do not need to work. Others suggest that retirement pay, like unemployment insurance, is intended as income maintenance protection so that paying both is a duplicate payment for the same loss.

On the other hand, some take the position that the individual earned his retirement pay by his prior services. They point out that in some situations the claimant, through his union, agreed to an increase in the employer's contribution to the pension trust in lieu of receiving a current wage increase. Accordingly, the retirement pay when received should be treated as deferred compensation and, as such, should not affect the payment of unemployment benefits where the individual is eligible in all other respects.

Others take a still different approach. They suggest that retirement pay should be treated as if it were currently earned wages and benefits figured accordingly. In making this computation some would exclude, as current wages, that portion of the individual's retirement pay financed by his own contributions.

** Issues arising during claims series including able/available, refusal of suitable work.

Whether or not receipt of, or eligibility for, retirement income affects the payment of unemployment benefits is a matter for State decision. Thirty-five State laws currently take into account retirement pay in determining benefit rights. Generally, the weekly unemployment benefit is reduced by the amount of the prorated weekly retirement payment. In some States only the employer-financed portion of the retirement pay is deductible. Twelve States also consider social security payments in determining the weekly benefit amount. In many States the weekly benefit is reduced only if the claimant retired from the service of a base-period employer or if the base-period or chargeable employer contributed to the financing of the plan under which the retirement payment is made.

However, P.L. 94-566, "The Unemployment Compensation Amendments of 1976" provides that unemployment compensation must be reduced by the amount of any retirement benefits received by the claimant. This change is not effective until October 1, 1979, to allow the National Study Commission (created by the act) to examine the provision before it is implemented.

Aside from the provisions for deducting retirement income, it should be pointed out that retirees are not automatically eligible for benefits. If the retirement is voluntary, the retiree is subject to possible disqualification from benefits for voluntarily leaving work without good cause. In addition, like all other claimants, retirees must be able to work, available for work and, in many States, actively seeking work.

F. Interstate Program

One area of the unemployment insurance program which has come under close public scrutiny is the interstate program. The question is often raised--why are individuals allowed to go to Florida and other vacation spots and continue to draw benefits from their home State? This is frequently seen as an abuse of the system.

As a condition for Federal approval of State unemployment insurance laws Section 3304(9)(A) of the Federal Unemployment Tax Act requires, in part, that "compensation shall not be denied or reduced to an individual solely because he files a claim in another State . . . or because he resides in another State . . . at the time he files a claim for unemployment compensation."

Accordingly, all States have entered into agreements which permit an individual to collect unemployment benefits from the State in which he has qualifying wages, although the individual is not physically present in the State. The State in which the individual is located accepts the claim, acting as agent for the State that is liable for the benefits claimed. Determinations on eligibility, disqualifications, and the amount and duration of benefits are made by the liable State.

The purpose of these agreements is to encourage a claimant to move from a State where no suitable work is available to one where there is a demand for the type of service the worker performs. For the unemployment insurance program to do otherwise, would inhibit the mobility of labor and tend to prolong a claimant's unemployment in some cases because of his reluctance to seek work in another State.

Of course, Florida cannot be treated differently than any other State even though it is recognized as a vacation spot. In fact, in many occupations connected with the resort industry, it is common practice for employees who work in Florida in the winter, to work up north in the summer.

Actually, interstate claims are a relatively small percentage of all claims filed, as shown in the following table:

Claims Filed Under Regular
State Unemployment Insurance Programs
July 1975 - June 1976

Type claim	Total claims (000's)	Interstate claims (000's)	Percent interstate
Initial	20,916	1,277	6.11
Continued	135,657	9,601	7.08
Total	156,573	10,878	6.95

Of the total interstate claims filed, approximately 6.8 percent were filed in Florida.

We have no evidence to indicate that fraud is greater in the interstate program. Although the data we receive from the States on fraudulent claims is not broken down by intrastate and interstate claims, a seven-State study conducted in 1972 showed no significant variation as to the incidence of fraud between intra- and interstate claims.

G. Fraud

Any program as broad in scope as the unemployment insurance program is subject to a certain amount of fraud. All State employment security agencies recognize this fact; first, by devising their operating procedures to hold fraud to the minimum; and second, by providing penalties for fraudulently claiming benefits.

Although the definition varies, fraud usually is the misrepresentation or concealment of facts, by the claimant, material to the determination or payment of a claim for the purpose of obtaining benefits to which the claimant is not lawfully entitled. It typically involves unreported or incorrectly reported earnings, fictitious employment, simultaneously claiming benefits in two or more States, and false statements as to the reason for separation from work, availability for work and efforts to find work.

All States have special disqualification provisions for fraudulently claiming benefits. While these provisions follow no general pattern they are typically more severe than other disqualifications.

Fraudulently claiming benefits is a crime in all States. A few State laws have no specific criminal penalties in their unemployment insurance laws with respect to fraud in connection with a claim. Such States rely on the State's criminal code for the penalty to be assessed in the case of fraud. Most States, however, include in their unemployment insurance law a provision providing for a fine (maximum $20 to $1,000) or imprisonment (maximum 30 days to 1 year), or both for fraudulently claiming benefits. In addition, all State laws have provisions for recovery of benefits obtained fraudulently.

The Secretary's Standard for Fraud and Overpayment Detection requires that "a State law include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation." For a State to meet this requirement, it must investigate a sufficient proportion of claims to test the effectiveness of the agency's procedures for the prevention of improper payments and assign to an individual or unit the responsibility for investigating suspected benefit fraud. To enable the States to carry out their responsibilities in this area, the Department of Labor allocates and funds State positions specifically for fraud and overpayment activities.

The following shows the scope of State activity for the three most recent fiscal years with respect to fraudulent misrepresentation involving State unemployment insurance programs.

Fraud Activity
State Programs

Fiscal Years 1974 - 1976

	1974	1975	1976
1. Number of determinations of willful misrepresentation.	68,512	81,130	103,306
2. As a percent of 1st payments of unemployment benefits	1.01	.73	1.19
3. Amount of fraudulent payments ($)	17,724,702	22,524,271	31,996,108
4. As a percent of all benefits paid	.34	.20	.24
5. Number of prosecutions recommended	11,263	10,397	9,952
6. Number of convictions	7,955	7,295	6,432
7. As a percent of prosecutions recommended	70.60	70.16	64.63
8. Amount of fraud restitutions ($)	7,757,713	11,212,270	13,396,736
9. As a percent of fraudulent payments	43.77	49.78	41.87

The States employ a variety of methods to detect improper payments. Probably the most productive technique is the quarterly crossmatch. The crossmatch involves the comparison of benefit payment records with wage information for the same quarter. Using a formula, the States select cases for further investigation to determine if the claimant failed to report wages during weeks for which benefits were paid.

Most States (39) maintain quarterly wage records that are used in the crossmatch. The 13 request-reporting States, which do not maintain wage records, formerly used social security wage information provided by the Social Security

Administration. However, in October of 1975, the Social Security Administration issued an interpretation of the Privacy Act of 1974 precluding the release of individual social security data to the State employment security agencies without the informed written consent of the claimant.

As a result, the request-reporting States have been unable to use the crossmatch as a detection technique. This has adversely impacted these States' programs for fraud and overpayment detection. The affected States include such large States as New York, New Jersey, Massachusetts, Michigan and Ohio.

The Department of Labor's Employment and Training Administration (ETA) has been negotiating with the Social Security Administration urging it to reconsider its interpretation and resume the routine release of individual social security data to the State employment security agencies. We believe such routine release is permissible under the Privacy Act.

It is our understanding that the Social Security Administration is considering proposing regulations which would allow routine release of social security data to the States for use in the quarterly crossmatch. However, we have been advised that the earliest date the revisions and implementation can be completed is November 1977. We plan to continue our efforts in this area.

In this connection it is noted that the Brock Amendment to P.L. 94-202 provides, beginning in January 1978, for the annual reporting and processing of employee wage reports with the Social Security Administration, instead of quarterly. In addition to the other major implications such a change would have for the administration of unemployment insurance (not here discussed), it would practically eliminate the use of social security data for detecting improper benefit payments, assuming such data are made available to the States.

H. Nonfraud Overpayments

Most unemployment insurance overpayments are not due to willful misrepresentation but result from (a) the implementation of the U. S. Supreme Court's 1971 Decision in "California Department of Human Resources Development et al, Appellants v. Judith Java et al" (402 U.S. 121) and (b) procedural or other errors.

The Java decision raised the issue of whether a State may, consistent with Section 303(a)(1) of the Social Security Act, suspend or withhold unemployment compensation benefits

from a claimant, when an employer appeals an initial determination of eligibility. Section 303(a)(1) of the Social Security Act provides that benefits must be paid "when due."

In its decision the Court held, in part, that Section 303(a)(1) of the Social Security Act requires that benefits be paid promptly, after a determination has been made in the claimant's favor regardless of the pending of the appeal period or of any appeal that has been taken from the determination.

All States were required to implement the Java decision requirements. Accordingly, benefits are paid immediately upon the issuance of a determination (based on a factfinding hearing) holding the claimant eligible. In some such cases, the determination will be reversed later, on appeal, and benefits denied. In such a case any benefits already paid are overpayments.

Other overpayments, not involving willful misrepresentation, include (a) overpayments resulting from misunderstanding on the part of the claimant of his obligations or benefit rights, (b) the failure of employers to provide necessary or current information, and (c) administrative or mechanical errors and omissions by the State agency, and (d) determinations holding the claimant ineligible, beginning retroactively.

All State laws provide for the recovery of benefits paid to individuals who later are found not to be entitled to them. Sixteen States provide for waiver of nonfraud overpayments under specified conditions.

The following table shows the scope of State activity relating to nonfraud overpayments for the three most recent fiscal years.

Nonfraud Activity
State Programs
Fiscal Years 1974 - 1976

		1974	1975	1976
1.	Number of nonfraud overpayment determinations	260,163	393,435	595,859
2.	As a percent of 1st payments of unemployment benefits	3.83	3.54	6.85

Nonfraud Activity
State Programs
Fiscal Years 1974 - 1976

		1974	1975	1976
3.	Amount of overpayments ($)	28,123,754	41,259,164	76,309,728
4.	As a percent of all unemployment benefit payments	.54	.37	.58
5.	Amount of restitutions waived ($)	5,375,092	6,988,375	10,356,160
6.	Amount subject to recovery ($)	22,748,662	34,270,789	65,953,568
7.	Amount of restitutions ($)	14,358,730	23,905,671	39,322,095
8.	As a percent of amount subject to recovery	63.12	69.76	59.62

III. RECENT PROBLEMS AND PROGRAM IMPROVEMENTS

An effective system of quality controls is essential to maintain the integrity of the Federal-State unemployment insurance program. During the past several years, the unemployment insurance system has been subject to drastic increases in the claims workload. This situation adversely impacted the States' systems for quality control.

The average weekly insured unemployment for all programs jumped from 2.1 million in September 1974 to over 5.2 million for January 1975. Weekly insured unemployment peaked during March 1975 at 5.8 million. The following table illustrates the increase in claims and benefit activity.

Claims & Benefit Activities
Under Regular State UI Programs
Fiscal Years 1974 - 1976

Fiscal year	Initial claims (000's)	Weeks claimed (000's)	Benefits Paid (000's)
1974	14,767	97,419	4,907,654
1975	24,631	177,799	9,962,197
1976	20,894	171,754	10,311,576

The States experienced extreme difficulties in coping with the greatly increased workloads. Some of the problems encountered were inadequate space in the local offices to handle claimant traffic flow, a high proportion of inexperienced and temporary claims personnel, and inadequate computer capacity. The States had to direct all their efforts to overcoming these problems in order to handle the claims volume. As a result, States were forced to curtail activities which were not essential to the prompt payment of benefits.

In the area of benefit payment control (fraud and overpayment), some of the activities curtailed, eliminated or modified were:

(1) The verification of dependency status for States which provide for allowances for dependents;

(2) the verification of return-to-work dates and verification of reported low earnings;

(3) full use of the current formula for crossmatching benefit payments with wage records in order to detect only the more flagrant fraud cases and to reduce the number of cases investigated;

(4) reliance on the use of mail inquiries for fraud investigations in order to reduce the number of field investigations to only those cases where there is substantial evidence of fraud.

In addition, many States were forced to curtail their benefit payment control activities even further. Some eliminated all detection techniques except the crossmatch while others temporarily discontinued the crossmatch. Still others transferred benefit payment control personnel to other activities.

The States made similar cuts in other unemployment insurance activities, particularly where the activity was not essential to the prompt payment of benefits. For instance, most States eliminated the individual or group benefit rights interview used to advise a claimant, following the filing of an initial claim, of his rights and responsibilities under the law and substituted a pamphlet for the interview. The States also curtailed or eliminated their programs for periodic eligibility interviews. These programs varied somewhat from State-to-State; however, the periodic eligibility interview is essentially a system for selective interviewing of claimants to assess whether or not they are continuing to meet the work test requirements of the State law and to examine any problems of reemployment.

Unemployment insurance claim workloads, although still high, have leveled off since the March 1975 peak. In turn, the Department of Labor and the State Employment Security Agencies have been working to improve the benefit payment control program and the programs for administering the work test requirements of the State laws.

In the area of benefit payment control, the Department has taken a number of steps to assist the States in revitalizing their programs. Following are the highlights of these actions:

(1) With the assistance of an outside contractor, the Department developed a comprehensive system for detecting and recovering benefit overpayments. The system includes an automated model program for cross-matching benefit payments with wage information in order to detect incidents of concurrent working and claiming benefits. The model systems were introduced to the States through a series of meetings held in October 1975.

(2) In February of 1976 the number of positions allocated to the States for benefit payment control was increased by 30 percent. This increase has been carried over into Fiscal Year 1977 so that there are now in excess of 1,500 positions nationwide dedicated to benefit payment control.

(3) The Department of Labor sponsored a National Conference on Benefit Payment Control held May 11-13, 1976, in Bloomington, Minnesota. At this conference representatives from the States and the Federal Government exchanged ideas on methods for strengthening fraud and overpayment programs and discussed areas needing further program emphasis.

(4) During Fiscal Year 1977, DOL regional offices will be conducting comprehensive reviews of all States' benefit payment control programs. A guide evaluation outline has been developed to assist the regional offices with their reviews. As part of these reviews, the regional offices will recommend improved methods of operation for each State.

We believe the States have made substantial progress in strengthening their benefit payment control programs, as evidenced by the 27-percent increase in the number of fraud cases detected during Fiscal Year 1976. However, we plan to continue our efforts to further improve this vital program area.

In addition to the benefit payment control program, the Department of Labor has been working with the States to improve the quality of all aspects of the claims process. Specifically, our efforts are directed at insuring that claims are processed properly and promptly and that benefits are paid only to those claimants who meet all eligibility requirements of the law. Following are the major actions we have taken towards meeting this goal:

(1) We have developed and are introducing a system for assessing the quality of a State's unemployment insurance administration. By the end of Fiscal Year 1977, it will be in use nationwide. It includes methodology for determining the State agency's ability to prevent and detect improper payments. A prominent feature is the interviewing of a large sample of claimants to reveal if the agency failed to consider any issues affecting a claimant's eligibility for benefits.

When the system is fully operational, we anticipate it will identify strengths and weaknesses in each State's unemployment insurance administration and lead to corrective action where necessary.

(2) At this writing, we are nearing introduction, nationwide, of an improved system for conducting periodic eligibility interviews. The Eligibility Review Program is designed to promote unemployment insurance claimants' early return to work and systematically, and continuously review, their continuing eligibility for benefits. The program's emphasis is on detecting eligibility issues, developing individualized work search statements (what the claimant plans to do to obtain a job) and utilizing knowledge of local labor market information to recognize potentially disqualifying conditions imposed by the claimant.

A training handbook was developed to provide claims personnel the skills and procedures to operate the program, and training in the new system has been provided to the States. Federal guidelines for the States are near release.

An effective eligibility review program has the ability to prevent improper payments through early detection of disqualifying issues. As such, it is the focus point to the overall quality of the claims process.

END