

# Current Federal Conformity and Compliance Issues

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Memphis, Tennessee



# Audience Poll

*How long have you been involved in discussions around legal issues for the UI program?*

1. Over many ebbs and flows
2. Since at least the Great Recession
3. Started during or shortly before the pandemic UC programs
4. Started in the last few months

# Agenda

- Statutory requirements for a state's UC law to be in conformity and compliance with federal UC law.
- Summary of the types of provisions we are seeing be introduced in states that may raise conformity and/or compliance issues.
- Process for the Secretary to withhold certification for either conformity or compliance with federal UC law
- Implications of the Secretary withholding certification for either conformity or compliance

# Conformity and Compliance

- The Unemployment Compensation (UC) system established in 1935 as a joint federal-state system for the purposes of compensating workers for periods of involuntary unemployment; stabilizing employment; and assisting beneficiaries in finding new jobs through referrals to public employment offices.
- Federal law establishes requirements for the program, including broad coverage provisions, certain benefit provisions, federal tax base and rate, and administrative requirements.
- These federal “conformity” and “compliance” requirements are found in the Federal Unemployment Tax Act (FUTA) and the Social Security Act (SSA).
- The Secretary of Labor is responsible for determining whether states meet the requirements of the various provisions of federal law. To accomplish this, the Secretary issues interpretations of federal law in various forms, such as regulations and Unemployment Insurance Program Letters (UIPLs).

# Conformity and Compliance

- FUTA provides for two credits against the federal payroll tax:
  - Normal credit reduces federal tax owed by the amount an employer actually pays into the state's unemployment fund (up to 5.4%)
  - Additional credit reduces federal tax owed for employers paying into the state unemployment fund at rates less than 5.4%, equaling the difference between what the employer actually paid and 5.4% of employer's federal taxable payroll.
- To receive both credits, state law must meet the provisions of Section 3304(a), FUTA. To receive the additional credit, states must meet the experience rating requirements of Section 3303(a), FUTA.
- Title III of SSA authorizes grants to states for administration of their UC laws. To receive administrative grants, states must comply with the provisions of Section 303, SSA.

# Conformity and Compliance

- The Secretary issues three certifications to the Secretary of Treasury:
  - Section 3304, FUTA, issued each October 31;
  - Section 3303, FUTA, issued each October 31; and
  - Section 302(a), SSA, considered ongoing unless a conformity decision requires it to be withheld.
- 2022 FUTA Certifications available at [87 Fed. Reg. 67501](#) (issued November 8, 2022)

# Conformity and Compliance

	Conformity	Compliance
Description	<p>When state law does not, on its face agree with federal law</p> <p>When a state law may agree with federal law but the state is interpreting it (<i>e.g.</i>, via precedential administrative or judicial decision) in a manner that is inconsistent with requirements of federal law</p>	<p>When actual state practices conflict with federal law</p> <p>Failure to comply must be <b><u>substantial</u></b></p>
Resolution	State changes its law	State must correct conflicting practices/procedures

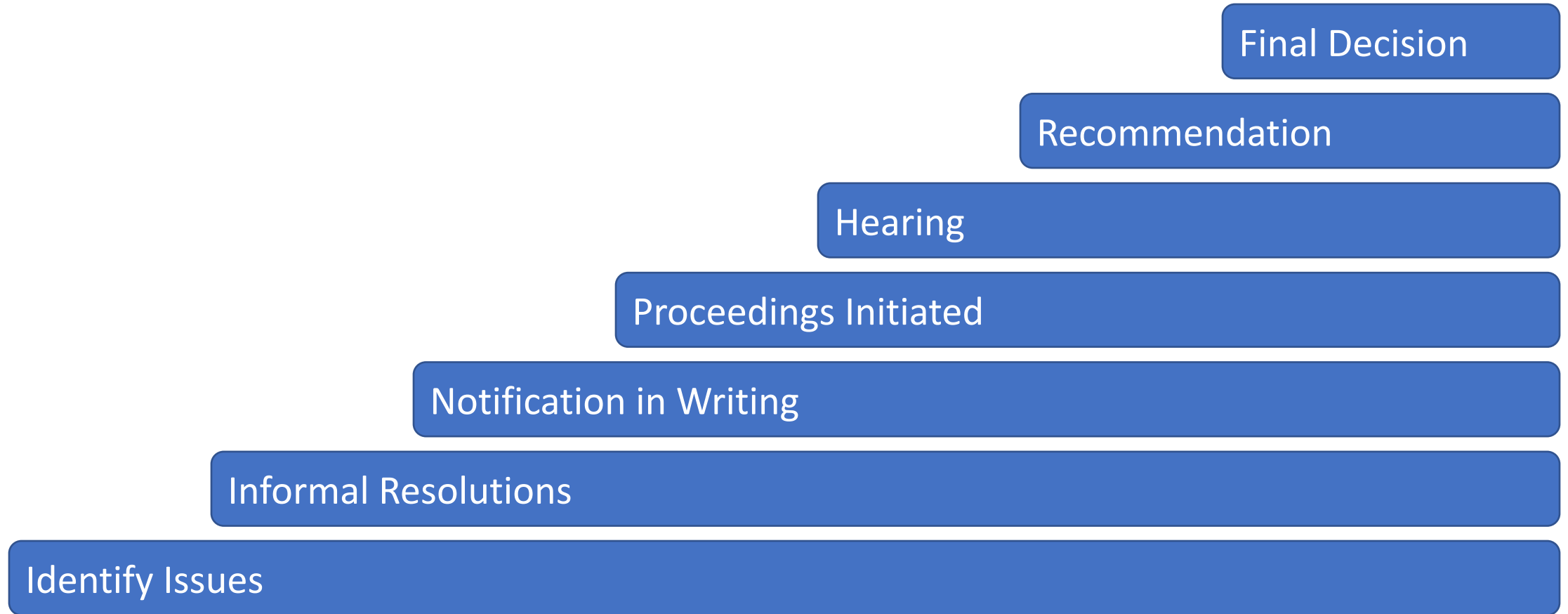
20 C.F.R. Part 601 discusses withholding payments and certifications.

# Provisions we are seeing be introduced in states that may raise conformity and/or compliance issues

- Impermissible disclosures of Confidential UC Information
- Requiring claimants to accept non-suitable work or work that does not meet the federal labor standards
- Exclusions from coverage in violation of the required coverage provisions
- New taxes and surtaxes being setup in violation of federal requirements



# Conformity and Compliance Review Process and Steps to Withhold Certification



*ETA works diligently with states to find paths to conformity and compliance to hopefully avoid initiating a formal proceeding.*

# Impact of Certification being Withheld

- If the Secretary withholds certification for the normal credit (Section 3304(a), FUTA)
  - The additional credit is automatically withheld.
  - Would also result in withholding certification for the administrative grant.
  - All employers in the state subject to the federal unemployment tax lose their 5.4% credit. Employers must pay the full FUTA tax of 6.0% on federal taxable wages.
  - In most states, employers would continue to pay the same state tax they would have paid if certification had not been withheld.
- If the Secretary withholds certification for the additional credit (Section 3303(a), FUTA)
  - All employers in the state must pay the difference between the amount of taxes paid to the state and the 5.4% of federal taxable wages, as well as the 0.6% already required.
- If the Secretary withholds the administrative grants
  - State operations would end, unless the state provides the necessary funds from a state source.

# Division of Legislation Publications

- Comparison of State UI Laws
- Significant Provisions of State UI Laws
- Report on State Legislation
- Federal-State Partnership Paper

# Contact Information



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# Questions

