

Luke Murren, Deputy Administrator
Office of Policy Development and Research
Employment and Training Administration
United States Department of Labor
200 Constitution Avenue NW, Room N-5641
Washington, DC 20210

**Re: RIN 1205-AC11, Federal-State Unemployment Compensation (UC)
Program; Data Availability**

Dear Deputy Administrator Murren:



National Political
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Deirdre Schifeling
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The American Civil Liberties Union opposes the Department of Labor’s proposed rule to mandate that states share Unemployment Compensation (UC) beneficiary information with the Department.¹ In the proposal, the Department suggests requiring state unemployment agencies to share confidential UC data with the Office of the Inspector General for unspecified “oversight and audit[]” activities. The Department does not identify what data it would require to be shared, how often, or through what means. In the alternative, the Department proposes to “require States to submit *all claims data* on a regular basis . . . as part of a national UC claims database for the purposes of UC program oversight and audits.”² Either alternative in the proposal violates federal authority under the Spending Clause, commandeers state resources, and exceeds Congressional intent in passing the Social Security Act. In addition, consolidation of data at the federal level poses significant risks to privacy and security. We strongly urge the Department to withdraw the proposal.

By Unilaterally Changing the Conditions of Grants, The Proposal Exceeds Federal Authority Under the Spending Clause and Runs Counter to Constitutional Federalism

The Department’s proposal constitutes a significant change in the conditions imposed on UC grants, potentially exceeding federal authority under the Constitution’s Spending Clause. This is particularly the case if the Department decides to amend part 603 to “require States to submit all claims data on a regular basis to the Employment and Training Administration as part of a national UC claims database for the purposes of UC program oversight and audits.”³

The Spending Clause grants Congress and the Executive broad “power of the purse” to “tax and spend,” including by offering funding to states in exchange for adopting state-level policies that Congress might not be able to directly compel.⁴ Despite its

¹ 90 Fed. Reg. 42143 (Aug. 29, 2025).

² *Id.* at 42144.

³ 90 Fed. Reg. 42143, 42144 (Aug. 29, 2025).

⁴ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 537 (2012); *S. Dakota v. Dole*, 483 U.S. 203, 206 (1987) (“Incident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power ‘to further broad policy objectives by

broad “power of the purse,” Congress can constitutionally impose conditions on federal funds only if it meets four requirements. Congress: (1) must provide clear notice of the conditions to states before they accept the funding; (2) may only establish conditions that are germane to the purpose of the funding; (3) may not coerce state action; and (4) may not mandate unconstitutional state action.⁵ These limits apply to conditions imposed by the Executive Branch as well,⁶ and **the Department’s unilateral change in the requirements for UC grants fails to constitute “clear notice” as required by the Spending Clause.**

The clear notice required by the Spending Clause arises from the contractual nature of federal grants. The Supreme Court has stated:



[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress’ power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the “contract.”⁷

There can be no clear notice if the state is “unaware of the conditions or is unable to ascertain what is expected of it.”⁸ And the federal government exceeds the limits of the Spending Clause when it imposes “post acceptance or ‘retroactive’ conditions.”⁹

Under this principle, the Supreme Court has invalidated the imposition of *new* conditions on federal funding that substantially exceed the conditions the states accepted. In *National Federation of Independent Business v. Sebelius*,¹⁰ the plaintiff states challenged the Affordable Care Act’s requirement for states to expand Medicaid to cover virtually all adults below a certain income level.¹¹ The government argued “that the Medicaid expansion is properly viewed merely as a modification of the existing

conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.”).

⁵ S. Dakota v. Dole, 483 U.S. 203, 207–08 (1987); Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 577 (2012). These limits apply to conditions imposed by the Executive Branch as well. City of Los Angeles v. Barr, 929 F.3d 1163, 1172 n.6 (9th Cir. 2019) (applying the *Dole* factors to agency scoring of grant applicants that favored those addressing immigration); Louisiana v. U.S. Dep’t of Educ., 737 F. Supp. 3d 377, 403 (W.D. La. 2024) (applying the *Dole* factors to agency rulemaking); Kansas v. United States Dep’t of Educ., No. 24-4041-JWB, 2024 WL 3273285, at *12 (D. Kan. July 2, 2024) (same).

⁶ Cf. City of Los Angeles v. Barr, 929 F.3d 1163, 1172 n.6 (9th Cir. 2019) (applying the *Dole* factors to agency scoring of grant applicants that favored those addressing immigration); Louisiana v. U.S. Dep’t of Educ., 737 F. Supp. 3d 377, 403 (W.D. La. 2024) (applying the *Dole* factors to agency rulemaking); Kansas v. United States Dep’t of Educ., No. 24-4041-JWB, 2024 WL 3273285, at *12 (D. Kan. July 2, 2024) (same).

⁷ Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).

⁸ *Id.*

⁹ *Id.* at 25.

¹⁰ 567 U.S. 519, 577 (2012).

¹¹ *Id.* at 542.



program because the States agreed that Congress could change the terms of Medicaid when they signed on in the first place.”¹² The Court rejected that argument, concluding that the Medicaid expansion “accomplishes a shift in kind, not merely degree. . . . A State could hardly anticipate that Congress’s reservation of the right to ‘alter’ or ‘amend’ the Medicaid program included the power to transform it so dramatically.”

The Department’s proposal similarly cannot be viewed as a mere modification of the existing UC program. Since their promulgation in 1986, the UC program’s confidentiality rules have included only limited provisions for sharing with federal agencies. For example, the original regulations permitted states to share information with the Department only for “establishing or verifying eligibility or benefit amounts.”¹³ In the draft of those regulations, permissible sharing with other state-level agencies was similarly narrowed from what was “useful” for the recipient agencies to what was “needed.”¹⁴ Likewise, the current regulations, as amended in 2006, require disclosure only as “necessary for the proper administration of the UC program”¹⁵ or to specific agencies for specific purposes, many of which are rooted directly in the Social Security Act or other statutes.¹⁶ These rules underscore the Department’s long-standing practice to ensure that data-sharing requirements are limited and targeted to specific purposes, reflecting the sensitivity of UC data.

In contrast, the proposal’s undefined requirement for states to share data for unspecified “oversight and audits” is a fundamental shift in the program, and this departure will be even more radical if the Department “require[s] States to submit all claims data on a regular basis.” Such a shift could not be reasonably anticipated by states and exceeds the limitations imposed by the Spending Clause.

A Requirement for States to Integrate Data Systems with the Department Constitutes Unlawful Commandeering and Does Not Comply With the APA

Unlawful, retroactive conditioning of federal funds also runs afoul of the anti-commandeering principles embodied in the Tenth Amendment, which provides that “[t]he federal government . . . may not compel the States to enact or administer a federal regulatory program.”¹⁷ If Congress and the President could coerce states into carrying out a regulatory agenda by threatening federal funding, it would undermine the Tenth Amendment’s anti-commandeering principle.¹⁸ As Chief Justice Roberts wrote in *Sebelius*, “Congress may use its spending power to create incentives for

¹² *Id.* at 582–83.

¹³ 51 Fed. Reg. 7199, 7207 (Feb. 28, 1986) (section 603.2(d)(6)).

¹⁴ 51 Fed. Reg. at 7200 (discussing section 603.2).

¹⁵ 20 C.F.R. § 603.6(a).

¹⁶ *Id.* § 603.6(b)(1)–(8) (public works or assistance agencies, the Railroad Retirement Board, Department of Agriculture, state food assistance agencies, etc.).

¹⁷ *Printz v. United States*, 521 U.S. 898, 926 (1997) (quoting *New York v. United States*, 505 U.S. 144, 188 (1992)).

¹⁸ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012).



States to act in accordance with federal policies. But when ‘pressure turns into compulsion,’ the legislation runs contrary to our system of federalism.”¹⁹

Anti-commandeering concerns are compounded by the fact that the Department is not simply instructing states in their handling of confidential data, but to build a data sharing apparatus from the ground up. The Department itself recognizes that the proposal carries “potential costs . . . for required technological upgrades, compliance costs, and costs related to data submission. . . . [S]ome States may need to perform upgrades to information technology systems in order to provide additional data required under this proposed rule.”²⁰ The Department is not only commanding states to share data by changing grant conditions — an already problematic proposal — but also to build the infrastructure to do so.

That is not a trivial proposal. Similar efforts to build integrated workforce and education data pipelines have required hundreds of millions of dollars in investment, vast training programs, and adjustments across state and federal privacy rules. For example, the U.S. Department of Education has awarded \$934 million in grants to build statewide longitudinal data systems (SLDS) to integrate data across the education sector,²¹ and the Department of Education undertook extensive rulemaking in 2011 in part to clarify the application of privacy laws to SLDS.²² The Department of Labor has similarly provided more than \$92 million in grants to states under its Workforce Data Quality Initiative to fund the development, or enhancement, of state workforce longitudinal administrative databases.²³ **The Department of Labor cannot unilaterally command the states to develop and carry out such a complex undertaking simply so it can achieve its preferred policy goals.**

Moreover, the Department’s failure to even remotely address these demands underscores its failure to meet the requirements of the Administrative Procedure Act (APA). The APA requires that agencies carry out reasoned, non-arbitrary decision-making supported by substantial evidence.²⁴ “Normally, an agency rule would be arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem”²⁵ Here, the Department has failed to address the substantial technical and financial demands of mandatory data integration with the

¹⁹ *Id.* at 577–78 (2012) (internal citations omitted) (quoting *Steward Machine Co. v. Davis*, 301 U. S. 548, 590 (1937)).

²⁰ 90 Fed. Reg. 42143, 42245–46 (Aug. 29, 2025).

²¹ Institute of Education Sciences, U.S. Dep’t Educ., History of the SLDS Grant Program (2023), https://nces.ed.gov/programs/slds/pdf/History_of_the_SLDS_Grant_Program_Oct2023.pdf.

²² 76 Fed. Reg. 75603, 75609 (Dec. 2, 2011).

²³ Employment and Training Administration, U.S. Dep’t Labor, WQDI Grants (2023), <https://www.dol.gov/agencies/eta/performance/wdqi/grants>.

²⁴ 5 U.S.C. § 706(2)(A), (F); *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

²⁵ *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).



federal government, suggesting the Department has not met with its responsibilities under the APA.

The Department's Proposal Exceeds Congressional Intent in Altering the Balance of Power Between State and Federal Administration of the UC Program

The Department's sudden change in policy runs afoul Congressional intent in establishing the UC program. Precedent requires "Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property."²⁶ And the need for clear authorization is particularly salient where the agency claims "to discover in a long-extant statute an unheralded power . . . in the vague language of an 'ancillary provision'" of the statute, "one that was designed to function as a gap filler and had rarely been used in the preceding decades."²⁷

The Department's proposal can find no clear statement of Congressional intent to support its shift of power away from states to the federal government in its new interpretation of the Social Security Act. The UC program has long been a "joint federal-state" program with administrative responsibility resting on the states, including managing beneficiary data.²⁸ The Department now proposes to alter that long-standing arrangement, and as noted above, integrating state UC data systems with the Department will undoubtedly carry costs; previous data integration efforts have required investments of tens to hundreds of millions of dollars.

The proposed shift of power toward the federal government rests on a new interpretation of section 303(a)(1) of the Social Security Act.²⁹ Although that provision permits the Secretary to require that states implement certain "methods of administration," the Department has never before interpreted that language to require mandatory sharing of confidential beneficiary data with the Department. Although "methods of administration" might plausibly encompass the Department's reading, its break with long-standing practice and significant burdening of states means that "something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to 'clear congressional authorization' for the power it claims."³⁰ The Department has failed to do so.

²⁶ *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (quoting *United States Forest Service v. Cowpasture River Preservation Assn.*, 140 S.Ct. 1837, 1850, 207 L.Ed.2d 186 (2020)).

²⁷ *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 724 (2022) (internal citations omitted).

²⁸ Katelin Isaacs & Julie Whittaker, Cong. Research Serv., *The Fundamentals of Unemployment Compensation* (2023), <https://www.congress.gov/crs-product/IF10336>.

²⁹ 42 U.S.C. 503.

³⁰ *W. Virginia*, 597 U.S. at 723 (2022).

Consolidation of State-Level Data in Federal Hands Threatens Privacy

The Department's proposal would increase the centralization of state-level data at the Department, risking significant privacy harms for two key reasons.

First, the centralization of data opens the door to misuses of data. Misuse of data is not a new problem — recently, the Supreme Court heard a case in which a police officer agreed to search a state law enforcement database for a purported undercover agent in exchange for \$5,000.³¹ In other instances, law enforcement and intelligence analysts have improperly accessed databases to snoop on former romantic partners or to share intimate photos discovered in the course of their duties.³²

Consolidation could exacerbate these abuses by expanding the data available to Department employees. The current stewardship of beneficiary data at the state levels helps ensure that there is no single, comprehensive data set available across the federal level. The Department's proposal would negate this safeguard.

Second, consolidating data at the federal level also increases the risks of cybersecurity incidents. A single, consolidated database would be attractive to foreign adversaries, who have previously targeted data held by the Office of Personnel Management,³³ large school districts,³⁴ and communications networks,³⁵ affecting tens of thousands of businesses and millions of Americans.

Likewise, rapid consolidation may make it difficult to establish robust cybersecurity protections. Federal law mandates that information systems meet minimum security controls,³⁶ but agencies have long faced obstacles in meeting those requirements. The Government Accountability Office recently stated that agencies have “varied in their efforts to implement key security practices for cloud services, which provide on-demand access to shared resources such as networks, servers, and data storage.”³⁷ Cloud services would be essential for consolidation of federal records, but the



³¹ Van Buren v. United States, 593 U.S. 374, 380 (2021).

³² Leadership Conference on Civil and Human Rights, Civil Rights, Big Data, and our Algorithmic Future, ch. 4 (2014), <https://bigdata.fairness.io/database-abuse/>.

³³ Government Accountability Office, Information Security: OPM Has Improved Controls, but Further Efforts Are Needed (GAO-17-614) (2017), <https://www.gao.gov/products/gao-17-614>.

³⁴ Lily Hay Newman, How Vice Society Got Away With a Global Ransomware Spree, Wired (Oct. 20, 2022), <https://www.wired.com/story/vice-society-ransomware-gang/>.

³⁵ Chris Jaikaran, Cong. Research Serv., Salt Typhoon Hacks of Telecommunications Companies and Federal Response Implications (2025), <https://www.congress.gov/crs-product/IF12798>.

³⁶ Federal Information Security Modernization Act, Cybersecurity & Infrastructure Sec. Agency, <https://www.cisa.gov/topics/cyber-threats-and-advisories/federal-information-security-modernization-act> (last visited Sept. 24, 2025).

³⁷ Government Accountability Office, High-Risk Series: Urgent Actions Are Needed to Address Cybersecurity Challenges Facing the Nation (GAO-18-622) (2018), <https://www.gao.gov/products/gao-18-622>.



necessary cybersecurity measures are lagging behind.³⁸ Rapid consolidation could lead to cybersecurity missteps, with potentially disastrous results, and falling further out of compliance with federal law on minimum security controls.

Ultimately, these risks are unnecessary. As the Department recognizes in its proposal, the Office of the Inspector General already has authority to issue subpoenas in evaluating fraud or waste under the UC program. The Department offers no reason why that existing authority is insufficient.

Conclusion

The Department's proposal runs afoul of longstanding constitutional precedent and poses significant privacy and security risks. It should be withdrawn. Thank you for your consideration, and please do not hesitate to contact cvenzke@aclu.org with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Anders".

Christopher Anders
Director, Democracy & Technology

A handwritten signature in black ink, appearing to read "Cody Venzke".

Cody Venzke
Senior Policy Counsel

³⁸ Government Accountability Office, High-Risk Series: Urgent Actions Are Needed to Address Cybersecurity Challenges Facing the Nation (GAO-24-107231) (2024), <https://www.gao.gov/products/gao-24-107231>.