

The federal A&A requirements implement this design by testing whether the fact that an individual did not work for any week was *involuntary* due to the *unavailability of work*. (Note that the A&A test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it looks to why the individual is unemployed for a given week; it does not look to why the individual was separated from employment, except to the extent that the individual may have not been A&A for the week of the separation.) Since the BAA-UC experiment did not examine the federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her "need" is created by lack of suitable work. BAA-UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of suitable work. While the idea of providing financial assistance to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of suitable work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (Section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

[Unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry.

\* \* \* A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA-UC is not consistent with this goal because it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. ("Credits" will be provided "in the form of lower contribution rates \* \* \* to employers who have stabilized their employment." (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA-UC contradicts the intent of experience rating because it allows payments based on an individual's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Although experience rating was discussed in the BAA-UC final rulemaking, that discussion did not recognize that stabilization of employment is one of the primary purposes of experience rating.

## II. Responses to Comments

### A. Overview

About 6,200 pieces of correspondence commenting on the NPRM were submitted by the close of the comment period on February 3, 2003. Roughly 74 percent of the commenters favored removal of the BAA-UC rule while the remainder opposed removal. Some commenters addressed areas beyond the scope of the NPRM, which was the removal of the BAA-UC regulation. These commenters addressed such matters as reforms to the UC program, including the eligibility of part-time workers and other expansions of eligibility. Because these areas are beyond the scope of the proposed rulemaking, they are not discussed in

this preamble. All timely comments were considered and all correspondence is included in the rulemaking record.

Most commenters were individuals, including many who identified themselves as human resource professionals. Comments were also received from employers; groups representing employer interests; groups representing the human resource community; labor unions and groups representing various other interests.

### B. Reasons for Repeal

#### (1) Need for Paid Family Leave

Many commenters opposing removal of the rule argued that paid family leave is needed because of financial barriers to taking family leave. Some noted that the final rule creating BAA-UC cited research supporting this need and that the NPRM proposing removal did not refute this research. Some also noted that the NPRM did not refute research that paid family leave might have positive effects on workforce attachment. Others claimed the rulemaking would have a negative effect on family life.

This rulemaking does not address whether paid family leave is needed or desirable. Thus, there is no need to discuss the research discussed in the BAA-UC Final Rule. The purpose of this rulemaking is to address whether a state's unemployment fund is the appropriate vehicle to fund family leave payments. As will be discussed in the next section, the removal of the BAA-UC rule does not prohibit states from establishing paid family leave programs nor does it prohibit integrating administration of these programs into a state's UC administrative infrastructure. Because no state will be required to repeal an existing BAA-UC program, and because other avenues are available to states for creating a paid leave program, the Department does not believe the rule would preclude paid family leave or have a negative effect on family life. Rather, by preserving the integrity of state unemployment funds, this rule helps assure that adequate funds will be available to benefit workers unemployed due to lack of suitable work (and, as a result, the families of those workers) under the UC program.

#### (2) Flexibility

Many commenters opposing removal of the rule cited preservation of state flexibility as a reason for maintaining the rule. Commenters opposing removal argued that there is state interest in flexible approaches, including BAA-UC, as indicated by the number of