Unemployment Insurance Trust Fund: Challenges Ahead

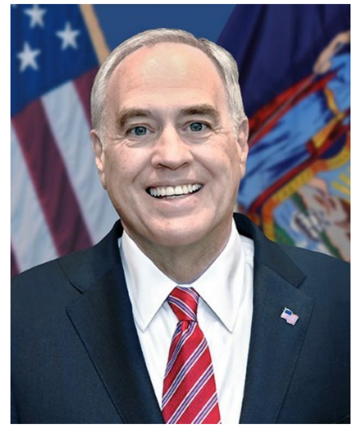
OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

September 2021

Message from the Comptroller

September 2021



Over the past 18 months, the COVID-19 pandemic created a devastating public health crisis while imposing economic hardships on New Yorkers. Fortunately, the emergence of successful vaccines and the extraordinary support of the federal government have allowed for an economic recovery to take hold and continue to build. While vigilance will continue to be necessary, there is reason for optimism about the future, including the prospect of sustained economic growth.

Among the multitude of impacts, the public health measures implemented in response to COVID-19 had a crippling effect on some New York businesses and their workforce, with a historic surge in layoffs and claims for unemployment insurance (UI) benefits. From the last calendar quarter of 2019 until the second quarter of 2020, regular UI benefits paid increased from $530 million to $6.5 billion – an increase of 1,124 percent. Total benefit payments, including federally-funded enhanced benefit programs, approached $100 billion in New York during the period from March 1, 2020 through August 6, 2021.

The surge in UI claims rapidly depleted the balance of the New York State Unemployment Insurance Trust Fund, requiring the State to borrow from the federal government to pay claims, with $9 billion in outstanding UI loans as of September 2, 2021. Over the coming years, the obligation to repay these federal advances and rebuild the Trust Fund balance to appropriate levels will present a daunting challenge that could potentially impede the State's overall economic recovery and prevent New York businesses from growing to the full extent of their capacity.

This report details the operation of the New York State UI system, the recent history and specific impacts of the COVID-19 pandemic on the Trust Fund, and steps that can be taken to replenish the Trust Fund balance. Working together, New York State, participating employers and the federal government can develop solutions that restore the Trust Fund while allowing the ongoing economic recovery to continue.

Thomas P. DiNapoli
State Comptroller

Table of Contents

I. EXECUTIVE SUMMARY 1

II. PROGRAM OVERVIEW 2

III. COVID-19 PANDEMIC IMPACTS 7

IV. OPTIONS AND RECOMMENDATIONS 15

APPENDIX A 18

APPENDIX B 28

I. Executive Summary

Unemployment Insurance (UI) benefits are jointly provided by federal and state governments to workers who become involuntarily unemployed. Federal law and rules provide direction on the requirements for a state UI system, and states are given discretion to set specific parameters on coverage, eligibility, and the funding and determination of benefits. Benefits are paid for with federal and state taxes collected from employers.

When unemployment rates are low, states tend to build up reserves in anticipation of paying more UI benefits due to job losses during economic downturns. If reserves become inadequate or depleted, states can borrow from the federal government or use other means to pay benefits. If these advances are not repaid within a relatively short period of time, states are required to pay interest on these loans and employers typically experience increases in their UI tax rates.

On January 1, 2020, the balance in New York's UI trust fund account at the U.S. Treasury was $2.65 billion, the highest in the State's history, and there were no outstanding balances owed to the federal government. Due to the scale and speed of the economic shutdown starting in March 2020 in response to the COVID-19 pandemic, unprecedented numbers of workers became unemployed. Quarterly benefits paid in New York under the regular UI program grew from $530 million in the fourth quarter of 2019 to $6.5 billion in the second quarter of 2020. In addition, federal legislation established temporary emergency benefits that are federally funded. Payments in New York for all benefit programs totaled more than $97 billion during the period March 1, 2020 through August 6, 2021. The reserves in New York's trust fund were depleted in response to these circumstances, and the State was required to draw an advance from the federal government of $658.7 million in May 2020. As of September 2, 2021, the amount owed to the federal government was $9.0 billion, down from a peak of $10.4 billion on March 26, 2021.

Absent significant action by the federal or State government that provides for repayment or elimination of some or all of New York's current advance by November 10, 2022, employers' *federal* UI taxes will increase for wages paid in 2022. Employers have already experienced increases in their *state* UI taxes for 2021 because of a negative balance in New York's UI fund. State UI tax rates are at their highest levels since 2015. As the State continues to recover from the impacts of the COVID-19 pandemic, State policy makers should pursue alternatives such as additional federal support and the use of federal economic assistance to mitigate the impact on New York businesses in the midst of an uncertain economic recovery.

II. Program Overview

The Unemployment Insurance System: A Partnership of Employers and Federal and State Governments

Unemployment Insurance (UI) benefits are part of the safety net in New York, and are intended to help eligible families and individuals pay for rent and utilities, food and nutrition, child care, health care and monthly needs. UI benefits are provided to workers who are unemployed involuntarily, but typically are not available to those terminated for performance issues or who choose to depart from a position. UI benefits and their administration are financed with federal and state payroll taxes collected from employers in each state. Federal law and rules provide the framework for these programs, and each state determines: [1]

- the tax rates and the amount of annual earnings per worker these tax rates are applied to for payment towards regular UI benefits (UI wage base, or taxable wage base);
- the employers that are subject to UI tax contributions and the workers that are covered and eligible for benefits; and
- the duration and level of benefits, among other features.

The Federal Unemployment Tax Act (FUTA) establishes the same base federal tax rate across all states – 6.0 percent on the first $7,000 of annual employee wages. To incentivize states to comply with FUTA requirements on state-level coverage and taxation, FUTA decreases this base rate to 0.6 percent for states that meet such guidelines.[2] Federal law prescribes additional circumstances affecting federal taxation, such as states' use of advances from the federal Unemployment Trust Fund (UTF) when state funds for benefit payments are insufficient.

The federal UI framework also requires workers who claim and receive regular benefits to have recent significant experience in the labor market, and to be willing and able to work and actively seeking or training for work.[3] Federal laws also provide benefits through other permanent or temporary programs funded by the federal and/or state governments. Finally, federal and state tax payments support training for unemployed individuals.

---

[1] See U.S. Social Security Act, Titles III, IX and XII; and the Internal Revenue Code, Title 26, Chapter 23, Federal Unemployment Tax Act (FUTA). There are three states that also require employee contributions to finance UI benefits. See United States Department of Labor (USDOL), *State Unemployment Insurance Benefits* at https://oui.doleta.gov/unemploy/uifactsheet.asp.

[2] Congressional Research Service (CRS), R44527: *Unemployment Compensation: The Fundamentals of the Federal Unemployment Tax (FUTA)*, October 25, 2016 at https://crsreports.congress.gov/product/details?prodcode=R44527.

[3] CRS, *In Focus (IF10336): The Fundamentals of Unemployment Compensation*, updated February 8, 2019 at https://crsreports.congress.gov/product/pdf/IF/IF10336.

The UI partnership plays a vital role in providing benefits that stabilize households and the economy, particularly during severe downturns like the Great Recession and the pandemic-related shutdown. States structure their UI systems to determine what employers pay and employees receive for this purpose. In New York, the maximum weekly UI benefit is $504, greater than in 29 other states and territories and the national average of $474 as of January 2021. New York's maximum benefit duration of 26 weeks is the same as in most other states and only 1 state provides regular benefits for a longer period of time (Montana, 28 weeks).[4]

In New York, not all workers are eligible for UI benefits; ineligible workers include the self-employed, independent contractors and farmers, among others. Additionally, not all employers are subject to or liable for unemployment contributions through the payment of taxes. Nonprofit organizations, public sector employers and Native American tribes may instead choose to reimburse the State UI fund for benefits paid to their former employees.[5]

State taxes are also paid on a portion of employees' annual wages and federal law specifies that states' taxable wage bases may not be lower than the federal base. New York's wage base of $11,800 in 2021 is lower than in 30 other states. This figure will continue to increase each year through 2026 after which the base will adjust to 16 percent of the State's average annual wage.

The total State unemployment insurance rate paid by liable New York employers consists of three components: normal, subsidiary and re-employment service fund (RSF) rates.[6] The normal and subsidiary tax rates vary by employer based on utilization of UI benefits by former employees, taxable payroll and the balances of the State's UI fund and its General Account. This structure ensures that tax collections grow or decline in response to the level of the State's UI fund. The lowest normal and subsidiary rates in law are 0.0 percent and the highest rates are 8.9 and 0.925 percent, respectively. There are 13 states with higher maximum rates than New York's maximum normal rate of 8.9 percent.[7] With the flat RSF rate for all employers of 0.075 percent, total state UI tax rates range from 0.075 to 9.9 percent. The highest subsidiary rates have been levied on employers since 1999; the range since that time has effectively been 0.6 to 9.9 percent. See Appendix A for more information.

---

[4] USDOL, *Significant Provisions of State Unemployment Insurance Laws: Effective January 2021* at https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2021.pdf.

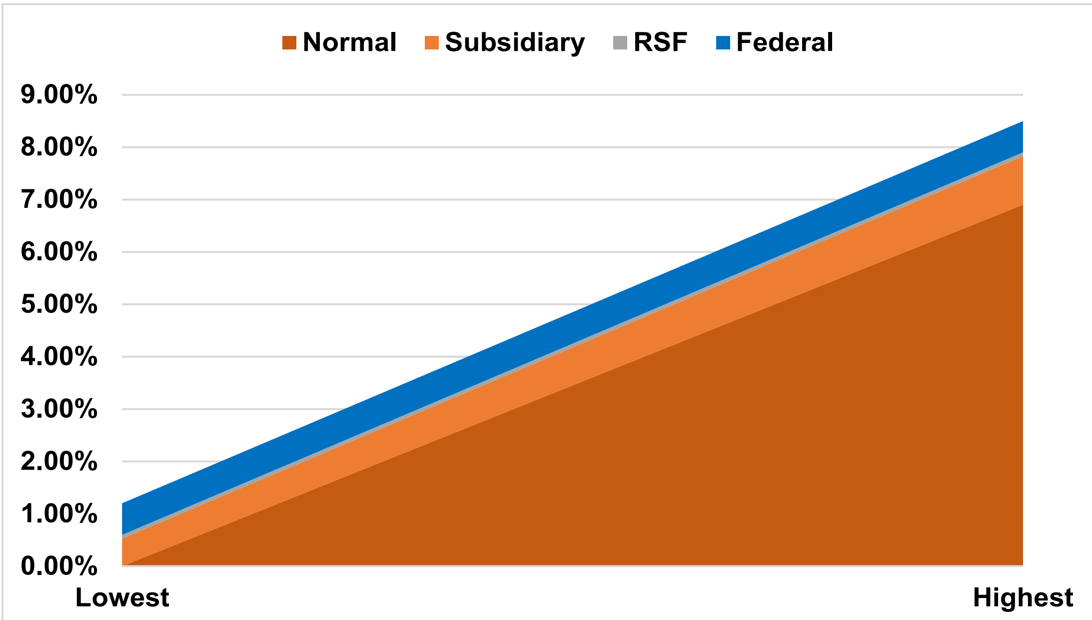
[5] New York State Department of Labor (NYSDOL), *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf; and NYSDOL, *How Your Weekly Unemployment Insurance Benefit Payment Is Calculated,* February 2021 at https://dol.ny.gov/system/files/documents/2021/02/p832_0.pdf.

[6] Normal rate tax payments are credited to individual employer accounts. Subsidiary rate tax payments are credited to the state general account. Reemployment services rate tax payments support costs related to re-employment activities. See Appendix A for more information.

[7] USDOL, *2020 Comparison of State Unemployment Laws,* as of January 1, 2020 at https://oui.doleta.gov/unemploy/comparison/2020-2029/comparison2020.asp.

Figure 1 shows the range in total tax rates paid by New York employers in 2020. On taxable wages, employers paid between 0.6 and 7.9 percent in total State taxes depending on their experience in the UI system. Along with the 0.6 percent in net federal tax rate, employers paid between 1.2 and 8.5 percent of the wage base in total taxes.

Figure 1
Range of Total State and Federal Employer Tax Rates on Taxable Wage Base, 2020



Source: USDOL, *Actual FUTA Credit Reductions, 2009-2020* at https://oui.doleta.gov/unemploy/futa_credit.asp and *State Unemployment Insurance Trust Fund Solvency Report*, 2014 through 2021 at https://oui.doleta.gov/unemploy/solvency.asp; NYSDOL, *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf; and Office of the New York State Comptroller (OSC) communications with New York State Department of Labor staff on May 17, 2021.

The federal-state partnership is structured to build state unemployment trust fund balances when the economy and employment are strong so these reserves are available to pay growing unemployment claims under a worsening economy. Depending on the severity or suddenness of economic recession, however, employment may decrease at a rate greater than the ability of a state's trust fund reserves to pay mounting unemployment claims.

If a state runs out of money in its UI trust fund account, the federal government will provide an advance, or loan, to the state.[8] States may borrow interest-free if they meet certain

[8] Federal law does not limit states from using resources outside the federal UI trust fund to pay benefits, such as other state governmental resources or borrowing through the private markets. See CRS, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States,* updated December 1, 2020 (RS22954) at https://crsreports.congress.gov/product/pdf/RS/RS22954; and USDOL, Division of Fiscal and Actuarial Services, *Borrowing to Pay Benefits*, October 23-26, 2018 at https://oui.doleta.gov/unemploy/ui_technical_assistance/docs/presentation/Borrowing_to_Pay_Bens_2018.pdf.

requirements and make timely repayment of advances taken from the federal UTF. If a state fails to take such actions, then employers will be subject to reductions in the credits they receive on their federal UI tax rates. If a state pays a portion of its outstanding loan and meets certain criteria, it may avoid some or all of the credit reduction. See Appendix A for more information.

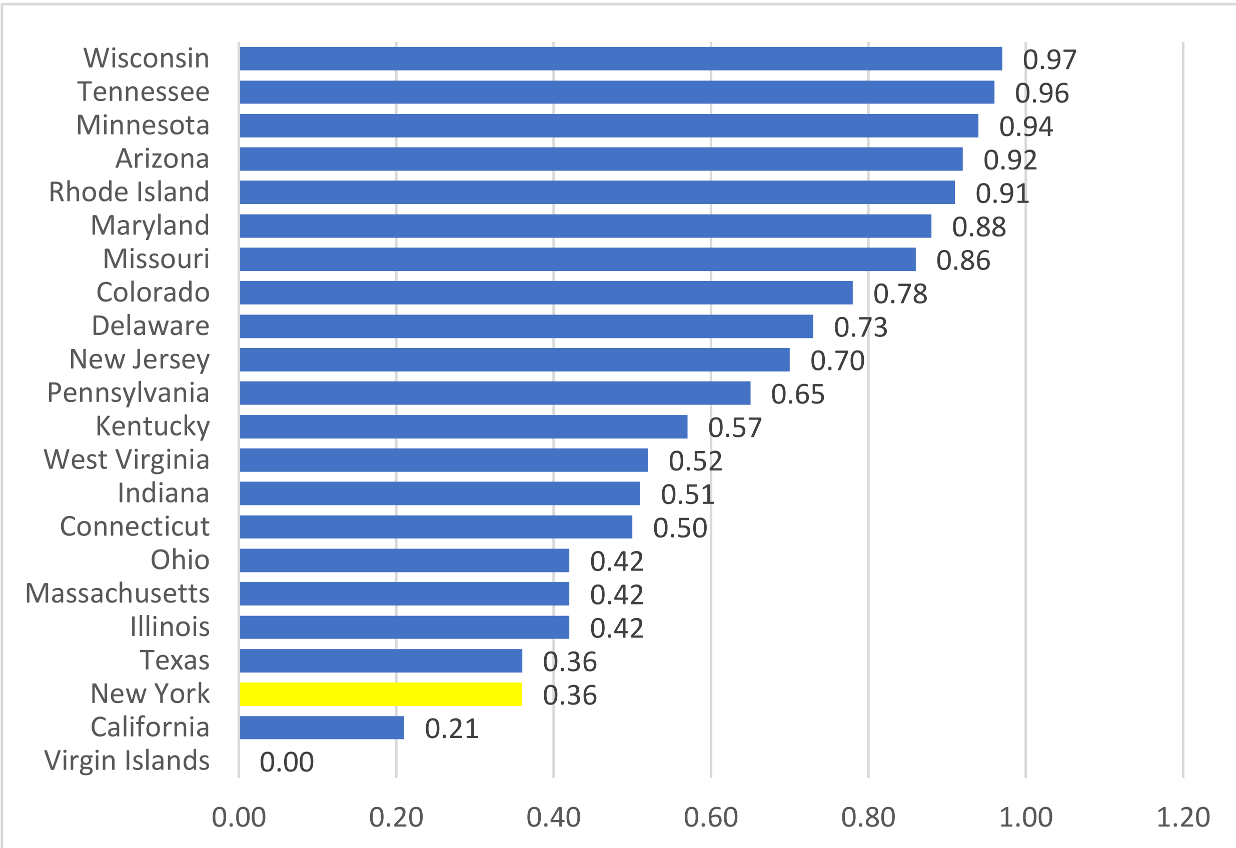
Worsening conditions in New York's UI fund also increase the state UI taxes levied on New York employers – as fund balances decrease relative to total state payroll, the schedules applied to employers' experience ratings increase these rates. Employers may also be charged assessments to pay any interest due on outstanding loans with the federal government.

Payment of UI benefits during the Great Recession depleted State UI fund reserves and New York State required an advance from the federal government in 2010. After reaching a maximum level of almost $4 billion in 2012, the loan was eventually repaid in 2015. For four years, New York employers experienced annual increases to their net federal UI taxes. They also paid the highest state tax rates allowed under law in 2010 through 2015.

Even though the balance in New York's UI trust fund account was at an all-time high of $2.65 billion on January 1, 2020, the U.S. Department of Labor reported in its February 2020 *Trust Fund Solvency Report* that New York was one of 22 states and territories where trust fund levels were below the recommended standard for solvency, determined for each state based on balances, wages, and benefit pay-outs.[9] The Virgin Islands and California were the only jurisdictions more vulnerable to insolvency than New York. (See Figure 2.)

[9] The U.S. Department of Labor uses states' trust fund balances and total wages paid and total benefits paid over time to compute a Reserve Ratio and Benefit Cost Rates for each state. These are compared to produce an Average High Cost Multiple where values of less than 1.0 represent potential insolvency. See USDOL, *State Unemployment Insurance Trust Fund Solvency Report 2020* at https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.

Figure 2
Trust Fund Insolvency: Vulnerable States on January 1, 2020



Source: U.S. Department of Labor, *State Unemployment Insurance Trust Fund Solvency Report 2020* at https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.

III. COVID-19 Pandemic Impacts

New York's UI system was not in a position to handle the unprecedented impact of the pandemic. The extensive economic shutdown in New York in 2020 led to unprecedented numbers of unemployed individuals while also reducing employers' ability to make sufficient contributions for UI claims by former employees.

Expanded Federal Funding During Emergencies

During the COVID-19 pandemic, federal relief legislation supported new temporary emergency programs. As of August 31, 2021, more than $77.5 billion of such benefits were paid to New Yorkers in 2020 and 2021. State employers do not have responsibility for payment of these costs; accordingly, they are excluded from this discussion.

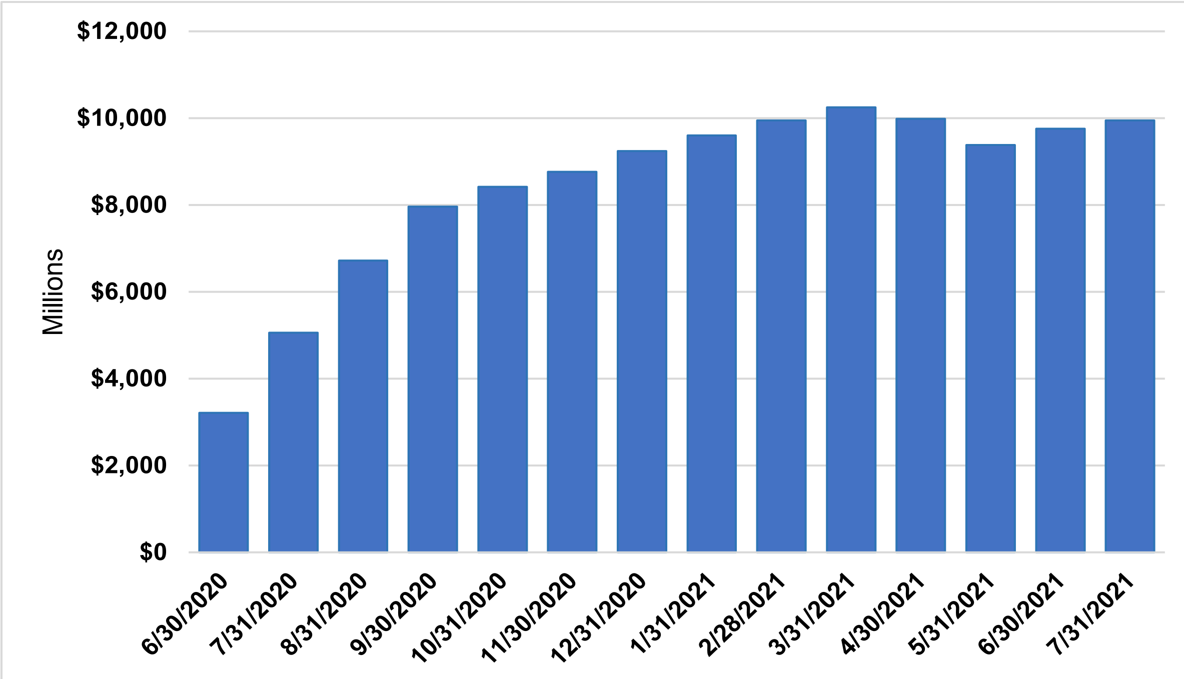
More details on federally-funded programs are provided in Appendix B.

Under the State program, total regular UI benefits paid increased from $530 million in the fourth quarter of 2019 to $829 million in the first quarter of 2020 and surged to $6.5 billion in the second quarter of 2020. In 2020, there were 2.3 million first payments provided to claimants, a sixfold increase compared to 375,000 in 2019.[10] For the period from March 1, 2020 through August 6, 2021, nearly 292 million UI payments totaling more than $97 billion in both regular and federally-enhanced benefits were paid by the Office of the New York State Comptroller.

In May 2020, the State was required to draw an advance from the federal government of $658.7 million. In June 2020, New York's total monthly advance reached its highest level during the pandemic – $2.6 billion – and New York's ensuing end-of-month loan balance was $3.2 billion. Figure 3 shows how the outstanding loan balance grew more than threefold to an end-of-month high of $10.2 billion in March 2021. The balance was down to $9.9 billion at the end of July and the most recent data show it has declined further, to $9.0 billion, as of September 2, 2021.

[10] USDOL uses "first payments" to represent roughly the number of UI beneficiaries, i.e., the number of claimants that received at least a week of benefits. Data for both measures is available at USDOL, *Unemployment Insurance Data* at https://oui.doleta.gov/unemploy/data_summary/DataSum.asp. See also https://oui.doleta.gov/unemploy/DataDashboard.asp.

Figure 3
New York's Outstanding Monthly UTF Loan Balance During the COVID-19 Pandemic

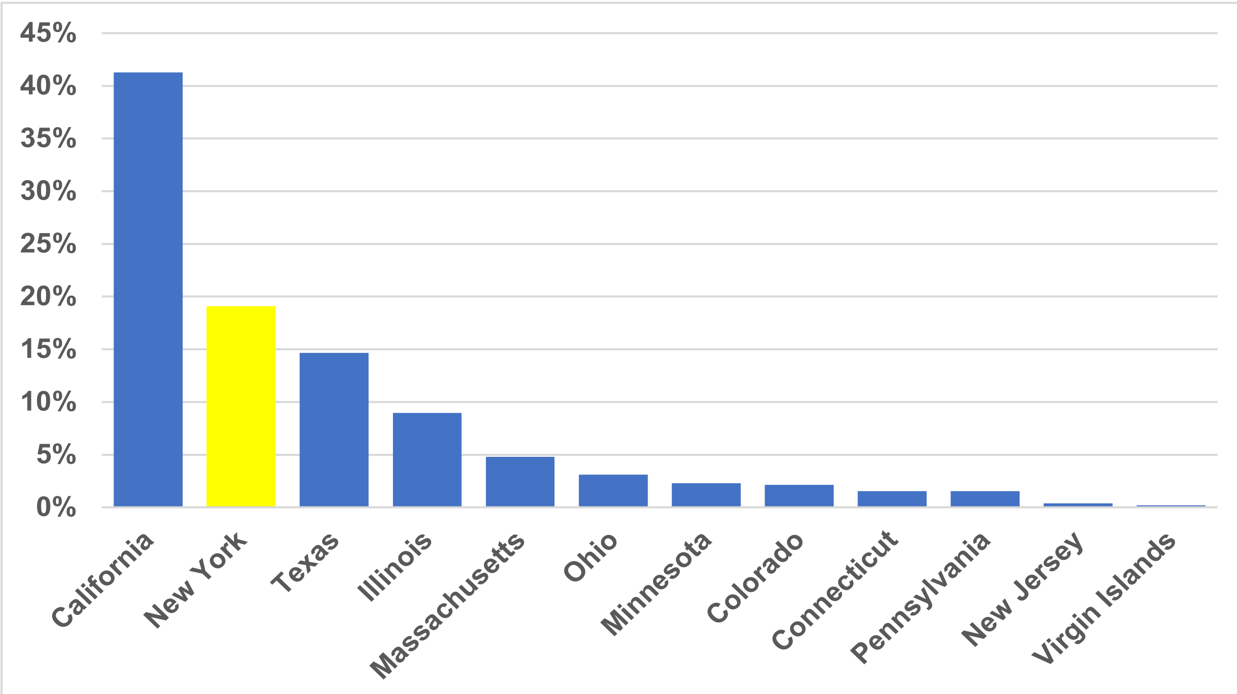


Source: U.S. Department of Labor, *New York Historical Title XII Loans 2007 – July 2021* (Excel spreadsheet provided by staff on August 17, 2021). These data may also be accessed at http://treasurydirect.gov/govt/reports/tbp/account-statement/report.html.

Loan balances do not represent total amounts drawn by New York during the pandemic. The State draws on its advance authorization from the federal government for the current month while also making repayment toward this loan with excess UI funds as possible. During the period shown above, New York State was advanced over $11.8 billion and has repaid $1.9 billion as of July 31, 2021.

As of September 2, 2021, the total balance for the 12 states and territories with outstanding loans was $47.2 billion. New York's share of this amount was 19 percent, higher than all other states except California, as shown in Figure 4.

Figure 4
Share of the United States' Aggregate Outstanding Loan Balance by State
(as of September 2, 2021)

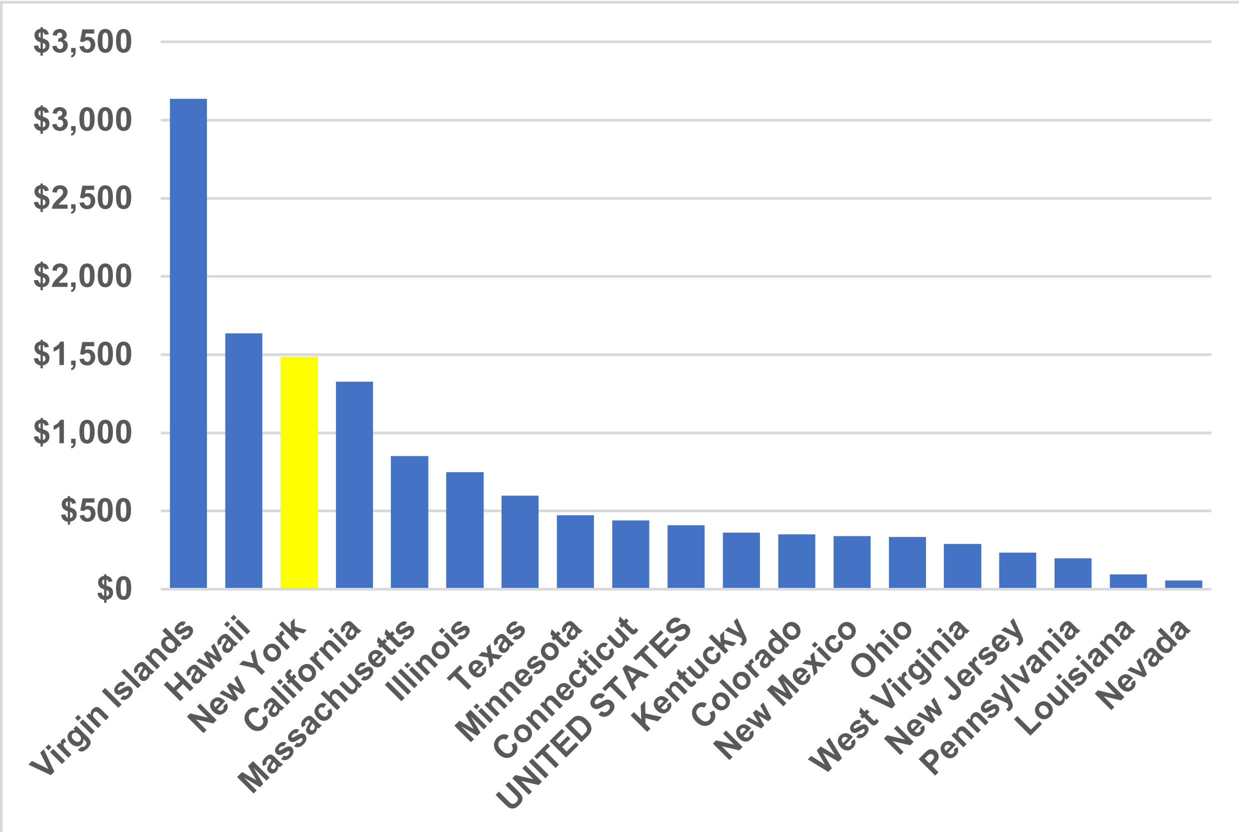


Source: OSC calculations using data from U.S. Department of Treasury, *Title XII Advance Activities Schedule*, as of September 2, 2021. See https://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm.

Given the differences in state populations and in features of the various state unemployment systems that affect employer contributions and benefit payments, it is also useful to look at measures that allow for more relevant comparisons among these states. The U.S. Department of Labor uses numbers of covered employees and total wages and benefits paid in a state to calculate both per-worker and fund solvency measures that adjust for these differences and provide more comparative information on state fund liability. These factors are affected also by unemployment levels. When unemployment increases, total paid benefits are higher relative to total paid wages than when unemployment is lower. Even though lags occur in reporting certain data (such as numbers of covered employees), drops in this factor increase existing loan balances per worker.

As shown in Figure 5, the outstanding loan balance per covered employee reflects New York's relatively high burden of $1,485, greater than California ($1,327) but less than Hawaii ($1,636) and the Virgin Islands ($3,138).

Figure 5
Outstanding Loan Balance per Covered Employee by State
(January 1, 2021)



Source: OSC calculations using data from U.S. Department of Labor, *State Unemployment Insurance Trust Fund Solvency Report* 2021, March 2021 at https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2021.pdf.

Impact of Outstanding Advances and Accompanying Interest on Employer Contributions

The existence and duration of an outstanding advance balance affects the federal and state UI taxes levied on employers, and employers are poised to experience significant increases in rates in coming years.

New York had an outstanding advance for the year beginning January 1, 2021; calendar year 2021 represents Year 1 of New York's outstanding loan, and employers' 2021 net FUTA tax rate will remain 0.6 percent. If New York continues to hold a balance on January 1, 2022 and does not meet certain rules by the following November to avoid some or all of the FUTA credit reductions, employers' federal tax rates will go up to 0.9 percent for 2022, representing an additional federal tax payment of $21 per employee. If New York continues to hold an outstanding balance on January 1, 2023, employers' tax rates will go up to 1.2 percent, representing an additional cost of $42 per employee over current levels.

Federal legislation has provided some flexibility on interest payments that would otherwise be due. The Families First Coronavirus Response Act (FFCRA), the Consolidated Appropriations Act and the American Rescue Plan deferred interest payments and the accrual of interest on state advances until September 6, 2021. As a result, states are deemed to have paid interest on these loans in 2020. Unless the State meets existing federal criteria for avoidance or delay of interest payments, or further federal relief action is taken, New York's interest payment for 2021 will be approximately $14.8 million, covering the period from September 6 through September 30, 2021. Because New York has met the high unemployment provision for deferral in these federal rules, the State will pay about $3.7 million of the interest due on September 30, 2021 and $3.7 million in each of the three following years.[11] According to the New York State Department of Labor, employers are not expected to be charged an interest assessment for the 2021 portion of this payment, because the State intends to pay this amount using other resources.[12]

The FFCRA also gave states the ability to temporarily modify UI law and policies for employer experience ratings in order to prevent the spread of COVID-19. Accordingly, on June 26, 2020, Governor Cuomo issued Executive Order No. 202.45 authorizing the Commissioner of Labor to determine the pandemic's impact on experience ratings and to take related action. On January 14, 2021, Commissioner Reardon issued an order recognizing the impact of unparalleled numbers of UI claims on employer accounts and ordering that employers not be charged for the benefits paid to former employees for UI claims during the COVID-19 pandemic.[13] The State also passed legislation that became effective on March 12, 2020 providing that COVID-19-related benefit payments would not be charged to employer accounts for experience rating purposes through December 31, 2021. COVID-19 benefit payments, therefore, were not a factor in the determination of 2021 State UI tax rates for employers.

Given the negative balance in the State unemployment trust fund, however, the normal UI rates for employers in New York increased for calendar 2021. These increases resulted from application of the highest series of rates in the Size of Fund Index schedule to employers' account percentages. Total State tax rates this year therefore range from 2.1 to 9.9 percent of

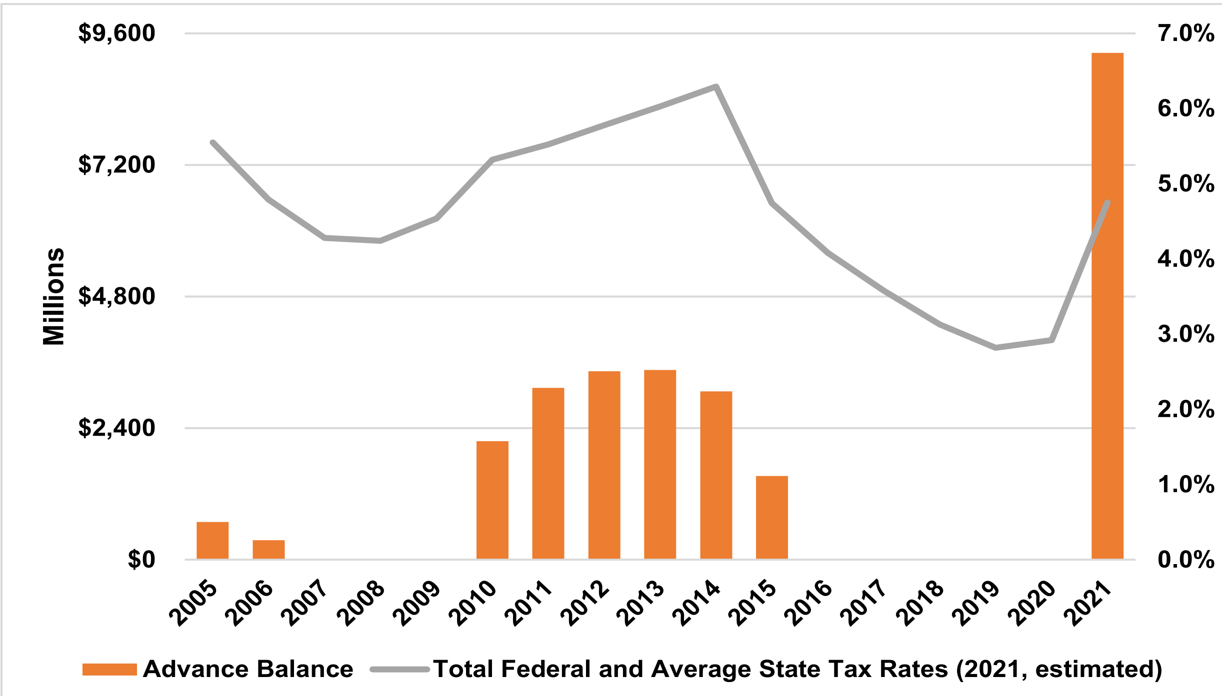
[11] Communications from the U.S. Department of Labor staff (July 7 and 15, 2021) stated that New York met criteria for the deferral of interest payments under 20 CFR 606.41, and set out the resulting structure of the State's approximate 2021 interest payments; these amounts are subject to change if there are withdrawals or repayments on New York's advance prior to September 30. See the Code of Federal Regulations at https://www.ecfr.gov/cgi-bin/text-idx?SID=3adb0edc51e8e0b070d4a4701176fad7&pitd=20160226&mc=true&node=se20.3.606_141&rgn=div8.

[12] OSC communications with New York State Department of Labor staff on July 1, 2021.

[13] NYSDOL, *Order of Commissioner Roberta Reardon Regarding Unemployment Experience Rating Charges*, January 14, 2021 at https://dol.ny.gov/system/files/documents/2021/01/employer-experience-rating-order-final.v2.pdf.

taxable payroll, depending on employers' experience ratings and payroll size. (In 2020, the rates had ranged from 0.6 to 7.9 percent.) Until the balance in the State account returns to a positive level, employers will continue to make State UI contributions in the range of 2.1 to 9.9 percent.

Figure 6
UI Advance Balances and Total Average Tax Rates in New York, 2005-2021



Note: Advance balance is as of January 1.
Source: USDOL: *Actual FUTA Credit Reductions, 2009-2020* at https://oui.doleta.gov/unemploy/futa_credit.asp; *Average Employer Contribution Rates by State* at https://oui.doleta.gov/unemploy/avg_employ.asp; quarterly UI data at https://oui.doleta.gov/unemploy/data_summary/DataSum.asp and *State Unemployment Insurance Trust Fund Solvency Reports* at https://oui.doleta.gov/unemploy/solvency.asp.

The 2021 increase in State UI tax rates has resulted in a 26.3 percent increase in tax payments for employers with the most negative account balances in the UI system and in a 159.7 percent increase for employers with the most positive account balances. Figure 7 presents data illustrating State UI tax payments per worker and per 25 workers for the 2020-21 calendar years, along with forecasts for 2022-25. Given the condition of New York's UI fund and the current advance balance, employers will continue to make contributions at the highest tax rates unless further State or federal action is taken related to outstanding loans.

Figure 7 also projects tax payments that will be made in 2022 through 2025 for the highest and lowest levels of rates that reflect employers' experience related to benefit payments and payroll contributions. The federal tax rate will likely increase by 0.3 percent per year in New York, given the required reduction in credits to this rate for states with an ongoing outstanding loan balance.

These are the only tax rates that increase in the forecast for 2022 through 2025, since State UI tax rates are already at their highest level. These tax rate assumptions are based on New York's experience following the Great Recession, when an outstanding advance balance of more than $3 billion remained at the start of four consecutive years. The State UI taxable wage base also increases each year under current law.

Interest assessments will be applied beginning in 2022 for interest due on September 30, 2022. These amounts will be determined based on projections of the size of the advance balance and related interest and will likely be substantially higher than what has been charged previously. For reference, interest assessments of $21.25 per employee were collected in 2011 due to an outstanding balance of over $3 billion.[14] These additional payments are not included in Figure 7.

Compared to contributions made in 2020, total State and federal tax payments will increase by 30.5 percent in 2022 and by 45.4 percent in 2025 for New York employers who are required to pay the highest rates. Much larger impacts will be experienced by employers who currently pay the lowest rates — their taxes will increase by over 182 percent in 2022 and by almost 254 percent in 2025 compared to tax payments made in 2020.

[14] The following interest assessment surcharge rates were levied on employers after the Great Recession (interest on outstanding advance balances was waived for 2009 and 2010): 2011 – 0.25%; 2012 – 0.15%; 2013 – 0.15%; 2014 – 0.07%; 2015 – 0.009%.

Figure 7
Illustrative UI Tax Payments For Employers with Highest and Lowest Rates, Per Worker and for 25 Workers

		Per Worker								25 Workers	
		Normal		Subsidiary		Re-employment Service Fund (RSF)		TOTAL		TOTAL	
Levels of Rates	Taxable Wage Base	Tax Rate	Tax Payment	Tax Rate	Tax Payment	Tax Rate	Tax Payment	Tax Rate	Tax Payment	Tax Payment	
State UI Tax Payments											
2020											
Highest	$11,600	6.9%	$800.40	0.925%	$107.30	0.075%	$8.70	7.9%	$916.40	$22,910.00	
Lowest	$11,600	0.0%	$0.00	0.525%	$60.90	0.075%	$8.70	0.6%	$69.60	$1,740.00	
2021											
Highest	$11,800	8.9%	$1,050.20	0.925%	$109.15	0.075%	$8.85	9.9%	$1,168.20	$29,205.00	
Lowest	$11,800	1.5%	$177.00	0.525%	$61.95	0.075%	$8.85	2.1%	$247.80	$6,195.00	
2022 Forecast											
Highest	$12,000	8.9%	$1,068.00	0.925%	$111.00	0.075%	$9.00	9.9%	$1,188.00	$29,700.00	
Lowest	$12,000	1.5%	$180.00	0.525%	$63.00	0.075%	$9.00	2.1%	$252.00	$6,300.00	
2023 Forecast											
Highest	$12,300	8.9%	$1,094.70	0.925%	$113.78	0.075%	$9.23	9.9%	$1,217.70	$30,442.50	
Lowest	$12,300	1.5%	$184.50	0.525%	$64.58	0.075%	$9.23	2.1%	$258.30	$6,457.50	
2024 Forecast											
Highest	$12,500	8.9%	$1,112.50	0.925%	$115.63	0.075%	$9.38	9.9%	$1,237.50	$30,937.50	
Lowest	$12,500	1.5%	$187.50	0.525%	$65.63	0.075%	$9.38	2.1%	$262.50	$6,562.50	
2025 Forecast											
Highest	$12,800	8.9%	$1,139.20	0.925%	$118.40	0.075%	$9.60	9.9%	$1,267.20	$31,680.00	
Lowest	$12,800	1.5%	$192.00	0.525%	$67.20	0.075%	$9.60	2.1%	$268.80	$6,720.00	
Federal UI Tax Payments - All Employers											
2020	$7,000							0.6%	$42.00	$1,050.00	
2021	$7,000							0.6%	$42.00	$1,050.00	
2022 Forecast	$7,000							0.9%	$63.00	$1,575.00	
2023 Forecast	$7,000							1.2%	$84.00	$2,100.00	
2024 Forecast	$7,000							1.5%	$105.00	$2,625.00	
2025 Forecast	$7,000							1.8%	$126.00	$3,150.00	
TOTAL: State and Federal UI Tax Payments											**% Change from 2020**
2020											
Highest								8.5%	$958.40	$23,960.00	
Lowest								1.2%	$111.60	$2,790.00	
2021											
Highest								10.5%	$1,210.20	$30,255.00	26.3%
Lowest								2.7%	$289.80	$7,245.00	159.7%
2022 Forecast											
Highest								10.8%	$1,251.00	$31,275.00	30.5%
Lowest								3.0%	$315.00	$7,875.00	182.3%
2023 Forecast											
Highest								11.1%	$1,301.70	$32,542.50	35.8%
Lowest								3.3%	$342.30	$8,557.50	206.7%
2024 Forecast											
Highest								11.4%	$1,342.50	$33,562.50	40.1%
Lowest								3.6%	$367.50	$9,187.50	229.3%
2025 Forecast											
Highest								11.7%	$1,393.20	$34,830.00	45.4%
Lowest								3.9%	$394.80	$9,870.00	253.8%

Note: Rate levels reflect the actual and projected tax rates for employers with the most negative account percentages (highest rate) and those with the most positive account percentages (lowest rate), given the actual and estimated Size of Fund Index and General Account balance for each year in the above table. Tax rates are multiplied by the wage base to obtain tax payments. Additional costs may occur in 2022 through 2025, due to interest assessment surcharges for payment of interest on advance loans. These will be assessed on taxable payrolls and will be determined based on projections of interest due.

IV. Options and Recommendations

States Have Options to Pay UI Benefits and Outstanding Loans

New York and other states have a range of options to pay for UI benefits and any outstanding loans with the federal government. Federal law allows the use of all state UI tax collections for repayment of outstanding advances, including the sweep of funds from state UI trust fund accounts to repay advance balances after other required transactions. It also permits utilization of General Funds and state-issued bonds for this purpose. Additionally, federal pandemic relief legislation provides for use of one-time, broad-based funds to replenish states' UI funds and repay states' outstanding loans. Specifically, the Coronavirus Relief Fund created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the State Fiscal Recovery Funds established by the American Rescue Plan (ARP) may be directed in this way.

The National Conference of State Legislatures identifies 32 states that have taken action or are considering using CARES Act and/or ARP funding for this purpose.[15] Georgia and Ohio each made commitments to direct $1.5 billion in relief aid to their UI funds, and Maryland dedicated $1.1 billion in such funds.[16] On August 10, 2021, Governor Ralph Northam also approved a spending plan passed by the Virginia General Assembly for use of $3.5 billion in federal pandemic relief funds, including $862 million to refill the State's UI fund.[17]

California Governor Gavin Newsom proposed to use $1.1 billion, but California passed a state budget that does not allocate federal relief funds for this purpose[18]. While Governor Newsom's plan would have immediately reduced interest costs, the benefits to employers and workers would have been limited because of the federal loan repayment structure and the estimated

---

[15] National Conference of State Legislatures, "ARPA State Fiscal Recovery Fund Allocations, Unemployment Trust Fund" as of August 24, 2021 at https://app.powerbi.com/view?r=eyJrIjoiMTcyNGQ5ZmUtNTY3Mi00YjViLTgyNjMtZjk1NzVkYTUyZGUzIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9&pageName=ReportSection and https://app.powerbi.com/view?r=eyJrIjoiODMxYjI1NGMtZWQ0Ny00YzNiLTkxNjQtMTBlNDZjYTkzNzhhIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9&pageName=ReportSection.

[16] Governor Brian P. Kemp/Office of the Governor, *Gov. Kemp Announces $1.5 Billion in CARES Act Funding to Unemployment Insurance Trust Fund*, October 14, 2020 at https://gov.georgia.gov/press-releases/2020-10-14/gov-kemp-announces-15-billion-cares-act-funding-unemployment-insurance; The Ohio House of Representatives, 134th General Assembly, *House Bill 168 – 134th General Assembly* at https://ohiohouse.gov/legislation/134/hb168 and Mike DeWine/Governor of Ohio, *Governor DeWine Signs House Bill 168,* June 29, 2021 at https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/governor-dewine-signs-house-bill-168-06292021; The Office of Governor Larry Hogan, *Governor Hogan, President Ferguson, Speaker Jones Announce Bipartisan Agreement for American Rescue Plan Funding,* March 31, 2021 at https://governor.maryland.gov/2021/03/31/governor-hogan-president-ferguson-speaker-jones-announce-bipartisan-agreement-for-american-rescue-plan-funding/.

[17] HB 7001 The Budget Bill, Approved by Governor, August 10, 2021 at https://lis.virginia.gov/cgi-bin/legp604.exe?213+sum+HB7001.

[18] *2021-22 May Revision to the Governor's Budget (California All, May Revision 2021-22)*, May 14, 2021, page 35, at http://www.ebudget.ca.gov/2021-22/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf.

number of years needed to pay off the state's extraordinarily large outstanding loan. California's Governor has further recommended applying any unused fiscal recovery funds as of June 30, 2024 to the state's remaining advance balance.[19]

Massachusetts Governor Charlie Baker signed a law on April 1, 2021 allowing the State to borrow $7 billion to replenish its unemployment trust fund, but employers there still confronted dramatic increases in the component of their state tax that contains a solvency assessment. On May 28, the Governor signed a bill that shifted the costs for claims ordinarily paid for with the solvency assessment to a new COVID-19 employer relief account until August 1, 2021. It allowed the State to borrow to cover the claims paid from this fund, reset employers' solvency assessments and extended the time employers have to pay for costs resulting from these claims.[20] Additionally, on August 18, 2021, Governor Baker filed a $1.6 billion supplemental budget proposal that would allocate $1 billion in surplus funds to Massachusetts' UI Trust Fund.[21]

Other responses to dramatic increases in federal Unemployment Trust Fund (UTF) costs include using revenue from new taxes to fund a state's UTF account (Florida).[22] Proposals to cease payment of federally-funded UI benefits would not affect the level or required repayment of outstanding loans with the federal government, which are used to pay for regular state UI benefits.

[19] California Legislative Analyst's Office, *Repaying the State's Federal Unemployment Insurance Loan,* May 26, 2021 at https://lao.ca.gov/Publications/Report/4442.

[20] The Commonwealth of Massachusetts (192nd General Court, 2021-2022), *An Act Financing a Program for Improvements to the Unemployment Insurance Trust Fund and Providing Relief to Employers and Workers in the Commonwealth*, Signed (in part) April 1, 2021 at https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter9 and *An Act Providing for Massachusetts COVID-19 Emergency Paid Sick Leave*, Approved May 28, 2021 at https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter16.

[21] Office of the Governor, Commonwealth of Massachusetts, letter from Governor Baker on filing "An Act Making Appropriations for Fiscal Year 2021 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects", August 18, 2021 at https://www.mass.gov/doc/fy21-closeout-supp-filing-letter/download.

[22] The Florida Senate, *CS/CS/SB 50: Taxation*, Approved by Governor, April 19, 2021 at https://www.flsenate.gov/Session/Bill/2021/50.

Recommendations

The COVID-19 pandemic resulted in unprecedented economic impacts and record utilization of the State's UI benefit system. During this period, the federal government provided enhanced benefits utilizing federal resources, as well as waiving interest assessments for the regular UI benefit system. These actions provided critical support for vulnerable New Yorkers, averted immediate negative impacts to employers, and helped to stabilize the economy. Looking forward, restoring New York's UI Trust Fund to surplus levels appropriate to withstand the next economic downturn will require a multi-faceted, sustained strategy. State policy makers should:

- **Advocate for additional federal support**. Ongoing federal relief for the UI system would relieve employers of damaging new costs that may impede the economic recovery. Specifically, the federal government could extend interest waivers that expired on September 6, 2021. This would avoid interest assessments that would begin to be assessed in 2021. The federal government could also waive portions of outstanding loans for states that were hardest hit by COVID-19 and pandemic-driven UI claims.

- **Monitor existing COVID-19 pandemic relief programs to determine if resources may be available for support of the UI Trust Fund**. Authorizing legislation for the federal Coronavirus Relief Fund and the Coronavirus State Fiscal Recovery Fund programs specifically allows the use of these funds to support UI Trust Fund solvency. The State Fiscal Year 2021-22 Enacted Budget Financial Plan allocates these resources for a multitude of pandemic response costs and economic recovery initiatives. The Financial Plan does not direct federal or State funding to repayment of outstanding advance balances or associated interest. As the economic recovery and the administration of these programs continue, any funds that are unused should be evaluated for potential transfer to the State UI fund.

- **Avoid the issuance of State debt**. Although some states have authorized or are considering the sale of bonds to generate funds for their UI Trust funds, this approach should be avoided in New York. Since the onset of COVID-19, the State's debt limits have already been waived for two consecutive fiscal years, rendering them functionally meaningless. Moreover, outstanding State debt is expected to increase by $24.7 billion over the next five years, largely as a result of the State taking on debt that would otherwise be issued by the Metropolitan Transportation Authority. Finally, New York already has an unfortunate history of issuing debt for operating budget purposes, such as tobacco bonds, New York City Sales Tax Asset Receivable Corporation (STARC) bonds and cash flow borrowings. These practices have been cited by bond rating agencies as counter to best practices and detrimental to the State's credit rating and fiscal outlook.

Appendix A

This Appendix provides additional reference information regarding the operation of the Unemployment Insurance system in the State of New York.

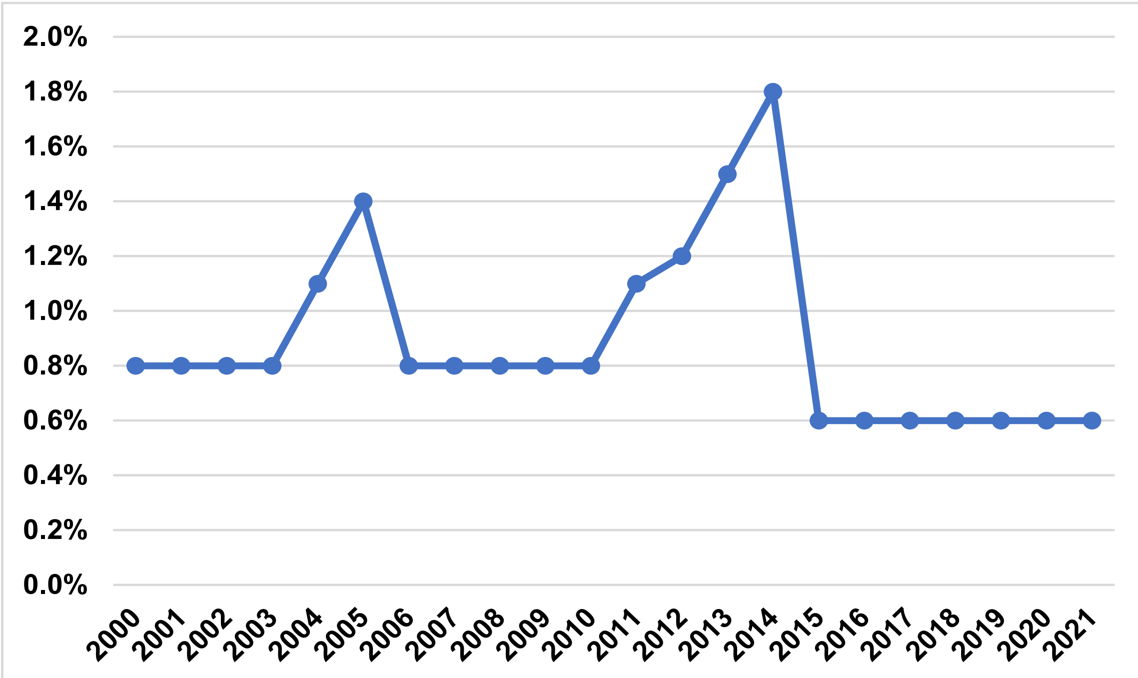
Federal UI Taxes

Employers make federal tax payments subject to the Federal Unemployment Tax Act (FUTA). Under FUTA, federal tax rates are set at 6 percent on the first $7,000 of employee wages. For employers in states that comply with federal rules, this rate is reduced by 5.4 percent to a net rate of 0.6 percent. Amounts received through this tax are collected by the Internal Revenue Service and deposited into the relevant account of the federal Unemployment Trust Fund. These revenues are used for federal and state administration of the program, 50 percent of the federal Extended Benefits program that extends the duration of UI benefits during periods of high unemployment, state employment services, and loans to insolvent states through a dedicated loan account within the federal UTF (Federal Unemployment Account, FUA).

As shown in Figure A-1, net federal tax rates in New York have varied since 2000 from a low of 0.6 percent to a high of 1.8 percent.[23] Increases between 2010 and 2015 were necessary to repay an FUA loan.

[23] Until June 2011, the base federal tax rate was 6.2 percent because of a temporary 0.2 percent additional tax enacted in 1976. The new net FUTA rate after the 5.4 percent credit and before any credit reductions became 0.8 percent. In July 2011, it returned to 0.6 percent when the temporary additional tax expired.

Figure A-1
Net Federal UI Tax Rates Levied on New York Employers, 2000-2021



Source: USDOL, *Actual FUTA Credit Reductions, 2009-2020* at https://oui.doleta.gov/unemploy/futa_credit.asp; *State Unemployment Insurance Trust Fund Solvency Report*, 2014 through 2021 at https://oui.doleta.gov/unemploy/solvency.asp; additional material provided by USDOL.

State UI Taxes

In New York, the total State unemployment insurance rate paid by liable employers consists of three components: normal, subsidiary and re-employment service fund rates.[24] The normal and subsidiary tax rates vary by employer based upon utilization of UI benefits by individuals formerly employed by the firm. These taxes are paid on a portion of employees' annual wages; in 2013 and prior years, this amount was the first $8,500 of wages earned by an employee. As part of reform to New York State's UI system enacted in 2013, this amount increased on January 1, 2014 to $10,300. After rising incrementally each year through 2026, the wage base will be indexed to the State's average annual wage. In 2021, the UI taxable wage base was $11,800.

[24] New employers, those that have not been liable for UI contributions for more than one full calendar year before January 1, pay a set normal rate that is the same as for an employer with a positive account percentage of less than 1 percent. This rate does not exceed 3.4 percent. The subsidiary and re-employment service fund rates are added to this rate. See NYSDOL, *Experience Rating, Contribution Rates*, February 2021 at https://dol.ny.gov/system/files/documents/2021/02/ia318.12.pdf, pages 12 and 17.

Individual accounts are established for each employer for the purpose of crediting tax payments and debiting unemployment benefits paid to former employees. The first step in the calculation of normal rates results in account percentages representing these transactions relative to employers' taxable payroll — i.e., their experience in the unemployment system. Second, a schedule or series of rates based on the condition of the State's UI fund, or the Size of Fund index, is applied to the negative or positive account percentages from the first step.[25] This action ensures that tax collections grow or decline to respond to the level of the State's UI fund.

The combination of these two measures determines employers' normal rates for the tax year, and the rates are updated annually. As shown in Figure A-2, the matrix of normal rates varies from 0.0 to 8.9 percent of the taxable wage base depending on employers' experience and the applicable Size of Fund index.[26] Regardless of their experience, all employers will be required to pay higher rates if the State fund is in poor condition, including those employers with positive experience rating account balances. Along with payment of UI benefits, these revenues are used to pay the State share (50 percent) of the Extended Benefits (EB) program.

Figure A-2
Range of New York State Normal UI Rates
(in percentage)

	Size of Fund Index											
	Less than 0% **(negative)**	0% but less than 0.5%	0.5% but less than 1.0%	1.0% but less than 1.5%	1.5% but less than 2.0%	2.0% but less than 2.5%	2.5% but less than 3.0%	3.0% but less than 3.5%	3.5% but less than 4.0%	4.0% but less than 4.5%	4.5% but less than 5.0%	5.0% or more
Employers with negative account percentages (more UI benefits paid than taxes)												
21.0% or more	8.9	8.7	8.5	8.3	8.1	7.3	6.9	6.5	6.2	6.1	6.0	5.9
Less than 1.0%	5.2	5.0	4.8	4.6	4.4	3.8	3.4	3.0	2.7	2.6	2.5	2.4
Employers with positive account percentages (more taxes paid than UI benefits)												
Less than 1.0%	4.1	3.9	3.7	3.5	3.3	2.9	2.5	2.1	1.9	1.8	1.7	1.6
10.5% or more	1.5	1.3	1.1	0.9	0.7	0.3	0.0	0.0	0.0	0.0	0.0	0.0

Note: The account percentages shown in the table are the highest and lowest categories for employers with negative and positive account percentages among a continuous range of categories.

Source: NYSDOL, *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf.

[25] "This index is the ratio of the balance in the fund as of December 31 to whichever is the higher: (1) total wages subject to contribution for all employers in the last preceding payroll year, or (2) the average of total wages subject to contribution for all employers for the five preceding payroll years." See NYSDOL, *Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, page 17, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf.

[26] The maximum rate is set in statute. See New York State Labor Law, Article 18 (Unemployment Insurance Law), Section 581.

To calculate subsidiary rates, a schedule reflecting the balance in the General Account within the State's UI fund is applied to the employer account percentages used in the computation of normal rates. This schedule produces tax rates that range from 0.0 to 0.925 percent of the wage base, as shown in Figure A-3. Since 1999, the highest set of rates from this schedule has been applied to employers' experience ratings to determine their subsidiary rates. Resulting tax rates, therefore, have ranged from 0.525 to 0.925 percent since that year. Employer payments of this tax are credited to the State's General Account. The General Account also reflects interest earned by New York's UI trust funds, late tax payments, balances of employers' accounts that have either lapsed, or are negative and exceed 21 percent of taxable payroll, and amounts credited to the State trust fund by the federal government.

The third component of employers' State unemployment insurance tax, the re-employment services fund rate, is a flat tax of 0.075 percent on the taxable wage base for all employers. Revenues from this tax are for the development of automated systems and staff that support re-employment services.[27]

Figure A-3
Range of Subsidiary Rates

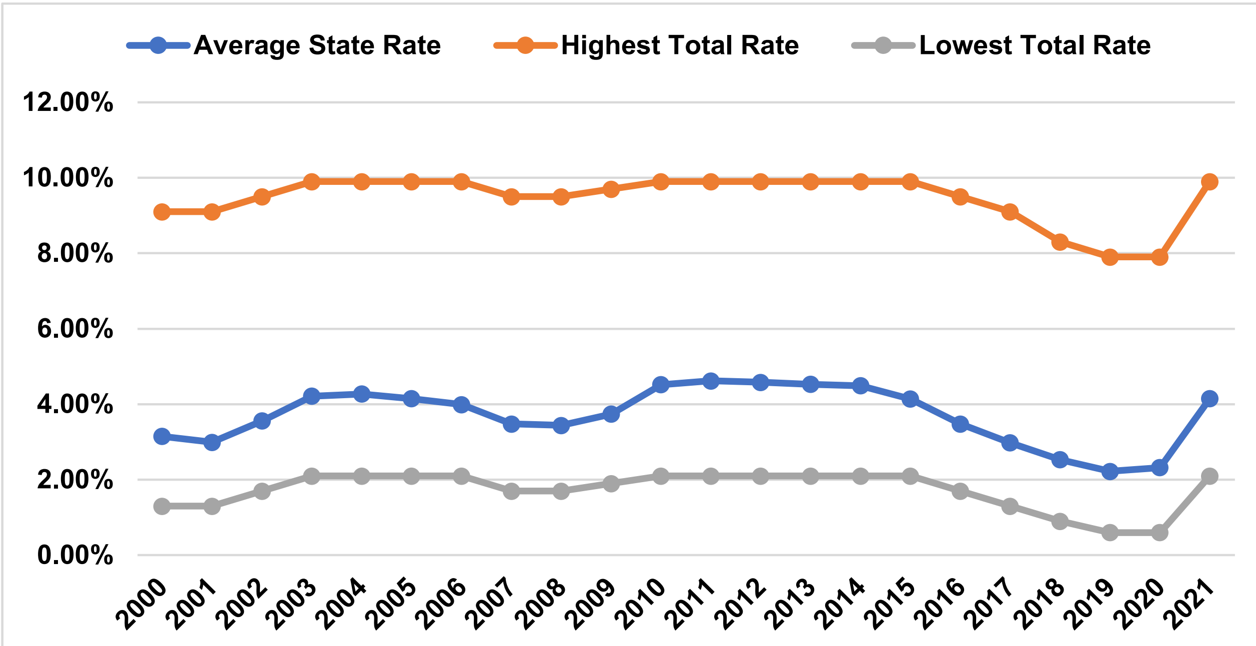
	General account balance (in millions of dollars)										
	Less than $0 **(negative)**	$0 or more but less than $75	$75 or more but less than $150	$150 or more but less than $225	$225 or more but less than $300	$300 or more but less than $375	$375 or more but less than $450	$450 or more but less than $525	$525 or more but less than $600	$600 or more but less than $650	$650 or more
Employers with negative account percentages (more UI benefits paid than taxes)											
Less than 0.0%	0.925	0.825	0.725	0.625	0.525	0.425	0.325	0.225	0.125	0.025	0.00
Employers with positive account percentages (more taxes paid than UI benefits)											0.00
0.0% or more but less than 5.5%	0.625	0.625	0.625	0.525	0.425	0.325	0.225	0.125	0.025	0.000	0.00
5.5% or more but less than 7.5%	0.625	0.625	0.525	0.425	0.325	0.225	0.125	0.025	0.000	0.000	0.00
7.5% or more but less than 9.0%	0.625	0.525	0.425	0.325	0.225	0.125	0.025	0.000	0.000	0.000	0.00
9.0% or more	0.525	0.425	0.325	0.225	0.125	0.025	0.000	0.000	0.000	0.000	0.00

Source: NYSDOL, *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf.

Total State UI tax rates for employers since 2000 are illustrated in Figure A-4. Tax rates for employers paying the lowest rates have ranged from 0.6 percent in 2019 and 2020 to 2.1 percent after the 2001 recession, after the Great Recession and in 2021. Tax rates for employers paying the highest rates have ranged from 7.9 percent to 9.9 percent.

[27] NYSDOL, "Re-Employment Service Fund" at https://dol.ny.gov/re-employment-service-fund-rsf (accessed July 26, 2021).

Figure A-4
State Unemployment Insurance Tax Rates



Note: Average State Rate is based on actual employer contributions and taxable payroll; 2021 figure is estimated by OSC staff.
Source: NYSDOL, *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf; USDOL, *Average Employer Contribution Rates by State* at https://oui.doleta.gov/unemploy/avg_employ.asp; and OSC communications with NYSDOL staff on May 17, 2021.

.

Employers in New York that pay the highest tax rates represent a much smaller share of the total wages paid in the State compared to the share charged to them of total UI benefits paid. In 2020, some 4,940 New York employers, or 0.9 percent of the 543,618 employers subject to UI requirements, paid total *state* taxes of 7.0 percent or higher. The total wages paid by these employers – $2.63 billion – represented 0.5 percent of the total 2020 payroll of $541.8 billion. These same employers were charged $111.6 million in UI benefits paid in 2020, or 6.2 percent of the total $1.8 billion. They comprised the top eight categories of negative experience factors. There are 70 categories that reflect a continuous range of negative to positive experience rating account factors.[28]

[28] Along with active employers whose UI experience is rated, subject employers include new employers and employers that have special rates (delinquent employers). They do not include employers that make UI payments on a reimbursable basis (employers that do not make contributions through tax payments). See USDOL, data from *ETA 204, Experience Rating Report, Sections C; 204r* at https://oui.doleta.gov/unemploy/DataDownloads.asp#ETA_204, accessed on May 10, 2021; and *UI Reports Handbook No. 401, ETA 204 Experience Rating Report* at https://oui.doleta.gov/dmstree/handbooks/401/ii_4.pdf.

Economic Recessions and Growing Unemployment Claims Negatively Affect Unemployment Trust Fund Balances and Increase Employers' UI Taxes

The federal-state partnership is structured to build state unemployment trust fund balances when the economy and employment are strong. These reserves become available to pay unemployment claims when layoffs occur or jobs disappear under a worsening economy. Providing benefits to unemployed workers helps stabilize the economy, as well as enabling individuals and their families to meet basic needs. Depending on the severity or suddenness of economic recession, however, employment may decrease at a rate greater than the ability of a state's trust fund reserves to pay mounting unemployment claims.

If a state runs out of money in its UI trust fund account, the federal government will provide an advance, or loan, to the state.[29] States may borrow interest-free if they meet certain requirements and repay advances taken after January 1st by September 30th of the same year. If a state fails to repay the advance by November 10th following the second consecutive January 1st on which it has an outstanding loan, then employers will be subject to reductions in the credits they receive on their federal UI tax rates. If a state pays a portion of its outstanding loan and meets certain criteria related to the period of the loan paid, the remaining funds in the state's account and changes to relevant state laws, it may avoid some or all of the credit reduction.[30]

The Basic Credit Reduction (BCR) of 0.3 percent annually begins in the year in which the second January occurs during an outstanding balance (applied retroactively). Additional credit reductions starting in the third and fifth years of an outstanding loan balance may occur that take other factors into account.[31] In the nineteenth year of an outstanding loan balance, cumulative annual basic credit reductions result in a net FUTA rate of 6.0 percent. Figure A-5 details the schedule of reductions. Revenue generated from the resulting increased tax payments is used to pay the principal on outstanding advance loans.

---

[29] Federal law does not limit states from using resources outside the federal UI trust fund to pay benefits, such as other state governmental resources or borrowing through the private markets. See CRS, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States,* updated December 1, 2020 (RS22954) at https://crsreports.congress.gov/product/pdf/RS/RS22954 USDOL, Division of Fiscal and Actuarial Services, *Borrowing to Pay Benefits*, October 23-26, 2018 at https://oui.doleta.gov/unemploy/ui_technical_assistance/docs/presentation/Borrowing_to_Pay_Bens_2018.pdf.

[30] CRS, Ibid. To avoid credit reduction, a state must: (1) repay all loans for the last year ending on November 9 and any additional taxes for the calendar year when a credit reduction occurred; (2) hold adequate amounts in its UTF account to pay compensation for the calendar year final quarter without use of a loan; and (3) amend its state law to improve the net solvency of its UTF account. See Section 272 of federal Public Law 97-248.

[31] Ibid. These additional credit reductions occur through formulas that result in add-ons and application of a benefit-cost ratio using annual average wages, average tax rates, state UI benefit payments and taxable wages.

Figure A-5
State Credit Reductions to Net FUTA Tax Rates

Outstanding Loan Year	Basic Credit Reduction	Additional Credit Reductions [1]	Net FUTA Tax [1]
1	0.0%	None	0.6%
2	0.3%	None	0.9%
3	0.6%	2.7 Add-on	1.5% or more
4	0.9%	2.7 Add-on	1.8% or more
5	1.2%	Benefit Cost Ratio (BCR) Add-on	2.1% or more
6	1.5%	BCR Add-on	2.4% or more
7	1.8%	BCR Add-on	2.7% or more
8	2.1%	BCR Add-on	3.0% or more
9	2.4%	BCR Add-on	3.3% or more
10	2.7%	BCR Add-on	3.6% or more
19	5.4%	BCR Add-on	6.0%

[1] Net FUTA tax base is 0.6 percent. Basic and additional credit reductions are applied to this amount. The "2.7 Add-on" consists of the following formula: [(2.7% x $7,000/ U.S. Annual Average Wage) - Average Annual State Tax Rate on Total Wages] x State Annual Average Wage/$7,000. The "BCR Add-on" uses the following Benefit-Cost Ratio formula: Max [Five-year Average State Unemployment UI Outlays /Taxable Wages, 2.7] - Average Annual State Unemployment Tax Rate on Total Wages.

Source: CRS, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*, updated April 16, 2020 at *https://crsreports.congress.gov/product/pdf/RS/RS22954/50*.

Interest is due and payable on September 30th for funds borrowed from the federal UTF.[32] There are exceptions to this requirement: if amounts borrowed are for cash flow purposes or are withdrawn in May or later of the federal fiscal year, or, if the state's unemployment rate is above a certain level during the previous calendar year or twelve months.[33]

According to New York State law, if the ratio of the balance in the state unemployment insurance fund relative to total taxable wages in the State is negative, the highest series of rates in the Size of Fund Index and General Account balance schedules are applied to employers' account percentages. Additionally, changes to State Labor law in 2003, 2011 and 2015 direct employers to pay an assessment for interest due on advances from the federal UI Trust Fund as of the first calendar quarter of the year such interest becomes due.[34]

[32] Such interest rates are determined by dividing "the aggregate amount credited…to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by…the aggregate of the average daily balances of the State accounts for such quarter…" The resulting interest rate cannot exceed 10 percent. Interest on advances during a federal fiscal year is paid prior to the beginning of the next federal fiscal year (before October 1). See Sections 904, 1201 and 1202 of the federal Social Security Act.

[33] USDOL, *Important Dates for Title XII Advances and Repayments* at https://oui.doleta.gov/unemploy/. A state may defer interest payments if its insured unemployment rate equals or exceeds 7.5 percent for the first six months of the previous calendar year or if its total unemployment rate averaged 13.5 percent or more for the prior 12 months.

[34] New York State Labor Law, Article 18, Section 581-d.

Great Recession Leads to Advances and Reforms

New York's experience with unemployment during the Great Recession of 2007-2009 and ensuing UI benefit claims is instructive for the State's current circumstances during the COVID-19 pandemic and its impact on unemployment trust funds. Figure A-6 shows State UI Trust Fund and outstanding advance balances from 2005 to 2021. In 2009, the Great Recession greatly decreased the State UI Trust Fund balance, and New York State required an advance from the federal government beginning in 2010. New York was one of 35 states with insolvent trust funds and total related debt of over $40 billion during the Great Recession. On January 1, 2010, New York's outstanding advance with the federal government was $2.2 billion. The advance reached its maximum level of $3.96 billion in March 2012; the loan was eventually repaid entirely in May 2015.

Figure A-6
New York's Unemployment Trust Fund Balance, Loan Advances & UI Tax Rates

	State UI Trust Fund Account Balance [1]	Outstanding Title XII Advance [1]	Interest Owed for Federal Fiscal Year	Net Federal Tax Rate [2]	Highest State UI Tax Rate	Lowest State UI Tax Rate	Actual Average State Tax Rate [3]
2005	$0	$691,332,000	$26,360,804	1.4%	9.9%	2.1%	4.15%
2006	$0	$357,319,000	$7,000,283	0.8%	9.9%	2.1%	3.99%
2007	$313,162,000	$0		0.8%	9.5%	1.7%	3.48%
2008	$429,723,000	$0		0.8%	9.5%	1.7%	3.44%
2009	$7,084,000	$0		0.8%	9.7%	1.9%	3.74%
2010	$41,752,000	$2,160,189,000		0.8%	9.9%	2.1%	4.52%
2011	$34,713,000	$3,134,427,000	$95,436,339	0.9%	9.9%	2.1%	4.62%
2012	$29,837,000	$3,436,549,000	$104,336,100	1.2%	9.9%	2.1%	4.58%
2013	$27,266,000	$3,461,890,000	$84,499,526	1.5%	9.9%	2.1%	4.53%
2014	$18,574,887	$3,072,430,401	$59,569,089	1.8%	9.9%	2.1%	4.49%
2015	$1,981,275	$1,528,955,086	$20,559,887	0.6%	9.9%	2.1%	4.14%
2016	$288,062,962	$0		0.6%	9.5%	1.7%	3.48%
2017	$1,299,535,236	$0		0.6%	9.1%	1.3%	2.98%
2018	$1,924,720,579	$0		0.6%	8.3%	0.9%	2.53%
2019	$2,373,467,910	$0		0.6%	7.9%	0.6%	2.22%
2020	$2,651,482,639	$0		0.6%	7.9%	0.6%	2.32%
2021	$474,589,819	$9,241,379,000		0.6%	9.9%	2.1%	4.15%

[1] As of January 1. As of September 2, 2021, the outstanding advance was $9,000,879,486.56, see https://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm, accessed on August 2, 2021.

[2] In 2014, the State received additional credit reduction ("Add-on") relief.

[3] The 2021 rate is estimated by OSC.

Source: NYSDOL, *NYS-50: Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax,* revised December 2020, at https://www.tax.ny.gov/pdf/publications/withholding/nys50.pdf and *IA 318.12: Experience Rating, Contribution Rates*, February 2020 at https://dol.ny.gov/system/files/documents/2021/02/ia318.12.pdf; USDOL, Unemployment Insurance data and reports accessed at https://oui.doleta.gov/unemploy/DataDashboard.asp, https://oui.doleta.gov/unemploy/futa_credit.asp and https://oui.doleta.gov/unemploy/avg_employ.asp; and U.S. Department of Treasury, data provided by staff on July 9, 2021.

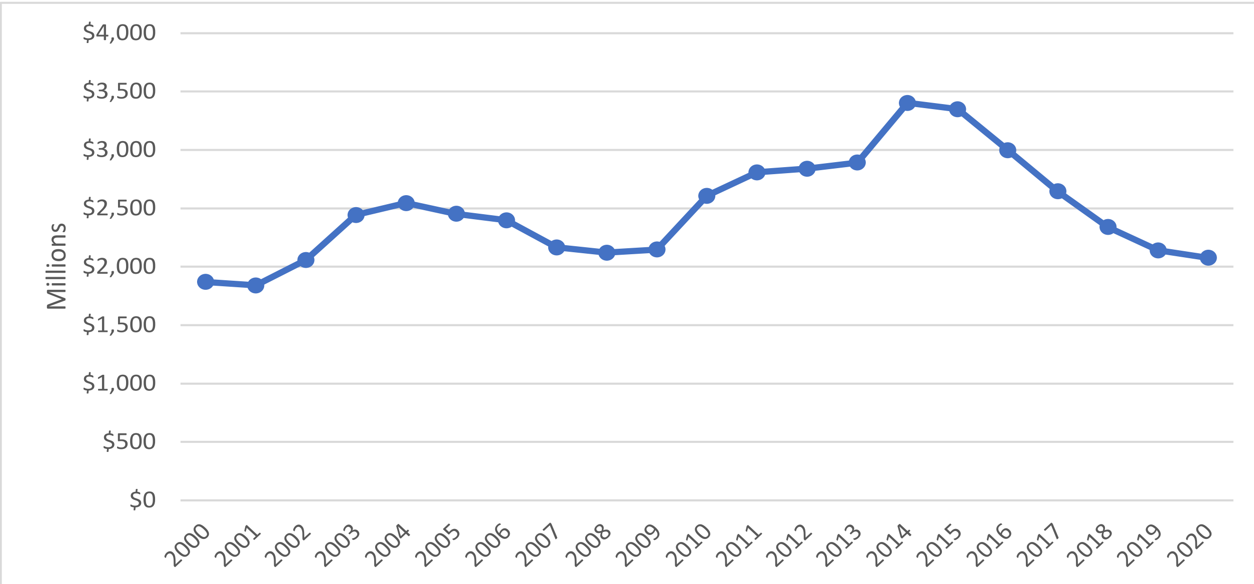
In 2011 through 2014, federal tax rates for employers increased 0.3 percent annually due to reductions in the credit normally applied to the base rate, as shown in Figure A-6. Additionally, average State tax rates were greater than 4 percent between 2010 through 2015, followed by incremental declines as the condition of the State's trust fund recovered. Employers with the lowest experience ratings and highest applicable rates paid as much as 11.7 percent in 2014.

In 2013, New York State enacted changes to its unemployment insurance system that provided more employer tax revenue, allowing the State to pay off advances from the federal government, strengthening the position of the State's unemployment trust fund, and improving benefits for unemployed workers.

The wage base for UI taxation was increased by 21.2 percent on January 1, 2014 from $8,500 to $10,300, with scheduled yearly increases until the base reaches $13,000 in 2026. After 2026, the taxable wage base will adjust annually to represent 16 percent of the State's average annual wage. Additionally, the amounts of weekly UI benefit payments increased as of October 2014 from $64 to $100 (minimum) and from $405 to $420 (maximum), respectively. After increases through October 2026, rates will adjust annually to 50 percent of the State's average weekly wage. Fraud prevention measures and new work search tools were also adopted.

Collections increased from $2.9 billion in 2013 to $3.4 billion in 2014, a 17.7 percent increase. (See Figure A-7). As a result of these changes, the State paid off outstanding advances with the federal government two years earlier than originally projected, in 2015, thereby saving $200 million in interest payments.

Figure A-7
UI Tax Collections: New York State



Source: USDOL, *ETA 2112: UI Financial Transactions Summary* report at http://oui.doleta.gov/unemploy/DataDownloads.asp (annual totals were calculated for monthly amounts).

Appendix B

The extensive economic shutdown in New York State in 2020 led to unprecedented numbers of unemployed individuals while also reducing employers' ability to make sufficient contributions for UI claims by former employees. Along with regular UI benefits and existing programs for extended and emergency benefits, federal relief legislation established temporary federally-funded COVID-19 related programs that expanded eligibility, extended the duration of UI benefits and provided additional weekly payments. As of August 31, 2021, more than $77.5 billion of such benefits were paid in in New York State in 2020 and 2021.[35]

The federal government pays for regular benefits provided to federal-level public sector workers and members of the military. It also pays for benefits during emergencies under such programs as Disaster Unemployment Assistance and Emergency Unemployment Compensation that had been utilized during the Great Recession. During the COVID-19 pandemic, federal relief legislation not only provided supplemental UI support through new temporary programs, it also provided full federal funding of the Extended Benefits program, as well as Short-Time Compensation for employees experiencing reduced work hours in states with existing plans, including New York. Aside from their role as federal and state taxpayers for the provision and administration of regular UI benefits, New York employers do not have responsibility for the payment of these federally-funded benefits. Figure B-1 identifies the various UI benefit programs and funding source.

Figure B-1
Unemployment Insurance Benefit Programs

Type of Benefit	Program	Funding Source
Regular	State	State
	Federal Workers and Military Members	Federal
Existing Emergency and Extended Benefits	Extended Benefits [1]	State/Federal
	Short-Time compensation [1]	State/Federal
	Emergency Unemployment Compensation	Federal
	Other [2]	Federal
Temporary Pandemic-Related Benefits	Pandemic Unemployment Assistance (PUA)	Federal
	Pandemic Emergency Unemployment Compensation (PEUC)	Federal
	Federal Pandemic Unemployment Compensation (FPUC)	Federal
	Mixed Earner Unemployment Compensation (MEUC)	Federal

[1] Federal relief legislation temporarily provided full federal funding of the Extended Benefits and Short-Time Compensation programs in states with existing or new plans in state law. Legislation also provided federal payment of the first week of UI benefits.

[2] Other existing benefits include Trade Adjustment Allowances, Disaster Unemployment Assistance, Self-Employment Assistance and State Additional Benefits programs.

Source: U.S. Department of Labor, see https://oui.doleta.gov/unemploy/.

[35] Federal Funds Information for States, *State Funding for Coronavirus Pandemic*, at https://ffis.org/COVID-19.

- **Pandemic Unemployment Assistance (PUA)** provides up to 79 weeks of unemployment benefits to individuals who are unable to work because of a COVID-19-related reason but are not eligible for regular or extended unemployment benefits. If qualified for benefits, individuals are eligible to receive an additional $600/week for weeks ending 4/5/2020 to 7/26/2020 and an additional $300/week for weeks ending 1/3/2021 to 9/5/2021.

- **Pandemic Emergency Unemployment Compensation (PEUC)** provides up to 53 weeks of additional unemployment benefits to individuals who previously collected state or federal unemployment benefits but exhausted those benefits. Individuals eligible for benefits under PEUC receive the same amount provided with their traditional unemployment insurance benefits. Benefits are available for weeks ending 4/5/2020 to 9/5/2021.

- **Extended Benefits (EB)** provides up to 20 weeks of additional unemployment benefits after all 26 weeks of traditional unemployment insurance benefits and all 53 weeks of PEUC benefits have been exhausted. There are two scenarios under which qualify an individual for EB: (1) if someone's benefit year for regular unemployment insurance expired after July 1, 2019 and they received the 13 weeks of PEUC benefits, or (2) if someone transitioned to EB after receiving the initial 13 weeks of PEUC before the program was extended in December 2020. Benefits are available for weeks ending 7/5/2020 to 9/5/2021.

- **Federal Pandemic Unemployment Compensation (FPUC)** provides an eligible individual with $300 per week on top of the weekly benefit amount he or she receives from certain other UI programs. An individual must first be eligible for UI benefits under the PEUC, EB, or PUA programs to qualify for the additional benefit under FPUC. Benefits are available for weeks ending 1/3/2020 to 9/5/2021.

- **Mixed Earner Unemployment Compensation (MEUC)** provides an additional federal benefit of $100 per week if you collect regular unemployment insurance, Pandemic Emergency Unemployment Compensation (PEUC), or extended benefits (EB); and earned $5,000 or more a year in net earnings from self-employment. Those receiving PUA benefits are ineligible to receive MEUC benefits. Benefits are available for weeks ending 1/3/2020 to 9/5/2021.

Contact
Office of the New York State Comptroller
110 State Street, 15th Floor
Albany, New York 12236

(518) 474-4044

www.osc.state.ny.us

Prepared by the Office of Budget and Policy Analysis

Andrea Miller, Executive Deputy Comptroller
Maria Doulis, Deputy Comptroller
Pasquale Reale, Assistant Comptroller
Todd Scheuermann, Assistant Comptroller

Like us on **Facebook** at facebook.com/nyscomptroller
Follow us on **Twitter** @nyscomptroller
Follow us on **Instagram** @nys.comptroller