

**ENDING CASH FOR CONVICTS AND OTHER
WAYS TO IMPROVE THE INTEGRITY OF
THE UI PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 11, 2013

Serial No. 113–HR08

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PUBLISHING OFFICE

89–553

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON WAYS AND MEANS

DAVE CAMP, Michigan, *Chairman*

SAM JOHNSON, Texas	SANDER M. LEVIN, Michigan
KEVIN BRADY, Texas	CHARLES B. RANGEL, New York
PAUL RYAN, Wisconsin	JIM MCDERMOTT, Washington
DEVIN NUNES, California	JOHN LEWIS, Georgia
PATRICK J. TIBERI, Ohio	RICHARD E. NEAL, Massachusetts
DAVID G. REICHERT, Washington	XAVIER BECERRA, California
CHARLES W. BOUSTANY, JR., Louisiana	LLOYD DOGGETT, Texas
PETER J. ROSKAM, Illinois	MIKE THOMPSON, California
JIM GERLACH, Pennsylvania	JOHN B. LARSON, Connecticut
TOM PRICE, Georgia	EARL BLUMENAUER, Oregon
VERN BUCHANAN, Florida	RON KIND, Wisconsin
ADRIAN SMITH, Nebraska	BILL PASCRELL, JR., New Jersey
AARON SCHOCK, Illinois	JOSEPH CROWLEY, New York
LYNN JENKINS, Kansas	ALLYSON SCHWARTZ, Pennsylvania
ERIK PAULSEN, Minnesota	DANNY DAVIS, Illinois
KENNY MARCHANT, Texas	LINDA SANCHEZ, California
DIANE BLACK, Tennessee	
TOM REED, New York	
TODD YOUNG, Indiana	
MIKE KELLY, Pennsylvania	
TIM GRIFFIN, Arkansas	
JIM RENACCI, Ohio	

JENNIFER M. SAFAVIAN, *Staff Director and General Counsel*

JANICE MAYS, *Minority Chief Counsel*

SUBCOMMITTEE ON HUMAN RESOURCES

DAVID G. REICHERT, Washington, *Chairman*

TODD YOUNG, Indiana	LLOYD DOGGETT, Texas
MIKE KELLY, Pennsylvania	JOHN LEWIS, Georgia
TIM GRIFFIN, Arkansas	JOSEPH CROWLEY, New York
JIM RENACCI, Ohio	DANNY DAVIS, Illinois
TOM REED, New York	
CHARLES W. BOUSTANY, JR., Louisiana	

CONTENTS

	Page
Advisory of September 11, 2013 announcing the hearing	2
WITNESSES	
Julia Hearthway, Secretary of Labor and Industry, Pennsylvania	7
Scott Sanders, Commissioner, Department of Workforce Development, Indiana	14
Doug Holmes, President, UWC—Strategic Services on Unemployment & Workers' Compensation	23
Valerie Melvin, Director, Information Management and Technology Resources Issues, Government Accountability Office (GAO)	38
Sharon Dietrich, Managing Attorney, Community Legal Services	52
SUBMISSIONS FOR THE RECORD	
Appriss, statement	71

**ENDING CASH FOR CONVICTS AND OTHER
WAYS TO IMPROVE THE INTEGRITY OF THE
UI PROGRAM**

WEDNESDAY, SEPTEMBER 11, 2013

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:16 p.m. in Room 1100 Longworth House Office Building, the Honorable Dave Reichert [chairman of the subcommittee] presiding.
[The advisory of the hearing follows:]

HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Reichert Announces Hearing on Ending Cash for Convicts and Other Ways to Improve the Integrity of the UI Program

Washington, Sep 2013

Congressman Dave Reichert (R-WA), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on preventing the payment of unemployment benefits to incarcerated individuals and other ways to improve the integrity of the Unemployment Insurance program. **The hearing will take place at 1:15 pm on Wednesday, September 11, 2013, in Room 1100 of the Longworth House Office Building.**

In view of the limited time available to hear from witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include public and private sector unemployment insurance experts. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Federal-State Unemployment Insurance (UI) program, created by the Social Security Act of 1935, assists unemployed individuals by offering weekly unemployment benefit checks while they search for work. According to the Department of Labor (DOL), in order to be eligible for benefits, jobless workers must have a history of attachment to the workforce and must be able and available for work.

As a result of a series of laws enacted since June 2008 to provide additional Federal extended benefits, the maximum number of weeks of total unemployment benefits payable per person grew to a record 99 weeks, including up to 73 weeks of Federally-funded benefits. More recently, the maximum number of Federally-funded unemployment benefits paid in any state has declined to 47 weeks. Since mid-2008, \$275 billion in Federal extended and other unemployment benefit payments have been authorized, with most supported by Federal general revenues.

As the number of weeks of unemployment benefits and total spending grew, so did total payments made in error. According to DOL, over the last five years, the UI program has made \$58 billion in improper payments with an error rate consistently above 10% for both State and Federal UI payments. During the same period, employer taxes have also increased significantly, nearly doubling since the recession began, and 18 States are still repaying Federal loans. Progress toward improving UI trust fund solvency and preventing further payroll tax hikes should be made by ensuring correct payments are made to the correct individuals, reducing improper payments. Recent news articles in a number of states suggest millions of dollars in UI benefit payments have been wrongly paid to individuals who are not able and available to work because they are behind bars.

Congress included several efforts to improve UI program integrity through Public Law 112-40, which increases penalties on individuals who commit fraud in collecting UI benefits, and Public Law 112-96, *The Middle Class Tax Relief and Job Creation Act*, which requires States to recover prior overpayments from current UI benefits. Additionally, the *Claims Resolution Act of 2010* (Public Law 111-291) expanded the authority to collect UI overpayments from federal tax refunds. As the UI benefit rolls return to their pre-recession levels, the 113th Congress looks to continue this important progress. On July 25, 2013, Chairman Reichert took the first step by introducing H.R. 2826, the *Permanently Ending Receipt by Prisoners Act*,

also known as the PERP Act, to formally prevent incarcerated individuals from receiving UI benefits.

In announcing the hearing, Chairman Reichert stated, **“Unemployment benefits are meant to provide needed assistance to individuals who have fallen on hard times, but who are able and trying to find work so they can provide for themselves and their families. In the case of incarcerated individuals, it is an injustice that the tax dollars of law-abiding citizens are being used to provide assistance to people who have broken the law and simply should not qualify for these benefits. We must make it very clear that unemployment benefits should go only to those who are eligible.”**

FOCUS OF THE HEARING:

The hearing will review possible measures to improve the program integrity of the UI program, including H.R. 2826, the *Permanently Ending Receipt by Prisoners (PERP) Act*.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to submit, and click on the link entitled, “Please click here to submit a statement or letter for the record.” Once you have followed the online instructions, submit all requested information. Attach your submission as a Word document, in compliance with the formatting requirements listed below, **by September 25, 2013**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available online at <http://www.waysandmeans.house.gov/>.

Mr. YOUNG [presiding]. I call today's hearing to order. I am honored to stand in for Chairman Reichert in today's hearing. He has been called away to a briefing on Syria. And I expect he is going to join us shortly.

But before I begin, I would ask that we take a moment to remember a long-time Ways and Means Committee colleague, and former chairman of this very subcommittee, Clay Shaw, who passed away last night.

Clay's legacy as a husband and father lives on through his wife of 53 years, Emily, and his four children and 15 grandchildren. They are in our thoughts and prayers. Clay's legacy as a legislator is highlighted by the 1996 welfare reform law, which he authored and shepherded through this committee, the House, and ultimately, into law. This landmark law helped, literally, millions of his fellow citizens lead more fulfilling lives. Every time we work to improve that legislation, we are advancing Clay's vision for a better America for all of its citizens.

We are privileged to carry on that legacy in this institution on this committee and on this subcommittee, all of which Clay loved and honored through his many years of dedicated service.

I would like to yield to our ranking member, Mr. Doggett, for further remarks related to the passing.

Mr. DOGGETT. Well, thank you so much. I just want to, join in honoring Clay and his service, and extending our condolences to his family. I had the good fortune to have Clay as a Washington neighbor over here on D Street, a couple blocks away. A good neighbor, a strong member of this committee who cared deeply about the issues that we are discussing here, and served honorably. And whenever we disagreed, we could always agree in a spirit of congeniality and collegiality. And it is a loss, and we join you in asking for a brief moment of silence in his honor.

Mr. YOUNG. Why don't we go ahead and, on his behalf, have that moment of silence.

[A moment of silence is observed.]

Mr. YOUNG. Thank you. Today, of course, we also mark the twelfth anniversary of 9/11. We remember the victims of that tragic day and their families. We also remember those who, in the years since, have sacrificed so much to protect our country and our people. Please join me for another moment of silence on this count, as well.

[A moment of silence is observed.]

Mr. YOUNG. Thank you. Today's hearing is on ending benefits for incarcerated individuals, and other ways to improve the integrity of the unemployment insurance program.

I would like to begin by asking unanimous consent that Chairman Reichert's statement be submitted into the record.

Mr. YOUNG. Chairman Reichert, as a former sheriff, was shocked to read headlines about individuals in jails collecting unemployment benefits, what you might call Cash for Cons. In New Jersey, there were 20,000 inmates who collected over \$24 million. In Illinois, another \$2 million was misspent this very same way. Millions more were wasted in South Carolina, Tennessee, Texas, and Wisconsin. It is an injustice that the tax dollars of law-abiding

citizens are paying for these benefit checks for people who have broken the law, and simply should not qualify for these benefits.

That is why Chairman Reichert introduced H.R. 2826, the Permanently Ending Receipts for Prisoners Act, also known as the PERP Act. This bill does two things. First, it makes clear that inmates are not allowed to collect UI benefits, in case there is any doubt. Second, it instructs states to use currently available prison data to ensure they are not paying benefit checks to inmates.

I am one of several Members who have already cosponsored this legislation, and I know Chairman Reichert would welcome the support of anyone who agrees we should address this issue.

This is only one aspect, one small aspect, of UI improper payments, though. It reflects an obvious area where we can and should make progress. We look forward to receiving valuable feedback on this bill from our panel today.

Today's hearing is about a lot more than ending Cash for Cons, though. We also want to identify other ways we can improve the integrity of the overall UI program, so it can be there for those who are deserving of help. That is a billion-dollar question. Or, actually, a 58 billion question. That is the total amount of the UI improper payments over the last five years. That \$58 billion in improper payments is more than the total amount of state and federal taxes collected last year to support all the unemployment benefits paid across the country. That is a huge number, and one that deserves serious attention.

Some of the problem involves fundamental mistakes, like paying UI checks to prison inmates, because UI places so much emphasis on getting checks out the door before verifying they are going to the right person. Data systems exist that can prevent these sorts of improper payments from being made in the first place. For example, involving prison inmates, deceased people, people who have already returned to work, and even people illegally applying from overseas.

Another part of the problem involves states trying to recover improper UI payments after they occur. This pay-and-chase approach is costly, time consuming, wasteful, and there are other challenges associated with it since, according to a recent report, only about half of annual improper payments are expected to be recovered.

So, the far-better approach is to prevent improper payments before they go out the door, and ensure we have systems in place to do just that.

There are many reasons to prevent improper payments, starting with how they are paid for. State UI benefits are supported directly by payroll taxes on jobs, which already have risen over 60 percent in the last 5 years, due to the recent recession. In many states, UI payroll taxes are expected to continue to rise into the future. These rising taxes fall directly on jobs, further reducing new job creation and hiring. That makes it especially important to prevent improper payments wherever possible, and recover as much of those that are made.

Joining us today to discuss all of these issues is a seasoned panel of experts representing the views of various states, including my home state of Indiana. Also businesses and program experts. I look forward to hearing from our witnesses today about how we can im-

prove the integrity of the UI program so it is there to serve those who need it to get back on their feet.

Mr. Doggett, would you care to make an opening statement?

Mr. DOGGETT. Thank you very much. Unemployment insurance provides critical assistance to workers who have lost their jobs through no fault of their own, and are actively looking for work. I don't know how someone who is involved in long-term incarceration can be actively looking for work. And to the extent that there are individuals who are incarcerated that are wrongfully receiving unemployment benefits, we do need to do something about it. Indeed, my question is why the Department of Labor has not already done something about it. So I certainly join with you.

While we want to assure that ex-offenders don't become re-offenders, and there are major problems in our society about the way we treat ex-offenders and integrating them back in the labor force, I doubt that is the source of these problems.

The additional issues concerning ensuring that this system works as it is intended is important, not only to the taxpayer, but it is important to the legitimate folks that are out there that are counting on an unemployment check. Just as with any other federal program in the employment or social service area, we want to be sure these programs are run efficiently and without fraud.

Over the last five years, this Congress has taken a number of steps to improve the integrity of our unemployment system. In 2008, legislation was passed to permit an individual's tax return to be seized if they owe unemployment compensation debt due to fraud. And this measure was strengthened in 2010. More recently, Congress has required employers to more accurately report new hires, and it made employers liable when they are at fault for overpayment.

Finally, we have required the states to recover 100 percent of any erroneous unemployment benefits by reducing further unemployment payments. These are good steps. But, as you indicated, Mr. Young, to the extent that we can prevent these problems from occurring in the first place, we don't have to chase them down.

The unemployment rolls are much higher because of the great recession. I believe that the studies that we will hear about indicate that, as to overpayments, while we need to get to them and prevent them, whatever the source, about a fourth are due to fraud, and most of the remainder are due to administrative errors by claimants and mistakes by employers or unemployment agencies.

Second, a factor in this is that the Federal Government has not adequately funded the administrative costs of the unemployment system for many years, which has made it somewhat more susceptible to errors. On the whole, though, I agree fully with Mr. Young and Mr. Reichert in their commitment to ensuring that any fraudulent payment or even accidental waste of taxpayer dollars is avoided. And I look forward to working with them, with our whole committee, to help ensure that unemployment benefits are there for the many who count on them, and that we eliminate fraud and waste at every opportunity. Thank you.

Mr. YOUNG. Well, thank you, Mr. Doggett. And, without objection, each Member will have the opportunity to submit a written statement and have it included in the record at this point.

I want to remind our witnesses to limit their oral statements to five minutes. However, without objection, all the written testimony will be made a part of the permanent record.

On our panel this afternoon we will be hearing from Julia Hearthway, Secretary of Labor and Industry, Pennsylvania; Scott Sanders, Commissioner, Department of Workforce Development, the great State of Indiana; Doug Holmes, president, UWC, Strategic Services on Unemployment and Workers' Compensation; Valerie Melvin, director, information management and technology resource issues, Government Accountability Office; and Sharon Dietrich, managing attorney, Community Legal Services.

I understand that Mr. Kelly would like to introduce our first witness, who is from his home state of Pennsylvania.

Mr. KELLY. Thank you, Chairman. It is really a pleasure for me that the Secretary of Labor and Industry, Julie Hearthway, is with us today. And she has done a marvelous job in Pennsylvania. Let me just give you a little bit of her background.

The secretary was unanimously confirmed by the Pennsylvania Senate in 2011. She was recently recognized by the National Federation of Unemployment Compensation and Workers' Compensation with its integrity award. Now, this award is given to an individual who has demonstrated a commitment to preserving the integrity of the unemployment system.

She played a vital role in restructuring Pennsylvania's unemployment compensation system, restoring the fund to solvency, and ensuring that benefits will be available for years to come for those who need and deserve them.

The secretary also created the first-ever office of integrity within the Pennsylvania Department of Labor and Industry to combat fraud, waste, and abuse of Government funds. Working with the Pennsylvania Unemployment and Insurance Integrity Task Force and other state agencies, this office has aggressively pursued its important mission.

Now, prior to her nomination, Secretary Hearthway spent 18 years in the attorney general's insurance fraud section after working as an assistant district attorney in a private legal practice.

Madam Secretary, thank you so much for being here today. And what you have done in Pennsylvania is absolutely phenomenal. And I think there are 49 other states that can learn from that. So thank you so much for being here.

STATEMENT OF JULIA HEARTHWAY, SECRETARY OF LABOR AND INDUSTRY, PENNSYLVANIA

Ms. HEARTHWAY. Thank you, Congressman Kelly, for that very kind introduction. Congressman Young, Ranking Member Doggett, Congressman Davis, and to the subcommittee, thank you very much for having me here today to talk about this extremely important issue.

Governor Tom Corbett strongly believes that taxpayer dollars must be managed with the utmost integrity, and that appropriate safeguards must be in place so benefits go to the individuals who are eligible and in need. We all understand the value of providing a safety net to bridge the gap between losing a job and finding gainful employment. However, when cases arise where individuals

fraudulently collect benefits they are not entitled to, the public's trust in that system is jeopardized. When the public constantly hears of misuse and management of tax dollars at all levels of government, they become disheartened, cynical, and ultimately, disengaged.

To combat the loss of confidence in the integrity of Government programs, it is incumbent upon us, as stewards of the taxpayer dollars, to ensure that safeguards are in place. We cannot afford to leave the barn door wide open. All too often government programs are rushed without appropriate or effective checks and balances. This creates a system that is ripe for fraud, waste, and abuse.

During my time as Secretary of Pennsylvania Department of Labor and Industry, I have had both the privilege as well as the challenge of working to combat fraud, waste, and abuse in the unemployment compensation system. To that end, one of my first acts when I took office was to establish the office of integrity within the department. The bureau director of that office, James Tillman, is here with us today.

This office has spearheaded each of the programs dealing with fraud that I am going to elaborate on in my testimony today. To date, in just a little over two years, these efforts at addressing fraud has saved Pennsylvania citizens and taxpayers an estimated over \$100 million.

One of these programs was aimed at stopping the abuse of prisoners collecting unemployment benefits. Under existing technology, at minimal cost, we have been able to weed out fraud through a cross-match system aimed at identifying individuals incarcerated in the state and county prisons who were either collecting benefits when they entered the prison, or applied for benefits after they'd been incarcerated.

The system, administered by JNET, operates in real time to stop payments whenever a claimant is identified as being incarcerated. JNET's integrated justice portal system provides a common online environment for authorized users to access public safety and criminal justice information. For the first quarter of 2013 incarceration stops were placed on more than 4,000 claims. Using that number, the average claim amount in duration, we have made an estimate of over \$100 million in just that time period.

JNET is just one of the successful integrity programs underway. We have also blocked all foreign Internet provider addresses from being able to be automatically used to apply for benefits when one is out of the country. We have, to date, annually saved 9.2 million with that step.

Additionally, we are working in partnership with the United States Treasury to implement the TOP program. The TOP program has been implemented starting in January of 2012 to August of 2013. That stops the refund of any tax dollars where we can intercept those funds for existing overpayments that have been made. To date we have been able to collect 26 million from that program.

We also implemented a three-month unemployment compensation amnesty program, which we believe to be first of its kind in the nation. The program goals were much like any other tax amnesty programs. Over the course of 40-plus years, labor and industry accumulated an exceptionally large number of cases involving

fraud overpayments due to individuals and the non-payment of taxes due from employers. More than 130,000 individual claimants and nearly 50,000 employers owed money to the state.

The office of integrity was looking for ways to recoup those lost dollars, and we implemented the amnesty program for that purpose. It began on June 1st and ended on August 31st.

We have implemented a number of other amnesty integrity programs which we think will reap benefit to Pennsylvania taxpayers in the future, but those are the highlights of what we have done. And by far, the incarceration program has been our most successful.

[The prepared statement of Ms. Hearthway follows:]



**Testimony of Secretary Julia K. Hearthway
Pennsylvania Department of Labor & Industry
before the Ways and Means Subcommittee on Human Resources
United States House of Representatives
regarding Unemployment Compensation Integrity Efforts**

**Washington, D.C.
September 11, 2013**

Chairman Reichert, Ranking Member Doggett and members of the Subcommittee, thank you for the opportunity to testify at this hearing regarding unemployment compensation (UC) integrity.

The Corbett administration strongly believes that taxpayer dollars must be managed with the utmost integrity and that appropriate safeguards be in place so that benefits go to individuals who are eligible and in need. In regards to UC, we all agree that individuals who lose their job through no fault of their own should be provided with a safety net to bridge the gap between losing that job and finding gainful employment. However, when I talk to business owners or the public, the frustration-level is quite high when cases arise where individuals fraudulently collect benefits to which they are not entitled. This drains money from the system that is very hard to recover and hurts those who are lawfully eligible for benefits. Further, when the public constantly hears of misuse and mismanagement of tax dollars at all levels of government, they become disheartened, cynical and ultimately disengaged.

To combat the loss of confidence in the integrity of government programs, it is incumbent upon stewards of taxpayer dollars, myself included, to ensure safeguards are in place. We cannot afford to leave the "barn door wide open." All too often, government programs are rushed without appropriate or effective checks and balances. This creates a system that is ripe for waste, fraud and abuse.

Office of Integrity. I appreciate that the theme of this hearing involves "integrity" of government programs. My background as a prosecutor in the Pennsylvania Attorney General's Office supervising insurance fraud investigations has equipped me to recognize when an entity lacks appropriate checks. When I became Secretary of the Department of Labor & Industry (L&I), one of my first acts was to establish an Office of Integrity to combat waste, fraud and abuse. I hired a career law enforcement official with a record of accomplishment to head up that office. Up until the creation of this office, L&I had no office or staff member accountable for the

integrity and accountability of the programs we administer. I am proud to say that over the past two years, the Office of Integrity has put in place nationally-recognized programs to ensure that services and benefits get to the right people. It is estimated that their efforts have saved taxpayers well more than \$100 million dollars annually.

Pennsylvania Justice Network (JNET). One example of how the Office of Integrity is using technology, at minimal cost, to weed out fraud is through a cross-match system aimed to identify and stop receipt of UC benefits by individuals incarcerated in state and county prisons. The system, known as JNET, operates in real-time to stop payments when UC claimants are incarcerated. When a new inmate enters a county prison that participates in JNET, the individual's information is automatically compared against the UC rolls maintained by L&I. After L&I receives and verifies the report, the individual is immediately removed from active UC benefit status, saving the UC Trust Fund and the commonwealth's businesses and employees millions of dollars.

Currently, the Office of Integrity administers the program in cooperation with the Pennsylvania Office of Administration (OA), which is home to JNET. The system became fully functional statewide January 2013. For the first quarter of 2013, incarceration stops were placed on just over 4,000 claims. Because the JNET program is largely a preventive strategy, aimed at stopping the fraud before the funds go out, it is difficult to measure the exact savings incurred. However, L&I's Center for Workforce Information Analysis was able to use the average duration of a UC claim and the average weekly benefit amount to calculate an average savings for every 1,000 claims stopped. Using the first quarter 2013 figures, the annual savings can be estimated at \$104 million.

Foreign IP Address Blocking. To collect on a UC claim in Pennsylvania, a claimant must be "able and available" for work for the week of the claim. The likelihood of a claimant filing a legitimate claim from an unauthorized internet provider, foreign IP address, or a foreign area code, is remote. In November 2011 the Office of Integrity enlisted the assistance of the state of New York, where an established foreign IP blocking program is in place, to run a sample of Pennsylvania UC claims through their software to gauge the extent of Pennsylvania's problem. The results revealed approximately 1,000 hits for foreign IP internet claims from 115 different countries over a 30-day period. We felt that the problem was significant enough to support an investment in software to identify claims coming from foreign internet connections. A pilot program began in March 2012 with several adjustments being made until it became fully functional on October 18, 2012. From January 1 to June 30, 2013, 3,975 foreign IP addresses have been blocked, producing an estimated annual savings of approximately \$9.2 million to the UC Trust Fund.

UC Solvency. As you look at integrity in government programs in general, I would also encourage you to consider the solvency of programs to ensure they are fiscally sound. When I took office in June 2011, I was immediately tasked with fixing a UC system that was structurally insolvent and, at one point, close to \$4 billion in debt to the federal government. Re-payment of this debt was solely on the backs of business. Furthermore, UC taxes are per employee, the more employees an employer hired the more taxes the employer would have paid. Governor Corbett was extremely concerned about the impact this onerous tax would have had on employment in Pennsylvania.

Adding to the challenges, the recession depleted all of Pennsylvania's UC reserves. The amount of unemployment benefits paid exceeded the amount of taxes collected. In 2011, the amount of regular unemployment benefits paid totaled \$3.028 billion while the amount of taxes collected totaled only \$2.686 billion.

For nearly a year and a half, L&I worked tirelessly with lawmakers and stakeholders to create a bi-partisan legislative package that re-financed the debt to the federal government, did not increase costs to job creators or employees, fixed the structural imbalance of revenue and benefits, mitigated the impact to future UC claimants, and brought fairness to the whole system. The enactment of this legislation (Act 6 of 2011 and Act 60 of 2012) provided for the development and implementation of innovative solutions to solidify the UC Trust Fund for individuals in need. Those legislative provisions have brought about an estimated savings to the UC Trust Fund of over \$385 million annually and an estimated savings to business of over \$350 million through interest and restoration of the FUTA credit for 2012.

Treasury Offset Program (TOP). Part of the solvency package was language to codify TOP, a partnership between the United States Department of Treasury and L&I to reclaim millions of dollars in UC benefits collected by means of fraud. TOP allows Pennsylvania to intercept the federal income tax refunds of individuals who collected benefits to which they were not entitled. In an effort to build awareness, L&I notified claimants whose federal income tax refund could be affected. Nearly 9,400 individuals were notified, representing fraudulent UC overpayments totaling \$50.8 million. From implementation in 2012 to August 28, 2013, over \$26 million has been recovered.

UC Amnesty. The legislative package also allowed L&I to implement a three-month UC amnesty program, which we believe is the first of its kind nationally. The program goals work much like popular tax amnesty programs. Over the course of forty-plus years, L&I accumulated a massive number of cases of fraud overpayment from individuals and non-payment of taxes from employers with little to no enforcement mechanisms to collect the money due. More than 130,000 individual claimants and nearly 50,000 employers owed money to the state. As the Office of Integrity was looking at ways to recoup these lost dollars through enhanced enforcement efforts, we felt it was appropriate to put in place an amnesty period to allow

employers with tax liabilities and individuals with overpayments an opportunity to repay what they owed at a discount.

The amnesty program began June 1 and concluded on August 31. Now that the deadline has expired, claimants and employers who have not paid their obligation will incur additional financial penalties and could face possible legal action including lien filings and criminal prosecution. At this time, L&I has no intentions to extend or repeat the program.

As you can see, Pennsylvania is working aggressively to ensure taxpayer dollars are spent wisely and properly. Part of my job as secretary is to ensure that recipients of government services are provided with the best possible customer service, receive the benefits they deserve in a timely manner, and have a positive experience. We will continue to strive toward that goal.

Mr. Chairman, this concludes my testimony. Again, thank you for the opportunity to testify.

Mr. YOUNG. Thank you very much, Secretary Heathway. At this point I would like to take a point of personal privilege here and introduce my state's own commissioner, Commissioner Sanders.

Today I have a distinct privilege of introducing, specifically, the commissioner of the Indiana Department of Workforce Development, or, as we call it, DWD, in Indiana, Scott Sanders. Commissioner Sanders was first appointed by Governor Mitch Daniels in May 2012 and is currently a member of the cabinet of Governor Mike Pence. He manages and implements training and employment programs for Hoosiers, collaborates on regional economic growth initiatives for Indiana, and oversees the unemployment insurance system.

Commissioner Sanders brings many years of workforce development and financial management skills to his role at DWD. And prior to his appointment as commissioner, Scott served as the deputy commissioner of systems information and analysis, and was the agency's CFO.

In his role as commissioner, Mr. Sanders' zeal for leading the agency and creating better outcomes for Hoosiers has helped pave the way for not only better, but more efficient service outputs, and also better quality and integrity in Indiana's overall workforce development system. He has been a tremendous asset for the State of Indiana. And I am honored to have him here today to testify in front of this Human Resources Subcommittee to present his reforms and accomplishments within the unemployment insurance system.

I yield back.

**STATEMENT OF SCOTT SANDERS, COMMISSIONER,
DEPARTMENT OF WORKFORCE DEVELOPMENT, INDIANA**

Mr. SANDERS. Thank you, Chairman Young, Ranking Member Doggett, Members of the Subcommittee. Thank you for the opportunity and honor to share with you some of the efforts we have been making in Indiana regarding the issue of unemployment insurance integrity, and specifically, actions we have taken to increase our ability to detect and prosecute UI fraud cases while helping unemployed Hoosiers return to work. My name is Scott Sanders, and I serve as the commissioner of the Indiana Department of Workforce Development.

Indiana's economy is beginning to recover from the recent recession. However, our unemployment rate remains too high, at 8.4 percent. Last week we had 60,000 individuals collecting some form of UI benefits. As long as Hoosiers rely on these benefits as a safety net against involuntary unemployment, protecting that system from misuse and corruption is a top priority of our department.

In 2012, roughly a third of Indiana's estimated payments made in error went to individuals who had returned to work but continued to claim benefits to which they were not entitled. Obviously, working harder on the front end of the problem is a very important strategy, but also having plans on the back end to detect, investigate, and prosecute the fraud that has already occurred is needed, as well. Our agency has targeted UI fraud as a priority over the

past two years. However, we had to overcome several challenges to combat UI fraud.

First, the low number of actual fraud prosecutions. Last year only 24 percent of the UI fraud cases that were referred to county prosecutors had charges filed. This is due to the complexities of the UI system and the limited resources of prosecutors' offices. UI fraud cases can be very time-consuming and resource-intensive.

Another challenge we faced was the issue of venue. By statute, generally all criminal actions are tried in the county where the offense was committed. This creates a challenge in determining which county the claim was actually filed, since claimants file for benefits using Internet-based online filing system. We determined that a partnership with the Marion County prosecutor's office was a solid solution. The department issued a grant to the prosecutor's office to help fund a dedicated deputy prosecutor to specifically work with our investigators on pursuing UI fraud cases. This solved the problem of resources in the prosecutor's office in handling complex UI fraud cases. Additionally, it solved the question of venue, since their office is located in Indianapolis, where all UI claims are processed.

We have also launched a public awareness campaign by publishing all UI fraud prosecutions on our website, including the names and photos and specifics of those that were convicted. We hope this creates an environment that conveys a heightened certainty and severity of punishment for fraudulent conduct.

Since the beginning of this year, when the partnership started, the number of fraud cases filed by prosecutors has increased by over 330 percent over the same period last year. So far, nearly \$450,000 in fraudulent benefits and penalties have been ordered to be repaid, versus expenses totaling \$64,000 for the grant. This partnership is still in its infancy, but already the returns are beyond original expectations. And we believe it will reduce the amount of UI fraud.

In addition, we have put some focus on the front end of our cases. Earlier this year, we were able to pass a bill through our state legislature that we refer to as Jobs for Hoosiers. This provision allows the department to direct recipients of UI benefits to receive re-employment and eligibility assessment activities after they draw their fourth week of benefit, similar to the federal program required by Congress last year. The primary goal of this program is to educate unemployed individuals on the services, training, and assistance offered by our one-stop work-one centers. But, most importantly, it gets Hoosiers back to work as quickly as possible.

One valuable feature of this new law is that claimants appearing at the work-one centers may need to provide proof of identification. Fraudulent claimants typically have not shown up to receive these services. And, subsequently, their claim was placed on hold. This potential stopping of benefits for individuals who are fraudulently claiming them will have a critical reduction on the amount of fraud that occurs.

In summary, protecting our UI system from misuse and corruption is a top priority of our department. By establishing this partnership with the Marion County prosecutor's office, we have realized the benefits that go beyond the simple filing of more cases. We

have fostered a greater awareness, expertise, and prosecution of UI fraud, increased the amount of fraudulent funds recovered, and have created an environment to deter fraud. Additionally, by adopting the Jobs for Hoosiers program, we will be able to get unemployed individuals back to work more quickly, while ensuring only those that are truly unemployed receive UI benefits. All of these efforts are important steps in improving UI program integrity.

Thank you for the opportunity to be with you today, and for your interest in our UI integrity initiatives.

[The prepared statement of Mr. Sanders follows:]



Indiana's Initiatives to Improve the Integrity of the UI Program

**PREPARED TESTIMONY FOR THE RECORD of the:
Subcommittee on Human Resources of the Committee on Ways and Means
U.S. House of Representatives**

**Offered by:
Scott B. Sanders, Commissioner
Indiana Department of Workforce Development
sbsanders@dwd.in.gov**

September 11, 2013

Michael R. Pence, Governor
Scott B. Sanders, Commissioner

10 North Senate Avenue
Indianapolis, IN 46204-2277
www.IN.gov/dwd
An Economic Development Partner

Phone: 317.232.6701
Fax: 317.233.4793

I. Introduction

Chairman Reichert, Ranking Member Doggett, members of the committee: Thank you for the opportunity and honor to share with you some of the efforts we have been making in Indiana regarding the issue of unemployment insurance (UI) integrity and specifically actions we have taken to increase and enhance our ability to detect and prosecute UI fraud cases while helping unemployed Hoosiers return to work more quickly.

My name is Scott B. Sanders, and I serve as Commissioner of the Indiana Department of Workforce Development. The Department of Workforce Development (DWD) operates the state's unemployment insurance system, workforce training programs funded by the United States Department of Labor, and works with the Bureau of Labor Statistics to report labor statistics for Indiana. Additionally, we administer Adult Basic Education programs working with the United States Department of Education.

II. Overview of Indiana's UI System

Indiana's economy is beginning to recover from the recent recession; however, our jobless rate remains high and stagnant. As long as Hoosiers rely upon UI compensation to provide protection as a first line of defense from the distress caused by involuntary unemployment, protecting that system from misuse and corruption is a top priority of our department. Last week, approximately 60,000 individuals collected some form of unemployment insurance benefits in Indiana, comprised of 40,000 who drew state paid benefits and 20,000 whose benefits were paid 100% by the federal government.

Indiana's trust fund went bankrupt near the end of 2008 and the State was forced to begin borrowing from the federal government to pay UI benefits. The State's loan balance reached a peak of \$2.2 billion at the beginning of 2011 and today it is \$1.32 billion. For the first time in over a decade, revenues received from employers exceeded the amount of benefits paid to claimants in 2012. This was due to legislation enacted by the Indiana General Assembly the prior year, which set the course for the trust fund to be returned to solvency and balanced the solution between employer premiums and benefit expenditures.

Employers have seen their average UI tax rate go from 0.56% in 2009 (32nd in nation) to 0.82% (37th in nation) for the twelve month period ending June 30, 2013. The average employer UI tax rate on taxable wages was 2.61% in 2009 (14th in nation) compared to 3.14% (24th in nation) for the twelve month period ending June 30, 2013. Additionally, due to requirements of the U.S. Department of Labor because our state has an outstanding loan, Indiana employers paid an additional amount of \$63 per employee in federal unemployment taxes (FUTA) this year and will pay an additional \$84 per employee next year.

The total number of claimants drawing either state or federally funded benefits at any one time peaked at over 271,000 in early 2010. For calendar year 2012, Indiana paid out approximately \$1.39 billion in benefits, down from \$3.5 billion in 2009. This included \$684 million in state benefits, down from \$1.9 billion in 2009, as well as \$672 million in federal benefits, down from \$1.6 billion in 2009. Over the course of last year, over 180,000 discrete individuals collected benefits for one week or more, and received an average weekly benefit of \$276. The average amount of time an individual received UI benefits decreased from 14.8 weeks in April 2012 to 13.5 weeks in June 2013.

During the twelve month period ending December 31, 2012, roughly a third of Indiana's estimated payments made in error went to individuals who had returned to the workforce but continued to claim benefits to which they were not entitled. Obviously, working harder on the "front end" of this problem to prevent such conduct before it happens is a very important strategy to reduce the overall amount of fraud within our system. However, in emphasizing the efforts to prevent fraud on the front end, it is easy to

overlook the significance of having great plans on the “back end” to detect, investigate and prosecute the fraud that has already occurred.

Along with fraud prevention, the concept of fraud deterrence is an important method to help ensure the integrity of the UI system. By establishing awareness of fraud prosecutions and consequences faced for engaging in fraud, the Department is hopeful of creating an environment that conveys a heightened certainty and severity of punishment for fraudulent conduct.

III. Barriers to Fighting UI Fraud

DWD has targeted unemployment insurance (UI) fraud as a priority of the agency over the past two years. However, the number of actual prosecutions historically has been fairly low. For example, last year, only 24% of the UI fraud cases that were referred by the Department of Workforce Development’s (DWD) fraud investigative team to deputy prosecutors throughout the state were prosecuted. This is due largely to the complexities of the unemployment insurance system and the limited resources of county prosecutor’s offices. In attempting to increase the number of fraud cases that were prosecuted in the state, DWD faced several barriers.

Indiana uses a County Prosecutor model, meaning that each county in Indiana has its own elected county prosecutor. (See Ind. Code § 33-39-1-2). Each county prosecutor has his/her own budget and a caseload that is unique to the nature of the crimes committed in that county. UI fraud cases can be very time intensive and require resources above and beyond what many prosecutors’ offices can afford. The complexity of these cases operates as a disincentive for prosecutors to take a UI fraud case.

Another barrier that Indiana faced with regard to effective fraud prosecution concerns the issue of venue. By statute, generally all criminal actions are to be tried in the county where the offense was committed. (Ind. Code § 35-32-2-1). Since 2007 Indiana has required claimants to file for benefits by using an internet based online filing system. Claimants are able to file their benefit vouchers from any computer to which they have access. This would include their home computers, library computers, or even computers located at our one-stop WorkOne® Centers. Among the local prosecutors in Indiana there is a difference of opinion concerning the issue of whether the offense of UI fraud is committed in a particular county, if the claim or voucher for a particular week was filed in a different county. This venue issue has not been litigated and resolved by the courts; thus, it is an issue of first impression in the state of Indiana. While some prosecutors interpret the venue statute as allowing charges to be filed in their county, others do not and have refused to file charges.

UI fraud prosecutions are generally originated by trained investigators in our Benefit Payment Control (BPC) division. Although the department, pursuant to statute, has administrative subpoena power, and limited enforcement authority, such as the ability to administer oaths (See Ind. Code § 22-4-19-8), the investigators in the BPC division are civilian employees and do not have the traditional authority of law enforcement personnel. There are times in UI fraud investigations where witness statements may be necessary or individuals may need to be detained based upon findings of probable cause. BPC investigators, for all practical purposes do not have such authority and are thusly restricted in the amounts and types of information they can gather as a part of their investigation.

IV. Partnership Solution for UI Fraud Prosecution

In figuring out how to address these barriers, we determined that a partnership with the Marion County Prosecutor’s Office was the best solution. The Marion County Prosecutor’s Office is located in the Capitol City of Indianapolis. We approached the elected Marion County Prosecutor, Terry Curry, with the idea of a partnership in the pursuance of UI fraud prosecutions and he was very interested. One reason

Marion County was approached relates to the venue issue discussed earlier. Indiana's venue law allows for offenses which are committed by the use of the internet or other computer network to be tried in the county where the computer network is located. Since DWD's computer servers are located in Indianapolis, Marion County was automatically a proper venue for the prosecution of every UI fraud case in the state.

The department issued a grant to the Marion County Prosecutor's Office from funds in the Special Employment and Training Services Fund (also known as the Penalty and Interest Fund). This fund collects interest on delinquent contributions and penalties collected from overpayments including fraud overpayments. (See Ind. Code § 22-4-25-1). With these grant funds, the Marion County Prosecutor's Office developed an approach known as a vertical prosecution model for UI fraud cases. This means they dedicated a deputy prosecutor to work with DWD fraud investigators on developing cases involving UI fraud from the very beginning and following them through to resolution in the criminal justice system. That prosecutor also screens and prosecutes UI fraud cases occurring inside and outside of Marion County, attends administrative hearings associated with open fraud investigations and participates in periodic meetings with DWD to identify and implement strategies in the investigation and prosecution of UI cases. Additionally, they will conduct yearly Continuing Legal Education (CLE) seminars at the Marion County Prosecutor's Office regarding unemployment fraud and welfare fraud cases.

Over the past two years, we began publicizing, via our website, the names, photos and basic factual situations which resulted in an individual being convicted of fraud. We have correspondingly been issuing press releases every time an individual is convicted of fraud highlighting the amount of the fraud, the method used to detect and catch the fraud and information on how to report unemployment fraud going forward. This strategy is part of our effort to convey a heightened certainty and severity of punishment for fraudulent conduct, and thus, contribute to the environment of deterrence that we were trying to create.

Not all UI fraud cases are referred to the Marion County Prosecutor's Office. Other local county prosecutors are still approached about filing cases in their jurisdiction; however, with our new partnership, we have an alternative available to us, if a local prosecutor declines our invitation to file a case.

V. Results of Partnership Solution

The impact of this partnership between DWD and the Marion County Prosecutor's office is borne out of the fact that since January, 2013 when our partnership started, the number of UI fraud cases filed by prosecutors has increased by 330% over the same time period in the previous year.

We also are recovering more of the fraud overpayments, penalties and interest than we have in the past. Claimants convicted of UI fraud are being sentenced to repay the fraud amounts plus the penalties and interest as a condition of probation through the criminal court system, with the threat of incarceration if they choose not to pay. Since the beginning of the year, when the partnership began, nearly \$450,000 in fraudulent benefits and penalties have been ordered to be repaid to the trust fund versus \$64,000 in staffing expenses.

This partnership program is still in its infancy, but already the dividends are beyond original expectations. We anticipate that as the partnership evolves and grows that Indiana will indeed create and maintain that culture of deterrence that conveys a heightened certainty and severity of punishment for fraudulent conduct; and thereby reduce the amount of UI fraud in the State of Indiana.

VI. Additional Benefits to the Partnership Solution of UI Fraud Prosecution

The department has realized additional benefits to this partnership than was originally anticipated. One of the benefits to this approach involved the utilization of the Marion County Grand Jury investigators as well as the Indiana State Police. Prior to our partnership with the Marion County Prosecutor's Office our BPC investigators had difficulty enlisting the help of the Indiana State Police and other law enforcement agencies perhaps struggling to articulate the importance of these cases. While speculation on the causes of this difficulty is immaterial, we can report that the involvement of the Marion County Prosecutor's Office has generated an increased sense of importance to UI fraud cases that was not evident early on. The knowledge that a prosecutor was interested in understanding and pursuing UI fraud cases created a cascade of heightened awareness that we did not anticipate.

The Marion County Prosecutor's Office was able to put together a team of state troopers from the Indiana State Police that serve search warrants, gather evidence, execute arrest warrants and take statements in anticipation of filing criminal charges. This has greatly elevated the strength of cases by including evidence that may have previously been beyond the grasp of our BPC investigators.

Additionally, other county prosecutors throughout the state are taking notice. Because of the Marion County Prosecutor's heightened interest in UI fraud cases, other counties are deciding to dedicate more time and resources to the same effort. Of particular importance in this development is the impact of having a deputy prosecutor with specialized knowledge of how to prosecute UI fraud cases.

BPC investigators have long been experts in the area of investigating and detecting fraud, but prosecuting these crimes, especially in light of the technological and computer-based environment that we have, brings its own set of difficulties. Indiana has never had a dedicated prosecutor with such specialized knowledge in the area of welfare or UI fraud. Our UI prosecutor has become a state-wide expert and resource for other county prosecutors and is able to communicate and assist other counties on a level that DWD was never able to in the past.

VII. "Jobs for Hoosiers" Act: Promoting UI System Integrity

In addition to targeting the "back-end" of UI fraud cases by developing our partnership with the Marion County Prosecutor's Office we have put some focus on the "front end" of our cases. In this past legislative session, the regular session of the 118th General Assembly (2013), our state legislature passed a provision which we refer to as "Jobs for Hoosiers". (See, Ind. Code § 22-4-14-3 (House Enrolled Act 1457-2013))

This provision allows the department to direct recipients of UI benefits to receive reemployment and eligibility assessment (REA) activities. The intended application of this provision is to require all UI claimants to report to a one-stop WorkOne® Center for these services after drawing their fourth week of benefits. The primary goal of this program is to expose unemployed individuals to the array of services, training and assistance offered by our WorkOne® Centers to help those individuals get appropriate training, if necessary, and get back into the workforce.

This program is intended to mirror the Emergency Unemployment Compensation Reemployment and Eligibility Assessment (EUC/REA) program recently required by Congress and the United States Department of Labor (USDOL) for individuals receiving federal EUC benefits. (See, Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96) Our overall goal is to reduce the number of weeks an individual draws benefits by at least 2 weeks through faster reemployment of that individual.

REA Services usually include in-person interviews, a review of UI eligibility, provision of labor market information, development of a work-search plan and referral to reemployment services and/or training when needed.

One valuable facet of this new law is that the department may require those claimants appearing at the WorkOne® Centers to produce proof of identification. We would acknowledge that while the primary purpose of this provision is to give unemployed individuals the best chances of getting a job, a secondary consequence is that individuals who are drawing benefits fraudulently, will not have an incentive to show up and receive REA services.

In fact, in studies occurring as recently as 2009, commissioned by the USDOL it was found that REA programs in other states were very effective at getting the unemployed back to work faster and even increasing the earnings for participants in the program. At the same time the states using the REA program were able to reduce costs to their state UI programs and decrease the rate of improper payments made to ineligible claims resulting in increased savings for state UI trust funds. (Letter from Jane Oates, Assistant Secretary of Labor for Employment and Training, USDOL, May 7, 2012; <http://social.dol.gov/blog/reemployment-eligibility-assessments-reas/>)

We are in the late stages of implementing this law and plan to begin the provision of these REA services next month. In line with the studies mention above, it is anticipated that persons fraudulently drawing benefits will not keep their required appointments and thus, would be eligible to have their benefits denied, pending their ability to protest that decision. This potential "stopping" of benefits for individuals who are fraudulently claiming them will have a critical impact on the amount of fraud that is allowed to occur over the course of a UI claim.

VIII. Conclusion

In summary, protecting our UI system from misuse and corruption is a top priority of our department. While we strive to work on efforts to prevent fraud on the front end, we would be remiss if we were to overlook the significance of having great plans on the "back end" to detect, investigate and prosecute the fraud that has already occurred. Utilizing the seemingly simple step of partnering with the Marion County Prosecutor's Office in creating a vertical prosecution model for UI fraud cases we have realized benefits that go beyond simply the filing of more cases. We have fostered a greater awareness of UI fraud and increased the level of participation by many law enforcement partners. We have created an "area of expertise" for prosecutors in the State of Indiana and while the number of cases we have filed has increased, so have the amounts of money that we are able to recover through the help of the criminal court system. Through increased publication of fraud convictions on our website and in press releases, we are able to project the environment of deterrence as it relates to the commission of UI fraud.

Additionally, by adopting the "Jobs for Hoosiers" program we will be able to get unemployed individuals back to work more quickly while also reducing the number of ineligible individuals receiving benefits. All of these efforts are important first steps in addressing the issue of UI program integrity.

Thank you for the opportunity to be with you today and for you interest and review of our UI Integrity initiatives.

Respectfully submitted,



Scott B. Sanders, Commissioner

Chairman REICHERT [presiding]. Mr. Sanders, thank you so much for being here today, and thank you for your testimony.

Mr. Holmes, you are recognized——

Mr. Holmes. Thank you.

Chairman REICHERT [continuing]. For five minutes.

STATEMENT OF DOUG HOLMES, PRESIDENT, UWC, STRATEGIC SERVICES ON UNEMPLOYMENT AND WORKERS' COMPENSATION

Mr. HOLMES. Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee on Human Resources, thank you for the opportunity to testify on the integrity of the federal and state unemployment insurance system. I am Doug Holmes, president of UWC Strategic Services on Unemployment and Workers' Compensation, UWC. We very much appreciate the work of this subcommittee in the enactment of the integrity measures in the Middle Class Tax Relief and Job Creation Act of 2012, and the attention that you have given to the integrity issues this year.

We support H.R. 2826, the Permanently Ending Receipt by Prisoner's Act. We favor legislation and policy that addresses a number of key points, including; methods of administration should seek to reduce employer administrative burden while improving the efficiently and effectiveness in the exchange of information needed for proper administration.

Two, employers and their representatives should be actively engaged by USDOL and states in the design and implementation of new systems.

Public and private databases should be more actively used to avoid erroneous payments, and to identify fraud and overpayment issues.

States should implement regular statements of charges to employer accounts and use the full social security number in the exchange of information.

New performance measures for UI integrity should be developed based on return on investment to the unemployment trust funds.

Additional targeted resources should be provided with incentive funding to states with the best performance. Clear direction should be provided to the states in defining the federal requirement that states must not pay unemployment compensation to individuals who have not been determined to be able to work, available to work, and actively seeking work.

The need for improved integrity became evident during the great recession, and the lack of integrity in the system led to dramatic increases in benefit payments, significantly higher benefit payment errors, and doubling of employer taxes. The speed of payment, as measured by the time lapse standards developed by the U.S. Department of Labor, has been emphasized for many years over the quality of decisions in integrity of UI trust funds.

Four years after the end of the recession, state and federal unemployment taxes in many states continue to increase, and 18 states have outstanding unpaid Title XII loans, totaling over 20 billion. Seven states have had to resort to bonds and borrowing in the private market to repay federal loans and interest, with employers paying the debt service for the next seven years.

Some individuals who are claiming unemployment compensation unduly limit their availability as long as they continue to receive unemployment compensation. Individuals must be registered for work. A mere statement by the claimant that he or she is actively seeking work should not be sufficient to meet the actively-seeking-work requirement. Work search should be documented and independently verified. If not, individuals should not be paid.

States should consider a variety of techniques to identify fraud. Is the application or claim being filed through a foreign IP address? Is the same IP address, phone number, and/or address used to initiate multiple UI claims? Are there multiple deposits of unemployment compensation into the same or related bank account? Is there prior verification of a legitimate employer account or accounts against which benefits are to be charged?

The process that is used in most states in requesting employers to verify wages continue to be, believe it or not, paper requests. A solution is needed to this earnings verification reporting that minimizes the general reporting requirements while preserving the ability to exchange information for effective prosecution of fraud.

In closing, permit me to emphasize that employers recognize the important role of the unemployment insurance safety net system. Employers are willing to provide funding for the system. However, employers also have an expectation of good stewardship of the funding they provide, and in the integrity of the federal/state UI system. Thank you for the opportunity to testify.

[The prepared statement of Mr. Holmes follows:]

Testimony of Douglas J. Holmes
President, UWC- Strategic Services on Unemployment &
Workers' Compensation

Before the
Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives

Hearing on Integrity of the Federal/State Unemployment
Insurance System
September 11, 2013

UWC- Strategic Services on Unemployment & Workers' Compensation
910 17th Street, NW, Suite 1070, Washington, D.C. 20006
Phone (202) 223-8904 Fax (202) 783-1616 www.UWCstrategy.org

Chairman Reichert, Ranking Member Doggett, and members of the Subcommittee on Human Resources, thank you for the opportunity to testify on the integrity of the Federal/State unemployment insurance system.

I am Douglas J. Holmes, President of UWC- Strategic Services on Unemployment & Workers' Compensation (UWC). UWC counts as members a broad range of large and small businesses, trade associations, service companies from the Unemployment Insurance (UI) industry, third party administrators, and unemployment tax professionals. The organization traces its roots back to 1933 at the time when unemployment insurance was first being considered for enactment.

We recognize your leadership in addressing this very important issue of integrity in the employer funded federal/state unemployment insurance system. As an organization, UWC supports a sound unemployment insurance system. Employers recognize the value of a system that provides short term partial wage replacement for individuals who become unemployed through no fault of their own. The UI social safety net program works as insurance paid by employers on behalf of unemployed workers against the risk of their unemployment.

The UI system provides for "trust funds" for employer paid state taxes (SUTA) primarily designed to provide funding for state unemployment insurance benefits, and federal taxes (FUTA) primarily designed to pay for the administration of the federal and state programs by the federal and state agencies with statutory responsibility.

State UI agencies effectively serve as trustees of the state UI contributions by employers.

As an insurance program, UI requires that state contributions paid by employers provide funds to pay state unemployment compensation. Contribution rates are determined based on factors related to benefit payment risk. The experience requirements of federal law are intended to apply insurance principles in the assessment of tax burden on employers. Employers that have a history of higher rates of unemployment claims by employees generally have higher experience contribution rates than those with lower claims rates.

Employers have a significant interest in assuring the integrity of the UI system to avoid unnecessary additional state tax (contribution) liability and to assure that amounts they have paid are used to pay claimants who meet the program requirements and not to pay those who do not meet the requirements.

The need for improved integrity became painfully evident as the combination of significantly increased unemployment claims during the Great Recession and the lack of integrity in the system led to dramatic increases in benefit payments, significantly higher benefit payment error rates, and a doubling of employer taxes. Additional administrative funding was needed not only to effectively manage the increasing case load but also to assure system integrity. Going forward, the system should not sacrifice integrity because of increasing claims.

Four years after the end of the recession state and federal unemployment taxes in many states continue to increase and eighteen states have outstanding unpaid Title XII loans totaling over \$20 billion. Seven states have had to resort to bonds and borrowing in the private market to repay federal loans and interest with employers paying the debt service for the next seven years.

Employers care deeply about the need to address integrity and solvency of UI trust funds because the obligation to pay the \$20 billion and other outstanding obligations falls directly on employers.

We very much appreciate the work of this committee in the enactment of integrity measures in the Middle Class Tax Relief and Job Creation Act of 2012 and the attention that you have given to integrity issues this year. We support HR 2826, the Permanently Ending Receipt by Prisoners Act”.

In addressing integrity issues it is helpful to first note the basic fundamentals of the UI program. Individuals may only be eligible for and be paid unemployment compensation if they have sufficient attachment to the workforce through qualifying employment, become unemployed through no fault of their own in connection with their work, and are able to work, available to work, and actively seeking work with respect to each week.

Each of these basic elements of the UI system calls for administrative efforts to assure the integrity of the system and to meet the requirements of the UI trust funds.

Of particular importance is the adoption of clear standards requiring that state laws require that individuals be able to work, available to work and actively seeking work. Section 2101 of the Middle Class Tax Relief and Job Creation Act of 2012 specified in statute the program fundamentals that had been generally understood but not uniformly applied by the states. In order to receive federal funding for the administration of the UI federal/state program, Section 303(a) of the Social Security Act requires that

(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provisions for--

(12) A requirement that as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.

From an employer’s view, there is a great deal of room for improvement in the methods used by UI agencies to avoid overpayments and identify claimants who have been paid benefits for weeks during which they were not able to work, available to work, or actively seeking work.

Greater attention must be paid to the requirement that claimants be able to work, available to work and actively seeking work. Despite the federal requirement that state laws require that these requirements be met, many states have enacted exceptions that degrade the integrity of the fund.

HR 2826 adds to the language adopted in the Middle Class Tax Relief and Job Creation Act by identifying methods by which state UI agencies would be required to assure that individuals who are not available to work because they are confined to prison are not able to meet the continuing eligibility requirements of the UI program.

Able to Work

The definition of the work for which an individual must be able varies from state to state. A determination that an individual is disabled so as to qualify for Social Security Disability by definition suggests that the individual is disabled and there is no work in the labor market that he or she can perform. Some states recognize that an individual who is disabled under SSDI should not be eligible for unemployment compensation, however, the identification of this issue and the adjudication of it is inconsistent from state to state.

A statutory provision that individuals determined totally disabled by SSDI are per se not able to work to meet the requirements of unemployment insurance would improve UI trust fund integrity. Individuals should not be receiving unemployment compensation and SSDI disability for the same week.

UWC supports legislation and/or policy that would assure that individuals who are totally disabled with respect to a week are not eligible to be paid unemployment compensation for the week.

Available to Work

The definition of the requirements with respect to availability to work by the states varies considerably. In some states the requirement is clearly that individuals must be available for any shift of work and available to perform any work for which they are able as a condition of being eligible for unemployment compensation.

Other states require only that the individual be required to be available to work to the same extent that the individual performed work during the individual's base period, and claimants may limit availability to the hours and terms of work they choose and to only that which is "suitable" for the claimant.

Relaxed availability requirements have resulted in increased benefit pay out and negatively impacted UI trust fund solvency. Employers continue to observe that some individuals who are claiming unemployment compensation unduly limit their availability as long as they continue to receive unemployment compensation. In the hearing before this subcommittee on April 16, 2013, small business owner Larry Kidd testified with specificity about the unwillingness of some claimants to accept employment that was

available in the local labor market only because they were already being paid unemployment compensation and did not want to jeopardize their continued receipt of benefits.

UWC supports legislation and/or policy that would assure that claimants must be available to accept work that is available in the labor market that they are able to perform as a condition of being paid unemployment compensation.

Actively Seeking Work

A number of states have recently begun to address the need to require that claimants meaningfully and actively seek work as a condition of being eligible for unemployment compensation.

Individuals should be registered for work through the state agency and through the job search systems available on the Internet and the UI agency should make employment services available. A mere statement by the claimant that he or she is actively seeking work should not be sufficient to meet the “actively” seeking work requirement.

Work search should be documented and independently verifiable. If not, individuals should not be paid for a week or weeks for which the requirements are not met.

UWC supports administrative funding for job search services and the selection of claimants for specific Reemployment Eligibility Assessment (REA) services. We also recognize that there are more claimants who can benefit from reemployment services than there is capacity within the public employment service to provide such services. To be effective, job search and reemployment services should be coordinated with employers and staffing agencies, and there must be a clear responsibility on the part of the individual to actively search for work.

Drug Testing

The abuse of prescription drugs as well as illegal controlled substances is a growing issue in the workforce, impacting performance, resulting in discharge of employees and creating a barrier for unemployed workers in meeting the requirements to be hired. It also affects a claimant’s ability to maintain that he or she is able to work and available to work to meet the requirements of weekly unemployment compensation benefit eligibility.

Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012 provided that states are not prohibited from enacting legislation that provides for the testing of applicants for unemployment compensation for the unlawful use of controlled substances as a condition of receiving unemployment compensation in certain circumstances.

Administration of this by a state electing such a provision should be developed in collaboration with employers, particularly those who already include drug testing as part of the hiring process. To be most effective, state administered or supervised testing

should be developed to meet proven standards upon which employers may rely in hiring decisions.

Employer Reporting Burden Should be Reduced

The UI system relies in large part on reports from employers with respect to wages paid, earnings, payroll information, and reasons that employees may have been separated from employment or became unemployed.

At each point in the determination process the integrity of the benefit determination and payment system depends on information from employers that is timely and sufficient for proper administration.

Responding to requests for information from up to 53 jurisdictions for the UI program is a cost of doing business for employers. Compliance and reporting costs increase expenses and reduce net profit for employers. As a matter of good business practice, employers seek to reduce these costs wherever possible.

However, employers also recognize that timely and complete responses to requests for information may assure that proper determinations are more likely to be made and as a result their unemployment insurance tax burden over time may be reduced.

The UI related employer reporting burden is significant, including:

- Quarterly Wage Reports for all employees to all 53 state UI jurisdictions
- Corrected quarterly wage information reports
- Responding to requests for separation information when claimants apply for unemployment compensation
- Responding to requests for earnings verification from state UI agencies seeking to determine claimant overpayments and fraud
- Responding to requests for information in the adjudication of benefits and appeals
- Appealing multiple stages of benefit determinations
- Submitting requests for relief of benefit charges erroneously charged to the employer's account
- State UI audits of payroll records
- Appealing state UI tax determinations
- Requests for information in the status and determination of state UI tax liability.

State UI agencies typically maintain a laundry list of forms to be used with each state's set of forms designed to meet the unique legal requirements of each state UI law.

UWC supports the development and implementation of the State Information Data System (SIDES) by the US Department of Labor and the states, and continued development of web based measures to enable the exchange of information in a more timely and efficient manner.

The Electronic Exchange of Information Should be Carefully Expanded

To the extent that reporting requirements can be streamlined through the electronic exchange of information, employers recognize that there can be savings in reporting burden, timely identification and resolution of issues, and potentially a reduction in overpayments and state UI tax liability.

However, there are issues associated with the use of the Internet and the electronic exchange of information that create challenges for UI integrity.

One of the first applications of electronic exchange of information and use of the Internet has been to enable claimants to file applications and claims on-line and enabling the electronic transfer of unemployment compensation directly into individual claimant bank accounts.

Internet application and claiming has reduced the cost to claimants of claiming and being paid benefits and has deemphasized the requirements that individuals must be able to work, available to work and actively seeking work as conditions to be met BEFORE being paid unemployment compensation for a week or weeks claimed.

According to the annual survey of states conducted by the National Foundation for Unemployment Compensation and Workers' Compensation, 31 states accept an electronic indication by the claimant that he or she searched for work as sufficient upon which to meet work search requirements. In seven states no verification of work search is generally conducted.

The result of the use of the Internet in claims filing has been to reduce the time within which claimants are able to file claims and be paid unemployment compensation. However, it has also increased the likelihood that benefits are paid without the appropriate attention to whether the claimant is able to work, available to work and actively seeking work.

The focus on speed of payment as measured by the "time lapse" standards developed by the US DOL and the increase in claims filed during the Great Recession resulted in significant increases in erroneous payments that could have been avoided and/or minimized with greater attention to integrity on the front end of the claims process.

The list of cross matches and electronic data bases that could be used to identify claimants who are NOT unemployed, able to work, available to work and actively seeking work includes

- Cross-matches between state wage data and benefit claim information

- Cross-matches between wage data from other states and benefit claim information

- New Hire data within the state

- National New Hire Data

- Private data bases that provide more timely and complete wage information that may be matched against benefit claim and payment information.

- Other public and private data bases listing individuals who may not be able to work and/or not available for work; e.g., prisoner databases.

- Workers compensation, SSDI and other disability program data bases identifying individuals who have been determined to be totally disabled

UWC supports effective access and use of these various data bases to avoid erroneous payments and reduce the number of weeks overpaid through earlier discovery of issues.

New Integrity Performance Measures Are Needed

Effective use of the data in making appropriate determinations and avoiding overpayments requires the dedication of UI administrative resources to use the information in the determination process. Effective use of this information may in fact result in an increase in the number of claims for which there are overpayments.

UWC supports additional administrative funding for integrity systems and staff with the caveat that new performance measures are needed to measure the effectiveness of integrity efforts in terms of return on investment to the state unemployment trust fund and additional recovery of overpayments and/or documented overpayment avoidance.

The Benefit Accuracy Measurement (BAM) system is currently used to determine the erroneous payment rate for each state. BAM is a benefit quality control measurement that was designed to measure whether state unemployment claims determinations are consistent with state UI law and policy. The BAM relies on a review of a small sample of claims in each state in inquiring whether benefit determinations resulting from these claims were consistent with state law. It does not review issues that were not addressed in the claims determination process.

States are able to reduce "error" rates by reducing requirements instead of increasing integrity measures.

UWC supports the development and implementation of a new measurement of integrity that measures how actively a state identifies and collects overpayments, avoids overpayments, and increases recovery for the state UI trust fund.

Regular Statements of Charges to Employer Accounts Should be Implemented

In addition to issue identification through cross-matches or other information data bases, increased attention to regularly reconciling accounts and providing monthly statements of charges to the accounts of employers can be very effective in avoiding erroneous payments.

Normal business process for utilities, banks, and other service providers is to generate a monthly statement of charges. Yet many state UI agencies do not provide such statements, and in some states there is no reconciliation of accounts and statement of charges until the end of the year. In such states it is possible that claimants may actually exhaust all 26 weeks of state UI benefits before the overpayment is identified.

States in which the UI agency generates timely and regular statements of charges to employer accounts are more effective in identifying erroneous payments early and avoiding multiple weeks of overpayments because employers are able to identify errors in a timely way and the agencies are able to make corrections, identify overpayments and collect overpayment amounts through claims offset and other measures.

Employers maintain payroll records using the full social security number, claimants are required to submit their social security number in order to apply for unemployment compensation, and claims are maintained by state UI agencies using the full social security number as a unique identifier. The US Department of Labor has recognized as a matter of policy that state UI agencies should exchange information with respect to claims with employers and their agents using the full social security numbers, yet concerns about identity theft in some states at times has resulted in state policies requiring truncating of social security numbers. Clarification of the need to track full SSNs for the specific purpose of proper administration of unemployment insurance is needed.

There is no other unique identifier that enables employers to respond. Roughly half of the workforce is employed by large employers, and employers with hundreds or thousands of employees often have multiple employees with the same name. Without reference to SSNs, appropriate tracking and responding necessary for proper administration is not possible.

UWC supports the requirement that state agencies produce regular statements of charges of accounts with reference to full social security numbers for claimants, that charges to employer accounts may be appealed by employers, and that states have authority to make overpayment determinations and adjustments to accounts in a timely manner based on requests or appeals by employers.

Best Practice Collection Efforts Should be Employed

Once overpayments are identified, there is a list of tools that should be used to verify amounts overpaid and effectively seek recovery. The list includes:

- The Treasury Offset Program (TOP)
- Mandated offset against future benefits claimed
- Wage garnishment
- Expedited judicial process and judgments
- Liens on real and personal property
- Other collection techniques

Collection efforts should not be limited to the staff and resources available to the state UI agency. Public and private collection agencies may be effective in collection and provide greater capacity to follow-up with collection efforts, particularly in light of the large number of overpaid claims.

Collection efforts should not be limited by statutory or regulatory time limits but should be guided by good business practice. A number of states automatically write off non-fraud overpayment collection after three years and fraudulent overpayment collection after a somewhat longer period even when there is an outstanding overpayment amount due and the individual is once again claiming unemployment or has been located and is being paid wages.

UWC supports improved use of best practices in the collection of overpayments and prosecution of fraud.

New Methods Are Needed in The Electronic Era

State UI agencies have implemented the use of the Internet and telephone as the primary ways in which individuals are able to file applications for unemployment compensation and to claim weeks of benefits.

Applications and claims may now be filed from virtually any physical location on the globe and through the use of PCs or phones that may or may not belong to the individual filing. Unemployment compensation payments may be directly deposited into identified bank accounts electronically without secondary verification of the identity of the applicant.

In the 21st century environment, new integrity measures are needed to track activity and to profile applications and deposits. States should consider a variety of techniques to identify fraud.

Is the application or claim being filed through a foreign IP address?

Is the same IP address, phone number and/or address used to initiate multiple UI claims?

Are there multiple deposits of unemployment compensation into the same or related bank accounts?

Is there prior verification of a legitimate employer account or accounts against which benefits are to be charged?

To be effective in assuring integrity, greater coordination with employers and financial institutions is needed.

UWC supports the development and implementation of new systems designed to assure improved integrity in collaboration with employers.

Earnings Verification Methods Should Be Improved

The processes used in most states in requesting employers to verify wages as the basis upon which to determine overpayment amounts, and particularly in determining fraud, continue to be paper requests. These earnings verification requests often seek a paper response and a form of information that is not readily available from employer files.

In some cases the requests received do not include full social security number references, making it very difficult, if not impossible, for an employer to provide a written verification specific to a particular employee.

Information provided by employers in response to earnings verification requests oftentimes is not used as the basis for determinations and employers are not advised whether the information provided was the basis of determinations of fraud or overpayments.

The definition of “week” for UI claims administration is typically the seven days ending on Saturday. This definition does not match with the typical payroll week definitions used by employers. Approximately 65% of employers have payroll periods ending on Fridays and a very small percentage have payroll weeks ending on Saturday.

It is a significant burden for employers to try to reconstruct their payroll records to reflect a Saturday end date in order to report manually or through the SIDES system. For general reporting purposes, the employer payroll information should be sufficient.

It strains “certification” for employers to certify wages with respect to a week that they do not use in payroll. There is a need to establish methods by which administrative notice of wages paid with respect to a week (or biweekly or semi-monthly payroll period) using an employer’s payroll would be sufficient upon which to determine an overpayment as a general matter, leaving more specific calculations as necessary on appeal and/or in determining fraud. Estimates of wages paid with respect to a week could be identified as sufficient absent information that payment was not received by the claimant with respect to a week.

At a minimum, employers should be able to respond with hours/earnings within a payroll period to eliminate potential overpayment cases where there is no overlap in UI benefits paid and hours/earnings within a payroll period. Where there appear to be overlaps, employers can then be asked to provide more specific hours and earnings.

Conclusion

We very much appreciate the work of this subcommittee in the enactment of integrity measures in the Middle Class Tax Relief and Job Creation Act of 2012 and the attention that you have given to integrity issues this year. We support HR 2826, the Permanently Ending Receipt by Prisoners Act”.

In addressing methods by which to improve UI integrity we favor legislation and policy that addresses a number of key points.

1. Methods of administration should seek to reduce employer administrative burden while improving the efficiency and effectiveness in the exchange of information needed for proper administration;
2. Employers and their representatives should be actively engaged by US DOL and states in the design and implementations of new systems;
3. Public and private data bases should be more actively used to avoid erroneous payments and to identify fraud and overpayment issues;
4. States should implement regular statements of charges to employer accounts and use the full social security number in the exchange of information with employers and their representatives;
5. New performance measures for UI integrity should be developed based on return on investment to the unemployment trust funds, avoidance of overpayments, and increases in the overpayment amounts collected;
6. Additional targeted resources should be provided with incentive funding to states with the best performance using the newly designed performance measures;
7. Clear direction should be provided to the states in defining the federal requirement that state laws must NOT pay unemployment compensation to individuals who have not been determined to be able to work, available to work and actively seeking work with respect to a week or weeks claimed.

Employers recognize the important role of the Unemployment Insurance safety net system. Employers are willing to provide funding for the system; however, employers have an expectation of good stewardship of the funding they provide.

Chairman REICHERT. Mr. Holmes, thank you for your testimony.

And, Ms. Melvin, you are recognized for five minutes.

STATEMENT OF VALERIE MELVIN, DIRECTOR, INFORMATION MANAGEMENT AND TECHNOLOGY RESOURCES ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. MELVIN. Good afternoon, Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee. Thank you for inviting me to today's hearing. My testimony discusses information technology systems supporting the unemployment insurance program.

With oversight by the Department of Labor, state workforce agencies rely heavily on information technology systems to collect and process the taxes that fund the program and to determine eligibility and administer benefits. However, the majority of the states' existing systems for unemployment insurance operations were developed in the 1970s and 1980s. And, although some agencies have performed upgrades throughout the years, many systems are reported to be outdated, costly, and difficult to support, and incapable of efficiently handling workload demands.

In September 2012, we reported on 9 selected states' efforts to modernize their unemployment insurance systems, and the challenges that they faced in doing so. At your request, my testimony today summarizes our findings regarding those modernization efforts and the related challenges. Our report noted that the selected states had made varying progress in modernizing their systems supporting the unemployment insurance programs.

Specifically, each of three states that were part of a multi-state consortium established to pool resources for developing joint systems were in the initial phases of planning that included defining benefits—I am sorry, business—needs and requirements. Two individual states were in the development phase. That is, building the system based on requirements. Two were in a mixed phase, where part of the system was in development and part was in operations and maintenance. And two states' systems had been completed and were in operations and maintenance.

The states reported that modernization efforts already undertaken had, among other things, helped enhance their unemployment insurance technology to support web-based services with more modern databases, and replaced outdated programming languages. Nevertheless, the states cited numerous challenges to achieving their modernized capabilities.

For example, all nine states said limited funding and/or the increasing cost of unemployment insurance systems had impacted their planning and execution of modernization projects. Seven states cited a lack of staff in their unemployment insurance offices with the expertise necessary to manage IT modernization efforts. And six states said that continuing to operate their legacy systems while simultaneously implementing new systems had required them to balance scarce staff resources between the two major efforts.

In addition, we noted separate and unique challenges for states participating in the consortiums. These included differences in

state laws and business processes that impacted efforts to design and develop a common system, difficulty among states in reaching consensus on the best approach for developing and modernizing systems, and decision-making by consortium leadership that raised concerns about the liability for outcomes that could negatively affect member states.

At the time of our study, the nine states had begun to address some of these challenges. They had also established certain IT management controls that are essential to carrying out successful modernization initiatives, such as incorporating industry-accepted program management processes and tools in their modernization efforts.

We noted in our report that a comprehensive assessment of lessons learned from the modernization work could further assist states' efforts, and that the Department of Labor could play a vital role in supporting and advising states. Accordingly, we recommended that Labor perform a comprehensive analysis of lessons learned, and distribute this analysis to each state through an information-sharing platform or repository.

In its response to our recommendations, Labor stated that it was committed to sharing the lessons learned, and we are continuing to follow up on the Department's actions in this regard.

Mr. Chairman, this concludes my oral statement. I would be pleased to answer any questions that you or other members of the subcommittee may have.

[The prepared statement of Ms. Melvin follows:]



United States Government Accountability Office

Testimony

Before the Subcommittee on Human
Resources, Committee on Ways and
Means, House of Representatives

For Release on Delivery
Expected at 1:15 p.m. EDT
Wednesday, September 11, 2013

**UNEMPLOYMENT
INSURANCE
INFORMATION
TECHNOLOGY**

**States Face Challenges in
Modernization Efforts**

Statement of Valerie C. Melvin, Director
Information Management and Technology Resources
Issues

GAO Highlights

Highlights of GAO-13-859T, a testimony before the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives

Why GAO Did This Study

The joint federal-state unemployment insurance program is the Department of Labor's largest income maintenance program, and its benefits provide a critical source of income for millions of unemployed Americans. The program is overseen by Labor and administered by the states. To administer their UI programs, states rely heavily on IT systems—both to collect and process revenue from taxes and to determine eligibility and administer benefits. However, many of these systems are aging and were developed using outdated computer programming languages, making them costly and difficult to support and incapable of efficiently handling increasing workloads. Given the importance of IT to state agencies' ability to process and administer benefits, GAO was asked to provide testimony summarizing aspects of its September 2012 report on UI modernization, including key challenges states have encountered in modernizing their tax and benefit systems. To develop this statement, GAO relied on its previously published work.

What GAO Recommends

In its prior report on states' UI system modernization efforts, GAO recommended that the Department of Labor conduct an assessment of lessons learned and distribute this analysis to states through an information-sharing platform such as a website. Labor agreed with the first recommendation; it neither agreed nor disagreed with the second recommendation, but stated that it was committed to sharing lessons learned.

View GAO-13-859T. For more information, contact Valerie C. Melvin at (202) 512-5304 or melvinv@gao.gov.

September 11, 2013

UNEMPLOYMENT INSURANCE INFORMATION TECHNOLOGY

States Face Challenges in Modernization Efforts

What GAO Found

As GAO reported in September 2012, nine selected states had made varying degrees of progress in modernizing the information technology (IT) systems supporting their unemployment insurance (UI) programs. Specifically, the states' modernization efforts were at various stages—three were in early phases of defining business needs and requirements, two were in the process of building systems based on identified requirements, two were in a "mixed" phase of having a system that was partly operational and partly in development, and two had systems that were completely operational. The enhancements provided by these systems included supporting web-based technologies with more modern databases and replacing outdated programming languages, among others.

Nevertheless, while taking steps to modernize their systems, the selected states reported encountering a number of challenges, including the following:

- **Limited funding and the increasing cost of UI systems.** The recent economic downturn resulted in smaller state budgets, limiting what could be spent on UI system modernization. In addition, competing demands and fluctuating budgets made planning for system development, which can take several years, more difficult.
- **A lack of sufficient expertise among staff.** Selected states reported that they had insufficient staff with expertise in UI program rules and requirements, the ability to maintain IT systems developed by vendors, and knowledge of current programming languages needed to maintain modernized systems.
- **A need to continue to operate legacy systems while simultaneously implementing new systems.** This required states to balance scarce resources between these two efforts.

In addition, a separate set of challenges arose for states participating in multistate consortiums, which were established to pool resources for developing joint systems that could be used by all member states:

- Differences in state laws and business processes impacted the effort to design and develop a common system.
- States within a consortium differed on the best approach for developing and modernizing systems and found it difficult to reach consensus.
- Decision making by consortium leadership raised concerns about liability for outcomes that could negatively affect member states.
- Consortiums found it difficult to obtain a qualified leader for a multistate effort who was unbiased and independent.

Both consortium and individual state officials had taken steps intended to mitigate challenges. GAO also noted that a comprehensive assessment of lessons learned could further assist states' efforts. In addition, the states in GAO's review had established certain IT management controls that can help successfully guide modernization efforts. These controls include establishing a project management office, using industry-standard project management guidance, and employing IT investment management standards, among others.

Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee:

Thank you for inviting me to today's hearing to discuss information technology (IT) systems supporting the unemployment insurance (UI) program. As you know, this is the Department of Labor's (Labor) largest income maintenance program, with its benefits serving as a critical source of income for millions of unemployed Americans. As a federal-state partnership, the program is overseen by Labor, while benefits for individuals are dependent on state law and administered by state workforce agencies.

To collect and process the tax revenue that funds the program and to determine eligibility and administer benefits, state agencies rely heavily on IT systems. However, a state survey published in 2010 found many of these systems to be old and based on outdated programming languages, costly and difficult to support, and incapable of efficiently handling workload demands.¹ Given the importance of IT to state agencies' abilities to effectively process and provide timely benefits to millions of unemployed Americans, in September 2012 we issued a report that discussed states' efforts to modernize the systems supporting their UI programs.² At your request, my testimony today summarizes aspects of that report, including the key challenges that states have encountered in their modernization efforts.

All of the work on which this statement is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹National Association of State Workforce Agencies Center for Employment Security Education and Research, Information Technology Support Center, *A National View of UI IT Systems*, July 2010.

²GAO, *Information Technology: Department of Labor Could Further Facilitate Modernization of States' Unemployment Insurance Systems*, GAO-12-957 (Washington, D.C.: Sept. 26, 2012).

Background

The federal-state UI program, created in part by the Social Security Act of 1935, is administered under state law based on federal requirements.³ The primary objectives of the program are to provide temporary, partial compensation for lost earnings of eligible individuals who become unemployed through no fault of their own and to stabilize the economy during downturns. Applicants for UI benefits must have earned at least a certain amount in wages and/or have worked a certain number of weeks to be eligible. In addition, these individuals must, with limited exceptions, be available for and able to work, and actively search for work.

The federal-state structure of the program places primary responsibility for its administration on the states, and gives them wide latitude to administer the programs in a manner that best suits their needs within the guidelines established by federal law. Within the context of the federal-state partnership, Labor has general responsibility for overseeing the UI program to ensure that the program is operating effectively and efficiently. For example, Labor is responsible for monitoring state operations and procedures, providing technical assistance and training, and analyzing UI program data to diagnose potential problems.

States' Use of IT to Administer UI Programs

State agencies rely extensively on IT systems to carry out their UI program functions. These include systems for administering benefits and for collecting and administering the taxes used to fund the programs.

Benefit systems are used for

- determining eligibility for benefits;
- recording claimant filing information, such as demographic information, work history, and qualifying wage credits;
- determining updates as needed, such as changes in work-seeking status; and
- calculating state-specific weekly and maximum benefit amounts.

Tax systems are used for

- online reporting and payment of employers' tax and wage reports;

³UI was initiated on a national basis as Titles III and IX of the Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620, codified as amended at 42 U.S.C. ch. 7, subch. III and IX.

- calculating tax, wage, and payment adjustments, and any penalties or interest accrued;
- processing quarterly tax and wage amounts;
- determining and processing late payment penalties, interest, civil penalties, or fees; and
- adjusting previously filed tax and wage reports as a result of a tax audit, an amended report submitted by the employer, or an erroneously keyed report.

However, the majority of the states' existing systems for UI operations were developed in the 1970s and 1980s. Although some agencies have performed upgrades throughout the years, most of the state legacy systems have aged considerably. As they have aged, the systems have presented challenges to the efficiency of states' existing IT environments. In a survey published by the National Association of State Workforce Agencies (NASWA) in 2010,⁴ states reported the following issues:

- Over 90 percent of the systems run on outdated hardware and software programming languages, such as Common Business Oriented Language (COBOL), which is one of the oldest computer programming languages.
- The systems are costly and difficult to support. The survey found, for example, that over two-thirds of states face growing costs for mainframe hardware and software support of their legacy systems.
- Most states' systems cannot efficiently handle current workload demands, including experiencing difficulties implementing new federal or state laws due to constraints imposed by the systems.
- States have realized an increasing need to transition to web-based online access for UI data and services.

States also cited specific issues with their legacy systems, including the fact that they cannot be reprogrammed quickly enough to respond to changes resulting from legislative mandates. In addition, states have developed one or more stand-alone ancillary systems to fulfill specific needs, but these systems are not integrated with their legacy mainframe systems, decreasing efficiency. Finally, according to the states, existing legacy systems cannot keep up with advances in technology, such as the move to place more UI services online.

⁴National Association of State Workforce Agencies Center for Employment Security Education and Research, Information Technology Support Center, *A National View of UI IT Systems*, July 2010.

Labor's Role in Facilitating IT Modernization

In addition to providing general oversight of the UI program, the Department of Labor plays a role in facilitating the modernization of states' UI IT systems. This role consists primarily of providing funding and technical support to the state agencies. In this regard, Labor distributes federal funds to each state for the purpose of administering its UI program, including funds that can be used for IT modernization.

Through supplemental budget funds, Labor has supported the establishment of state consortiums, in which three or four states work together to develop and share a common system. These efforts are intended to allow multiple states to pool their resources and reduce risk in the pursuit of a single common system that they can each use after applying state-specific programming and configuration settings.

Labor also helps to provide technical assistance to the states by supporting and participating in two key groups—NASWA and the Information Technology Support Center (ITSC). NASWA provides a forum for states to exchange information and ideas about how to improve program operations; serves as a liaison between state workforce agencies and federal government agencies, Congress, businesses, and intergovernmental groups; and is the collective voice of state agencies on workforce policies and issues. ITSC is funded by Labor and the states to provide technical services, core projects, and a central capacity for exploring the latest technology for all states. ITSC's core services to states include application development, standards development, and UI modernization services, among others.

States Face Challenges in Modernizing Their Tax and Benefit Systems

Our September 2012 report noted that selected states⁵ had made varying progress in modernizing the IT systems supporting their UI programs.⁶ Specifically, we found that each of the three states that were part of a multistate consortium were in the initial phases of planning that included defining business needs and requirements; two individual states were in the development phase—that is, building the system based on requirements; two were in a "mixed" phase where part of the system was in development and part was in the operations and maintenance phase;

⁵These states were California, Colorado, Florida, Indiana, Minnesota, Ohio, Tennessee, Vermont, and Virginia.

⁶GAO-12-957.

and two were completed and in operations and maintenance. These efforts had, among other things, enhanced states' UI technology to support web-based services with more modern databases and replaced outdated programming languages. They also included the development of auxiliary systems, such as document management systems and call center processing systems.

Nevertheless, while the states had made progress, we found that they faced a number of challenges related to their modernization efforts. In particular, individual states encountered the following challenges, among others:

- All nine states cited limited funding and/or the increasing cost of UI systems as a major challenge. For example, they said that the economic downturn had resulted in smaller state budgets, which limited state funds for IT modernization. Moreover, once funds were identified or obtained, it often took a considerable amount of time to complete the IT project. Officials added that developing large state or multistate systems may span many years, and competing demands on resources can delay project implementation. As a result, states may fund one phase of a project with the hope that funds will be available in the future for subsequent phases. This lack of consistent funding potentially hinders effective IT project planning.
- Seven of the nine states cited a lack of staff in their UI offices with the expertise necessary to manage IT modernization efforts:
 - Several states said they lacked sufficient subject matter experts knowledgeable in the extensive rules and requirements of the UI program. Such experts are essential to helping computer designers and programmers understand the program's business processes, supporting an effective transition to the reengineered process, and identifying system requirements and needs.
 - States also identified challenges in operating and maintaining a system developed by vendors because state employees may have lacked the needed expertise to maintain the new system once the vendor staff leave.
 - The states added that their staffs may implement larger-scale systems only once every 10 to 15 years, leading to gaps in required knowledge and skills, process maturity and discipline, and executive oversight.
 - States further stressed that their staffs may have expertise in an outdated computer language, while modernization efforts require them to learn new skills and more modern programming languages.

- According to a 2011 workforce survey, over 78 percent of state chief information officers confirmed that state salary rates and pay grade structures presented a challenge in attracting and retaining skilled IT talent.
- According to Labor, the limited staff resources facing states have required that subject matter experts be pulled off projects to address the workload demands of daily operations.
- Six of the nine states noted that continuing to operate their legacy systems while simultaneously implementing new UI systems required them to balance scarce staff resources between the two major efforts.

In addition to the challenges facing individual states, we found that states participating in multistate consortiums⁷ encountered a separate set of challenges:

- Representatives from all three consortiums indicated that differences among states in procurement, communication, and implementation of best practices; the involvement of each state's IT office; and the extent to which the state's IT is centralized could impact the effort to design and develop a common system. As a result, certain state officials told us that consortiums were not practical; one official questioned whether a common platform or system could be successfully built and made transferable among states in an economically viable way.
- States within a consortium often had different views on the best approach to developing and modernizing systems. State officials said that using different approaches to software development is not practical when developing a common system, but that it was difficult to reach consensus on a single approach. In one case, a state withdrew from a consortium because it disagreed with the development approach being taken by the consortium.
- States had concerns about liabilities in providing services to another state. IT representatives from one consortium's lead state noted that decisions taken by the lead state could result in blame for outcomes that other states were unsatisfied with, and there was a concern that the lead state's decision making could put other states' funds at risk.

⁷At the time of our review, three consortiums had been formed with federal funding: the Wyoming, Colorado, Arizona, and North Dakota (WyCAN) consortium; the Southeastern Consortium for Unemployment Insurance Integration (SCUBI), composed of Tennessee, South Carolina, North Carolina, and Georgia; and the Vermont, Maryland, and West Virginia technology infrastructure consortium.

One state withdrew from its leadership position because of such concerns about liability.

- Reaching agreement on the location of system resources could also be a challenge. For example, one consortium encountered difficulty in agreeing on the location of a joint data center to support the states and on the resources that should be dedicated to operating and managing the facility, while complying with individual state requirements.
- All three consortium representatives we spoke to noted that obtaining an independent and qualified leader for a multistate modernization effort was challenging. State IT project managers and chief information officers elaborated that while each state desires to successfully reach a shared goal, the leader of a consortium must keep the interests of each state in balance and have extensive IT experience that goes beyond his or her own state's technology environment.

Both individual states and consortium officials had developed methods to mitigate specific challenges and identified lessons learned. For example, several states

- were centralizing and standardizing their IT operations to address technical challenges;
- found that a standardized, statewide enterprise architecture could provide a more efficient way to leverage project development; and
- took steps to address consortium challenges they encountered, such as ensuring that each state's IT department is involved in the project.

In our report, we noted that ITSC had been tasked with preparing an assessment of lessons learned from states' modernization efforts, but at the time of our review, this assessment had not been completed.

Moreover, the scope of the assessment was limited to ITSC's observations and had not been formally reviewed by the states or Labor. A comprehensive assessment would include formal input from states and consortiums, the ITSC Steering Committee, and Labor. Accordingly, we recommended that Labor (1) perform a comprehensive analysis of lessons learned and (2) distribute the analysis to each state through an information-sharing platform or repository, such as a website. Labor generally agreed with the first recommendation; it did not agree or disagree with the second recommendation but said it was committed to sharing lessons learned.

In addition, the nine states in our review had established, to varying degrees, certain IT management controls that aligned with industry-

accepted program management practices. These controls included the following:

- establishing aspects of a project management office for centralized and coordinated management of projects under its domain;
- incorporating industry-standard project management processes, tools, and techniques into their modernization UI efforts;
- adopting independent verification and validation to verify the quality of the modernization projects; and
- employing IT investment management standards, such as those called for in our IT investment management framework.⁸

If effectively implemented, these controls could help successfully guide the states' UI modernization efforts.

In summary, while states have taken steps to modernize the systems supporting their UI programs, they face a number of challenges in updating their aging legacy systems and moving program operations to a modern web-based IT environment. Many of the challenges pertain to inconsistent funding, a lack of sufficient staff with adequate expertise, and in some cases, the difficulty of effective interstate collaboration. States have begun to address some of these challenges, and the nine states in our review had established some IT management controls, which are essential to successful modernization efforts. In addition, the Department of Labor can continue to play a role in supporting and advising states in their efforts.

Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee, this concludes my statement. I would be happy to answer any questions at this time.

GAO Contact and Staff Acknowledgments

If you have any questions concerning this statement, please contact Valerie C. Melvin, Director, Information Management and Technology Resources Issues, at (202) 512-6304 or melvinv@gao.gov. Other individuals who made key contributions include Christie Motley, Assistant Director; Lee A. McCracken; and Charles E. Youman.

⁸GAO, *Information Technology Investment Management: A Framework for Assessing and Improving Process Maturity*, Version 1.1, GAO-04-394G (Washington, D.C.: March 2004).

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (http://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to http://www.gao.gov and select "E-mail Updates."
Order by Phone	<p>The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, http://www.gao.gov/ordering.htm.</p> <p>Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.</p> <p>Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.</p>
Connect with GAO	Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts. Visit GAO on the web at www.gao.gov .
To Report Fraud, Waste, and Abuse in Federal Programs	<p>Contact:</p> <p>Website: http://www.gao.gov/fraudnet/fraudnet.htm</p> <p>E-mail: fraudnet@gao.gov</p> <p>Automated answering system: (800) 424-5454 or (202) 512-7470</p>
Congressional Relations	Katherine Siggerud, Managing Director, siggerudk@gao.gov , (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov , (202) 512-4800, U.S. Government Accountability Office, 441 G Street NW, Room 7149, Washington, DC 20548



Please Print on Recycled Paper.

Chairman REICHERT. Thank you, Ms. Melvin.
Ms. Dietrich, you are recognized.

**STATEMENT OF SHARON DIETRICH, MANAGING ATTORNEY,
COMMUNITY LEGAL SERVICES**

Ms. DIETRICH. Thank you, Chairman Reichert, Ranking Member Doggett, and Members of the Committee. My name is Sharon Dietrich. I am a managing attorney with Community Legal Services in Philadelphia. I have been a legal aid lawyer for 26 years. During most of that time I have handled unemployment compensation cases on behalf of claimants. And during most of that time I have been the lead policy advocate for the legal aid community in Pennsylvania on issues involving unemployment insurance.

Let me start by saying that, although I am here to represent the perspective of claimants, I, of course, agree that fraud must not be tolerated. We can all agree on that. And I certainly have no objection with the content of House Bill 2826, that there be use of databases in order to make sure that people who are incarcerated and are not available for benefits are not getting them.

I would add, from my work in the area of helping people with criminal records, that not all criminal databases are necessarily infallible. I have seen issues around accuracy, matching, updating. And I do hope that, as one of the implementation goals here, making sure that the data is verified is part of how the statute would be implemented.

When discussing program integrity, I think that some context is important. And as Ranking Member Doggett mentioned earlier, fewer than one in four overpayments is a fault overpayment. Most overpayments in the unemployment system are for reasons of non-fault, either because there was agency error, employer error, or claimant error.

Secondly, I want to point out that dollars are lost from the system on both sides. I understand from the amnesty program that Pennsylvania ran earlier this summer that a good deal of money was sought back from employers, as well as from employees, that 356 million was sought from employees for both fraud and non-fraud overpayments.

\$274 million was sought from employees who committed fraud, as opposed to \$257 million being sought from employers for unpaid taxes. So, clearly, money is leaking out of the system from the employer side, as well.

And third, I would note that many workers are underpaid unemployment benefits, or unpaid unemployment benefits. Indeed, more are underpaid than are getting fault overpayments. And I certainly agree with the idea that correct payments must be made. But I would urge that we consider making sure that people who are entitled to unemployment get paid, as well as those who are not and who are committing fraud.

Now, to meet this goal of making correct payments, I urge Congress to look at the issue of adequate funding of the state administrative programs, which is a topic that I think that Secretary Hearthway and I can agree on. Certainly we have a federal source of funding for these programs, the FUTA funding source. But funding has been stagnant for a long time, and the states are starting

to hurt in their administration of the UI programs, as a result of that.

The Pennsylvania experience over the last year has been quite difficult, where there has been inadequate staff to answer phones and perform other work, as a result of which the Pennsylvania state legislature had to enact a measure to supplement our federal funding so that we would have adequate money to run our program effectively.

You may ask, "Why is adequate federal funding an issue of program integrity?" Well, first of all, it allows the states to do a better job in administering the program, so that erroneous decisions can be avoided, and overpayments, therefore, avoided. But I would also urge that, with more staff, claimants have a better opportunity to make sure that they understand what the system wants them to do. In many cases, the difficult criteria of the program are simply not understood by claimants. And if they are not able to speak to staff, agency employees, because they are not available, then, unfortunately, they may get into an overpayment situation that they did not intend.

Finally, a couple of preventative measures I urge consideration of. First of all, is better communications with claimants. I think if the states were to look at their notices, their technological interfaces, to make sure that clear communications are happening with claimants, there would be fewer overpayments. And secondly, we should incentivize employers to engage on claims as soon as possible.

In summary, I urge a holistic approach to program integrity, and I thank you for your attention, and am happy to answer questions. Thank you.

[The prepared statement of Ms. Dietrich follows:]

Testimony of
Sharon M. Dietrich
Community Legal Services, Inc.

Hearing Before the
U.S. Congress, House of Representatives,
Committee on Ways and Means
Subcommittee on Human Resources

September 11, 2013

Sharon M. Dietrich, Managing Attorney
Community Legal Services, Inc.
1424 Chestnut St.
Philadelphia, PA 19102
(215) 981-3719
sdietrich@clsphila.org

Testimony of Sharon M. Dietrich
Before the U.S. Congress, House of Representatives, Ways and Means Committee,
Subcommittee on Human Resources
September 11, 2013

Chairman Reichert, Ranking Member Doggett, and members of the Subcommittee, thank you for this opportunity to testify on the subject of program integrity in the Unemployment Insurance (UI) system.

My name is Sharon Dietrich. I am the Managing Attorney for Employment and Public Benefits for Community Legal Services, Inc. (CLS), in Philadelphia, PA. CLS is the larger of the two legal services programs serving low income people with civil legal problems in Philadelphia; we are not funded by the Legal Services Corporation. CLS is among the few legal services programs in the country that have long-standing employment law practices, with ours dating to the early 1970s. We see about 1,500 new clients seeking employment law representation every year.

I have been practicing employment law at CLS for 26 years. In that capacity, I have long been the lead policy advocate on the operations of the UI system in Pennsylvania. My advocacy is on behalf of the hundreds of unemployed legal aid clients with UI claims that our community represents every year, and it is informed by their experiences. I am knowledgeable about the role of overpayments in the system, how they occur, and how they can be prevented. I also have experience around issues of fraud and UI program integrity.

Let me be unequivocal about several points on which we all agree. First and foremost, fraud must not be tolerated. Second, UI should not be paid to people who are not entitled to it. Third, as stated in the press release for this hearing, correct payments should be made to the correct individuals.

As for the subject of "cash for convicts," I reiterate my agreement that UI benefits should only be paid to people who are entitled to them. Incarcerated people who are serving time on a conviction are generally not "able and available" for work, and thus are not entitled to benefits. I support efforts to root out claims by such ineligible people. However, I will raise two caveats.

First, from my extensive experiences working on employment issues involving criminal records, I am very aware that criminal justice system databases are often not reliable, because they are inaccurate or are not updated on a timely basis.¹ Especially given that many people are serving short sentences and availability for work is determined on a week by week basis, special care must be taken that the database used to identify incarcerated persons is up to date and reliable, and "hits" should be verified by the states.

¹ For instance, the FBI database is rightly criticized for its inaccuracy. See Madeline Neighly and Maurice Emsellem, Wanted: Accurate FBI Background Checks for Employment (National Employment Law Project, July 2013).

Second, while I understand the outrage around people who are incarcerated collecting UI benefits, clearly this is a small subset of claims that are found to be fraudulent, much less overall overpayment numbers. There are much more significant ways to avoid or reduce UI overpayments, which will be the focus of most of my testimony today. In particular, I will focus on:

- Resolving the inadequate federal funding of the state administrative systems, which compromises the functioning of these systems, including proper payment of claims and program integrity; and
- Involving state administrative agencies and employers in preventing overpayments, in addition to the focus on the unemployed.

I. Overpayments ≠ Fraud.

Sometimes, there is a tendency to conflate fraud with overpayments, the latter which are all circumstances in which people received UI benefits for which they were later determined to be ineligible. In the vast majority of cases, these overpayments are “non-fraud,” meaning that the worker was not intentionally trying to defraud the system. While fraud should of course be curbed to the extent possible, its prevalence should be kept in context.

For the three year period ending June 2012, approximately 10.87% of UI payments were overpaid. Just 2.67% of total payments represented fraud.² ***Fewer than one out of four (24.6%) overpayments were found to be fraudulent.*** The other three out of four cases involve reasons that do not involve fraudulent intent, such as a good faith dispute or misunderstanding about eligibility, employer error, or agency error. In these cases, the worker is found ineligible for such non-fraudulent reasons after initially having been paid benefits.

The percentage of fraudulent UI claims has not been on the rise. During this lengthy recession, claims have been at historically high levels. But the average rate of fraud from mid-2008 to mid-2011 (24.0%) declined slightly compared to the prior three-year period (28.0%).³

In fact, workers are more likely to be underpaid benefits to which they are entitled rather than to be overpaid as a result of fraud. In 2010, for example, workers were underpaid \$2.2 billion in benefits. In contrast, overpayments resulting from fraud were \$1.6 billion.⁴

² U.S. Dept. of Labor, Employment and Training Admin., “Unemployment Insurance Integrity Rates, From July 1, 2009 to June 30, 2012”, https://www.oui.dol.gov/unemploy/improp_payinitatives.asp#.

³ National Employment Law Project, The Facts about Overpayments and Fraud in the Unemployment Insurance Program, (Aug. 2012) [hereinafter The Facts about Overpayments and Fraud in the UI Program], at 1, citing U.S. Dept. of Labor, Employment and Training Admin., “State Improper Payment Data and Integrity Initiatives,” https://www.oui.dol.gov/unemploy/improp_payinitatives.asp#.

⁴ *Id.*, citing U.S. Dept. of Labor, Employment and Training Admin., “Calendar Year 2010 Benefit Accuracy Measurement Data Summary.”

Finally, it must be noted that employer fraud also contributes significantly to the loss of revenues from the UI system. In 2010, employers failed to report \$4.4 billion in wages, mostly because of misclassification of employees as independent contractors.⁵

II. Overburdened and Underfunded State UI Administrative Agencies Are More Likely to Make Overpayments

While fraud has not increased during the recession, overpayments have. Non-fraud overpayments increased to 7.9% in the mid-2008 to mid-2011 period, compared to 6.9% in the prior three years.⁶ To observers of state UI administrative systems, this should not be surprising. During recessions, these systems must rapidly expand in order to handle vastly increased numbers of claims and to implement federal extension programs. They must hire and train new staff, often while fighting for resources in the recessionary environment to do so. All the while, they must try to pay benefits “when due” to meet their responsibilities to desperate unemployed workers and to comply with the federal timeliness guidelines. They often do this with badly obsolete technology.

Having seen several recessions in my career, I am always impressed by the challenges that the administrators face as they confront the increased claims load. Understandably, increased numbers of mistakes are made, including both paying claims that should not be paid and not paying claims that should be paid.

These challenges would be difficult enough if the state administrative agencies were adequately funded to do their jobs. But they are not, and have not been for a long time. And the consequences of this inadequate funding were exposed around the country during this recession. These consequences include compromised state ability to meet performance measures, including program integrity.

States’ UI administrative funding is to be paid for by through the Federal Unemployment Tax Act (FUTA). Employers pay a federal tax of 0.6% on the first \$7,000 of wages (or \$42.00 per worker) per year. But despite this dedicated funding mechanism, the allocations that the states receive have been eroding for almost 20 years. As the National Association of State Workforce Agencies (NASWA) noted earlier this year:

States argue that even in good economic times they do not receive enough administrative funds to administer their programs as well as they would like. Since 1995, the federal government has not adjusted grants to states for administration of their UI programs for inflation (except for the one percent increase in fiscal year 2010). When adjusted for inflation and normalized at a base

⁵ Audit Data, ETA 581. *Contributions Operations Report*.

⁶ *The Facts about Overpayments and Fraud in the UI Program*, *supra* note 3, at 1.

two million average weekly insured unemployment level, base funding for State UI Administration is at its lowest level since 1986.⁷

In a survey about the impact of anticipated reduced administrative funding, NASWA members indicated that they expected consequences to include reduced administrative performance with U.S. Department of Labor (USDOL) measures.⁸

Pennsylvania's problems caused by inadequate federal administrative funding were particularly acute over the last year, as administrative funding losses threatened the adequacy of staffing in our UI system. Customer service in Pennsylvania's UI program had been deteriorating for years, as flat administrative funding has not kept up with inflation. But starting in the fall of 2012, unemployed workers were confronted with impenetrable busy signals for days on end when they tried to call the UC Service Centers to file new claims, ask questions, or conduct their business (as were employers that had business to conduct with the call centers).

This funding crisis was severe enough that in a rare virtually unanimous action, the Pennsylvania General Assembly recently adopted Act 34 of 2013, which diverts revenues intended for the state's trust fund to administrative purposes through 2019.⁹ Indeed, many states are now forced to also contribute state funds to supplement the inadequate federal administrative dollars. No one is pleased that state dollars had to be redeployed to supplement inadequate federal funding. However, there was consensus that this supplemental funding was needed, given that our UI program simply could not be run adequately without it.¹⁰ Our funding problems and their compromise of state agency operations have not been unique.¹¹

What does inadequate federal administrative funding have to do with overpayments? Plenty. Here are a few impacts.

- Worker communication with the state agencies is thwarted. They cannot get information that they need to act appropriately to avoid overpayments. Misunderstandings of complex and confusing rules are seen as fraud. Staff cannot be reached to report errors that have been made on online applications or telephone claims.

⁷ National Association of State Workforce Agencies, EUC08 UI Administrative Funding and State Staff Reductions (Feb. 1, 2013), at 2.

⁸ *Id.* at 7.

⁹ Pennsylvania is one of the few states in a position to take such an action. Federal law requires state employer taxes to be used solely for benefit payments. However, we are one of only three states to also collect employee taxes, which are not restricted to this use.

¹⁰ Pennsylvania's federal base appropriation for FY 2013 (\$119.8 million) is actually less than in 2001 (\$121.9 million).

¹¹ See, e.g., Karen Bouffard, Jobless Feel Pain As State Cuts Staff at Unemployment Offices, Detroit News (Sept. 18, 2012); Associated Press, SC Jobless Agency Cutting More than 100 Positions, Enquirer Herald (Oct. 15, 2012).

- Because the agency staff struggles with their workloads, erroneous payments are made.
- Delay in adjudicating claims, both initially and on appeal, leads to bigger overpayments of more dollars when erroneous payments are identified and stopped.

Thus, Congress should reform federal UI administrative funding, not only to restore state program operations to acceptable performance levels, but as a necessary component of program integrity.

III. Preventative Measures by State Agencies and Employers Are Needed Reduce Overpayments

Most of the program integrity strategies discussed to date have focused on identifying workers after they have done something wrong. For instance, cross-matching with National Directories of New Hires identifies claimants who continued to collect UI benefits after returning to work. While such strategies are appropriate, taking actions that can avoid or curtail overpayments in the first instance are preferable and should at least supplement punitive actions.

A) State agencies should focus on improving communications with workers

In my experience, many workers who have committed errors involving their unemployment claims have not done so purposefully and are in fact aghast when they learn that they are being charged with fraud or violating program rules. But rules that are clear to lawyers and program administrators are not always so obvious to the rank and file. Clear communications with claimants are extremely important, especially in an environment where they are being encouraged to process their UI claims without human interaction, through the internet and automated telephone interfaces.

For instance, the most common reason for overpayments is that claimants file for UI benefits after returning to work.¹² In some cases, this is an attempt to double dip. In others, it is caused by confusion over when a last claim can properly be filed. People are sometime uncertain about the timing of a claim. Or because they will not see a pay check for several weeks after starting work, they believe that they can continue to collect benefits. Clear communication about the rules and the consequences of violating them will help avoid such overpayments.

Another area where we have seen worker confusion is over opaque questions in applications. Online applications present particular difficulties. The options presented on a drop-down menu may not adequately reflect reality as experienced by a worker. Or the application may be structured in a manner that tracks UI law, rather than worker understanding. For instance, I have heard of much confusion among Pennsylvanians who have lost their jobs

¹² Earnings during the benefit year constitute almost 30% of overpayments. U.S. Dept. of Labor, Employment and Training Admin., "BAM Annual Report Rate Overpayments by Cause, From July 1, 2011 to June 30, 2012," http://workforcesecurity.doleta.gov/unemploy/improp_pay.asp

because of medical restrictions that that could not be accommodated by their employer (but that still permit them to be able and available for work). Tracking state UI law, the question on the online application was structured as though the worker had quit for medical reasons. But the claimants often did not see their separation that way; they believed that they have been laid off because the employer did not have any work consistent with their restrictions.¹³

State agencies can reduce overpayments caused by worker confusion by reviewing their communications to see whether they can be improved. Steps that should be taken include:

- Reviewing and clarifying notices and other written materials (including looking at literacy levels and language access) ;
- Reassessing technological interfaces with claimants, including online applications and continuing claims filing and automated telephone claims filing; and
- Making a priority of increasing access to staff to answer worker questions, to the extent consistent with administrative funding.

Because the areas of earnings during the benefit year and work search documentation are such frequent causes of overpayments, these are good subjects on which to start.

B) Prompt employer engagement in responding to claims should be further incentivized

One of the most common reasons for overpayments is employer delay in providing disqualifying information about a worker's separation (20%).¹⁴ The UI system was set up as an adversary system. A worker files a claim; then his or her employer is supposed to respond within a short time of getting notice of the claim. However, many employers do not initially contest claims, which are then paid based on the information given by the worker. The situation has become even more severe, especially among large employers, because of the proliferation of third-party agents (e.g. TALX) that represent employers in UI proceedings. When it comes time for the employer to face increased tax rates based on the paid claim, it may then still contest the claim, even if many months of payments have been made. By contrast, workers in Pennsylvania must file appeals within 15 days if their claims are denied, or the decision is final.

Workers who received benefits under these circumstances are harmed, as are the state trust fund and other employers that play by the rules. These workers now are burdened by large overpayments, which could have been avoided if the claim had been properly adjudicated at the beginning if the employer had responded as it is supposed to do. In Pennsylvania, we regularly

¹³ In the last year, Pennsylvania legal services advocates went through our online application and provided feedback to the PA Department of Labor and Industry that was gratefully received by the Department, which accepted most of our recommendations.

¹⁴ The Facts about Overpayments and Fraud in the UI Program, *supra* note 3, at 1.

see overpayments of 8-10 weeks under these circumstances; it is not unheard of to see most or all of an *entire* 26-week claim paid before the worker is ruled ineligible.

Hopefully, this problem will be reduced as the states implement the prohibition on noncharging due to employer fault that was created by Unemployment Compensation Integrity Act of 2011,¹⁵ which states must implement for overpayments established after October 21, 2013. However, the new federal law requirement that states must prohibit an employer from getting relief from charges if it did not timely or adequately respond to a claim applies *only* if the employer established *a pattern* of failing to respond timely or adequately.”

While this requirement is a move in the right direction, advocates believe that it does not go far enough. We worry that the state agencies burdened by tracking “patterns” will not be fully motivated to do so. A better standard that would further reduce overpayments would be for relief from charges to be denied in *any case* in which the employer lacks good cause for its failure to respond. In addition, the 2011 law did not specifically regulate the third-party agents, which contribute significantly to the delays in responding to requests for information and, in turn, to UI overpayments.¹⁶

On behalf of the Pennsylvanian clients with UI claims that I represent, I thank you for the opportunity to testify today.

¹⁵ Public Law 112-40 (enacted Oct. 21, 2011), enacting Section 3303(f) of FUTA. This law also requires states to impose a 15% penalty in cases of fraud. Additionally, Congress has permitted states to recover fraud and certain non-fraud overpayments from federal tax returns under the Treasury Offset Program.

¹⁶ Jason DeParle, Contesting Jobless Claims Becomes a Boom Industry, New York Times (April 3, 2010).

Chairman REICHERT. Well, thank you all for your testimony. And if you have testified before Congress, you know that the next phase of our hearing today is the question-and-answer phase. So we would like to get into that for a moment.

But I would like to comment, first of all. I apologize, Ms. Hearthway, for not being here for your testimony. I appreciate the testimony of all the witnesses, and I just want to make a quick comment on Ms. Dietrich's remarks regarding inaccurate law enforcement or criminal records. I don't know if the panel is aware of it, but I was in law enforcement 33 years, starting from the deputy through the end of my career as the sheriff in King County in Seattle, Washington. I am very familiar with the fact that criminal records are not accurate. I think it is a very poignant point to make here.

And the other point that you made, the whole effort here is to make sure that those people who deserve the assistance are paid the assistance. And I think that is really what this panel has come together and just some quick figures. In New Jersey, 20,000 inmates collected over \$24 million. And I could give you a list of some other states here, but the total cost of abuse, in this system, loss of dollars that could go to those folks that really need it, is \$58 billion. That is the total amount of UI improper payments over the last five years.

So, we do have a lot of work and ground to cover. And I am very pleased to hear that Mr. Doggett is supporting the legislation, as are you, Ms. Dietrich, and I think other members of the panel have been invited to also sign on to this legislation. It is common sense.

Common sense brings me to the first question. Ms. Hearthway, the steps that you have taken in Pennsylvania with your office of integrity, the word "remarkable" has been used. And "remarkable," I think it is just sort of a definition of what common sense is, I guess, now, in today's world. Because you have taken some valuable and available information, and you are actually putting it to use.

So, what lessons, from what you have done in Pennsylvania, can we learn and apply to this piece of legislation that we are considering?

Ms. HEARTHWAY. I think perhaps the most obvious is that there are some simple solutions to some large problems. You have to look for them, you have to be open to those ideas.

We knew Pennsylvania has a JNET system that housed all individuals who have been incarcerated. Obviously, we had a database for everyone applying for unemployment. It was really, in all honesty, a simple step, then, to marry those two concepts. In doing so, we knew fraud existed. We knew the scam of sitting in prison and collecting an unemployment check existed. The sheer numbers were a little surprising to us. It is the kind of information—and Representative Kelly and I spoke about this briefly—that spreads pretty quickly through the prison system. So, a few individuals receive a check, a whole lot more know about it.

Marrying two systems, technology allowed us to stop that process fairly quickly. Now, the technology was there for us to do it, and it was not complicated. So I think the first lesson is look at the fraud that is being committed and look at your existing systems.

There could be a program to implement quickly to stop the bleeding.

Chairman REICHERT. So the bill points to the Social Security Administration's prisoner database, but there might be other databases that could help states with this task, too. What criteria should we use to evaluate various prisoner databases, in ensuring that the UI benefits are not paid to prisoners?

Ms. HEARTHWAY. When someone is entering prison, if you marry up two identifiers, social security and date of birth—it is not a massive database, it is a prisoner database—that will pretty much ensure you have the accurate person. We then match that with the social security number and date of birth of any claimant applying for unemployment. There is the opportunity, should a mistake happen, for that individual to say, “No, I wasn't incarcerated,” and then further checks can occur. We have not had that situation. We have been able to verify each one of the stops has been because someone was in prison at the time.

Chairman REICHERT. Thank you for your answers. And we are going to go to three minutes a piece, because we have, I have been told, some votes that may be called to interrupt our day. So, Mr. Doggett is recognized.

Mr. DOGGETT. Thanks to each of you for your testimony. Secretary Hearthway, I was particularly interested in your comment just now, that we can act fast and stop the bleeding, and that states can act fast on this, as well.

Do you know if your counterparts in some of our other states have followed your example on this?

Ms. HEARTHWAY. I know we have talked to a number of other states, told them about our program. Not all states have a similar or the same JNET-type system that we do. So each state could run into slightly different problems. But once you institute this, it is something that comes to a stop pretty quickly.

I mentioned a moment ago the sort of word of mouth that goes through a prison when there is a benefit like this. The same word of mouth will go through the prison when it can't happen, because it would affect someone's parole, perhaps probation. This is a type of fix that can go a long way.

Mr. DOGGETT. And, Ms. Dietrich, thank you for your comments. I gather that, while there may be some policy differences with the Secretary in Pennsylvania on some other issues, this particular program that she is testifying about today has not led to any negative consequences in your state.

Ms. DIETRICH. I have not personally seen any. I would point out that this program has not been in effect for all that long. So I feel it is a little premature to say that from our perspective it has worked perfectly.

I think the issue that has most concerned me as I have studied it is the question of whether people who are incarcerated pending the posting of bail are running into any difficulties after they are able to post bail and have made themselves able and available for work again.

But, no, personally I have not seen any issues with that—

Mr. DOGGETT. And the accuracy of the systems, as you discussed with the Chair.

While we want to prevent even one dollar of fraud, overall I think your testimony is that this problem of prisoners getting payments to which they are not entitled is a pretty small part of this.

Ms. DIETRICH. Oh, absolutely.

Mr. DOGGETT. And as far as the integrity of the system generally, maybe you might just expand on your testimony as to where you think our focus needs to be.

Ms. DIETRICH. Well, I do think that preventative measures are a great idea. And one thing that worries me about the increased technological way that claims-handling is being done these days in order to save money is that we have lost the opportunity for unemployed people to talk to live staff sometimes. And the result of that is that the sort of isolated unemployed person is in a position where he or she doesn't necessarily know what the rules are.

My brother, for instance, was unemployed last year. He was a laid-off school teacher. He has a master's degree in reading comprehension. And he was often confused to what the rules are, and said to me that if he was confused, certainly somebody with a much lesser level of education might be confused.

So, I do think that, from the perspective of the claimants, getting out better information, making available good ways of getting answers to questions, looking at interfaces to the computer systems, I commend Secretary Hearshway for having taken very seriously feedback that we gave the Department about ways that we thought the computer—the online application was confusing, so that people aren't answering incorrectly because they don't see the world quite the same way that unemployment insurance administrators do.

Mr. DOGGETT. Thank you. Thank you, Mr. Chairman.

Chairman REICHERT. Thank you, Mr. Doggett. Mr. Young, you are recognized for three minutes.

Mr. YOUNG. Thank you, Mr. Chairman. The General Accountability Office's report on this very topic, where you studied IT modernization challenges for the states with respect to their UI programs, one of the things I find quite interesting is towards the end of your oral and written testimony. You indicate that, number one, you recommended to Labor to perform a comprehensive analysis of lessons learned, and they agreed with that recommendation.

Secondarily, you recommended they distribute the analysis to each state through an information-sharing platform or repository. Say, a website. And they were silent, for some reason, on that recommendation. Do you have any thoughts about the manner, if you wish, do they intend to share best practices, unsuccessful practices, or so forth, absent a website?

Ms. MELVIN. It is my understanding that they are in the process of compiling lessons learned. They have not communicated back with us about how they would do that, other than that they were putting that information together to disseminate—

Mr. YOUNG. Okay.

Ms. MELVIN [continuing]. To the state officials.

Mr. YOUNG. I just think it is essential that we get better in all areas of public policy at the state level through talking more, and sharing best and worst practices. I understand there are differences across populations and cultures and sub-cultures and economies. But, nonetheless, we have to formalize these things, as

I see it. And hopefully, Labor will be a willing and engaged partner in that regard on this topic.

Commissioner Sanders, we have a great story to tell in the State of Indiana. I am going to give you an opportunity to expound upon it a little bit. But perhaps you could start just by indicating what motivated you and DWD and the administration more broadly to take up this initiative of targeting UI fraud, and then maybe speak to where you go from here.

Mr. SANDERS. Well, thank you, Congressman. I think it gets back to really having unemployment insurance truly be a safety net for those that are unemployed. And I think too often we see the amount of waste, fraud, and abuse that goes on in the system. And one of the challenges we had in Indiana was getting local prosecutors to take up the drum and march with it. And obviously, as the secretary mentioned, word of mouth in unemployment insurance moves very quickly, whether it is those that are incarcerated, or those that are actually unemployed and that are gaming the system. So now that we have been able to pick up the prosecution front in Prosecutor Curry's office, we have been able to really move the ball forward.

I really think the piece, though, with Jobs for Hoosiers, that will attack UI fraud, as well. It is similar to the program that the Feds started in—last year, but they brought individuals in at the 27th week. By that point, it is too far out. We are going to bring those individuals in the fourth week to verify that they are who they are, and then also help them get re-employed.

Mr. YOUNG. Well, thank you so much for your good work. To the extent—for all of you—we can help remove obstacles for further reform and further improvement in these programs and how they operate, please let us know. I yield back.

Chairman REICHERT. Thank you, Mr. Young. Mr. Kelly, you are recognized.

Mr. KELLY. Thank you, Chairman. Just so we understand—and, Secretary Hearthway, maybe you could help us—the revenue that goes into unemployment insurance, where does it come from?

Ms. HEARTHWAY. Employers, primarily. Now, Pennsylvania—

Mr. KELLY. Thank you. Employers.

Ms. HEARTHWAY. Yes.

Mr. KELLY. All right. I happen to own a company. We pay eight percent of everybody that works for us. And I think they put in about 7 percent on their own. So I want to make sure we understand this isn't some benevolent monarch showering these folks with some kind of a benefit. It comes out of employers. It drives the cost of operation higher. And you have to be very careful of that.

Pennsylvania, though—it may be early—you are estimating savings of \$100 million.

Ms. HEARTHWAY. Yes.

Mr. KELLY. Well, in a time where 100 million means absolutely nothing. That was, last minute, what we spent in interest. I think it is incredibly important that everybody understands everybody who deserves this funding should get it. Those who don't should

not. And why do I say that? Because it ruins the safety net for those who are deserving. So I am all on board with you.

Let me ask you, though, to share the information—because there are 49 other states that could benefit from what you have done—is there a best business practices exchange? How do we share that information? How do we get it out to other people?

Ms. HEARTHWAY. It is an excellent question, and it is something I wish that USDOL would work a little bit more on, in pushing out this information. We have contacts of—we reach out to our counterparts. But we do need a more easy, systematic system where we can exchange more detailed information. All of those using JNET, we can walk them through almost a 10-step process of how to utilize this or a system like JNET.

That is something that I think would help tremendously. Perhaps a little bit more focus on that and a little bit less, perhaps, on the ban of imports.

Mr. KELLY. Okay. Mr. Sanders, you want to weigh in?

Mr. SANDERS. Yes, if I could. There is an agency, the National Association of State Workforce Agencies, that our agency belongs to. I believe the Secretary may, as well. In the last year, they have actually set up a best practices group for information technology. And it is something that is picking up steam. So I think it is an area where we could really get the word out fairly quickly on how we could take this approach.

Mr. KELLY. Well, thanks for what you are all doing. I think the key to this, like in every program, it starts off with one mission in mind, it grows, and it gets really—it morphs into something different. We get the economy back on track, we get people going back to work and making higher wages, that automatically grows, it solves your insolvency problem in Pennsylvania.

So, it is really not that difficult to figure out. Maybe it is hard to talk about, but we know the goose that lays the golden egg. It is the employer. It is the ability for us to raise our economy, get it back on its feet, that is going to help all these safety net programs that we have.

So, thank you all for what you do. You are incredibly important to society. Thank you.

Chairman REICHERT. Thank you, Mr. Kelly. Mr. Davis, you are recognized.

Mr. DAVIS. Thank you very much, Mr. Chairman. Secretary Hearthway, does one have to be in active pursuit of work or a job to qualify for unemployment insurance?

Ms. HEARTHWAY. You have to be ready and available to work in order to qualify for unemployment insurance.

Mr. DAVIS. And individuals who are incarcerated, they—on the applications they indicate that they are available and ready to work?

Ms. HEARTHWAY. Yes. Pennsylvania actually has a separate law that simply states if you are incarcerated you are not eligible for unemployment. There is also the broader law, that you must be able and available to work in order to collect unemployment. So there are actually two provisions in our state that would apply to that situation and legally prevent someone from collecting.

Mr. DAVIS. Ms. Melvin, you indicated that fraud occurs because some of the agencies are using outdated computer equipment and don't have the accuracy of their data systems. What would you think some of the barriers are as to why they don't have this equipment that they need?

Ms. MELVIN. We found that the states, first of all, were in very mixed states of implementing modernized capabilities, but they were facing a number of challenges, and those challenges ranged from inconsistencies in the funding that they received that they were relying on to actually implement some of the capabilities. Often times with information technology, modernization efforts, it can take a long time for some programs to be designed and actually executed. So the time frame for getting money across the time that they would actually be doing that could be problematic.

We also saw a lot of problems with the skills, the staff skills that were involved. In many cases, the states reported to us that they did not have the appropriate skills, in terms of IT staff, who could actually carry out these particular projects for them.

So there were a number of complicating factors that impacted whether they, in fact, could get modernization efforts in place.

Mr. DAVIS. So in some instances inadequate funding and inadequate skill is actually costing money, rather than saving money.

Ms. MELVIN. Unfortunately, if you were trying to tie it to the improper payments, that potentially could be a factor.

Mr. DAVIS. And finally, Ms. Dietrich, you mentioned that some employers defraud the unemployment insurance system by falsely claiming that individuals are independent contractors.

Ms. DIETRICH. Yes.

Mr. DAVIS. What difference does that make?

Ms. DIETRICH. Well, the difference is that if you are an independent contractor, the employer is not going to pay those taxes that have been discussed previously. And that also leads to the underfunding of the system, resulting in other employers having to pick up the slack.

Mr. DAVIS. Thank you very much. Thank you, Mr. Chairman.

Chairman REICHERT. Thank you, Mr. Davis. Mr. Renacci, you are recognized for three minutes.

Mr. RENACCI. Thank you, Mr. Chairman, and I want to thank Chairman Reichert for his introduction of H.R. 2826 and for holding this hearing today, so we can better understand the issues states are facing us when it comes to preventing UI fraud. And I want to thank the witnesses for being here.

In my home state of Ohio, the UI administrators serve approximately 225,000 active Ohio employers, and process 1 billion of tax revenues per year. Those tax revenues, as we heard earlier, are coming from businesses. The UI program has made 58 billion in improper payments over the last 5 years. And as a small business owner, I understand the impact these errors can have on businesses. But I also understand the importance of the safety net for individuals, who through no fault of their own, have lost their job. And I think that is important. But we must ensure, as Mr. Kelly said, that taxpayer dollars are spent wisely, and not on individuals that do not qualify.

In the last 12 months I know the Ohio benefit payment control division identified more than 34 billion in fraudulent overpaid benefits. Mr. Sanders, you mentioned in your testimony that the benefit payment control division in your state encountered some challenges when investigating fraud and improper payments. Can you expand a little on those challenges?

Mr. SANDERS. Sure, absolutely. When our investigators first believe there is somebody that is committing fraud, it takes some time and process to then go out and investigate those. In addition, we weren't getting a lot of cooperation from law enforcement agencies. Through our partnership now with Marion County, it has the ability to pull in, whether it is state police, the county sheriff, or even local individuals to actually have that subpoena power and do those investigations and pull that information in.

That was, I think, one of the biggest barriers that has now been opened up for us to be able to investigate these fraud cases.

Mr. RENACCI. And overall for the panel, the status of UI error rates, do you think they are getting worse, better, or generally unchanged?

Mr. SANDERS. I can speak for our state. I haven't studied the other states, but our state continues to improve. Probably over the last year we have cut that number in half. But we are still too high, personally. And I think we really need to continue to improve that and drive that number down, probably into the three to five percent range.

Mr. RENACCI. Any others?

Ms. HEARTHWAY. If I could just add, I mean, Pennsylvania is improving slightly. But if I could make one point here. The benefits error, BAM, program would not have taken into account the prison cross-match that we just instituted. They look at your processes and procedures and see if you are following them, and they extrapolate your error rate based on that.

We have a fairly solid estimate of \$100 million, and that would not show up, either as an error previously or as a benefit now unless you happened upon a case that you knew someone was incarcerated. It wouldn't show those kinds of numbers. And so, I think there is a portion of this that we may be emphasizing form over some substance.

Mr. RENACCI. I am running out of time, and I yield back.

Chairman REICHERT. Thank you. Mr. Griffin, you are recognized for three minutes.

Mr. GRIFFIN. Thank you, Mr. Chairman. In my home state of Arkansas I have got some of the most recent figures. In 2012 it looks like we had about \$46 million in improper payments. And for a state with only three million people, that is a lot of money.

I want to ask you, Mr. Sanders if you would tell me, first of all, how are the prosecutors organized in Indiana? In Arkansas, they are not under the attorney general, for example. They are independently elected. And so, there is a prosecutor coordinator that can help get those elected officials on the same page with regard to the push to prosecute fraud. But could you tell me a little bit about how you got things moving in Indiana? And have you gotten things moving on a statewide scale, or is it very targeted?

Mr. SANDERS. That is the specific issue we had in Indiana, as well, where each of our county prosecutors is independently elected into the position.

First of all, I don't think they have the staff or the resources to go after unemployment insurance fraud, nor do they have the expertise. It is such a unique field. And the fact that we utilized where our computer server—where all the claims are processed is based in Marion County—that actually created the venue issue, which then gave the Marion County prosecutor the ability to prosecute in every county in the state. It is no different than, I think, under federal law. We could charge those individuals with wire fraud because we use the Internet to actually then make payments, as well.

So that is really what was the lynch pin that then opened up the gates. Now we also see our county prosecutors wanting to jump in and help out. Obviously, it helps them, as well. So I think that was really the key—

Mr. GRIFFIN. So that is Indianapolis, is that right?

Mr. SANDERS. And Marion County, yes.

Mr. GRIFFIN. Right. And so I represent all of Pulaski County, which is Little Rock. And so you would be sort of an analogous situation there, potentially.

Real quickly I want to ask you. You may be familiar that in the federal system there is something called qui tam actions, where people can report fraud and get it—basically get a cut of it. Are there incentives in Indiana to—for people to report fraud? And is there a way for some of these prosecutors to get a cut of some of these cases? Are there mechanisms like that that could help sustain?

Because you mentioned the lack of resources. If you get a system where people are getting a cut to report it, and prosecutors are getting a cut to prosecute it, then you can incentivize that behavior that is otherwise hard to incentivize without money and resources and what have you.

Do you have any comment on that?

Mr. SANDERS. Yes, I would. In Indiana there, obviously, is not an incentive to get a cut of what is collected back. We do have an anonymous website. But the piece that is unique, I believe—in most states there is what is called the penalty and interest fund, which means if you find someone that has committed fraud, you can not only charge them with the return of the benefits that go back into the trust fund, but you can also hit them with a penalty and interest on top of that amount, so those funds can then be turned back in to help prosecutors for whatever else you may have going on.

Mr. GRIFFIN. Any—well, it looks like I am out of time. So thank you.

Chairman REICHERT. Yes, sir, Mr. Griffin, you are out of time.

I want to thank all of the panel for being here, and all of our witnesses for being here today. We all recognize the need to make corrections within the system. And I think that we are all in agreement this is at least one small step, this is a small piece of the pie, as was mentioned by Ms. Dietrich and others. But it is an obvious area where we can make progress.

And you have shared some information with us today, some of the areas that we need to focus on, where we need help in technology, information sharing, and lack of resources. Those are things we can make progress on and we can maybe have an impact on making sure that the money our taxpayers put forward go to the people who really need it. So thank you all for your time.

One last comment. If Members have additional questions for the witnesses, they will submit them to you in writing. And we would appreciate receiving your responses for the record within two weeks. This committee stands adjourned.

[Whereupon, at 2:21 p.m., the subcommittee was adjourned.]

[Submissions for the record follow:]

Appris, statement

Appris Written Statement Information

Name:	Richard Boone
Organization (if applicable):	Appris, Inc.
Address:	10401 Linn Station Road Louisville, KY 40223
Phone Number:	502-815-3811
Contact E-mail Address:	rboone@appriss.com
Title of Hearing:	H.R. 2826, the Permanently Ending Receipt by Prisoners (PERP) Act.

Statement will be attributed to Richard Boone

Appriss was founded in 1994 as a direct result of the murder of Mary Byron in Louisville, Kentucky in January of 1993. Mary had been kidnapped and raped by an ex-boyfriend who was in custody in the Jefferson County Metro Corrections awaiting trial. Mary and her parents, John and Pat Bryon, asked authorities that they be notified should Donovan Harris post bail. Harris did make bail, was released and on Mary's 21st birthday he shot and killed her as she left work. Mary and her parents never knew that Harris had been released from jail.

The Byron's, local authorities, and the co-founders of Appriss worked for the next year on developing an automated victim notification system. Almost exactly one year from the day of Mary's death VINE was introduced in Louisville.

VINE (Victim Information and Notification Everyday) is an automated victim notification system that is now offered in 47 states. Forty one of these states provide the system on a statewide basis. This means all county jails and state DOC facilities are accessible through a single toll-free number or website. VINE gives victims the ability to check on the custody status of an offender 24/7 by telephone, internet, or smartphone app, and register to be notified on custody status changes by phone, email or text message.

In order to provide VINE, Appriss develops and maintains interfaces with offender management software systems within each facility. At the county jail level, Appriss collects data that has been entered into the jail management system about every 15 minutes, processes that data, and makes it available through VINE. At the DOC level, most data exchanges occur at least once per day.

In response to demand from our customers in 2003, Appriss began offering the jail data that is collected for victim notification for law enforcement purposes. JusticeXchange provides access to over 70% of all local jail and DOC inmate populations in the United States. This system currently includes over 80,000,000 booking records. Each month, approximately 750,000 new booking records are made available and accessible within one hour of being updated at the jail or DOC. There is no other inmate data source in existence that is as comprehensive or current.

This data is now available to state workforce agencies to help identify and prevent overpayment of unemployment insurance benefits. There are several ways states can use the data. There are several examples on how we helped states identify millions of dollars in overpayments to incarcerated recipients.

In Illinois, we uncovered 1,000 recipients incarcerated resulting in over \$2,000,000 in overpayments identified. In Tennessee, we uncovered \$1,300,000 in overpayments.

There are several methods states can use to take advantage of the jail records. The first method is to perform a scheduled cross match of recipients against the jail data. Typically this is done once per week and the results include both incarceration records and Social Security Death Master File records. Appriss provides various data elements in the results file, including booking date, release date, and facility information. Most states are looking for records which identify incarceration periods of two days or more.

Appriss also has the ability to place 'watches' on recipients, whereby the agency will be notified by email within one hour of booking of a recipient. This process will also email the agency when the recipient is released from custody. The email includes facility name and contact information.

Appriss can also interface the JusticeXchange incarceration with an agency's benefits management system.

Appriss offers state agencies a no cost and no obligation proof of concept project in which we will perform a cross match of records in order for the state to determine return on investment. Several states have taken advantage of this offer and as of this writing no state has declined to move forward with us on contracting for services.

Appriss has two states under contract with four others currently moving through sole source procurements. Several other states are evaluating the results of the pilot while others are committed to performing the proof of concept.

