

Testimony of Douglas J. Holmes
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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

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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.