UNEMPLOYMENT CHECKS TO PAYCHECKS: IMPLEMENTING RECENT REFORMS

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

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CONTENTS

	Page
Advisory of April 25, 2012 announcing the hearing	2

WITNESSES

Panel 1:	
The Honorable Jane Oates, Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, Testimony	7
Panel 2:	
Mr. Darrell Gates, Deputy Commissioner, New Hampshire Department of Employment Security, Testimony	72
Mr. Larry Temple, Executive Director, Texas Workforce Commission, Testimony	85
Dr. Wayne Vroman, Ph.D., Senior Fellow, The Urban Institute, Testimony	92
Mr. Douglas J. Holmes, President, UWC—Strategic Services on Unemployment & Workers' Compensation, Testimony	103
Mr. Michael Cullen, Managing Director, OnPoint Technologies, Testimony	115

MEMBER SUBMISSIONS FOR THE RECORD

The Honorable Tom Reed	134

PUBLIC SUBMISSIONS FOR THE RECORD

TrueBlue	184

MEMBER QUESTIONS FOR THE RECORD

The Honorable Geoff Davis	169
The Honorable Jim McDermott	179

MOVING FROM UNEMPLOYMENT CHECKS TO PAYCHECKS: IMPLEMENTING RECENT REFORMS

WEDNESDAY, APRIL 25, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
WASHINGTON, DC.

The subcommittee met, pursuant to call, at 10:08 a.m., in Room 1100, Longworth House Office Building, the Honorable Geoff Davis [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Davis Announces Hearing on Moving from Unemployment Checks to Paychecks: Implementing Recent Reforms

Washington, April 25, 2012

Congressman Geoff Davis (R–KY), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing reviewing the implementation of the reforms to the unemployment insurance system contained in Public Law 112–96, *The Middle Class Tax Relief and Job Creation Act of 2012.* **The hearing will take place on Wednesday, April 25, 2012, in 1100 Longworth House Office Building, beginning at 10:00 A.M.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include a representative of the U.S. Department of Labor (DOL) as well as other public and private sector experts on unemployment benefits and policies designed to promote reemployment. 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:

In March 2012 (the most recent official data), the U.S. unemployment rate was 8.2 percent, with 12.7 million individuals unemployed, of whom 5.3 million were long-term unemployed—defined as unemployed for 27 weeks of longer. As of the week ending March 24, 2012, approximately 6.8 million individuals were collecting State or Federal unemployment benefits.

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 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 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. Since mid-2008, over $200 billion in Federal extended unemployment benefits have been authorized, with most supported by general revenues.

As the number of weeks of unemployment benefits and total spending have grown, so have total payments made in error. According to DOL, improper payments of unemployment benefits reached record highs in 2011, with $13.7 billion paid in error or 12 percent of all payments.

On February 22, 2012, the President signed P.L. 112–96, *The Middle Class Tax Relief and Job Creation Act,* which extended and reformed Federally-funded unemployment benefits under the Emergency Unemployment Compensation (EUC) program for the remainder of 2012. The reforms to the permanent program include creating job search requirements for Federal benefits, permitting States to have flexibility to promote pro-work reforms, allowing screening and testing of certain UI applicants for illegal drugs, requiring reemployment eligibility assessments for the long-term unemployed, and requiring States to recover prior overpayments of UI benefits. Prior to their enactment, these reforms were the topic of a previous Human Resources Subcommittee hearing on moving from unemployment checks to paychecks in October 2011.

Also under the law, the unemployment rate thresholds and weeks of benefits available in various "tiers" of EUC will change in the coming months, resulting in fewer weeks of Federal benefits being paid, with those weeks increasingly focused on States with the highest unemployment rates. As a result, starting in September 2012, the maximum number of weeks of eligibility for UI benefits will have fallen from 99 weeks to 73 weeks, but only in States with unemployment rates above 9 percent.

In announcing the hearing, Chairman Davis said, **"Members from both Chambers of Congress and both sides of the aisle came together to agree on new policies designed to help unemployed Americans return to work. This hearing will examine how these new reforms are being implemented by DOL and the States. This will help us judge what next steps may be needed to improve the overall integrity of the program so that we are better able to move more individuals from benefit checks to paychecks."**

FOCUS OF THE HEARING:

The hearing will focus on the implementation of reforms to unemployment benefits enacted in P.L. 112–96, *The Middle Class Tax Relief and Job Creation 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, "Click here to provide a submission 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 the close of business on Wednesday, May 9, 2012**. 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 avail-

ability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman DAVIS. Good morning. Thank you for joining us for the hearing this morning.

As we all know, we have been paying record unemployment insurance benefits for years now. Despite characterizations by some that this is the best stimulus that money can buy, we know that the U.S. labor market remains in near critical condition today. There are 5 million fewer jobs today than the administration predicted there would be at the end of 2010. This is the slowest jobs recovery since data were first recorded in the 1930s. Unemployment has been above 8 percent for 37 consecutive months, the longest stretch since the Great Depression. Today's 12.7 million unemployed Americans are almost 1 million more than when President Obama took office, and today's 5.3 million long-term unemployed are more than double the number when President Obama took office.

Yet even those grim figures miss some major problems. For example, beyond the 12.7 million unemployed and the 5.3 million long-term unemployed, millions more have simply stopped looking for a job. As this chart shows, the unemployment rate would be 11 percent today if these discouraged workers were counted as officially unemployed.

To address this desperate need to change direction, in February of 2012 Congress passed and the President signed into law legislation originating from this committee containing historic reforms to the Nation's unemployment insurance system. When that legislation passed, the headlines often focused on how it extended Federal unemployment benefits through the end of the year with shortened durations and greater focus on the highest unemployment States. But the legislation contained much more, including what the administration described last week as the first major overhaul of the unemployment insurance system in decades. I would echo that sentiment.

In sum, these reforms are designed to help more unemployed people, and especially more long-term unemployed, get back to work. Among other provisions the legislation includes new job search requirements for people collecting extended unemployment benefits, new waiver flexibility to test ways of using UI funds to help people get a job instead of just a benefit check, new reemployment assessments designed to address obstacles long-term unemployed have to taking a new job, and new authority for drug screening and testing of some UI applicants.

The American people need these reforms to take effect quickly and to work effectively. This hearing is designed to review the implementation of these reforms as well as consider what additional steps may be needed. Members will hear from the Department of Labor as well as State and private sector experts about what these reforms are meant to accomplish, what has already happened, and what is yet to come in terms of their implementation.

We have some specific questions about how and why certain policies are being implemented the way they are, as well as about the challenges States and employers may have in adjusting to the reforms, but most importantly we use this hearing to ensure these changes are being implemented in a way that will help more unemployed Americans trade benefit checks for paychecks. That is our ultimate goal and the standard by which this program should and will be judged.

I know that over time we have had spirited discussions on this, both in the committee, on the floor. Several of us who are up on the dais today have managed extensions of the previous unemployment program through the early period of the last Congress and the Congress before that, and we finally hit a center of mass where we were able to make some reforms, achieve a compromise with a focus on the process, getting away from the emotion of ideology on either end of the spectrum to really fix some problems that the States had, as well as addressing spending issues and incentives for folks to go back to work.

So I appreciate all of you being here, appreciate the Members of the Subcommittee for joining us today.

Chairman DAVIS. And one other note that I would like to make before we move on is I would like to take a moment to recognize Tim Ford, who is our Legislative Assistant on the Human Resources Committee, also helping to keep the trains running on time today. Tim has been with the subcommittee staff since early 2011, and he leaves us tomorrow for the University of Michigan law school. Tim does a lot of work before and during our hearings to make sure they run smoothly, and I know our witnesses are grateful for his help as they prepare to testify today.

He is a great addition to our team. I personally appreciate his contribution, his infectious enthusiasm, and his devotion to duty on what can be a very intense subcommittee to work on.

And I just want to thank you very much and all of us give you a round of applause for your contribution.

[Applause.]

Chairman DAVIS. With that, the ranking member, my friend from Texas, Mr. Doggett is recognized for 5 minutes.

Mr. DOGGETT. Thank you, Mr. Chairman.

Certainly extending a hand to those Americans who have lost a job through no fault of their own and who are out searching for new opportunities is the right thing to do to keep our economy moving forward and to assist millions of our fellow Americans.

Unemployment benefits helped in a significant way to avoid a very bad recession, the worst since the Great Depression, from becoming a catastrophic depression by helping folks put food on the table, a roof over their family's head, and get the kids the clothes they need to go to school.

Overall our economy is making some progress as evidenced by the nearly 3½ million jobs that have been created over the last 2 years, but there is considerable work to do. And it is correct that since December of 2007, before this administration took office, we have, versus that point, 5 million fewer jobs.

Though there has been some remarkably good news over time in Texas, according to the Center for Public Policy Priorities in East

Austin, we still have a shortfall in our State of almost three-quarters of a million jobs. In San Antonio, for example, almost 40,000 workers are receiving unemployment benefits, and more than half of those have been unemployed for at least 6 months. In Travis County, almost 25,000 unemployed workers are claiming benefits. Last week the San Antonio Express-News held a job fair that attracted some 1,400 people, including Amanda, a 46-year-old trained as a medical assistant, who has been searching for a job for 6 months without success.

I think it is vital that we maintain the unemployment insurance lifeline for families who want to work, but have not yet been able to find a job. Fortunately, in February a number of our Republican colleagues, after a great deal of foot dragging and creating an unnecessary crisis for too many of our families, joined with us as Democrats in maintaining emergency unemployment benefits throughout the rest of 2012.

There have been included with that new law as a part of the extension a number of reforms that are designed to promote employment. One of those was the subject of testimony in this subcommittee last year by Senator Ron Wyden of Oregon. I worked with Senator Wyden in sponsoring legislation to encourage more States to promote entrepreneurship among the unemployed by allowing under certain conditions those who are unemployed to use their resources to help establish small businesses. I think this is a program with much potential for some of the unemployed, and I look forward to hearing from the Secretary and others about how that potential can be achieved.

The new law also contained provisions to avert layoffs through work-sharing programs in which individuals receive partial unemployment checks when their work hours are cut. The administration also had initiated a program that is included in the new law to require recipients of emergency unemployment to undertake reemployment assessments, and there are some demonstration projects that will be conducted by the Secretary of Labor to explore other alternatives, which we can discuss this morning.

As we review how the States have responded to the various changes in Federal laws related to unemployment, we need to acknowledge that there is a much bigger challenge looming. Thirty States now owe the Federal Government $41 billion in unemployment loans, and several other State unemployment programs, like my home State of Texas, have borrowed from the private market. The magnitude of the recession had an obvious impact in driving up insolvency, but truthfully, a number of these States failed to make proper preparations for even a mild recession, much less a more severe one like that that we experienced. A system that was more forward funded would have averted many of the problems and certainly the massive amount of State debt to the Federal Government that we have today.

I look forward to suggestions and recommendations as to how we can create an unemployment insurance system that does a better job of saving for the future and protecting those who need it in an economic downturn.

Thank you, Mr. Chairman.

Chairman DAVIS. Thank you, Mr. Doggett.

Chairman DAVIS. I would like to remind our witness to limit her oral statement to 5 minutes. However, without objection, all of the written testimony will be made part of the permanent record.

On our first panel this morning we will be hearing from the Honorable Jane Oates, Assistant Secretary for the Employment and Training Administration, U.S. Department of Labor.

Ms. Oates, please proceed with your testimony.

STATEMENT OF THE HONORABLE JANE OATES, ASSISTANT SECRETARY, EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Ms. OATES. Good morning, Chairman Davis, Ranking Member Doggett, and other Members of the Subcommittee. Thank you for the invitation to testify today and for holding this hearing on the unemployment insurance provisions in the Middle Class Tax Relief and Job Creation Act of 2012. It is an exciting time for the UI program, and I welcome the opportunity to talk to you about what we are doing to implement these provisions.

Let me first start by thanking Congress for extending the Emergency Unemployment Compensation Program and the full Federal funding for the Extended Benefit Program. We estimate that about 5.3 million unemployed workers will receive more weeks of benefits as a result of this extension. Unfortunately, too many Americans are still unable to find work, particularly those that have experienced long-term unemployment. Therefore, both the extension of benefits and the provisions of these acts focusing on reemployment and layoff aversion are very important.

My staff is rising to the challenge of having to implement multiple new initiatives at the same time, and we have made significant progress in developing the necessary guidance and providing technical assistance to States. I am also pleased to report that States are generally being successful in implementing the mandatory provisions of the act in very short timeframes, and NASWA, their association, has a lot to do with that.

As you know, the act makes many complex changes to the EUC program structure. On March 5th, we issued initial guidance on the EUC changes, and we have additional guidance related to the random work-search audits and responses to State questions in the final stages. And to enable States to administer the new EUC provisions, Secretary Solis and all States signed addenda to their EUC agreements by March the 19th.

The new provisions for providing reemployment services and eligibility assessments to claimants are an important step to ensure that long-term unemployed workers are getting the reemployment services they need to regain employment as soon as possible. Guidance was issued on implementation of RES and REA on March 16th, a full week ahead of schedule, thanks to my great career staff.

States have articulated a number of challenges related to implementation of RES/REA, but by far the biggest one is the need to increase their capacity to serve the additional 4 million EUC claimants they will be seeing through the end of the year. Despite these challenges, the States were able to commence RES/REAs by mid-

April, most of them, and almost all States will have implemented by the first week of May.

Secretary Solis is pleased to have the opportunity to promote innovative reemployment strategies by allowing up to 10 States to conduct demonstration projects. We know that States are excited about this new opportunity. UI PL 15–12 was issued on April 19th, providing guidance to the States on the application process, and many of the States will probably tell you they are still reading it. A Webinar to review the guidance and response to State questions is scheduled for this Friday. We welcome your staff and interested constituents to participate, and we will be happy to give you the information about how to get on that Webinar.

We look forward to the opportunity to improve State take-up and expansion of short-term compensation as an important layoff-aversion tool. We began implementation of these provisions by consulting with stakeholders and other program experts in two listening sessions on March 19th and 20th. Guidance for all the short-term compensation provisions and the model legislative language will be issued soon, and we are planning for robust technical assistance so that everyone who wants to can take advantage of that.

We anticipate that States currently operating an STC program may have to make at least some State law modifications to conform to the new Federal program definition and to be eligible for the available grants. The 100 percent reimbursement of State STC benefit costs for States with permanent programs will begin soon after the guidance is issued.

The self-employment assistance that the ranking member mentioned, the SEA provisions to support increased State implementation and to expand the program to both EUC and EB, will enable many more unemployed workers to consider self-employment as a reemployment strategy. Similar to STC, we hosted two listening sessions on March 19th and 20th and consulted with stakeholders and other program experts.

While most of the UI provisions in the act are temporary, it also establishes some permanent changes to the UI program, including an explicit statutory requirement that regular UC claimants must be able to work, available for work, and actively seeking work. States will likely not need to make significant changes to their laws, as they already include such requirements.

Other things on which we will be issuing a guidance, of course, are the changes permitting the permanent changes to include the provision allowing States to test certain applicants for the use of illegal drugs as a condition of eligibility. We are consulting with SAMHSA and with other agencies to make sure that our regulation concerning the occupations that regularly conduct drug testing are uniform across our agencies.

I appreciate the opportunity to talk to you about the UI provisions. In the interest of time, I won't talk about data exchange standardization, but please know we are very interested in that. We have already engaged with the Office of Management and Budget and our State partners to explore ways that we can expand that. You know we already bought into that. My career staff will be dancing in the aisle when we can do that.

Chairman DAVIS. I would like to see that.

Ms. OATES. Right.

And I would be remiss in my last few seconds if I didn't say what a sad day for me to be testifying. We all lost a good friend when Don Payne lost his battle to cancer, and I know that some of you know that I spent some years in New Jersey. He was a great friend while I worked for Senator Kennedy and a terrific friend while I was in New Jersey. And I understand that members may be coming and going to go to his services, and I fully appreciate that, Chairman.

Thank you. I look forward to your questions.

Chairman DAVIS. I thank you very much, Madam Secretary.

[The statement of Ms. Oates follows:]

STATEMENT OF
JANE OATES
ASSISTANT SECRETARY
EMPLOYMENT AND TRAINING ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
April 25, 2012

Good morning Chairman Davis, Ranking Member Doggett, and members of the Subcommittee. Thank you for the invitation to testify today and for holding this hearing on the Unemployment Insurance (UI) provisions in the Middle Class Tax Relief and Job Creation Act of 2012 (the Act), which extends UI benefits for long-term unemployed workers and includes a number of important UI reforms that align with the President's priorities. This is an exciting time for the UI program and I welcome the opportunity to talk to you about what we are doing to implement these provisions.

Let me start by thanking the Congress for extending the Emergency Unemployment Compensation (EUC) program and full Federal funding for the Extended Benefit (EB) program. We estimate that about 5.3 million unemployed workers will receive more weeks of benefits as a result of this extension – benefits that are a critical lifeline for these workers as the economy recovers and more jobs are created.

While our economy is now growing and new jobs are being created each month, too many American workers are still unable to find work—particularly the 5.3 million long-term unemployed. Therefore, the provisions in the Act focusing on reemployment are particularly important, including Self Employment Assistance (SEA), and the provision of reemployment

services (RES) and reemployment and eligibility assessments (REAs) for EUC claimants, both of which have been Administration priorities and were proposed in the American Jobs Act. In addition, the provisions encouraging states to implement or expand short-time compensation (STC) programs will now provide an important new tool for states to implement layoff aversion strategies, helping workers to remain employed and employers to retain skilled workers. The opportunity for the Secretary of Labor (Secretary) to enter into agreements with states to both demonstrate and evaluate new reemployment strategies will support reemployment and provide all of us with evidence-based information to inform future UI reforms.

My staff in the Office of Unemployment Insurance has been working diligently to provide the necessary guidance and technical assistance to states to implement these provisions and we have made significant progress in a very short amount of time. While substantial work has been done in all areas, we prioritized those areas requiring immediate implementation. Our early focus was on issuing guidance and providing technical assistance about the EUC extension and the complex changes to the EUC program including the RES/REA provisions, which required guidance and state implementation within 30 days; consultation with stakeholders and program experts about STC and SEA; and developing guidance on the application process for the reemployment demonstration projects. I am pleased that I can report that we have accomplished all of these early deliverables and we expect that additional guidance on the remaining provisions, including the guidance on STC and SEA, and other required tools, such as the model legislative language for both STC and SEA, will be issued within the next several weeks. More information about each of these components and the other UI-related provisions in the Act are provided below.

As you know, implementing several major new program initiatives concurrently is a challenging undertaking for both the Department of Labor (Department) and for states, and there are a number of factors that can impact timing for implementation of each of these provisions. As an example, many of the provisions are requiring new financial and programmatic processes, which, in turn trigger the need to develop packages for clearance under the Paperwork Reduction Act (PRA). From a state perspective, a number of provisions require state law changes, limiting states' ability to quickly implement them. In addition, states necessarily have had to focus in the short term on implementing mandatory EUC changes, including the new RES/REA requirements, and have not yet been able to give significant attention to implementing the optional provisions. I am pleased to report that states are generally being very successful at implementing the mandatory provisions and are doing so in very short time windows.

Below is a more detailed review of our implementation of the various UI provisions in the Act.

EXTENSIONS AND EUC CHANGES

As you know, UI benefits are a crucial lifeline for jobless workers, their families, and local communities. Keeping these benefits available to long-term unemployed workers was a high priority for the President and, again, I appreciate the subcommittee's efforts to ensure that they remain available.

The Act provides vital assistance to America's long-term unemployed workers by extending the EUC program and provisions enabling EB to remain available in states longer. In addition to the actual extension of EUC benefits, the Act made a number of significant and complex changes to the structure of the program including changes to the number of weeks available in the 4 tiers of benefits as well as the triggers for states to provide the various tiers of benefits. These

structural changes will reshape the program every quarter until the program ends completely, with no phase out, on January 2, 2013. The complexity of these changes is a challenge for states to implement. Each change will require new computer programming to implement, something that states with antiquated information technology infrastructure struggle with, and will generate significant workload related to customer call volume due to claimants' difficulty understanding the changes and asking questions about how they impact them. Nonetheless, states have been working extremely hard to comply with all of the new EUC program requirements, with particular emphasis, in the states to which it applies, on making the new 10 weeks of Tier 4 benefits available as quickly as possible to eligible unemployed workers.

The Act makes several other changes to the EUC program. First, it adds a new explicit requirement that individuals be able to work, available to work, and actively seeking work. Actively seeking work is defined to include registration with the employment service, an appropriate search for work, maintenance of a work search record, and the provision of such record to the state agency upon request. Further, the Act requires the Secretary to establish a minimum number of claims states must randomly audit each week to verify individuals' work search efforts. In addition, the Act requires states to recover improper EUC payments by offsetting against benefits payable to individuals. Finally, the Act modifies the EUC "non-reduction rule" to exclude state enactments before March 1, 2012 that would violate this rule by reducing average weekly benefit amounts payable.

Within days of enactment, my staff had a conference call with the state UI agencies to provide initial technical assistance to facilitate state efforts to promptly implement these changes. On March 5, 2012, the Department issued guidance (UI Program Letter 4-10, March 5, 2012) to the states about these programmatic changes. The Secretary and all states signed addenda to their

EUC agreements by March 19, 2012, that contain the new required additions to the EUC program enabling states to continue to operate the program. Additional guidance on the requirement for states to implement work search random audits will be issued soon. We also plan to issue follow-up guidance in a question and answer format to address specific state implementation questions that were not addressed in the original guidance.

RES/REA

The provisions in the Act for reemployment services and eligibility assessments for all new EUC claimants and current claimants who transition to Tier 2 of EUC benefits is an important step to ensure that long-term unemployed workers are getting the reemployment services they need to regain employment at the earliest possible time. This blended approach to providing reemployment services and eligibility assessments helps reduce the duration of benefit receipt and saves unemployment funds by helping claimants find jobs faster and eliminating payments to ineligible individuals. We know this is a strategy that works. The results of a study of the REA program by IMPAQ International concerning the State of Nevada, which included a combined REA and RES model, showed that combining RES with REAs increased reemployment by close to 20 percent initially and by close to 10 percent into the second year following participation in the program. Use of this model also increased earnings by 25 percent initially and close to 15 percent into the second year after participation. Thus, not only did eligibility assessment and reemployment services have a positive effect on UI duration, but also a persistent effect on employment and earnings. This model also resulted in larger savings to the Unemployment Trust Fund (UTF) than the results from the other states that did not combine these functions. Claimants who received REAs in Nevada received, on average, 2.96 fewer

weeks of benefits than similar claimants, which translated to a reduction in benefit payouts of $805 per claimant.

The Act makes participation in RES/REA activities and services a condition of EUC eligibility, though participation may be waived under certain limited circumstances. States must:

- Provide labor market and career information;
- Assess individuals' skills;
- Give individuals an orientation to one-stop career center services; and
- Examine individuals' work search activities to review eligibility for EUC.

States also have the option to provide more intensive reemployment and training services.

The Act provides states with funding for RES/REA activities at $85 per person served. The funding is flowing through either the state's UI agency or employment service agency, at the Governor's discretion. States were strongly encouraged to collaboratively engage the state's UI agency, the state's employment service and Workforce Investment Act agencies, local workforce boards, and One-Stop Career Centers in planning for implementation.

The Secretary was required, by statute, to issue guidance on implementation of RES/REA activities not later than 30 days after enactment (March 23, 2012) and the guidance was issued on March 16, 2012—seven days in advance of this requirement. To provide additional technical assistance to states, we held several calls with states and hosted a webinar on March 21, 2012, to amplify our guidance.

It has been a challenge for states to ramp up to implement the RES/REA requirements quickly and to increase necessary capacity to serve an additional 4 million EUC claimants through the

end of the year. In our guidance, we instruct the states to contact individuals by the third week in their claim series and to schedule in-person REA/RES by the sixth week in their claim series. Based on information collected through the Employment and Training Administration's Regional Offices, many states were able to implement by mid-April and most states will implement by the first week of May.

I would also note that we are in the process of implementing a state reporting process that will capture employment and retention outcomes for those served, utilizing existing reporting processes used for the employment service.

DEMONSTRATION PROJECTS

Helping unemployed Americans find good jobs is a top priority for the President. For this reason, we are pleased to have the opportunity to promote innovative reemployment strategies. The Act provides that the Secretary may permit up to 10 states to conduct demonstration projects to expedite the reemployment of individuals who are eligible for "unemployment compensation under the State law of such State" or to improve state effectiveness in carrying out "its State law with respect to reemployment." The scope of state demonstration projects is limited to subsidies for employer-provided training or certain direct disbursements to employers who hire individuals receiving UI benefits.

In order to carry out these demonstration projects states may request a waiver of two requirements in Federal law. Among other things, these waivers could permit a state to use funds from the state's account in the Unemployment Trust Fund to support the demonstration project. In recognition of the importance of maintaining reserves for the payment of

unemployment compensation, the demonstration projects may "not result in any increased net costs to the state's account in the Unemployment Trust Fund."

The Act also permits states to use their UI administrative grants to fund these demonstration projects and establishes additional requirements for states that want to conduct these projects, including a state evaluation of the effects of the demonstration project on individual skill levels, earnings, and employment retention. All projects must last for at least one year and end no later than December 31, 2015.

We know that states are excited about this new opportunity. To ensure that states understand the requirements for an application to be approved and that all states have the chance to apply, Secretary Solis sent letters to the governors to let them know of the opportunity and that application guidance would be forthcoming. Given that this opportunity is limited to only ten states, the application process is designed to allow the Secretary to identify strong demonstration projects and to ensure we can evaluate the effectiveness of these new approaches. UIPL 15-12 was issued on April 19, 2012. An applicant webinar to review the application process is scheduled for April 27, 2012. In addition, the Department plans to conduct a national evaluation of the entire initiative, in addition to the individual state evaluations of their own demonstration projects.

SHORT-TIME COMPENSATION

STC, also known as work sharing, is a layoff aversion strategy that enables workers to remain employed and employers to hold onto their trained staff during times of reduced business activity. Expansion of STC is a top priority for this Administration and we are happy to be in

position to advance state implementation of STC programs. While it can be an effective layoff aversion strategy in any economy, it is a particularly important tool in a recession.

The Act includes several STC-related provisions. First, it codifies and modifies the definition of STC, which essentially establishes program requirements. While much of this definition is consistent with prior law, there are some key changes including maintenance of health and retirement benefits for STC participants. States that had been operating an STC program prior to enactment of the Act have 2 ½ years to amend their laws to conform to the new definition.

To encourage states to enact state STC programs and give states an incentive to promote the use of STC, the Act provides for 100 percent reimbursement of STC benefit costs paid under state law for up to 156 weeks (three years). Authority to provide these reimbursements ends 3 years and 6 months after the date of enactment of the Act (August 22, 2015).

In recognition of the fact that states may want to try out an STC program before they are able to get a state STC program enacted, the Act also establishes a voluntary Federal STC program. Under this program, the Federal government would pay all administrative costs and one-half of the STC benefit costs, and the employer participating in STC would pay the other half of the STC benefit costs. States may participate in the Federal STC program for no more than 104 weeks (two years) and authority for this program ends 2 years and 13 weeks after the date of enactment (May 24, 2014).

To ensure states have adequate administrative resources to implement and promote STC, the Act also provides for just under $100 million in grants to states whose permanent STC laws meet the new Federal definition. States must submit grant applications no later than December 31, 2014. States must use 1/3 of their share for implementation or improved administration of their STC

programs. The remaining 2/3 of their share must be used for promoting and enrolling employers in STC programs.

To meet the requirement in the Act to consult with stakeholders and other program experts with regard to model legislative language, technical assistance, and reporting requirements, and to inform our efforts to draft guidance on all of these STC provisions, we held two listening sessions on March 19 and 20, 2012. We are actively working on guidance for all of the STC provisions, but we prioritized first issuing guidance on the new definition of STC, special transition provisions for the 25 states currently operating STC programs, and 100 percent reimbursement of state STC benefit costs. We hope to issue it soon. We anticipate that all states currently operating an STC program will have to make at least some modifications to conform to the new definition. We have coordinated extensively with the Department of the Treasury to establish the processes necessary for these reimbursements to occur and anticipate that these reimbursements will begin to be made shortly after the guidance is issued. Additional guidance on the temporary Federal STC program and the STC grants are under development and will be issued in the near future. We also are establishing a robust outreach and technical assistance strategy to support state take-up and implementation.

SELF EMPLOYMENT ASSISTANCE

Both a reemployment strategy and a job creation strategy, SEA helps unemployed individuals establish their own business by providing them with temporary income support (in lieu of receiving regular UC) and access to entrepreneurial training and services. Previous studies show that those who participate in SEA programs are 19 times more likely to remain self-employed than those who do not.

The Act has two key SEA components. First, it expands SEA to the EB and EUC programs. Individuals may receive up to 26 weeks of SEA payments based on EUC, EB, or combined EUC/EB eligibility. The requirements for these programs are generally the same as for state SEA.

Second, the Act provides $35 million for grants to states that operate any SEA program— a regular state SEA program, an EB SEA program, or an EUC program. The grant amount is determined by formula and states should submit a grant application no later than June 30, 2013. States may receive two grants—one for development, implementation, or administration of an SEA program; and one for promotion and enrollment of individuals in an SEA program.

Similar to the STC program, we hosted two listening sessions on SEA on March 19 and 20, 2012 to meet the requirements of the Act to consult with stakeholders and other program experts, develop model legislative language for state use, provide technical assistance, and establish state reporting requirements. We expect to get guidance on the SEA provisions to states by early May. As required by the Act, we have already engaged with the Small Business Administration (SBA) and are planning outreach and technical assistance to states in partnership with SBA. We have also already begun planning for the required evaluation of the program.

PERMANENT UI LAW CHANGES

While many of the provisions of the Act described above are temporary, it also establishes a few permanent law changes with respect to the UI program. First, it adds an explicit statutory requirement that individuals must be able to work, available for work, and actively seeking work in order to be eligible for regular UC. As being "able and available" for work is a longstanding interpretation of Federal law that has been codified in Federal regulation, all states currently

require individuals to meet this requirement as a condition of eligibility for benefits. We are currently reviewing the existing regulation to determine if there is any need to amend it to align with the provision in the Act. For your reference, all states currently require individuals to actively seek work, so there should be little or no operational change to current practice.

In addition, the Act mandates that states recover improper benefit payments via offset from current benefit entitlement under any state and Federal unemployment compensation benefit programs. Under prior law, states had permission to recover improper benefit payments via offset from current benefit entitlement and all states do that. In calendar year 2011, states recovered more than $440.2 million via these offsets.

The Act also includes a provision concerning drug testing. It permits states to test applicants for use of illegal drugs under certain circumstances as a condition of eligibility for benefits. Specifically, this authority is limited to two reasons directly related to the "fact or cause" of an individual's unemployment:

- The applicant was terminated from employment with their most recent employer for unlawful use of drugs; or
- The only work that is suitable for the individual is in an occupation that regularly conducts drug testing.

Policy guidance on this is under development. The Act also requires the Secretary to issue a regulation concerning the occupations that regularly conduct drug testing. We are consulting with the Substance Abuse and Mental Health Administration in the Department of Health and Human Services and others to develop an approach to identifying these occupations that regularly require drug testing as a prelude to developing the required regulation.

DATA EXCHANGE STANDARDIZATION

Prior to enactment of the Act, the Department had already begun to implement data exchange standardization for the UI program – specifically for the Separation Information Data Exchange System (SIDES) and the Interstate Connection Network (ICON). We welcome the opportunity to continue to expand the interoperability of the UI system with regard to data exchange among states, across programs, and between states and the Federal government.

The Social Security Act, as amended, requires the Secretary, in conjunction with the Office of Management and Budget (OMB), to designate a data exchange standard for any category of UI information required under Titles III, IX, and XII of the Social Security Act. In addition, the Secretary is required to issue a proposed rule within 12 months of enactment and a final rule within 24 months of enactment concerning these standards.

We have reached out to House of Representatives staff to ensure our approach is consistent with Congressional intent. In addition, we have engaged with OMB and state partners through the National Association of State Workforce Agencies to explore areas of opportunity as a prelude to issuing the required regulation.

CONCLUSION

I appreciate the opportunity to talk to you today about the UI provisions in the Act. My staff in "team UI" is dedicated to helping America's unemployed workers and welcome the opportunity to implement these vital initiatives. I look forward to continuing to work with the subcommittee on ways to help unemployed workers and improve the UI program to transform our unemployment system into a reemployment system that helps Americans get jobs. I will gladly answer any questions you may have.

13

Chairman DAVIS. I move now to questions. I have a question for you first as we move forward. Your written testimony on page 6 notes, and I quote, "The Secretary was required, by statute, to issue guidance on implementation of RES/REA activities not later than 30 days after enactment."

To my knowledge there was not a similar requirement for the Secretary to issue guidance on waivers. Is that correct? And, if so, why did DOL issue its recent guidance on waivers?

Ms. OATES. On the demo project, sir?

Chairman DAVIS. Yes.

Ms. OATES. We did the guidance on that so that we could make sure—since this was a pilot and demo that the Secretary was very interested in pursuing and very happy that Congress gave her the opportunity to do, we wanted to make sure that we had some standardized process so that States would know exactly what we were looking for. And while I think some people will say, and I respect their opinion, that the guidance is lengthy, we think that this was—this is the first time that we have allowed States to use trust fund money for anything else other than the payment of UI benefits, and therefore it was important for us in good public policy to make sure that we told people what we were looking for in that.

Chairman DAVIS. Our review of the Secretary's guidance reveals little additional information about how the States are supposed to apply, except for the section labeled "The Secretary's Priorities," and this section includes a number of provisions that, in effect, were part of the President's American Jobs Act, but not the bill passed by the Congress. And that includes new provisions related to the Fair Labor Standards Act, assurances that demonstrations lead to permanent employment, and goals involving low-income and older workers. Where exactly in the law Congress passed did these and other Secretary's priorities for the waiver provision appear?

Ms. OATES. Well, in the guidance, sir, we did provide all the statutory provisions that are mandatory, and the Secretary's priorities were included as additional things. Yes, many of them were included in the President's program that he put forward, but I think that the fact that we are using State trust fund money, that the businesses that are the sole providers of that money would want to make sure that raiding the trust basically resulted in permanent employment and did follow the Fair Labor Standards Act that was passed by Congress. So, I mean, I am not quite sure why we wouldn't have said that. We don't want temporary workers going in and displacing other workers, and the Fair Labor Standards Act is something that, quite frankly, businesses and States are used to already. We didn't add anything that was new or complicated that they are not already working under.

Chairman DAVIS. Well, I'll just take this one step further. The President's bill actually was never enacted, and there is reflection of those priorities in the new rules, and if the law Congress passed and the President signed didn't include such requirements, why does DOL think that it can include them in the State waiver applications? I mean, coming back to the baseline legislation.

Ms. OATES. Sure. I think that Congress gave the Secretary the discretion to add additional components, and the fact that the Secretary even—Congress, as Members of Congress, you gave her the discretion to do this program or not do this program. It wasn't mandatory. So I think in choosing what was in the final guidance, we did choose to follow laws that had been passed by previous Congresses, like the Fair Labor Standards Act.

Chairman DAVIS. If State applications do not include these "Secretary's priorities," will that be held against their application and result in it being rejected?

Ms. OATES. Well, quite frankly, like everything else we do, the guidance that we put out, whether it is a grant or a demonstration project like this, State applications will be weighted against their ability to meet the standards set in the guidance. So it would be premature for me to tell you what the Secretary will or will not dismiss. The process that we have developed has the Secretary only in the final stages, so therefore career people will be engaged in weighing State applications against what was in the guidance. So I would encourage States to follow the guidance as closely as they could so that their application could be seen favorably.

Chairman DAVIS. I think this is bringing me back to one final point, and this really questions positional authority regarding what was enacted versus some of the additional, let's say, interpretations that added legislation that was not enacted into it.

Coming back to the core legislation that the Congress passed and the President signed into law, what is your authority for rejecting State waiver applications that satisfy the statute quite clearly, but not the additional requirements that were tacked on by the Secretary? And I think there is a question of prerogative and balance of law that the States, I think, certainly have a right to redress or ask. So if you could just quickly answer that question.

Ms. OATES. Yeah, I think, Mr. Chairman, quite frankly, oftentimes we go and give further guidance when laws are passed. We do it through regulation, and we do it through guidance like this. I don't think anyone in our solicitor's office thought that we were doing anything unusual with this guidance.

So with great respect, you know, happy to work with you as we get applications and the Secretary makes decisions, and we are open to your opinions and possibly the option that we would differ with you on the interpretation.

Chairman DAVIS. Yeah. Well, just in closing then what I would appreciate is if your office would answer us from your counsel, explaining the addition of or interpretation of rules that are outside the scope of the original legislation.

Ms. OATES. I am happy to do that, sir.

Chairman DAVIS. Great. Thank you.

Chairman DAVIS. With that, I would like to yield to my friend Mr. Doggett from Texas.

Mr. DOGGETT. Thank you, Mr. Chairman. And thank you, Madam Secretary.

In fact, the legislation we are referring to is permissive with reference to these demonstration projects. It does not mandate the Secretary to set up any demonstration project. It uses the term "may"; does it not?

Ms. OATES. That is correct, sir.

Mr. DOGGETT. And as I understand these other requirements that are not specified in the statute, one of the most basic ones is that in setting up these programs, these demonstration programs, and looking at whether you will grant waiver authority, you expect there to be compliance with other Federal statutes.

Ms. OATES. That is correct, sir.

Mr. DOGGETT. Such as the minimum wage, such as not going back to child labor and working excessive hours without being paid overtime. Those would be the kind of requirements that I am sure that there are some still in this Congress that are as ideologically opposed to them as when they were first enacted into law decades ago, but you seek to assure compliance with Federal statutes; is that right?

Ms. OATES. That is correct, sir.

Mr. DOGGETT. And with reference to those demonstration projects, there will be some testimony shortly that what the Department has done is overly bureaucratic and administratively cumbersome.

Can you tell us why certain requirements are imposed on the States wanting to use unemployment insurance funds to administer these programs, and weren't some of these requirements, such as cost neutrality, requiring work to be suitable, and including a rigorous evaluation, already included in the statute; and don't some of them, such as not using new programs to cause more unemployment with temporary workers replacing people who have not been unemployed, consistent with the goals of this legislation?

Ms. OATES. That is correct, sir. Again, since this is the first time in history that the Federal Government has given States the permission to go into their State trust fund for anything else other than the payment of benefits, we took this very seriously.

Additionally, we are hoping to get great innovative measures, and if we don't make those measures adhere to other Federal laws, then we are using these demos as a political football rather than using them as really instructive techniques in order to get us information to share with you to get permanent changes to the UI system.

Mr. DOGGETT. You are trying to preserve the trust associated with trust fund monies, which, as I understand your testimony, have never previously been used for any purpose other than paying the unemployment insurance benefits that unemployed workers have relied upon when the Congress set this program up?

Ms. OATES. That is correct, sir.

Mr. DOGGETT. With reference to the self-employment programs, are there some States that, in order to participate in those programs and help someone who has been unemployed innovate, be an entrepreneur, set up a small business, that the States will have to change their laws?

Ms. OATES. We firmly believe that some States are going to have to change their laws. As I am sure you are aware, there are nine States who currently allow it, but only six of them are active, actively using it right now. But we think that States will be able to make those changes in enough time, because you have been generous enough to give us enough time until 2015 to actually do this that those States will have time to do it.

Mr. DOGGETT. You have noted in your written testimony that those six States that have used the program and the individuals that have participated in the programs have a much better success rate than others in actually staying employed and getting a small business, as risky as that is, under way and going. Can you tell us a little about the potential of these self-employment programs?

Ms. OATES. Well, Congressman, we have done actual research following up in these States, and even if folks weren't able to open their own business because of credit problems, you know, or things that they couldn't get right then and there, these programs are five times more likely to get a job and keep it.

And so the lessons they learn in these entrepreneurship activities really make them a better candidate for another employer. They understand all aspects of a business. So we think it is a win-win. We think it would be great if they could get their own business up and going, but we definitely think this gives them a leg up in competing for jobs that would be available in their local area.

Mr. DOGGETT. Madam Secretary, at a time when we have made significant economic progress, but still have a good ways to go to get the unemployment rate down, what is the effect of seeing major, substantial cuts in training and job-training programs across the country?

Ms. OATES. Well, certainly, sir, I have a bias here, but I think this committee, in crafting the REA/RES provision that is now mandatory for States, it is going to be really a shell game for our constituents, mine and yours, if we gut the workforce programs so that when people go to get those reemployment activities, the services that they have been promised, there is no one there or the one-stop has closed up.

So I hope that we are able to show you quickly the benefits of getting folks both the assessment and the services that they need quickly, and get them back into the employment ranks where they are adding to the tax revenue and not taking money from the UI trust anymore. But I think it will be really terrible for all of us if we pull the rug out from under these folks that have suffered enough.

Mr. DOGGETT. Thank you so much.

Chairman DAVIS. I thank the gentleman.

The chair now recognizes the gentleman from Minnesota Mr. Paulsen for 5 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman.

Madam Secretary, you also mentioned in your testimony on page 4 actually about the program, EUC program, expiring coming up. It ends completely with no phase-out on January 2nd of 2013. And, of course, we are making progress on jobs, we are moving forward. You stated that as well, and that is our goal across the board up here.

So my question is this: Does the administration believe that current economics and the job growth that exists right now is strong enough that the EUC program should not be extended past the deadline of its expiration coming up in January at the end of this year?

Ms. OATES. Well, if I could say two things on that, Congressman. First, I think that we have all learned with this recession that predictions are likely not to be correct. So I don't want to make a prediction, and I don't think the administration has yet shared with me their opinion on whether or not to go for another extension or not. I think we are all trying to look at everything as the glass is half full, hoping that the economic situation will continue to improve.

But the other thing is really a plea for all of us to make sure that people understand this cliff in January. It is different than anything they have experienced since we have begun this in 2008, 2009, 2010, 2011, 2012. People will not understand that all of their benefits will end abruptly; they are used to a cascade. And I think if I were still staffing, as I did for many years, in the other Chamber, I would be letting people know that, because some people may be getting job offers that don't meet the job that they lost either in terms of dignity or salary, and they may be holding out to wait for a better job offer that is closer to the job they lost. They need to really understand that in January of 2013 they may not have another option.

Mr. PAULSEN. Yeah, and to know that those job options are going to be employment options before that cliff hits.

So let me ask you this: Are there any other economic indicators that you would maybe hold out there that might be indicative of when it is time to end the temporary extension of these unemployment benefits? Is it 7 percent, is it 6½ percent, is it 6 percent? You know, is there some sort of other benchmark or marker when it sort of makes sense to start to phase that out?

Ms. OATES. You know, I think we are all confused about what everything means. I mean, I think that the chairman brought up people who are off our radar screen who have already exhausted benefits, that are still searching or underemployed. So I don't know what the right number is. And, quite frankly, over the last 3 years, we have seen things like the economic situation in Greece and the tsunami impact our economy when none of us would have been able to predict that.

So I wish I could give you a better answer. The only answer that I can give you is that we are trying to put as much information out there as we can and work as closely with employers as we can, both directly and through our regions, you know, our States that are such important partners with us, but also our local one-stops, to help figure out, you know, what are the indicators out there besides just looking at warn notices with layoffs, but also starting to look at where are we seeing job growth in your State, in Minnesota, as well as in other States, so that we can figure out—we could come to you and say, look, it looks great; it looks like these companies are really on solid ground, and they are going to be adding jobs for the next 5 years. I just don't have anything, any indicator that really predicts that right now.

Mr. PAULSEN. Okay. Let me ask one other question, because we talked about the reforms being targeted to those who are able to work and actively looking for work. Under the new law, the States are also required to reduce current State and Federal UI checks to recover any prior overpayments for unemployment, but with about 11 percent rate of overpayment being in error, it is about $30 billion, actually a huge amount of money. What effort is the Department of Labor making right now to help States implement some of those new overpayment recovery requirements?

Ms. OATES. You know, we are really doing everything in partnership, mostly with NASWA, who is their association, and individually with States. We are trying to give them clear guidance, and

we are really trying to tell the stories of the States that have done a great job at this.

We haven't done a lot of work on specific tools with them, although we will, just as we did last year, have some additional over the base money that we will be putting out for States to work on things like integrity and improvement of their IT system. And we are hoping that States, just as they did in the past, will take advantage of this to customize this additional money to an area that is in need for them. Some States are having a tougher problem with IT in terms of overpayment; some are having a tougher time interacting with other State agencies as well as Federal agencies. For us that is Treasury, but in a State that could be two or three different State departments.

Mr. PAULSEN. Are certain States having more success reaching that?

Ms. OATES. I can tell you best about the States that are having real initial success on the TOP program where they can garnish it from people's tax returns, and so far we have seen somewhere—and I will get you the exact number—somewhere in the area of about $135 million in terms of reclamation since that program started. So the early-on States like New York, you know, did a great job on that, and newly we have had Mississippi that has come on later in this year, and they have had a great success rate in getting money back that way.

You know, we would like to suggest that our system—because my State friends will tell you this—you know, if you do $10 in overpayment and you reclaim 9 of it, you are still dinged for having $10 in overpayment. You know, we would like to look at ways that we can address the system so that States could get the credit for getting that $9 back in reclamation. We don't think it is a $10 overpayment anymore; we think they reclaimed 9 of it. So until we can get our system to reflect that, I don't think we are doing enough to incent States and recognize them for their efforts in this area.

Chairman DAVIS. Thank you.

The gentleman's time has expired. The chair now recognizes Mr. Berg for 5 minutes.

Mr. BERG. Thank you, Mr. Chairman.

Secretary, thank you for being here.

Ms. OATES. Hi, how are you?

Mr. BERG. I tell you, one of the bright spots in my first year in Congress was when we were talking about the HIRES Act. We were talking about these pilot projects in a bipartisan way that we said, you know what, the best solution is to put people to work; the best solution is to have them find a job that works for them. And I think almost unanimously some of the senior veterans as well as other freshmen said, you know, we think the States can probably figure this out best for their population. They know what their population needs; they know what the work opportunities are on that local level.

And so that was the thrust that has been behind this pilot project, and one of my top concerns is it seems to me that we are not going to have anyone who is going to have a chance to even do one of these pilots before it expires. And my goal or quest is really to encourage the States to have innovation, to come up with

things, and, sure, to meet all these requirements and meet all the laws, but, more importantly, to put someone back to work as quickly as we can.

So I guess my first question to you is what are the main barriers you are hearing from States? If you said, here is the top three things that they are saying that they have problems with this, what would they be?

Ms. OATES. With the demo, sir?

Mr. BERG. Correct.

Ms. OATES. We haven't really heard a lot from States. I mean, I have heard some from my friends who have said, really, 19 pages worth of guidance? So they didn't like the length of the guidance, but we haven't heard a lot about the specifics. I am sure you will hear. You have two terrific State folks here on your second panel. I am sure you will hear things, and I am sure we will hear a lot more on Friday during the Webinar.

Mr. BERG. So you don't have things today that you can tell this panel here is the number one, number two or number three thing?

Ms. OATES. I don't, I am sorry. Friday I might.

Mr. BERG. So let me just ask you this: If, in fact, through the rest of this panel we are hearing things that quite frankly are redundant requirements or barriers that really don't make sense because they are qualifying, are those things that you are open to saying, okay, we are going to relook at these requirements or the things that are redundant to help streamline this? You are willing to do that?

Ms. OATES. I can't say that I am because that would slow down the process. Quite frankly, we have the guidance out there, and we don't know if people are already working on applications under that guidance. I suppose that if we find in, you know——

Mr. BERG. I am saying if someone says here is something that you are asking in these 19 pages that you already have or you don't need . . . I mean, one of my concerns is I heard or saw in the testimony one State was saying it is going to require us to hire another full-time person to fill out this application. And so if there is a way to streamline this, is that something you are open to giving a waiver of the requirements?

Ms. OATES. Requirements for waivers, yeah. I don't know how I could say yes to that since this is not a process that is just me, it goes through a clearance process. So that if we were going to make changes, we would have to go through that clearance process. And, again, unless we suspend it and said don't respond to the guidance that we put out, we have no idea how many States are at the 10-yard line on this and finished, so if we change the rules now, would that mean they had to go back?

But, certainly, let me give you a scenario. If no States applied in the first several months, I think that would make us go back to the drawing board on this one. I think that States—there are some States that may not apply for other reasons. They are all under the gun and stretched doing REA and RES for everyone.

Mr. BERG. Well, let me ask you. I mean, if no one applies for 2 months, we have lost the opportunity of what we are doing. Maybe just to make it more simple, if, in fact, as we go through the panel, if on a bipartisan basis our legislative committee here

says, here are things we think are redundant, here are things that we think would help remove some barriers, I am asking you, is that be something you would be open to?

Ms. OATES. I think we would at least be willing to discuss it with you, and share with you, get your ideas and share with you what that would mean in terms of our getting implementation, absolutely, sir.

Mr. BERG. All right. Thank you. I will yield back.

Chairman DAVIS. I thank the gentleman.

The chair recognizes Mr. McDermott from Washington for 5 minutes.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

I was once a State legislator, and some of the people up here were State legislators. We all have been through the business of setting your unemployed insurance rate, tax rate for the State, and State legislators love to cut the taxes on their businesses, so they are always thinking, well, there is this—we already got this pile of money over here in the account; why shouldn't we lower the rate? And now we have $41 billion in debt at the State level, and I am sure State legislators aren't very interested in raising those rates to take care of those things.

What leverage do we have in terms of forcing the States to pay their debts to the Federal Government? I mean, they are riding on our back. They are buying our money. They are getting our money for free, and they are going on down the road, acting like it was falling out of the sky for nothing. We are paying taxes at the Federal level for the failure of the States to tax adequately to cover their own funds. So what leverage do we have in that game?

Ms. OATES. Well, first of all, now that the Recovery Act money is gone, all States are paying interest on the money that they are borrowing.

Mr. MCDERMOTT. Are they paying it?

Ms. OATES. Yes. And they are—there are mandatory increases to their FUTA tax if they are in borrowing status as of a certain date, and I can get you that information. In fact, 20 States will actually see their rate go from .3 percent to .6 percent, and I think two States will actually be at .9; one that I can think of, but there might be a second.

So those mandatory triggers happen and, you know, some of the things, it is a problem for their trust funds. We have seen the borrowing slow down dramatically. But you are right, I mean, we still have $41 billion that is owed to the Federal fund.

Mr. MCDERMOTT. Could you give us a list——

Ms. OATES. Sure.

Mr. MCDERMOTT. I would like to see that so we can see where you are in sort of recovery or forcing the States to be responsible. We talk about responsibility up here a lot.

Ms. OATES. Absolutely. I can send that to the chair today. We have that list. We will make sure that we put on there as of a certain date.

Mr. MCDERMOTT. Okay. I have a second question, and that is this whole business, and Mr. Doggett touched on it, of the Workforce Reinvestment Act, and the legislation or the budget resolution that says we are going to cut $16 billion out of there. That is

money we are not using for anything, I guess, useful anyway, so the States won't miss it. Is that your view?

Ms. OATES. Well, the States are already limping because both of us, the Congress in the previous years and this year in the President's budget, have taken away what they have had since 1998. They have been able to keep 15 percent at the State level, 5 percent for admin and 10 percent for State activities. And that money was used to be glue, you know, to fund things like the kinds of things we are talking about today without UI funds.

But if we are to cut the workforce investment funds to States, States are not going to be the only ones who suffer. Local areas. Local areas run the local boards. They are the ones that have direct conversations with business, businesses that may be too small to be captured in LMI data at the States, but the businesses that are really creating jobs.

I think it is a huge mistake, sir. Of course, I have a self-interest in this. I love the bill, I love ETA, but if the Workforce Investment Act goes away, there are going to be real people who don't get information on jobs in demand, who don't have access to the training they need in order to qualify for those jobs and, quite frankly, have no one caring whether they are retained in those jobs or not, and I am talking about people like all of us as well as vulnerable populations.

Mr. MCDERMOTT. When you are talking about these entrepreneurial, States are being given the flexibility to use their funds for entrepreneurial things for the first time.

Ms. OATES. Uh-huh.

Mr. MCDERMOTT. As we pull away, is any of this Reinvestment Act money being used in training those people who are going into the entrepreneurial kind of thing? Is there a connection, I guess, is what I am really looking for?

Ms. OATES. Yes, sir. We are not the experts in that, so what we have done is partnered with SBA, the Small Business Administration, because they are the experts in this. So whether we are doing entrepreneurial activities through a one-stop or through a State, or whether we are doing them in one of our Job Corps, we are partnering with SBA.

All of our one-stops offer people access to things that help small, budding entrepreneurs, computers, fax machines that they might not have at home in order to start their business, and an ability to use space sometimes to meet with other people. Some of our one-stops are partnering with 4-year and 2-year colleges that operate business incubators. They are linking them with that business incubator. I think our system is trying not to duplicate things that already exist in their community, but partner with local colleges or other entrepreneurial efforts like trade associations that are already doing this and learn from them.

Mr. MCDERMOTT. Thank you.

Chairman DAVIS. The gentleman's time has expired. The chair now recognizes the gentlewoman from Tennessee Mrs. Black for 5 minutes.

Mrs. BLACK. Thank you, Mr. Chairman. And, Ms. Oates, thank you for your testimony here today.

We all know in the unemployment world there are several pieces of information reported on a regular basis that experts examine to gauge the economic health of the economy, and one important piece of information is the weekly reports on initial claims for the unemployment benefits, which are released every Thursday by the Employment and Training Administration, over which you are the Assistant Secretary.

This data comes out in a preliminary form one week, and then it is revised to be the final report in the following week, and a number of reviewers have noted on a pretty consistent basis that these first initial claims data have been revised upward and only upward when they are made in the final week.

For example, on April 5th, the Wall Street Journal reported "the Dow Jones analysis of claims reports found that the Labor Department has revised upward its first estimate of seasonal adjusted claims of 56 of the past 57 weeks, and revisions to the government data occur on a regular basis, but it is uncommon for the numbers to nearly always be restated in the same direction."

And the article went on to say, "while the consistent need for upward revisions doesn't undermine the overall trend of the improving job market, it does suggest that the government's methodology for the initial estimate might not properly take into account factors such as seasonal adjustments and under accounting by States."

So is the ETA aware of this issue, and, if you are, should experts and policymakers be concerned about this data revision always flowing in one direction; that is, when the initial reports are always revised upward?

Ms. OATES. This is something that we are aware of, and, you know, we don't do this alone. We do this in partnership with our sister agency, the Bureau of Labor Statistics, BLS. And the fact is that basically seasonal factors are challenging, and that is what we are working with.

But happy to give you and your staff a better briefing with both of us there. This is not my area of expertise, Congresswoman, at all, but this is something that we have noticed. And, you know, we would love to explore with the committee, your staff any way that—your ideas on how we can improve this. We don't like that—we don't like always being off either, and we are not quite sure what it means that we are always adjusting up. Is that because people are conservative in what their initial estimates are? These are all estimates as we try to get this moving. And should we maybe not do it weekly so that we can have more time to make the number correct? We have had all those discussions and would welcome your expertise and your staff's in those discussions with us.

Mrs. BLACK. So you have had discussions, but you don't have any plan at this point in time to say . . . this is what we are going to do to try to better balance this? It is just still in the discussion phase; is that what you are saying?

Ms. OATES. Yeah, we do not have a plan. I mean, basically there has been no allegation of wrongdoing in any of this. No one has told us we are doing anything wrong. It is just that we—this is a complicated issue, and there could be better ways to do it. And we would be delighted to have conversations and get your ideas about

what those might be, and I am sure my partner Jack Galvin at BLS would feel the same way.

Mrs. BLACK. And likewise, I would like to hear about what your discussions are in the office where you may come up with something that you can bring back to us to say, this is what we have thought about and researched and found would be more effective.

Ms. OATES. Certainly.

Mrs. BLACK. Let me turn to something that has already been discussed, but just to follow up on the unemployment insurance benefit overpayments. In one of the charts that we have in our folder, we see that there was a $13.7 billion overpayment, and I wanted to know if there is anything being done to collect this overpayment or how that is done.

Ms. OATES. Well, as you know well, the States are the primary agents in this. We run this program only through them. So different States are doing different things in order to do the re-collections. I talked a little bit about the States that are already using the garnishment of Federal tax returns. Some States are looking at using State tax returns as well.

So that I think that each State is actively working in this. I mean, in our improper payments activities, I am delighted to report to the committee every State has a task force, cross-agency in their State. Every State has a plan, and we are really starting to see terrific trending.

You know, the trend in improper payments, whether over or under, was going up since 2008, and we are delighted that finally in fiscal year 2011, the trend is ticking down. Not fast enough, we are not reclaiming enough money, but States are really paying attention to this in the midst of the busiest time, in my lifetime, that States have had in the UI program.

Mrs. BLACK. Do you have any numbers for us to say what those percentages are that they are recovering? Do we know what those percentages are overall? Also, I would like to know specifically State by State what kind of recovery is occurring so we can get a better handle on making sure the taxpayer dollars are being used efficiently.

Ms. OATES. Absolutely. The numbers that we could give you in a table today are the numbers from the TOP program, that is the Treasury Offset Program, but I would be happy to work with my staff and NASWA. We would have to collect that information from the States. We would be happy to do that.

Chairman DAVIS. Thank you.

The gentlewoman's time has expired. I would now like to welcome the distinguished gentleman from Texas, a senior member of the committee and also the chairman of the Subcommittee on Trade, Mr. Brady. Thank you for joining us today. Would you like to ask a question?

Mr. BRADY. Thank you, Chairman Davis, for allowing me to sit in today and for calling this hearing.

As you know, we literally have tens of millions of Americans who can't find a full-time job. We have millions more who have simply given up looking for work. After all the bailouts and stimulus and programs, we have fewer Americans working today than 3 years ago. We have fewer, about 700,000 fewer, women working today

than 3 years ago. That is why when Republicans and Democrats passed the payroll extension bill, it included important reforms to unemployment to try to match local workers with local jobs sooner, because what we are doing clearly isn't working.

I sat on that conference committee, sat through the discussions, and a key part of that reform was to allow States, many of whom have successful, innovative programs, to step forward and share that innovation in programs to allow us to better get people back to work. The law we passed, passed by both Republicans and Democrats, clearly said the first 10 States to meet the criteria laid out in that new statute would receive the waivers in order to allow the innovation to go forward. Texas submitted their application 2 days after the President signed the law, and rather than being accepted, embraced, and put to work, Texas was denied.

So the two questions I have are, one, is the Department of Labor ignoring the intent and statute of Congress when it comes to these waiver programs to allow the States to innovate?

Ms. OATES. Absolutely not, sir. The statute gave the Secretary the option of approving a demonstration project.

Mr. BRADY. Well, I would counter, no, it gave the States the option to apply for an innovation project. The mandate within the law was that the Department of Labor would grant 10 waivers, up to 10 waivers, for States that apply on a first come/first serve basis.

Ms. OATES. Sir, with great respect, and I am a former staffer, the word was "may" and not "shall." So it gave the Secretary the option. I mean that with great respect.

Mr. BRADY. And I do, too. I just was a lowly Congressman serving on the negotiating team.

Ms. OATES. Lowly staff person.

Mr. BRADY. We clearly had discussions here. And so in my view, with the delays you are putting in place, you are hurting a lot of workers who could be taking advantage of this innovative program at the State level. I think you are substituting the administration's judgment for that of Congress. And one of my worries is that this is an election year, and that the Department of Labor is playing politics with a very important program.

In your testimony you made the point that you want to embrace best practices and innovation in these programs; is that correct?

Ms. OATES. That is correct, sir.

Mr. BRADY. The Texas program a year and a half ago received an award from your agency——

Ms. OATES. Yes, it did.

Mr. BRADY.—for innovation and best practice.

Ms. OATES. And deserved it, yes.

Mr. BRADY. They submitted that program to you in a timely manner and were denied. So why the delay? Why the denial?

And, by the way, if that waiver had been granted, and Texas would have been allowed to go to work, we would have more than 2,000 Texans back to work today who aren't. So are you ignoring the intent of Congress, or in this election year, are you playing politics with such an important issue?

Ms. OATES. Sir, we are neither ignoring the intent of Congress, nor are we playing politics with this. Quite frankly, Congress told us the Secretary could approve up to 10 demonstrations, and these

demonstrations for the first time in history could use their UI Trust Fund dollars to do this experimentation.

By telling us we could do up to 10, and to do them as demos that would show innovative practices that could be institutionalized and used into the future at net cost neutrality to their trust fund, you put us in a situation where we had to be, just as you are every day, good stewards of the taxpayers' money.

Mr. BRADY. Now, you recognize, don't you, that States using innovative programs today are actually investing their own dollars——

Ms. OATES. Absolutely, sir.

Mr. BRADY.—in these programs? So there is very poor——

Ms. OATES. And in the case of Texas, that 10 percent money that I was talking about was the money that—which the Governor used.

Mr. BRADY.—which is, I think probably as or equally or more important than the trust fund dollars. And my question continues to be if you are not ignoring the intent of Congress, not playing politics, when will these applications be granted? Will they be granted in May?

Ms. OATES. Within 30 days of the day they submit them to us. You have my word on that. We have a timeline internally, and we are—the career people are running this process.

Mr. BRADY. So that could be, what, months from now?

Ms. OATES. Well, if the first application comes in today, it will be 30 days from today.

Mr. BRADY. But you just heard from those most interested that the paperwork is very burdensome, the criteria, again, is much broader than what Congress intended. You have taken what was an enthusiastic response by States to want to help you and may put people back to work and have, frankly, chilled it. I would be surprised if many States, frankly, step up now, given the fact it is now top down rather than innovation up.

I yield back, Mr. Chairman.

Ms. OATES. I will be disappointed, sir, if we don't.

Chairman DAVIS. I thank the gentleman.

The chair would also like to apologize to the gentleman from New York, who became an inadvertent victim of circumstances, and I would like to recognize him now for 5 minutes.

Mr. REED. Well, thank you very much, Chairman. I appreciate that apology. But no offense taken ever with me.

Thank you for being here with us today. I wanted to follow up on something. When I was on the conference committee for the payroll tax rate and unemployment extension, one issue that came up that I took personal interest in was the drug-testing ability for folks on unemployment insurance. And I was proud that as part of the final package that the authority to the States was granted in that legislation to implement programs to drug-test folks in that situation, because I do believe that one of the things we should be doing not only by providing people who are in the circumstance of being unemployed with resources to carry them through that, but put ourselves in the best position to arm those individuals to control their own individual destiny, and if they shall or should or may have a drug issue, which I firmly believe is a major barrier to re-

employment, that the tools are there to identify the issue and have those individuals overcome it so that they can get back to an employed status sooner than later.

But I would note your Department has yet to release guidance for the States on how to proceed with that new authority. You noted that you are consulting with the Substance Abuse and Mental Health Administration in HHS about the drug-testing provisions of the new law, specifically the section allowing States to screen and test individuals seeking jobs in sectors requiring drug tests as an eligibility requirement.

I would encourage you also to consult with the Society for Human Resource Management, which in 2011 issued a study that found that 57 percent of organizations conduct drug testing on all job candidates, and 71 percent of organizations conduct some form of preemployment drug testing on at least some candidates.

At this point, Mr. Chairman, I ask unanimous consent to insert that SHRM study in the record. Has it already been done?

Mr. PAULSEN [presiding]. No objection.

[The information follows, The Honorable Tom Reed:]

DRUG & ALCOHOL TESTING • INDUSTRY ASSOCIATION
SHRM
SOCIETY FOR HUMAN RESOURCE MANAGEMENT
SHRM Poll: Drug Testing Efficacy
In collaboration with and commissioned by the Drug & Alcohol Testing Industry Association (DATIA)
September 7, 2011

About the Respondents

Staff size categories of respondents:

- The majority of organizations had fewer than 2,500 employees (80%):
  - More than one-third of organizations had 100 to 499 employees (36%).
  - Nearly one-quarter of respondents had 1 to 99 employees (24%).
  - One-fifth of respondents had 500 to 2,499 employees (20%).

Sectors of respondents:

- The majority of organizations were publicly owned for-profits (50%).
  - Almost one-fifth each were from privately owned for-profits (19%) and nonprofit organizations (19%).

Industry of respondents:

- The largest proportion of organizations were from the manufacturing (18%) and health care (14%) industries.

Key Findings

- **What percentage of organizations conducted pre-employment drug testing in 2011?** More than one-half of organizations (57%) indicated that they conduct drug testing on *all job candidates*. More than one-quarter (29%) of the organizations do not have a pre-employment drug testing program.
- **Is there a tie between drug testing programs and absenteeism?** Yes. In organizations with high employee absenteeism rates (more than 15%), the implementation of a drug testing program appears to have an impact. Nine percent of organizations reported high absenteeism rates (>15%) prior to a drug testing program, whereas only 4% of organizations reported high absenteeism rates after the implementation of a drug testing program, a decrease of approximately 50%.
- **Are workers' compensation rates affected by drug testing programs?** Yes. In organizations with high workers' compensation incidence rates (>6%), the implementation of a drug testing program appears to have an impact. Fourteen percent of organizations reported high workers' compensation incidence rates prior to a drug testing program, whereas only 6% of organizations reported similar rates of workers' comp after the implementation of a drug testing program, a decrease of approximately 50%.
- **Do drug testing programs improve employee productivity rates?** Nearly one-fifth (19%) of organizations experienced an increase in productivity after the implementation of a drug testing program.
- **How much of an impact do drug testing programs have on employee turnover rates?** Sixteen percent of organizations saw a decrease in employee turnover rates after the implementation of drug testing programs.
- **Do multinational organizations apply similar drug testing protocols/policies in the United States and globally?** Nearly three-quarters (72%) of organizations that have multinational operations indicated that all, almost all or some of the same protocols/policies are applied while conducting drug tests outside the United States.

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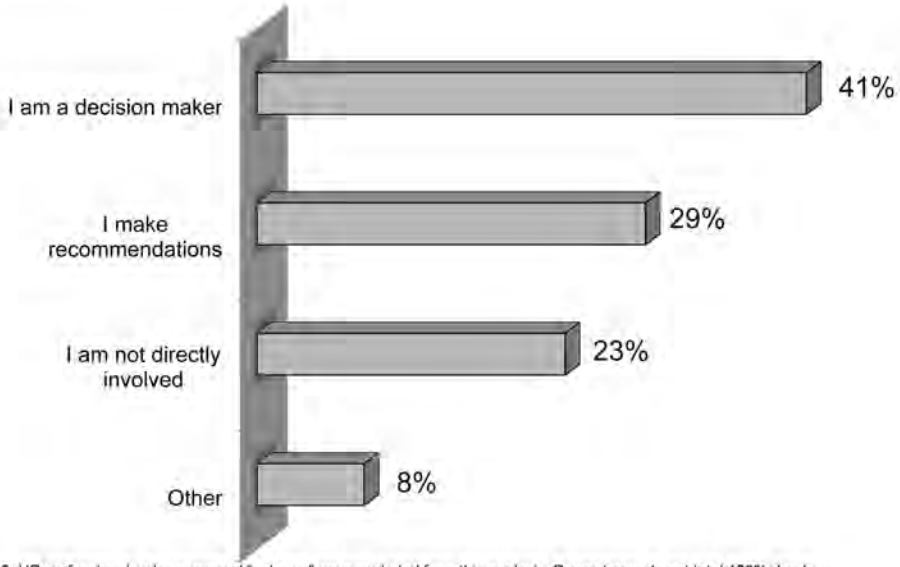
Organizations with Drug Testing Programs

- Pre-employment with job candidates
- Post-employment with employees
- Pre-and/or post-employment with contract employees

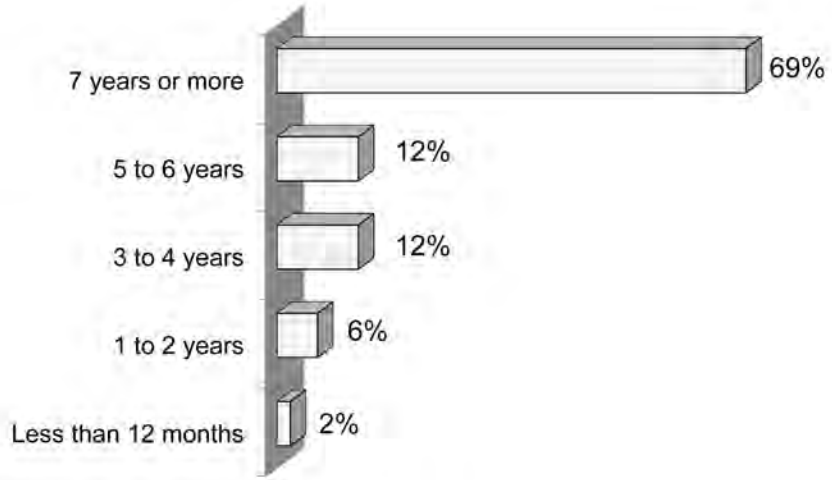
How are you involved in your organization's drug testing program?



Note: n = 636. HR professionals who answered "not sure" were excluded from this analysis. Percentages do not total 100% due to rounding.

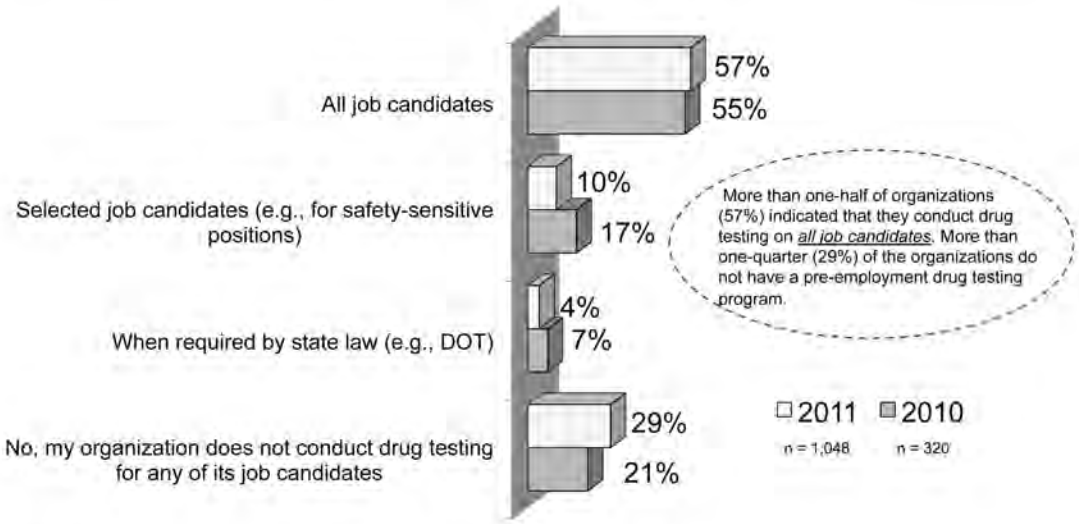
SHRM/DATIA Poll: Drug Testing Efficacy ©SHRM 2011

For approximately how many years has your organization been conducting pre- and/or post-employment drug testing?



Note: n = 626. Percentages do not total 100% due to rounding. HR professionals were asked to round to the highest year.

Does your organization conduct pre-employment drug testing with job candidates?



Note: HR professionals who answered "not sure" were excluded from this analysis.

Does your organization conduct <u>pre-employment</u> drug testing with job candidates?

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Comparison by Organization Staff Size

Larger organizations (2,500 or more employees) are **more likely** to conduct pre-employment drug testing for **all job candidates** compared with smaller organizations (fewer than 2,500 employees).

Smaller Organizations	Larger Organizations	Differences Based on Organization Staff Size
•1 to 99 employees (39%) •100 to 499 employees (56%) •500 to 2,499 employees (62%)	•2,500 to 24,999 employees (71%) •25,000 + employees (71%)	Larger organizations > smaller organizations

Comparison by Organization Sector

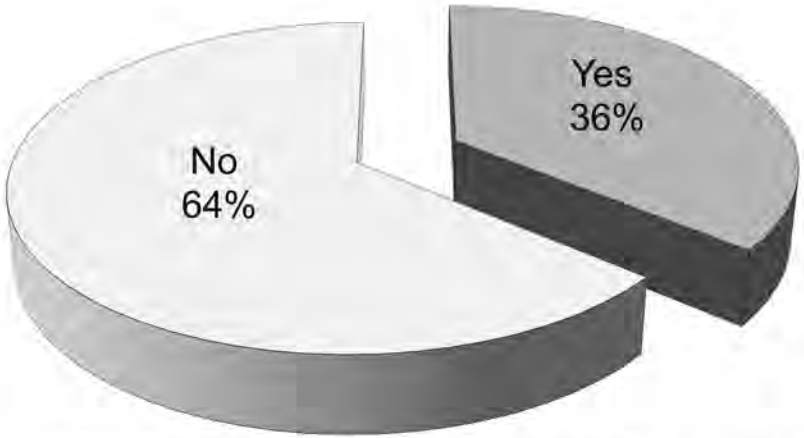
Publicly owned for profit organizations are **more likely** to conduct pre-employment drug testing for **all job candidates** compared with privately owned organizations, nonprofit organizations and government agencies.

Organization Sector		Differences Based on Organization Sectors		
•Publicly owned for profit (71%)	•Privately owned for profit (55%) •Nonprofit organizations (49%) •Government agencies (51%)	Publicly owned for -profit	>	•Privately owned for-profit •Nonprofit organizations •Government agencies

Government agencies are **more likely** to conduct pre-employment drug testing for **selected job candidates** compared with publicly owned for-profit organizations, privately owned for-profit organizations and nonprofit organizations.

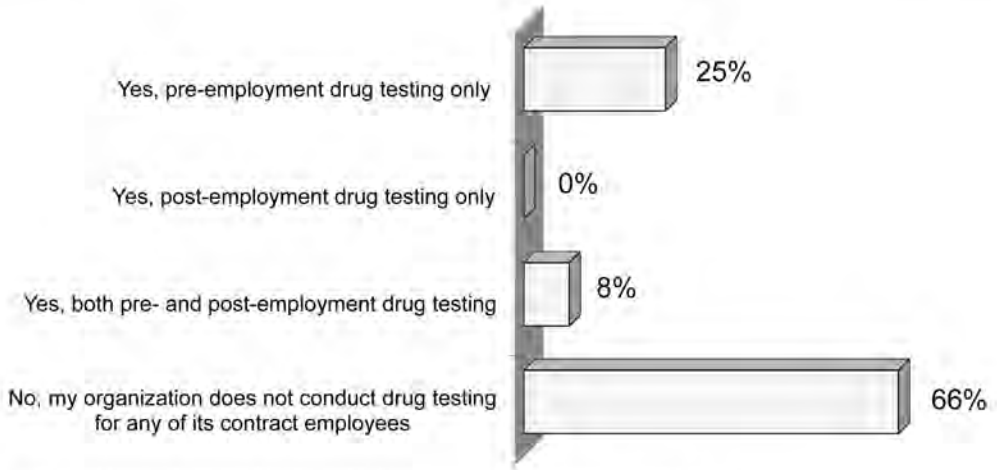
Organization Sector		Differences Based on Organization Sectors		
•Government agencies (23%)	•Publicly owned for-profit (8%) •Privately owned for-profit (8%) •Nonprofit organizations (6%)	Government agencies	>	•Publicly owned for-profit •Privately owned for-profit •Nonprofit organizations

Does your organization conduct post-employment drug testing with current employees?



Note: n = 1,029. Percentages do not include HR professionals who indicated that they were "not sure" if their organizations conducted post-employment drug testing with current employees.

Does your organization conduct pre- and/or post-employment drug testing with its contract employees?



Note: n = 754. HR professionals who responded "not applicable" and "not sure" were excluded from this analysis.
Percentages do not total 100% due to rounding.

Does your organization conduct pre- and/or post-employment drug testing with its contract employees?

Comparison by Organization Staff Size

Larger organizations (500 or more employees) are **more likely** to conduct pre-employment drug testing for **contract employees** compared with smaller organizations (fewer 500 employees).

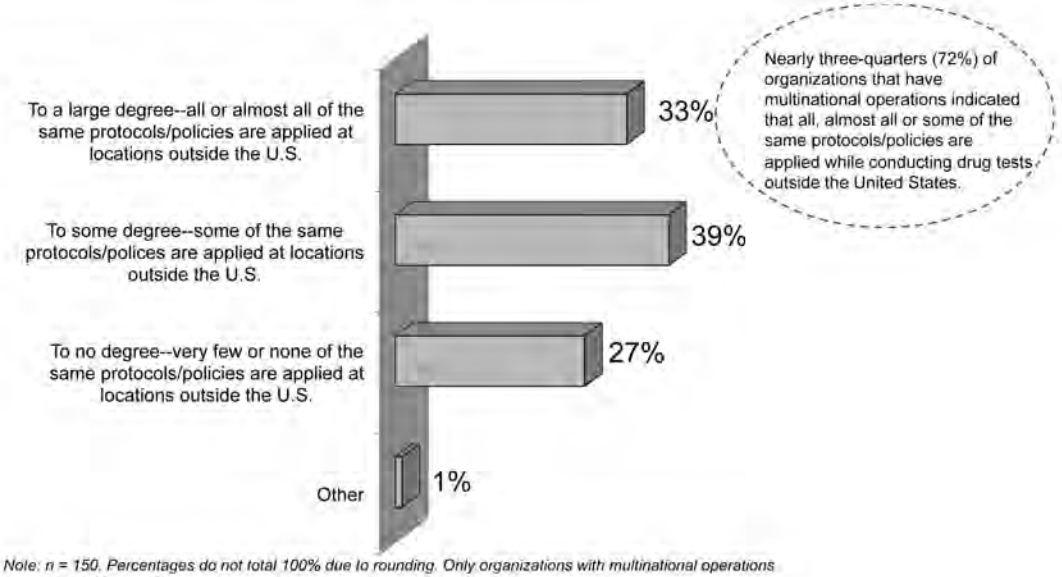
Smaller Organizations	Larger Organizations	Differences Based on Organization Staff Size
•1 to 99 employees (17%) •100 to 499 employees (19%)	•500 to 2,499 employees (30%) •2,500 to 24,999 employees (36%) •25,000+ employees (44%)	Larger organizations > smaller organizations

Which of the following post-employment drug tests does your organization conduct?

Drug Test Used	2011 (n = 313)	2010 (n = 222)	2006 (n = 222)
Post-accident testing (administered to all employees who are or may have been involved in a workplace accident)	51%	69%	58%
Random testing (conducted on an unannounced basis using a neutral selection process and has the highest deterrence and detection impacts; a certain portion of the employee population is randomly selected periodically throughout the year)	47%	46%	39%
Reasonable suspicion testing (occurs when an employer has reason to believe that an employee is under the influence of drugs and/or alcohol)	35%	80%	73%
Follow-up testing (conducted during and after an employee has been referred to an employee assistance or other rehabilitation program)	20%	30%	*
For-cause testing is based on indicia that an employee may have a substance-abuse problem (e.g. excessive absenteeism, performance problems, dramatic mood swings, etc.).	19%	*	*
Site testing (based on suspicion of a significant drug-abuse problem—e.g., based on employee complaints—at a specific work site and involves testing of all employees at that site on a one-time basis)	8%	13%	*
Baseline testing (conducted to establish the level of drug use at implementation of a program; this method essentially "cleans house" to establish a drug-free workplace)	6%	22%	1%
Other	4%	*	*

Note: Percentages do not total 100% due to multiple responses.
"" indicates question was not asked.*

To what degree are the U.S. pre- and/or post-employment protocols/polices also applied at locations outside the United States?



Note: n = 150. Percentages do not total 100% due to rounding. Only organizations with multinational operations were asked this question.

Impact of Drug Testing Programs

- Absenteeism
- Workers' compensation
- Employee productivity
- Employee turnover

Absenteeism rates at organizations before and after drug testing program implementation

	Before implementation of a drug testing program *(n = 162)*	After implementation of a drug testing program *(n = 218)*
0-15%	91%	96%
More than 15%	9%	4%

9% of organizations reported high absenteeism rates, (more than 15%). After implementation of a drug testing program only 4% of organizations reported high absenteeism rates, a decrease of approximately 50%.

Note. HR professionals who answered "not sure" were excluded from this analysis.

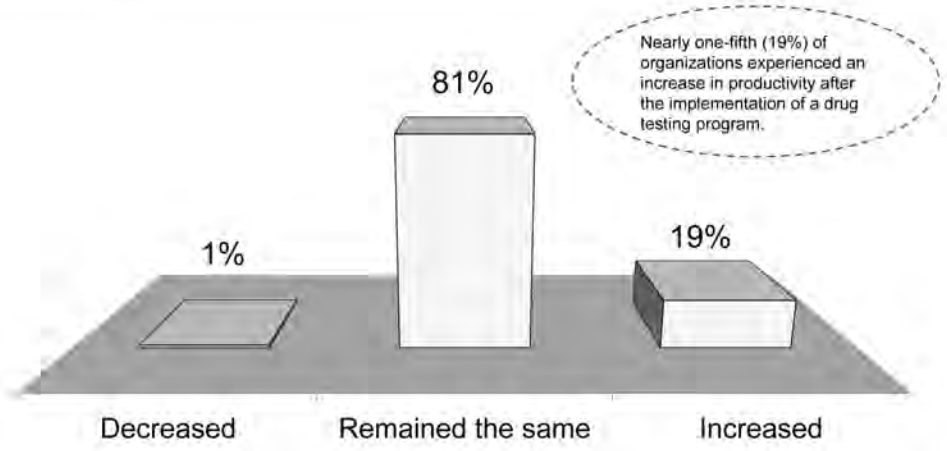
Workers' compensation incidence rates at organizations before and after drug testing program implementation

	Before implementation of a drug testing program *(n = 255)*	After implementation of a drug testing program *(n = 312)*
0-6%	86%	94%
More than 6%	14%	6%

14% of organizations reported high workers' compensation incidence rates prior to a drug testing program, whereas only 6% of organizations reported similar rates of workers' comp after the implementation of a drug testing program, a decrease of approximately 50%.

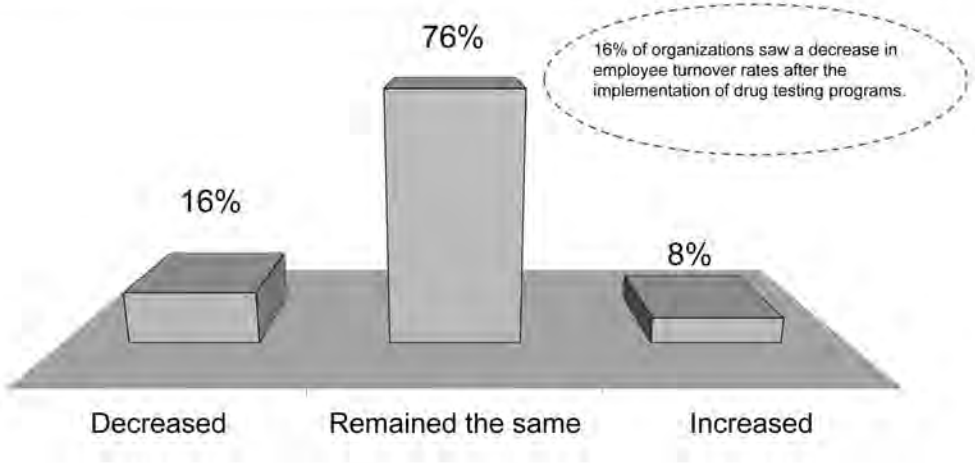
Note: HR professionals who answered 'not sure" were excluded from this analysis.

Change in employee productivity in organizations after drug testing program implementation



Note: n = 513. HR professionals who answered "not sure" were excluded from this analysis. Percentages do not total 100% due to rounding.

Change in employee turnover rates in organizations after drug testing program implementation

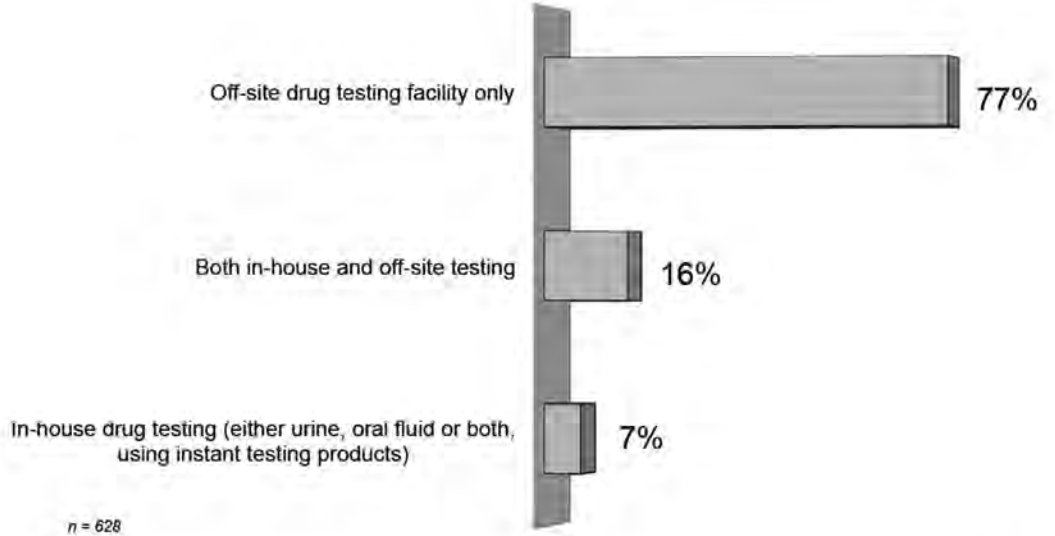


Note: n = 520. HR professionals who answered "not sure" were excluded from this analysis.

How Drug Tests Are Performed

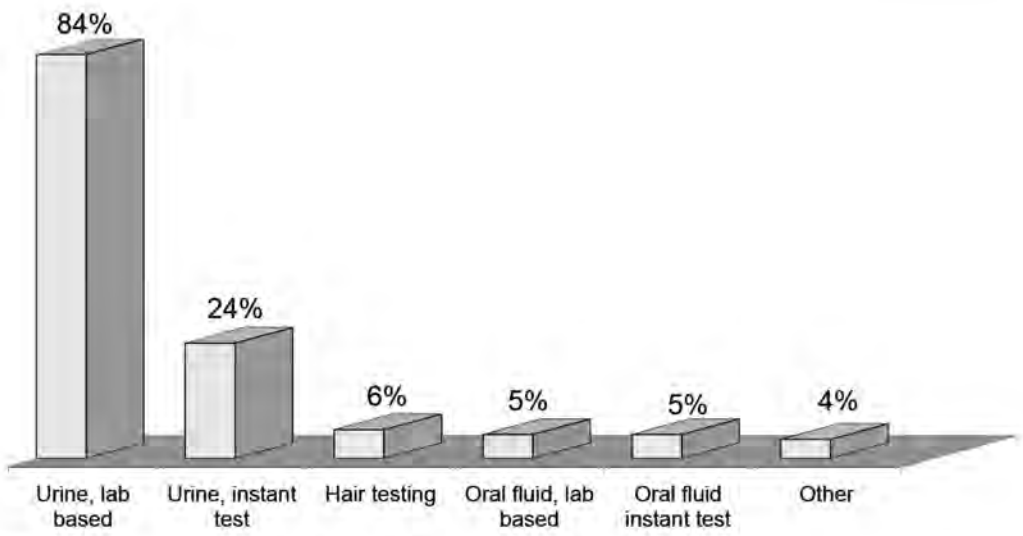
- Where?
- What type?
- How much?

Does your organization conduct drug testing in-house or at an off-site testing facility run by another entity?



n = 628

What type of sample is used for your organization's drug testing program?



Note: n = 634. Percentages do not total 100% due to multiple responses.

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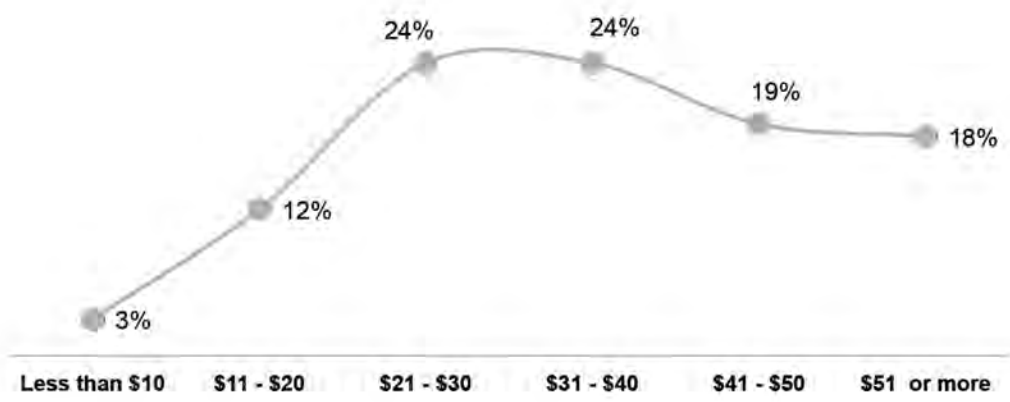
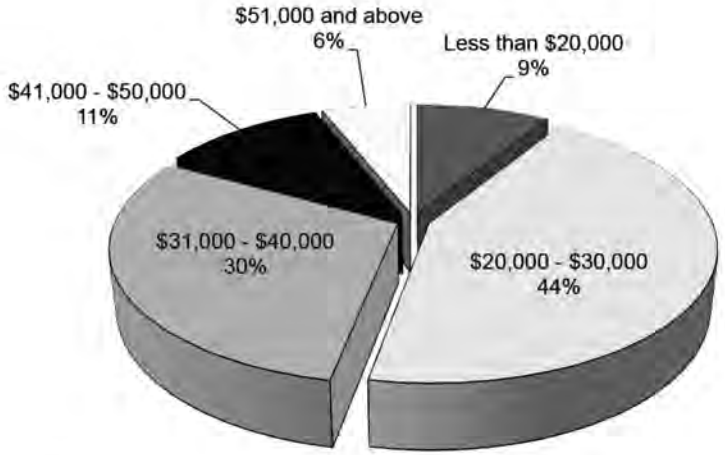
How much does it cost your organization each time a drug test in conducted (per employee or job candidate)?



n = 633

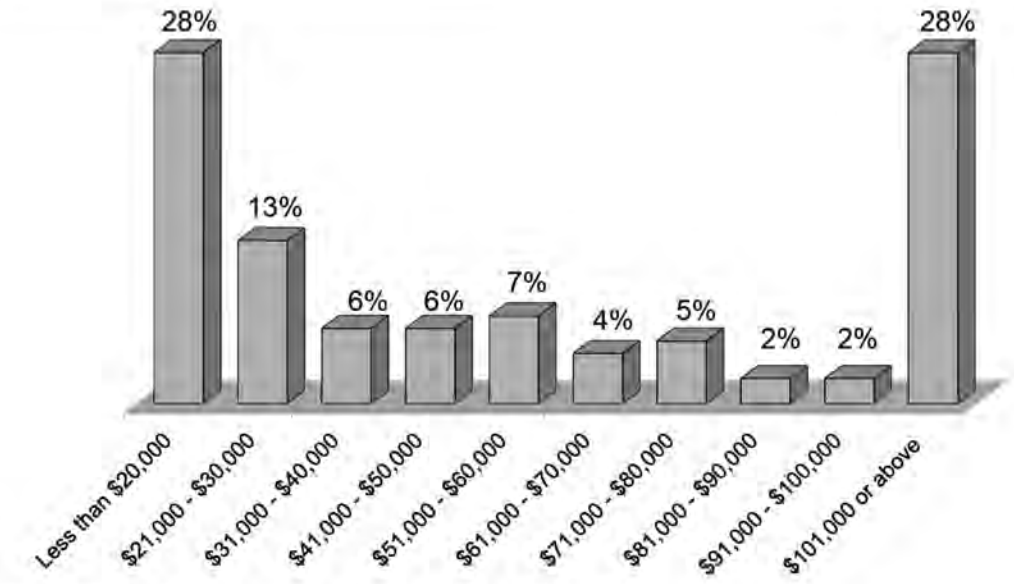
Characteristics of Organizations With Drug Testing Programs

What is the average entry-level full-time annual salary at your organization?



n = 632.

In 2010, how much did your organization spend on recruiting, training and drug testing combined?

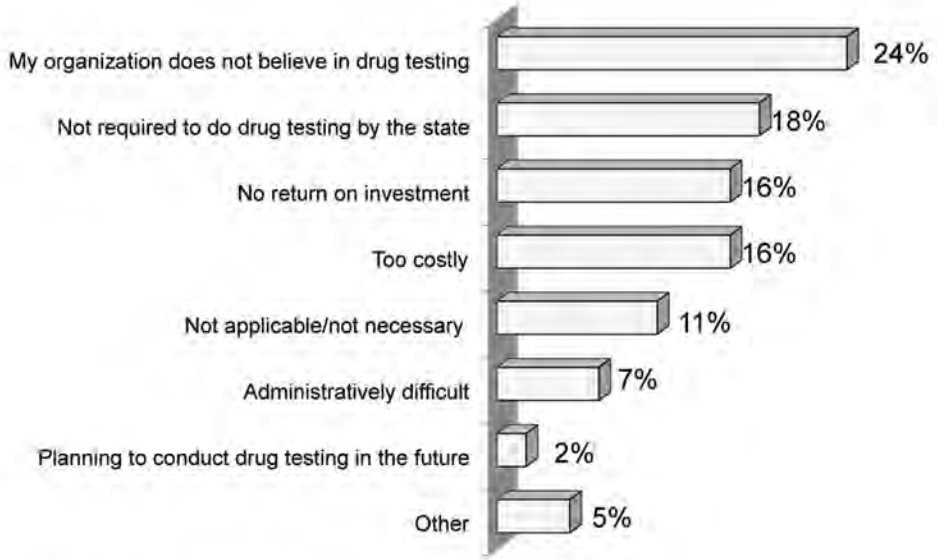


Note: n = 595. Percentages do not total 100% due to rounding.

SHRM/DATIA Poll: Drug Testing Efficacy ©SHRM 2011

Organizations that Do Not Have Drug Testing Programs

What are the primary reasons your organization *does not* conduct pre-and/or post-employment drug testing?



Note: n = 262. Percentages do not total 100% due to rounding.

What is the primary reason your organization *does not* conduct pre- and/or post-employment drug testing?

SHRM
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Comparison by Organization Staff Size

	1-99 employees (n = 104)	100-499 employees (n = 95)	500-2,499 employees (n = 36)	2,500-24,999 employees (n = 21)	25,000 or more employees (n = 6)
My organization does not believe in drug testing	23%	22%	28%	19%	17%
Not required to do drug testing by state	21%	6%	25%	24%	33%
No return on investment	11%	19%	25%	5%	0%
Too costly	14%	19%	11%	19%	17%
Not applicable/not necessary	15%	10%	0%	0%	0%
Administratively difficult	4%	9%	3%	19%	0%
Plan to conduct drug testing in the future	4%	3%	0%	0%	0%
Other	7%	11%	8%	14%	33%

Note: n = 262. Some row percentages do not total 100% due to rounding. Caution should be used when generalizing results when the sample size is less than 30 for any category.

Demographics

Demographics: Industry

Industry	
Manufacturing	18%
Health care and social assistance	14%
Professional, scientific and technical services	11%
Finance and insurance	9%
Educational services	5%
Public administration	5%
Retail trade	4%
Accommodation and food services	3%
Construction	3%
Utilities	3%
Arts, entertainment and recreation	2%
Information	2%

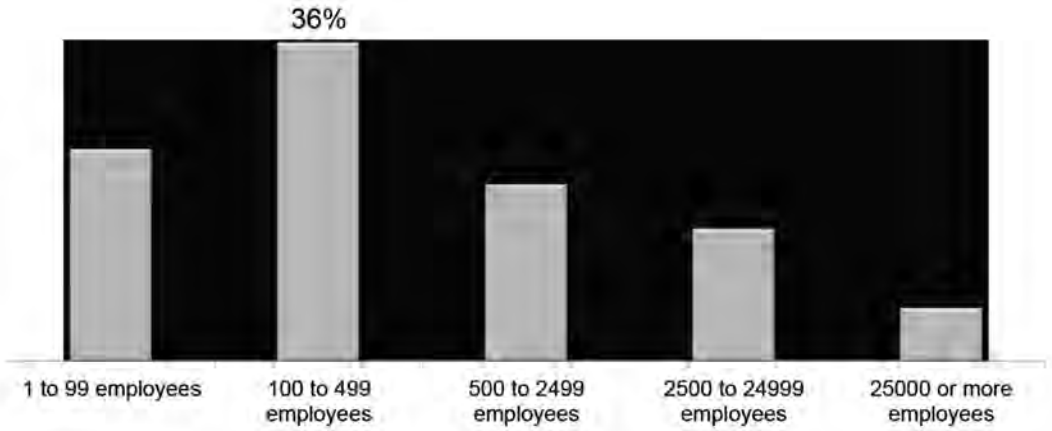
n = 1,024

Demographics: Industry (Continued)

Industry	
Real estate and rental and leasing	2%
Religious , grant-making, civic, professional and similar organizations	2%
Transportation and warehousing	2%
Wholesale trade	2%
Administrative and support and waste management and remediation services	1%
Agriculture, forestry, fishing and hunting	1%
Management of companies and enterprises	1%
Mining	1%
Repair and maintenance	1%
Personal and laundry services	--
Private households	--
Other services except public administration	8%

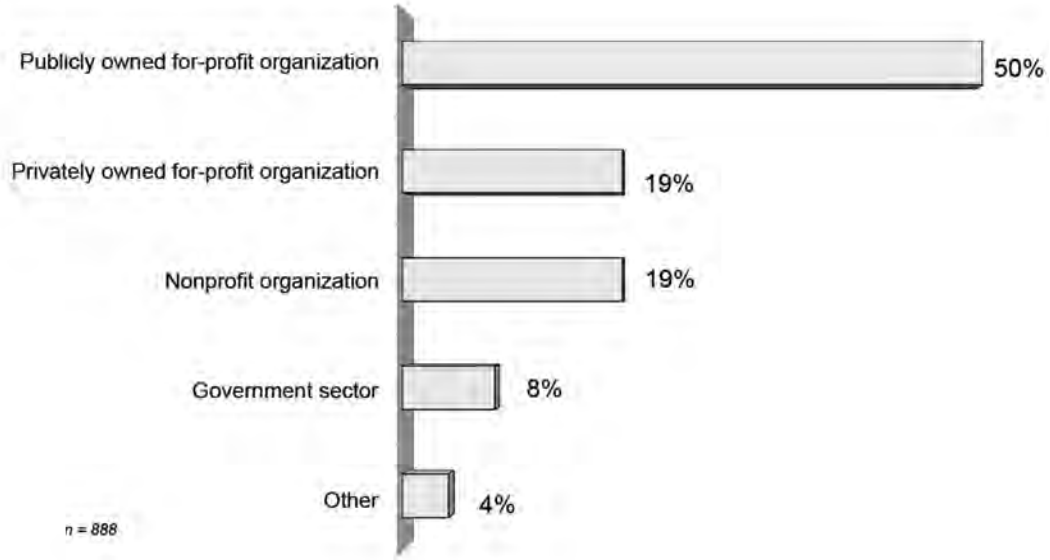
n = 1,024

Demographics: Organization Staff Size



Note: n = 899. Percentages do not total 100% due to rounding.

Demographics: Organization Sector



Demographics: Other

Does your organization have U.S.-based operations (business units) only or does it operate multinationally?

U.S.-based operations	78%
Multinational operations	23%

Note: n = 906. Percentages do not total 100% due to rounding.

Is your organization a single-unit company or a multi-unit company?

Single-unit company: A company in which the location and the company are the same.	32%
Multi-unit company: A company that has more than one location.	68%

Note: n = 863

Are HR policies and practices determined by the multi-unit corporate headquarters, by each work location or both?

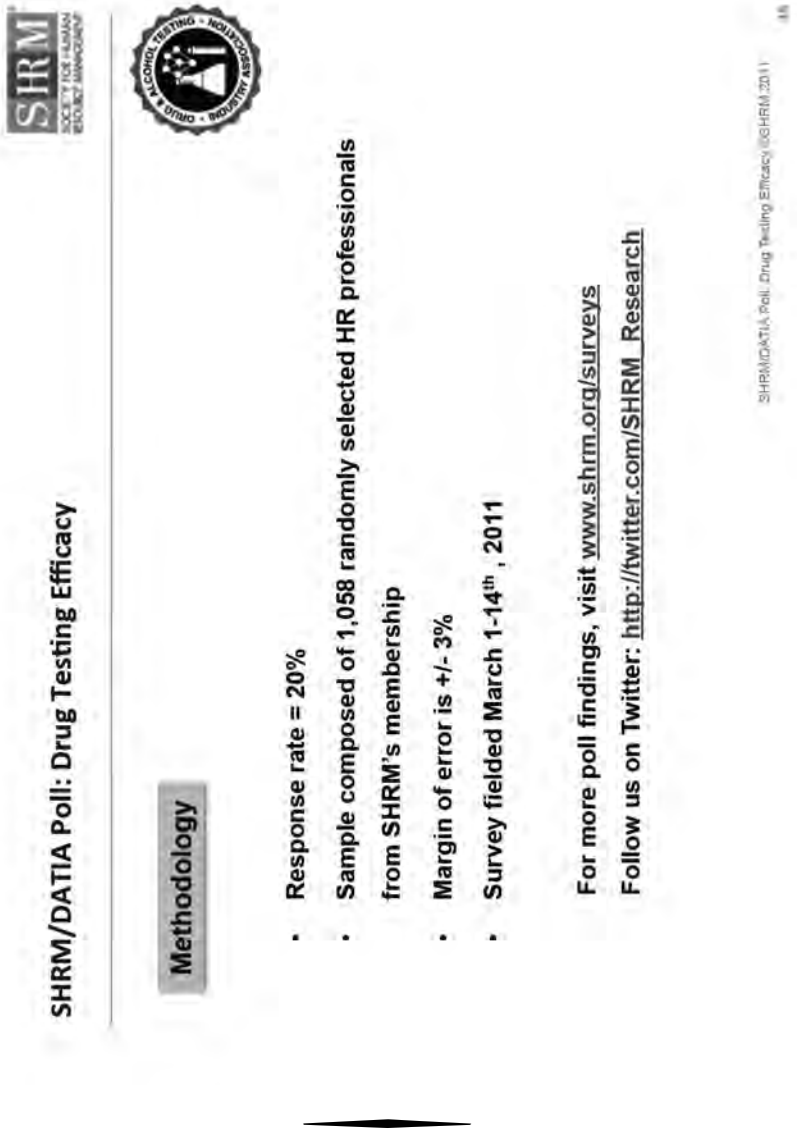
Multi-unit headquarters determines HR policies and practices	57%
Each work location determines HR policies and practices	3%
A combination of both the work location and the multi-unit headquarters determine HR policies and practices	40%

Note: n = 619

Level of HR department/function for which you responded through this survey.

Corporate (company wide)	75%
Business unit/division	14%
Facility/location	11%

Note: n = 621



Mr. REED. Thank you very much, I appreciate that, Mr. Chairman.

Madam Secretary, could you tell us when you expect to issue that guidance that you are consulting with the—at this point?

Ms. OATES. Absolutely, sir. And, you know, I apologize. We would love to get everything done at once. We worked at first on the things that had a mandate, especially the REA/RES with the 30-day deadline and the demo, on which we put our own internal

mandate because States were interested in it. We hope to have that done in the next month or two. We hope to have all this guidance out by June.

Mr. REED. By June, okay. And will it be limited to identifying what occupations are eligible as directed by the act, or will the Department of Labor take additional criteria on States trying to use this authority as you did with the guidance on waivers?

Ms. OATES. Well, I think we will continue to have consultations with our stakeholders. You give us—I don't think we have talked to SHRM before, so that is a great addition. But our hope is that we will do the right thing, and, again, I don't want to—we haven't issued the guidance yet. We have had discussions. I haven't even seen drafts from my career people yet, so I really can't answer your question.

Mr. REED. Do you find any sentiment within your agency of objection to this ability of States to utilize this new tool for reemployment by drug testing? Is there anything in the agency that would cause concern that this policy or this initiative or this authority to the States would be hampered because of a—as I heard in that conference committee in the debates from my colleagues on the other side of the aisle that they were adamantly opposed to this type of requirement or tool because there was something that they disagreed with. Do you see that within the agency at all, or are you seeing any concern about that?

Ms. OATES. You know, I think the longstanding tenets of this are someone who loses their job because of drug involvement on the work site has never been eligible for unemployment, so I don't see any change to that coming.

And then this idea that—what we are struggling with is the language that States have the right to drug test someone who's only suitable work is in jobs that require drug testing. So finding those jobs and giving clear guidance to the States is what is really taking our discussion time now. But in terms of seeing any hurdles within our building or any must-dos or must-haves other than what is current long-term practice, no, sir, I don't see anything coming in those discussions that would be, you know, hurdles to getting this done quickly and getting it done consistent with the intent of Congress.

Mr. REED. I appreciate that. Thank you very much. I look forward to working with you on this issue. And with that, Chairman, I will yield back.

Chairman DAVIS. I thank the gentleman.

I want to thank you, Secretary, for joining us today. We look forward to continuing to correspond with you and work with you, and appreciate you getting back to my office on the question that I asked specifically for documentation, as well as the other Members. If Members have additional questions, they will submit them to you directly in writing, and all we would ask is that you reply or give a copy of the reply to the committee staff so we can make sure that it is inserted into the record.

Ms. OATES. Absolutely.

Chairman DAVIS. Thank you very much for being here.

Ms. OATES. It is a pleasure to work with this committee, sir. Thank you so much.

Chairman DAVIS. That concludes the first panel. I would like to invite our second panel to come up.

Chairman DAVIS. I appreciate all of you gentlemen joining us here today for our second panel to continue this discussion on the unemployment insurance program, the reforms that have been made and, the implementation thus far.

On our second panel we are going to hear from Mr. Darrell Gates, deputy commissioner of the New Hampshire Department of Employment Security; Mr. Larry Temple, executive director of the Texas Workforce Commission; Dr. Wayne Vroman, senior fellow of the Urban Institute; Mr. Douglas Holmes, president of UWC, Strategic Services on Unemployment and Workers' Compensation; and Mr. Michael Cullen, managing director of OnPoint Technology.

Before we move on in the testimony, I would like to again recognize Chairman Brady from Texas to introduce the witness from his home State, Mr. Temple.

Mr. BRADY. I again want to thank Chairman Davis for his leadership in calling this hearing. And to all the witnesses who are here to testify today, it is a special pleasure to welcome Larry Temple, an outstanding public servant from my home State of Texas, to the Ways and Means Committee.

In 2003, Larry took over as executive director with the Texas Workforce Commission, a State agency with a budget of nearly $1.1 billion. The commission has oversight over all the state's employment training, welfare reform, child care and unemployment insurance programs.

During his time at the commission, Mr. Temple designed, implemented and administered Texas' successful welfare reform initiative. A significant portion of this initiative involved the transition of welfare services via block grant to our local workforce development board, and the result was an unprecedented caseload reduction to unemployment, and national recognition as one of the top 10 programs in the Nation for putting welfare recipients to work.

It is an issue dear to the heart of this committee and critical to the country at this time. He has an exemplary record designing programs that help people get back to work. I am grateful he can share his expertise with us today, and I welcome you, Mr. Temple, along with the rest of the witnesses. Thank you.

Mr. Chairman, I yield back.

Chairman DAVIS. All right. Thank you, Chairman Brady.

Mr. Gates, please proceed with your testimony. You are recognized for 5 minutes.

STATEMENT OF DARRELL GATES, DEPUTY COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY

Mr. GATES. Thank you.

Good morning, Chairman Davis, Ranking Member Doggett and Members of the Committee. My name is Darrell Gates. I serve as deputy commissioner for the New Hampshire Department of Employment Security. I also serve as chairman of the Unemployment Insurance Committee for the National Association of State Workforce Agencies, known as NASWA. On behalf of NASWA, I am pleased to speak on the implementation of the Middle Class Tax Relief and Job Creation Act of 2012.

States have done an extraordinary job reacting and adapting to the unprecedented challenges of the great recession. From 2008 to 2010, benefits paid to UI claimants more than tripled from roughly $42 billion in fiscal year 2008 to $143 billion in fiscal year 2010. The rapid and unprecedented increase in UI claims since 2008 brought some State programs nearly to a breaking point. This is due to the lack of funding for UI computer technology. State UI programs have information technology systems averaging 25 years old and are unable to easily adapt to programs such as Emergency Unemployment Compensation Act of 2008. But States are moving rapidly to implement the new law, and my comments will focus on the progress of implementation.

First, States appreciate the new law kept the current tier structure intact. If the program is continued beyond the end of the year with the goal of an eventual phaseout, NASWA recommends it should be accomplished by either adjusting the unemployment rate triggers for the tiers, the number of weeks in each tier, or eliminate tiers in reverse order with the last tier being the first to be eliminated.

Second, States applaud Congress for funding reemployment activities known as RES and REAs. States are moving aggressively to meet with roughly 9 million workers by the end of the year to comply with the in-person requirement. But the process could be easier if USDOL recognized basic technology, such as the telephone and video conferencing, that allow for virtual in-person meetings.

In New Hampshire and other States, investments have been made in video conferencing. This technology would speed along the meetings with claimants and provide the services they need, but USDOL has said this would not comply with the in-person requirement.

Third, NASWA recommends early intervention of reemployment services as soon as the claimant files for UI. Providing these services in week 1 rather than week 27 yields the greatest return for the unemployed, employers and taxpayers.

Fourth, NASWA recommends a permanent REA and RES program through our capped entitlement grant at $500 million per year. We recognize this is challenging, but it would ensure States receive sufficient funds for reemployment activities to help the jobless go back to work sooner, which also could lead to lower benefit outlays and lower employer taxes.

Fifth, on the demonstration projects we recommend that reemployment bonuses should be added as a permissible activity. The bonus could be graduated to pay larger bonuses for early returns to work and progressively smaller bonuses for later returns to work.

Also, New Hampshire, and I suspect other States with limited staff, will likely not apply for the demonstration projects because USDOL imposed too many conditions. My State would need an additional staff person to assure the application was complete.

Sixth, on the work search criteria, States should have the flexibility to conduct the work search data that best meets the needs of the States. USDOL has told New Hampshire that paper logs must be submitted during the in-person session even though my State collects this information electronically.

Seventh, on a nonreduction rule, NASWA recommends it should be eliminated completely and not just modified. States should have the flexibility to determine the most appropriate methods for addressing Unemployment Trust Fund solvency.

Eighth, on the data exchange provision, NASWA strongly agrees that data on participants in various publicly funded programs could be collected, stored and exchanged more efficiently, and used more effectively. NASWA is hopeful OMB will fund a NASWA proposal to improve payment accuracy, administrative efficiencies and service delivery, and reduce barriers to program participation of eligible applicants.

Finally, to address the aging computer infrastructure, NASWA was hopeful Congress will consider our administrative funding proposal that would do the following: maintain the current funding structure for UI administration and give States an additional discretionary appropriation of $100 million each year for IT investments to promote efficiency and better services to employers and workers; and in years in which 50 percent of FUTA revenue exceeds the amount that would be allocated under the current system, generally in better economic times, provide States with an additional amount for UI administrative investments distributed via a formula.

Thank you for the opportunity to testify.

Chairman DAVIS. Thank you very much.

[The statement of Mr. Gates follows:]

**NATIONAL ASSOCIATION OF STATE WORKFORCE AGENCIES (NASWA)
STATEMENT ON THE UNEMPLOYMENT INSURANCE PROVISIONS OF THE
MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012**

**SUBMITTED BY DARRELL L. GATES
DEPUTY COMMISSIONER,
NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY
ON APRIL 25, 2012**

**TO THE HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on implementation of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96). State Workforce Agencies are responsible for implementation of EUC08 and other provisions in the Act. The National Association of State Workforce Agencies (NASWA) submits this testimony for the record.

The mission of NASWA is to serve as an advocate for state workforce agencies' programs and policies, as a liaison to workforce system partners, and as a forum for the exchange of information and effective practices. Our organization was founded in 1937. Since 1973, it has been a private, non-profit corporation, financed by annual dues from member agencies and other revenue.

Our members administer critical programs including Unemployment Insurance (UI), the Workforce Investment Act (WIA), Veterans' Employment and Training Services (VETS), Labor Market Information (LMI), Trade Adjustment Assistance (TAA) and the Employment Service (ES).

The Unemployment Insurance System in the Aftermath of the Great Rescission

The unemployment insurance (UI) program is an entry point to the nation's one-stop career center system for workers who lose their jobs. For many workers, this may be their first interaction with the publicly-funded workforce system. It should provide timely income support, while emphasizing reemployment of UI claimants.

The UI system is a unique federal-state partnership, grounded in federal law, but administered through state law by state officials. It provides temporary, targeted, timely and partial wage replacement to laid-off workers. Created by the Social Security Act of 1935, the UI system has been a successful social insurance program for many years. The system is decentralized at the state level to address the varying economic problems among the states. State unemployment benefits are financed through state payroll taxes, which are held in individual state trust fund accounts in the federal Unemployment Trust Fund in the U.S. Treasury.

Administering unemployment benefits involves a number of efforts. For example, states are responsible for: (1) processing benefit payments for both state and federal claims; (2) preventing overpayments and fraud; (3) answering thousands of questions they receive from UI claimants and employer taxpayers; and (4) resolving disputes about job separations between UI claimants and employers in the claims adjudication process. These are time consuming tasks made harder by a record number of claimants during and after the Great Recession.

While much has been written about problems states have encountered with unemployment insurance call centers and on-line claims processing, states have done an extraordinary job reacting and adapting to the unprecedented challenges of the Great Recession. From 2008 to 2010, benefits paid to UI claimants more than tripled from roughly $42 billion in Fiscal Year 2008 to $143 billion in Fiscal Year 2010. While benefits decreased to $113 billion in Fiscal Year 2011, the rapid and unprecedented increases in workload on state workforce agencies since 2008 brought some state programs nearly to a breaking point. This is due to the chronic federal underfunding of the states for the administration of the UI infrastructure which has left states with legacy information technology averaging 25 years old.

The Middle Class Tax Relief and Job Creation Act of 2012

The Act extends the expiration dates of the EUC08 program and the temporary provisions of the Extended Benefit (EB) program. It contains complex and phased-in changes to the EUC08 program and alters the duration and state availability of each tier of the EUC08 program during three separate periods: March-May 2012, June-August 2012, and September-December 2012.

States are moving rapidly to conform to the Act. They appreciate the new law kept the current tier structure intact. NASWA recommends if the EUC08 program is extended beyond December 2012, it should retain the current tier structure. If the federal government decides to phase down the program after December 2012, it should either adjust the unemployment rate triggers for the tiers, the number of weeks in each tier, or eliminate tiers in reverse order with the last tier being the first to be eliminated.

Reemployment and Eligibility Assessment, and Reemployment Services

The Act provides new entitlement funding estimated at about $440 million to states from general funds to provide Reemployment and Eligibility Assessment (REA) activities and Reemployment Services (RES) to EUC claimants. NASWA applauds Congress for providing funding to assist the jobless get back to work faster.

Numerous evaluations demonstrate REA and RES programs reduce UI duration and are cost-effective. Reemployment assessments and services are proven to reduce a claimant's duration on unemployment insurance benefits by two weeks or more. This does not sound significant, but a reduction of two weeks of unemployment benefits for one million workers would save about $600 million in federal benefit outlays.

Research varies, but in Washington State, for example, a reemployment services demonstration project reduced claimant's duration on UI by nearly eight weeks. Further, in Minnesota and Nevada, providing job search assistance services, including individual case management, also reduced duration of unemployment insurance -- by 4 weeks in Minnesota and 1.6 weeks in Nevada.

UI claimants do not necessarily have in-person connections to employment and job search assistance services. Most UI claims processing occurs remotely over the internet or telephone. They might be required to register for work, but they might not necessarily avail themselves of the services in one-stop career centers authorized under the Workforce Investment Act (WIA). States and the federal government have become more interested in connecting UI claimants to reemployment services, but the inflation adjusted funding for these programs has been declining and has not kept pace with the growth in the labor force, nor has it responded well to the near tripling of initial UI claims early in the Great Recession.

A permanent REA and RES program is needed. The American Recovery and Reinvestment Act of 2009 (ARRA) included $250 million for states to provide Reemployment Services targeted specifically to UI claimants as a temporary increase in authorization for the Wagner-Peyser Act program. Many states used these funds effectively, but these funds have been spent and the workforce system is struggling to serve a persistently high continued UI claims workload despite the recent drops in initial UI claims. While most states have received separate REA grants from ETA, the funding amounts have been temporary, and these grants provided no funding for reemployment services.

Many states have reported it will be difficult to develop an effective program with per-capita operational costs of $85 or less as specified in the Act. Further, the Act does not provide states funding to cover the fixed costs to develop programming and for start-up operations. States that have limited REA programs, or are not currently implementing REA programs, likely will face more difficulties because they will not be able to build on existing programs. Some states also have said with limited funding and high caseloads it will be hard to provide the reemployment services allowed under the new Act. They might be forced to provide minimal REA services only.

"In-Person" REA/RES Requirement

According to USDOL guidance, "states must, at a minimum, require a EUC claimant's presence to perform the review of eligibility and review of the claimant's work search." This will prove challenging for a number of states as USDOL projects approximately 3.2 million individuals will file for First Tier benefits and 1.4 million claimants currently receiving EUC First Tier benefits will transition to EUC Second Tier. Some 4.4 million workers receiving EUC First Tier benefits are being scheduled by states for "in person" reemployment services. About 9 million workers will be seen by states through the duration of the EUC program, which is scheduled to expire on January 2, 2013.

The guidance interprets the statutory "in person" provision to require the physical presence of each claimant at a one-stop career center or affiliate office. While the guidance permits flexibility to handle cases remotely where there would be a hardship on a claimant to appear in person, it does not recognize basic technology, such as the telephone and leading edge technologies that allow for "virtual" in-person meetings.

In my state of New Hampshire, we have invested in video conferencing technology and would like to use this technology to increase efficiencies in our delivery of the new REA/RES activities for EUC claimants. Specifically, we would like our office staff in rural areas to handle some of the in-person eligibility reviews for claimants in our urban areas through video conferencing. So a claimant who appears in the Manchester office would sit down and talk face-to-face through video conferencing with a staffer located in one of our rural offices. However, officials in USDOL's Employment and Training Administration (ETA) told us the use of video conferencing in this manner would not comply with the "in-person" requirements under the statute.

While it is a complex task for all states, those states with the highest unemployment rates face challenges. In my state of New Hampshire, with an unemployment rate of 5.2 in March 2012, (preliminary seasonally adjusted), we will see approximately 8,000 persons for "in person" assessments conducted in our one-stop career centers throughout the remainder of the year, about 85 percent of our EUC workload from 2011. In states like Nevada and California, the task is more difficult. In Nevada, for example, they will be renting large convention facilities to process as many claimants as possible at one time. California, will conduct the assessments in their 80 plus one-stop career centers, but the scheduling and logistics of seeing more than 500,000 claimants for "in-person" assessments requires considerable organization and coordination.

NASWA also recommends early engagement in REA and RES -- targeting claimants who file their UI initial claims -- as important interventions to producing the greatest returns for the unemployed, employers and taxpayers. Under the Act, states are required to engage EUC claimants in REA activities within a specified period. Since EUC claimants in most states likely would be at least in their 27th week of UI receipt, the provisions are targeted at the long-term unemployed and not initial UI claimants. While we recognize the concern about long-term unemployment and the cost of EUC, state administrators believe engaging claimants in REA and RES earlier in their receipt of UI would be more cost-effective.

Work Search Requirements

The Act amends EUC eligibility provisions to include specific language requiring individuals to be able to work, available for work, and actively seeking work. Under prior federal law, state law work search requirements applied to EUC claimants. The new law defines "actively seeking work" to mean an individual must register for employment services; engage in an active work search; maintain a detailed record of employer contacts; and provide the work search record to the state upon request.

The new language in the Act generally mirrors what state laws already require of claimants. As the Department of Labor's Comparison of State UI Laws finds: "In addition to registration for work at a local employment office, all states… , whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work." One state was an exception to this statement until it recently changed its law. We know of no state exceptions now.

States should have the flexibility to collect the work search data in the manner that best works for their state. In New Hampshire, for example, UI claimants will have already submitted a record of their work search that will be electronically

linked to their claim in our system. Yet, ETA is insisting claimants bring "paper logs" of their work search with the names of employers contacted, method of contact and date of contact. This is duplicative of what they have already submitted.

Overpayments

The Act changes federal law on the collection of UI overpayments from states "may" to "shall" collect state and federal overpayments. The new law reads:

> A State shall deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deductions shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

States strongly support avoiding UI overpayments and collecting them when they occur. States and the federal government are making improvements in this area despite continued underfunding of federal grants to states for UI administration, the excessive workload brought about by the Great Recession and the weak recovery of employment. Examples of improvement include the ongoing implementation of the State Information Data Exchange System (SIDES) and the new federal law requiring employers to report rehires of separated employees. Both these improvements help states make better decisions about the eligibility of UI claimants by providing more timely information about the claimants' separations from employment and any earnings they might have while claiming UI benefits.

USDOL has not yet issued guidance on how states should implement this new law. States are concerned about implementation in the area of interstate benefits, which is governed by reciprocal interstate agreements among the states that the states are in the process or revising and updating. Collecting UI overpayments within a state is complex, but when trying to collect across state lines, states need reciprocal agreements under which the laws of each state are respected and obeyed.

Short-Time Compensation

The Act included a new provision for Short-Time Compensation (STC) Program, also known as work sharing. It provides incentives for States to implement these programs and adds some new provisions with which states must comply within roughly two years. Some new provisions require participating employers to:

- reduce hours by at least 10 percent, but not more than 60 percent;
- certify, if health and retirement benefits are provided to employees, those benefits will not be reduced due to participation; and
- submit a written plan describing how the requirements will be implemented with an estimate of the number of layoffs that would have occurred but for the program.

The work sharing program is not a new concept to the federal-state unemployment insurance (UI) system. In 1978, California was the first state to implement a STC program where employers could offset workweek reductions with UI benefits in order to avoid total layoffs. Since 1978, twenty-one other states have introduced some type of work sharing program. California is the only state out of the twenty-two states (AZ, AR, CO, CA, CT, DC, FL, IA, KS, LA, MD, MA, MN, MO, NH, NY, OK, OR, RI, TX, VT, and WA) with a work sharing program that does not require a percentage maximum for the reduction of hours worked.

The new federal definition for the STC program has two requirements where states with existing STC programs might have to modify their UI laws in order to receive the federal funding. States will have to make sure the reduction of hours is not more than 60 percent and that employers will have to continue to provide health and retirement benefits. California has indicated the new federal requirement of a 60 percent maximum might be problematic for some employers.

USDOL has not yet issued guidance on these amendments, so states might have additional comments later.

Self-Employment Assistance

The Act authorizes an extension of the Self-Employment Assistance (SEA) program to include individuals who are collecting EUC consistent with the parameters of the established program. The self-employment concept was first tested in the 1990's through a series of demonstration programs and then made permanent in 1998. While the concept of offering unemployed individuals the opportunity to start a small business as an alternative to collecting benefits is in theory promising, the experience has been mixed. Today seven states: Delaware, Maine, New Jersey, New York, Oregon, Pennsylvania and Washington have active Self-Employment Assistance programs.

The Act authorizes $35 million for this activity. Data from the Department of Labor show from 1995 to 2011 the largest single year expenditure was about $17 million in 2002 and the average yearly benefits paid for the whole period was only $10.8 million. The average number of individuals referred to an SEA program peaked at 3,170 in in 2002. The average per year for the whole period was about 2,000 claimants. In 2011 only 1,055 individuals entered an SEA program and they received benefits of slightly more than $1million.

Non-Reduction Rule

The Act modifies the non-reduction rule that requires states to maintain their current weekly benefit amounts (WBAs) in order to receive EUC08 funding, with an effective date of March 1, 2012. Prior to P.L.112-96, if states failed to maintain their WBAs, their access to EUC funding, 100 percent federal financing of Extended Benefits, and the deferral of interest and Federal Unemployment Tax Act credit reduction caps would have been in jeopardy.

While NSWA understands the intent of this provision to protect weekly benefit amounts for claimants, we believe the non-reduction rule should be eliminated. It limits a borrowing state's options to address solvency issues by denying EUC eligibility to states that reduce weekly benefit amounts. It might have led some states to reduce potential weeks of benefits instead. Without this provision, at least four states would have been found in violation of the non-reduction rule. States should have the flexibility to determine the most appropriate unemployment insurance benefit structure and methods for addressing unemployment insurance trust fund solvency.

Demonstration Projects

The Act authorizes the Secretary of Labor to enter into agreements with up to 10 states that apply to conduct demonstration projects evaluating measures to reemploy UI claimants sooner than they normally would return to work. Approved demonstration projects are limited to those that: (1) subsidize employer-provided training; or (2) subsidize wages of UI claimants to pay the part of a wage that exceeds a UI claimant's weekly benefit amount. The maximum subsidy per week is the UI claimant's weekly benefit amount.

As part of the demonstration authority, the Secretary is authorized to waive the "withdrawal standard" that generally limits the use of state unemployment trust fund account funds to the payment of benefits. The applicant state must assure and provide supporting analysis that the demonstration project will not result in any increased net costs to the state's unemployment trust fund account during its operation. State trust funds may be used to cover the cost of the required state evaluation too, but these costs must be included in the calculation that there is no net impact on the state trust fund account.

NASWA strongly supports efforts to accelerate the rate at which UI claimants return to suitable work. Members believe this is not only good for the claimants, but it is good for employers and the taxpayers too. It would be helpful if the federal government would provide separate funds for the evaluations of these demonstration projects.

While New Hampshire has an excellent return-to-work program, it decided against applying for the demonstration project because USDOL imposed too many conditions in its Unemployment Insurance Program Letter. In order to provide assurances that all requirements in USDOL's application process were complete, New Hampshire would need an additional staff person to complete the application.

NASWA has one idea it would like to add to demonstration authority – reemployment bonuses. The concept is to pay bonuses to UI claimants who return to work sooner than projected. The bonus could be graduated to pay larger bonuses for early returns to work and progressively smaller bonuses for later returns to work. Similar rigorous evaluation standards to assure no net cost to state unemployment trust funds could apply to reemployment bonuses as has been applied to the demonstration projects under this Act. Such an option could be added to the authority described above with appropriate modifications.

NASWA would be pleased to work with the Subcommittee on such an amendment. A recent summary of the research evidence on reemployment bonuses by economist Stephen A. Wandner says they significantly affect job search behavior and reduce the duration of unemployment. Further, the bonuses should be no more than three or four times a claimant's weekly benefit amount and they should be aimed at workers projected to be unemployed a long time, such as dislocated workers. Targeting workers who are likely to be unemployed a long time early in their spells of unemployment and subsidizing their reemployment has the greatest promise for unemployment benefit outlay savings.

Data Exchange Standardization for Improved Interoperability

The Act requires the Secretary of Labor to designate a data exchange standard for information required under the UI program as described in Titles III, IX and XII of the Social Security Act. As we understand it, this in part reflects the concern that data about participants in various publicly-funded programs are not communicated efficiently among programs and are often collected and stored multiple times in multiple places. NASWA agrees such data could be collected, stored and exchanged more efficently and used more effectively.

In response to this problem, NASWA, through its Information Technology Support Center (ITSC), funded by the U.S. Department of Labor, submitted a proposal to the Office of Management and Budget (OMB) Partnership Fund for a National Applicant Directory and Data Exchange System. It would be modeled after two existing systems: (1) the UI State Information Data Exchange System (SIDES), and (2) the Wage Record Interchange System (WRIS). Here is how the Data Exchange System would work:

- An applicant would apply for benefits or services from a program online;
- An electronic applicant record is created for that program database;
- The state requests data on the applicant from other participating programs by using a standardized format submitted to a central broker;
- The central broker contains an index file of unique identifiers of individual program applicants and program participants;
- The central broker queries other participating state programs for data on the applicant;
- Where data are found on the applicant, they are extracted in a standardized format and electronically sent back to the central broker;
- The central broker electronically transmits the data back to the requesting program; and
- The program to which the applicant has applied now has information on the applicant from the other participating programs.

Such a system would improve payment accuracy, administrative efficiency, service delivery and reduce barriers to program participation of eligible applicants. OMB has not yet funded this proposal. NASWA believes it responds to the concerns of Congress in this Act. We hope the Subcommittee would support the proposal and that OMB will fund it soon. The states of Florida, Minnesota and Mississippi have said they would participate in the proposed pilot of the system, so our Information Technology Support Center is ready to work with them to show that this concept could improve data exchange among programs dramatically.

Drug Testing of Applicants

The Act allows states to enact legislation to test UI applicants for use of controlled substances as a condition of UI receipt, in cases in which the UI applicant was fired because of drug use. The U.S. Department of Labor has not yet issued guidance on this provision.

Generally, to qualify for UI, workers must have lost their jobs through no fault of their own and must be able to work, be available for work, and be actively seeking work. States disqualify workers from receipt of UI if they were discharged due to misconduct connected with work, and definitions of misconduct have developed separately in each state. As of January 2011, 20 states had specific provisions disqualifying workers from unemployment insurance if they lost their jobs because of drug use or failure to undergo drug testing, or they committed a related violation.

The Act also allows States to test UI applicants for drug use as a condition of receipt if suitable work for the applicant is available only in an occupation that regularly conducts drug testing. If states were to pass such a provision, it likely would apply to a small subset of the applicant population.

NASWA supports state flexibility. Spending on drug testing of UI applicants or claimants might yield savings and allay concerns about claimants' availability for work or ability to work. However, concerns about costs and due process have been raised. Drug tests are reported to cost $25 to $40 per test. One widely quoted study of federal government workers found 0.5 percent tested positively at an estimated cost of $77,000 per positive result. We are unaware of any evidence on drug tests of UI applicants, but states would have to weigh the costs against the potential benefits. To make informed decisions, further information would be needed.

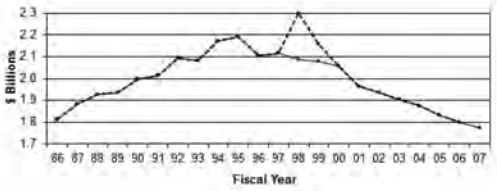
NASWA Recommendations: An Alternative Approach to UI Administrative Funding

At the beginning of the "Great Recession" in December 2007, state unemployment insurance (UI) programs were struggling to administer their programs at a time of near full employment. They were not in a position to expand dramatically without engaging in triage of services and substantial reallocations of existing resources. Real funding for the base amount of insured unemployment had been declining since the mid-1990s. Despite hoped for improvements in productivity from adoption of remote UI claims taking through telephone call centers and the internet, many states faced steep challenges with a three-fold spike in initial UI claims and a more than doubling of continued UI claims. Fortunately, the system was designed to respond to such increases in demand for unemployment benefits with additional administrative funds, but not without critical time lags and much scrambling by states as they awaited additional resources.

In the federal-state UI system, one of the roles of the federal government is to provide grants to states to fund the administration of state UI programs. In part, Title III of the Social Security Act says: "The Secretary of Labor shall certify…for payment to each state which has an unemployment compensation law…such amounts…necessary for the proper and efficient administration of such law during the fiscal year…The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant."

The figure below shows real (adjusted for inflation) federal funding for state administration of UI per two million average weekly insured unemployment (AWIU) from 1986 to 2007. Two million AWIU is a rough measure of the base workload that would exist nationally to maintain operations of all state UI programs even at very low unemployment levels. The dotted line shows added federal funding to aid states making software adjustments for the year 2000 changeover. The solid line graph shows a substantial decline in real resources for base funding from about $2.2 billion in 1995 to less than $1.8 billion per two million AWIU in 2007. Although some of this decline might be due to productivity gains, states have long said they have not received enough base level funds to administer their programs in a proper and efficient manner even during periods of relatively low unemployment. Many states have adjusted for insufficient funds by adding state funds, but their ability to do that is dwindling as states cut their own spending to balance their annual budgets. States reported to NASWA in many years they added roughly $150 million per year of their own funds to federal funds for UI administration.

UI Base Funding 1986-2007
Inflation Adjusted Dollars per 2 million AWIU



The figure below shows weekly initial claims and continued claims for the state programs only (Excluding EUC and EB) from January 2007 through January 2012. Note that unemployment usually lags behind the initial stages of a recession.

- The number of unadjusted weekly initial claims for state benefits was about the same in July 2008 as it was in July 2007, six months after and before the start of the recession, respectively. Then weekly initial claims skyrocketed to more than triple the level in July 2008 to around 900,000 from January to July 2009. The number of weekly continued claims for state benefits rose in response to more and more claimants entering the system and staying on UI for even longer durations than had been experienced recently. Weekly continued claims nearly doubled from about 3 million in July 2008 to about 6 million in July 2009.
- As the economy began recovering, weekly initial claims and continued claims showed gradual declines from 2010 to 2012. Initial claims decline as employer layoffs decline, but growing long-term unemployment and extensions of unemployment benefits led to longer durations on regular state benefits and higher weekly continued claims than would have existed in a stronger economic recovery. At the beginning of 2012, weekly initial claims were nearly back to normal, but weekly continued claims remained high at about 4 million.

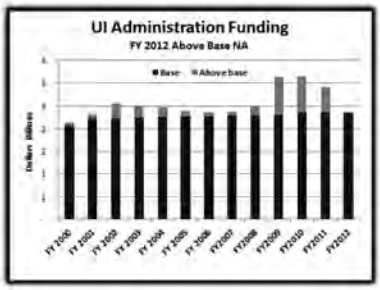
Unadjusted Initial and Continued Unemployment Insurance Claims (2007-2012)

There are a number of sources of funding for state administration of UI. The main source is federal grants for administration of UI, which breaks down into base, above-base and contingency funding.

- Base funding is, in a sense, how much the U.S. Department of Labor (USDOL) determines a state needs to keep its program running regardless of how low the workload falls at or near full employment.
- Above-base funding is distributed during the year as states process workloads that exceed that funded by base funding. Conceptually, this allows USDOL to distribute funds to states that need the funds above the base funding, but after the workload has been experienced and reported by the state.
- Contingency funding is activated at the national level when the average weekly insured unemployment (AWIU) exceeds the level of AWIU that was funded in the federal budget. When a recession begins, contingency funding usually activates shortly after the beginning of the recession when unemployment increases. The formula provides USDOL with $28.6 million per 100,000 additional AWIU above the level in the budget, which USDOL then distributes to states that have experienced the increased unemployment.

The figure below shows base, above base and contingency funding (imbedded in above base in the graph) for UI administration from fiscal years 2000 to 2012. Significant increases for above base are shown as that funding helped states cope with the recession beginning in December 2007, the last month of the first quarter of fiscal year 2008. As the graph shows, the substantial increases in above base and contingency funding occurred in fiscal years 2009, 2010 and 2011.

Unemployment Insurance (UI) Administrative Funding
(Fiscal Years 2000 to 2012)



In addition to the regular annual funding, states can receive funds through supplemental budget requests (SBRs), which fund irregular activities, such as implementing the State Information Data Exchange System (SIDES), Reemployment and Eligibility Assessments, or information technology modernization projects. States also can add their own funds to UI administration. In the aggregate, states added about $180 million of their own funds to the federal grants for administration of UI in 2007, but this total declined to about $135 million in 2010, partly because of state budget cuts in response to the recession.

NASWA Administrative Funding Reform Proposal

NASWA urges the federal government to ensure sufficient funds for proper and efficient administration of state unemployment insurance (UI) programs by guaranteeing states at least 50 percent of Federal Unemployment Tax Act (FUTA) revenue collected in the previous tax year for grants to states for administration. Under this approach there would be a mixture of discretionary and mandatory spending for UI administrative funding, as there is under current law. (Contingency funding is mandatory funding authorized under appropriations acts.)

As under current law, funding would be appropriated for base funding, above-base funding and contingency funding. In addition to current law, performance incentive awards would be appropriated up to $100 million to states that exceed acceptable levels of performance on core measures set in State Quality Service Plans (SQSPs).

Total UI Administration funding granted to states for a fiscal year would be the higher of the following:

(1) the sum of (a) base funding, (b) above-base funding, (c) contingency funding, and (d) performance incentive awards, or

(2) 50 percent of FUTA revenue collected in the previous tax year.

New mandatory funding would consist of the excess, if any, of 50 percent of FUTA revenue collected in the previous tax year over the funding under the sum of (a), (b), (c) and (d) above. Excesses likely would occur in years when unemployment is low because when unemployment is high, generally 50 percent FUTA revenue collected in the previous tax year would be lower than the sum of (a), (b), (c) and (d) above.

The excess, if any, would be a mandatory entitlement to states and distributed to states as follows:

(1) 50 percent based on state shares of the sum of the funding under (a), (b), (c) and (d) above; and

(2) 50 percent based on state shares of the estimated FUTA revenue collected during the previous tax year paid by employers in each state.

After excess funds have been deposited in a separate state administrative account for ten years, the state may transfer such funds to its unemployment trust fund account to cover state benefit costs.

A number of basic questions about the NASWA administrative funding proposal have been asked, such as:

(1) Would funds be appropriated for performance incentive awards? We realize in the current budget environment, this is not very likely.

(2) How much would the excess funding cost? This funding would be available only during periods of low unemployment. If the proposal had been in effect from 1986 to 2010, we estimated there would be 12 years out of the 25 years when an excess would have existed. The annual excess in current dollars would have varied in these 12 years between about $90 million and to nearly $250 million.

(3) How would the cost be covered in the Congressional budget process? The proposal does not deal with the financing of the proposal. Costs could be covered within an unemployment insurance reform bill or a larger budget reconciliation bill by changes in spending or revenue to be determined later in those contexts.

(4) How could new mandatory spending be created? Contingency funding already is a mandatory spending for grants to states for UI administration in appropriations bills and the new funding for REA/RES is mandatory spending on grants to states based on the number of EUC claimants needing in-person REAs.

(5) Does the proposal have employer support? Yes, UWC, a group representing employers in the UI system supports the concept as long as states aim added funding at improving the integrity of the UI programs, which they intend.

We suspect the Subcommittee will have other questions about the NASWA proposal. NASWA looks forward to talking further about the concept. After years of struggle, it is the only proposal to reform UI administrative funding on which NASWA members have reached a consensus, and that employers support. It is the only idea currently in play that could alleviate the underfunding of the system by the federal government and help the states improve their UI information technology and other systems.

NASWA Recommendation: A New Capped Entitlement Grant for REA and RES

States are struggling to administer their UI programs in a "proper and efficient manner" and provide REA/RES for several reasons: (1) They have said for years the federal government underfunds state grants for UI administration; (2) REA funding for state programs (not EUC) has not been provided to all states and appears to be only one-time funding provided through supplemental budget requests (SBRs); (3) RES funding has been limited, uncertain and episodic at best; and (4) inflation-adjusted funding for employment services under the Wagner Peyser Act and the Workforce Investment

Act has been cut many times, is steadily declining, and likely will continue declining as federal domestic discretionary spending is cut even more in the next few years.

In response to this struggle, NASWA suggests the federal government create a capped entitlement grant, at $500 million per year, to states for REA and RES to ensure steady and sustainable funding for these important activities for the regular state UI programs. The program should be patterned after the REA/RES provisions in the Act that currently apply only to EUC claimants, but should be funded out of FUTA instead of general revenue. The amount per claimant should be set higher than $85, perhaps at $200 per claimant, so some RES could be provided in addition to minimal REA services. States strongly suggest a more cost-effective approach would be to apply REA/RES to the claimants of regular state benefits early in their claims, instead of waiting until they exhaust their regular state benefits, after as much as a half year, and transition onto EUC.

NASWA is aware that creating a new capped entitlement grant to states for REA/RES would be challenging. However, if there is sufficient FUTA revenue coming into the federal unemployment trust fund to finance these activities and sufficient funds are not appropriated for state administration of UI and Wagner Peyser Act services, a capped entitlement would be a way for the Committee on Ways and Means to ensure states receive sufficient funds for REA/RES. This could help claimants go back to work sooner, which also could lead to lower benefit outlays and lower employer taxes in the future.

We urge the Subcommittee to consider this idea and work with NASWA to map out the details of this concept.

11

Chairman DAVIS. Mr. Temple, you are recognized for 5 minutes.

STATEMENT OF LARRY TEMPLE, EXECUTIVE DIRECTOR, TEXAS WORKFORCE COMMISSION

Mr. TEMPLE. Thank you.

Good morning, Chairman Davis and Ranking Member Doggett, distinguished Members of the Committee, Congressman Brady. Thank you for inviting me to testify on the implementation of the Middle Class Tax Relief and Job Creation Act.

As we have talked about in previous testimony, Texas prioritized the UI claimant population as its number one population to serve

in a State, second only to vets, in 2003 by actually self-imposing a 10-week reemployment measurement for UI claimants. This isn't a Federal measure, this isn't a State legislative measure; this is one that we put upon ourselves.

When we put this in place in 2003, our unemployment rate was about 6.4 percent. Our performance was around 27 percent of the claimants were going to work within 10 weeks. During the—before the downturn in the recession, we had gotten up to 64 percent. I am happy to report now that last year we were able to get back up to 50 percent, and it continues to grow. Ten weeks is great; eleven, twelve or thirteen is certainly better than sixteen, twenty and twenty-six. So the Middle Class Tax Relief and Job Act supports what we are already doing.

Another example of how Texas has made this population a priority is the legislature in 2009 created the Texas Back to Work Program, putting general revenue into our appropriation. I am happy to report that to date, in less than 2 years, we have had over 25,000 placements with over 4,000 participating employers. Two-thirds of the employers participating have employees of 100 or less. The average wage replacement before the individual became on UI, we are able to statewide 96.8 percent replacement rate of those wages. We have been able to reduce on average, including State-funded benefits as well as EUC, shorten the weeks by 9.01 weeks of UI. And after the cost of the $2,000 incentive and the roughly $200 per to administer, it is still $596 cheaper on average than the total cost of benefits for those who did not go through the program. This is not only saving State trust fund dollars, this is saving Federal EUC dollars as well. And in addition, 15 percent of the people that we serve in this program are exhaustees, so we are not only serving those who were on UI, but we are also serving the long-term unemployed.

As you are aware, and we talked about it earlier, the testimony earlier, the REA/RES services, Texas is under way with that implementation. To date, through our system of local workforce boards, we have outreached 28,000 individuals in the first—just the first 4 weeks. We expect this to be about 7,000 individuals per week through the end of August, which will total about a little over 160,000.

Our first day of outreach was Monday, and we got the report yesterday. We had a—unfortunately we had a 53 percent no-show rate for the first day of the three of our boards that reported the performance. Those people will be held ineligible for that week. We will have to outreach them again. And I bring that up because as the way that we are funded, the $85 per claimant, we are only funded for those people who show up. So States are going to have some unreimbursed expenses to this degree, and we are trying to work through that.

The one thing that complicates this, we will be hiring an additional 225 staff on a temporary basis to help us administer this program, but our infrastructure was woefully inadequate to be able to fund this, this outreach, this quick, and we didn't have it in place. A year ago we had about 250 offices around the State. We have 220 today. These offices, Employment Services as well as Un-

employment Insurance Administration, the vets program and those others, are funded through FUTA taxes paid by employers.

Over the last 10 years Texas—Texas is a donor State; we get about 35 cents on the dollar. Over the last 10 years, Texas has contributed $5.2 billion into that system, and it received $2 billion back, and that is after paying back our loans. So we don't believe this money is falling from Heaven; it is money that we are sending to D.C., and we are not getting our return. And it is part of the issues that Darrell Gates talked about would get some more parity into the funding to States, particularly donor States like Texas.

I want to talk a little bit about the waiver process. We did submit a waiver. Very quickly, we thought we had met the criteria set out in the act that said what a complete application would be. And we are now reviewing those requirements under the guidance, and one of the things that will—just as an example, regardless of what your benefit amount is, everyone represents a $2,000 hiring incentive. Under the guidance as we read it so far, and we are still reading it, we will have to have an individual reimbursement for each individual person depending upon their benefit amount. And we are looking at serving—I estimated 33,000 to 35,000 people per. That is not the most business friendly——

Chairman DAVIS. Your time is expired. Thank you very much. I appreciate your passion.

[The statement of Mr. Temple follows:]

Testimony of

Larry Temple,

Executive Director

Texas Workforce Commission

House Ways and Means
Subcommittee on Human Resources

"Moving from Unemployment Checks to Paychecks:
Implementing Recent Reforms"

April 25, 2012

Good morning Chairman Davis, Ranking Member Doggett and distinguished members of the Committee. Thank you for inviting me to testify on the implementation of the Middle Class Tax Relief & Job Creation Act.

As I have stated in previous testimony, Texas prioritizes the UI claimant population in its reemployment efforts. The Commission formalized this priority in 2003 and self-imposed a reemployment measure for UI claimants within 10 weeks; this is not a federal or state mandated target. Prior to establishing this formal target and the introduction of new tools and policies, performance was roughly 27% but climbed to a high of 64% before subsequently dropping with the onset of the recession.

Despite a slow economic recovery and Texas having seen the unemployment rate hit over 8% this past year, we continue to connect UI claimants to work. The 10-week performance target has exceeded 50% in the past year. It is important to recognize that while our goal is reemployment within 10 weeks, going back to work in 11, 12, or 13 weeks, is still better than reemployment in 16, 20, or 26 weeks.

As further evidence of the State's commitment to getting UI claimants back to work, the Texas Legislature in 2009, created a hiring incentive initiative, the Texas Back to Work (TBTW) Program. This program is what we based our application on for the Department of Labor's (DOL) demonstration project outlined in this Act. I am pleased to share the following results:

- Over 25,000 placements
- Over 4,000 employers participating, over 2/3 of participating employers have 100 employees or less
- Average wage replacement of 96.8%
- TBTW placement tended to reduce benefits utilized by 9.01 weeks on average (state and federal)
- A TBTW placement is $596 cheaper on average than the total benefit cost for a similar claimant who was not placed

As you are aware, the Middle Class Tax Relief & Job Creation Act included a number of provisions aimed at getting Emergency Unemployment Compensation (EUC) claimants back to work. Specifically, the Act requires states to provide Reemployment Eligibility Assistance (REA) and Reemployment Services (RES) to EUC claimants that enter into Tier 1 benefits or transition from Tier 1 to Tier 2 on or after March 23, 2012.

This includes four steps; orientation to the services available through Workforce Solutions Offices, labor market and career information, assessment of the EUC claimant's skills and in-person review of the claimant's continued eligibility for EUC, including a review of the claimant's most recent work search log. The first three steps of this requirement can be done in groups, by phone, or via webinar, but the fourth step will require each individual claimant to come into a workforce center and meet face-to-face with employment counselors. The Texas Workforce Commission will hire an additional 225 staff in order to execute this provision of the Act.

Building on an integrated system administered through a network of 28 Local Workforce Boards, we have benefited from our existing operational relationship between the Boards and our unemployment services. This infrastructure has allowed us to build upon a process already in place to administer the REA-RES provisions. Although Texas has the benefit of having an integrated system, and Texas's unemployment rate is below the national average, there will still be challenges to our system.

As I stated, the provision requires in-person reemployment services, meaning the claimants that we outreach will have to come into one of our 220 One-Stop centers. We have already conducted outreach to 28,000 EUC claimants in just the first four weeks of implementation. TWC estimates approximately 7,000 EUC claimants per week will be outreached out of 161,000 claimants between now and the end of August. In some cases, One-Stops are preparing to see an additional 1,000 claimants walk through the doors in just a single week.

Because states only get reimbursed for those claimants who actually respond to outreach, there will be unfunded costs associated with implementation. For example, out of the first group of claimants scheduled for services, 53% did not report and must be contacted again. Staff time and cost to generate lists of claimants and sending outreach letters will not be recuperated unless the claimant comes in for services.

The local infrastructure to serve the unemployed is woefully inadequate. A portion of Federal Unemployment Tax Act (FUTA) dollars paid by Texas employers funds regular Employment Services (ES). Unfortunately, Texas is a donor state in the Federal Unemployment Insurance System, receiving only 35 cents on the dollar in return from FUTA taxes paid by employers. There is an expectation for Texas and other donor states to administer programs without prior investment in local infrastructure to provide the resources to offset those costs.

Another challenge I would like to bring to your attention is the guidance provided by the Department of Labor (DOL) for the implementation of this Act. For example, implementation on the unemployment insurance side for imposing a sanction of a period of ineligibility for not participating in the REA-RES is an "open ineligibility" until the individual participates, yet on the workforce side, the imposition of a sanction or a period of ineligibility is just one week. This is a prime example of the disconnect and lack of understanding within DOL of how contradicting policies impact the implementation of programs at the local level, and contrary to supporting an integrated system of service delivery.

In closing, I would like to briefly address Texas's application for a demonstration project under Section 2102. Texas submitted a waiver application on February 24, 2012 based on the criteria for a complete application as laid out in this section of the Act. On March 17, DOL denied our application stating that we would have to wait on federal guidance for the application process.

On April 19, 2012, DOL issued guidance on how states should apply for a waiver. We were disappointed that the guidance appears to go beyond what we believe is required by the legislation. The legislation set out a simple process in about four (4) pages of bill language, yet

DOL released 19 pages of guidance that we believe to be overly bureaucratic and administratively burdensome.

In our opinion, the DOL guidance is more process driven rather than outcome based, which we believe should be putting people back to work. The Middle Class Tax Relief & Job Creation Act specifically states that these demonstration projects are intended to begin as soon as possible upon enactment of the legislation. Had Texas been able to move forward in early March, we estimate that we had the potential to place an additional 2,400 individuals in a job under an already existing, successful, and DOL recognized program.

Again, thank you for allowing me to testify before you today, and I will be happy to respond to any questions.

Chairman DAVIS. Mr. Vroman.

STATEMENT OF WAYNE VROMAN, PH.D., SENIOR FELLOW, THE URBAN INSTITUTE

Mr. VROMAN. Thank you, Chairman Davis, Representative Doggett, other committee members.

I have submitted a written record, which I will refer to for certain of my comments. However, the one aspect of the Middle Class Tax Relief and Job Creation Act that I do want to single out for particular attention is the provisions related to short-time compensation; that is, allowing employers to reduce weekly hours for a large segment of their workforce, and allow those people on short hours to collect partial weekly unemployment benefits. Half a billion dollars was set aside for this. It is an innovative, forward-looking part of the legislation which will be useful not in this economic recovery so much as in the front edge of the next recession, because the utilization by employers of this particular feature happens most intensely as the economy is going into a recession, employers are not certain about what their employment prospects are, they don't want to sever workers, so they try to keep them on, and short-time compensation allows this to happen. After the extent of the downturn is more obvious, then employers are able to make better decisions regarding separation versus bringing people back to full-time work. Having this included in the recent legislation is a very strong and positive aspect of that legislation.

Now, I will move to the bulk of my remarks, which focus on the situation in the trust funds and the situation of the benefit payments in helping to stabilize the economy.

Four factors contributed to the loss of trust fund reserves in the States. It has already been pointed out $41 billion is owed to the Treasury and an additional $5 billion in the private market. There were low reserves going in, uniquely low compared to all the previous postwar recessions. It is obvious to say the recession has been deep and long, and it is still persisting with an unemployment rate above 8 percent 4 years after things started to get worse. The timing in 2008 affected revenue in 2009, because the recession really started to bite in the last half of the year. And continuing low employment is continuing to keep UI revenues below what they would be if the economy had gone through a recession with the more

usual V shape as opposed to the long trough shape that the current one has.

The UI system has responded very strongly. It paid out a little over $30 billion in 2007. In 2009 and 2010, it paid out over $120 billion. That is a quadrupling of the total amount of support payments. It helped prevent poverty from rising, it supported many families, and it continues to do that even into this year. The written statement has estimates of how much the economy was stabilized as a consequence of those added payments.

Looking to the future I would make four comments. First of all, for future solvency of the State trust funds, the most important single thing that could be done is to have the States operate with an indexed taxable wage base. Since the mid-1980s, 16 States have operated continuously with indexation; only 6 of those States have borrowed in the current recession. In contrast, for the 35 jurisdictions that are not indexed, 29 have borrowed, or over 80 percent. So indexation is strongly associated with improved trust fund solvency, and it is something that the Congress should encourage the States to operate with.

The funding problem in unemployment insurance rate now in the regular program is most serious in the biggest States. Mr. McDermott, your State is unique among the 20 largest in the country. The only State that hasn't borrowed among the top 20 in size is Washington State, and that is partly because Washington has followed a consistent policy of restoring its trust fund after recessions and bringing the reserves back up.

Any proposal to provide relief to States that have trust fund deficits, however, must recognize that many other States have operated responsibly through this recession. States like South Dakota, there was a representative from Tennessee here, New Hampshire, as well as Washington have not had to borrow or have had to borrow only very limited amounts because of their prudent trust fund policies.

The final point I would make is that borrowing in the private market is not a panacea. There is about $5 billion outstanding right now. The States are going to have to pay that money back, just like they are going to have to pay the debts owed to the Treasury. So any relief to the States should include some kind of reward for the States that have operated prudently as well as providing partial relief to the States with indebtedness if that is the direction the Congress chooses to go in.

Thank you very much.

Chairman DAVIS. I thank you very much.

[The statement of Mr. Vroman follows:]

Unemployment Insurance Performance
and Trust Fund Restoration

Statement of
Dr. Wayne Vroman
The Urban Institute[1]

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

April 25, 2012

Chairman Davis, Ranking Member Doggett, and members of the Subcommittee, thank you for the opportunity to appear here today. As states change their unemployment insurance (UI) programs in response to recent legislation, it is important to recognize that states also face great challenges in financing their UI programs.

The Great Recession of 2007–09 and its aftermath pose the most serious challenge to UI financing since the state programs were founded in the mid-1930s. To help finance benefit payments in the regular UI programs, state-financed programs that pay up to 26 weeks of benefits in most states, 36 of the 53 "states"[2] have borrowed from the United States Treasury since 2008. The number of states borrowing and the relative size of the loans have been larger than in any previous recession. As of April 17, 2012, 30 state programs have outstanding Treasury loans totaling $41.5 billion with an additional $5.0 billion owed in the private securities market. Seven state programs owe more than $2.0 billion, led by California with a debt of $10.8 billion. Even if the recovery continues at a strong pace for the next five years, many of our biggest states will likely owe substantial amounts past 2015. A recession later in this decade would only add to state trust fund indebtedness.

My remarks today focus on three questions: (1) How did this large trust fund debts come about? (2) How have UI benefit payments performed since the onset of the Great Recession? (3) How can a financing crisis with large UI trust fund debts be avoided in a future recession?

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[1] The views expressed in this statement are those of the author and should not be attributed to the Urban Institute, its trustees, or its funders.
[2] The 53 are the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Islands.

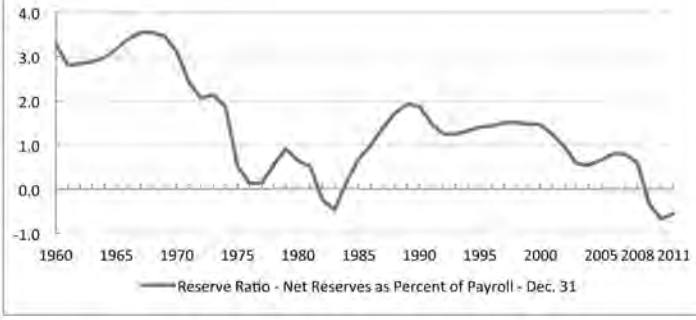
The Origins of the Current Situation

The scale of state UI trust fund indebtedness reflects the combined effects of four identifiable factors. These are low pre-recession reserve balances, the unusual depth and duration of the recession, the timing of the downturn, and the continuing loss of employment and associated UI tax revenues from the recession and the slow recovery. The first two factors are responsible for the largest part of current indebtedness, but the final two have also contributed to the loss of trust fund reserves. Each will be discussed briefly.

Low Pre-Recession Reserves

Chart 1 displays aggregate year-end UI reserve ratios (net reserves as a percentage of total covered payroll) from 1960 to 2011. The reserve ratio consistently exceeded 2.0 percent of payroll before 1973, while it has never reached 2.0 percent since then. Three early periods of economic recovery were accompanied by large-scale trust fund build-ups (1961–69, 1976–79, and 1983–89). Between 1983 and 1989, the reserve ratio increased from -0.47 percent to 1.92 percent. Later recovery periods had much smaller reserve ratio increases. This meant that the pre-recession reserve ratio was lower in 2001 than it had been in 1989 and even lower at the end of 2007 than in 2001. The reserve ratio was 0.79 percent of payroll in December 2007, the lowest ever for a pre-recession year.[3]

Chart 1. UI Program Reserve Ratio, 1960–2011



Source: Data on net reserves and total payroll used in the calculations are from the Office of Unemployment Insurance of the U.S. Department of Labor.

[3] The second-lowest pre-recession reserve ratio was 0.91 percent just before the 1980 recession.

Note in chart 1 that the past three years are the only period when net reserves were negative for three consecutive years. Based on recent developments, it appears net reserves are likely to remain negative for three or four more years. The final section of this testimony discusses measures to foster reserve accumulations in the states.

How low were UI trust fund reserves at the end of 2007? A common measure of UI reserve adequacy is the reserve ratio multiple, or RRM (also called the high cost multiple or HCM). The RRM is measured as a ratio of two ratios. The numerator is the reserve ratio, reserves as percentage of payroll—that is, the series depicted in Chart 1. The denominator is the highest previous annual benefit payout rate, also expressed as a percentage of payroll. It was 2.22 percent during January-December 1975. Thus, the RRM at the end of 2007 was 0.36. Many have suggested that a pre-recession RRM of 1.0 (representing 12 months of benefits) is generally an adequate level. Aggregate net reserves totaled $38.2 billion at the end of 2007, but the associated RRM of only 0.36 meant that the reserves represented only 4.3 months of benefits when paid at the highest-ever payout rate.

The explanation for low reserves before the Great Recession lies mainly in the failure of UI tax revenue to restore trust fund balances following the recessions of 1991 and 2001 and not the effects of unusually high benefit payout rates during the 1990s and 2000s.[4] While benefit payout rates between 1990 and 2008 were low relative to earlier periods, UI tax revenues were even lower, leading to the long-run decrease in trust fund reserve adequacy. The state UI programs entered the Great Recession with historically low trust fund reserves.

The Deep Recession

The recession that commenced in November 2007 was the deepest and longest of the entire post–World War II period. Between 2007 and 2009, the national unemployment rate doubled from 4.6 percent to 9.3 percent. It then increased to 9.6 percent in 2010 and has remained high, averaging 8.9 percent during 2011 and 8.3 percent during the first three months of this year. Unemployment averaged 14.8 million in 2010 and 13.7 million in 2011; it has remained above 12.5 million during January–March 2012. Associated with increased unemployment has been an increase in average (mean) unemployment duration, which reached the unprecedented levels of

[4] One summary of the patterns of UI benefits and taxes for five-year periods extending back to the 1950s is given in Wayne Vroman, "Unemployment Insurance: Current Problems and Future Prospects," Unemployment Insurance Brief No. 2 (Washington, DC: National Academy of Social Insurance, 2011).

24.4 weeks in 2009, 33.0 weeks in 2010, and 39.3 weeks in 2011. Before the Great Recession, mean duration had reached 20.0 weeks just once, in 1983.

The Great Recession, with its high unemployment and long unemployment duration, caused a large increase in UI benefit payments. Table 1 summarizes annual unemployment and UI benefits from 2007 to 2011. The payments data distinguish regular UI benefits from Emergency Unemployment Compensation (EUC), Federal-State Extended Benefits (EB), and Federal Additional Compensation (FAC). FAC made payments of $25 a week to all UI recipients during most of 2009 and 2010 but was phased out in late 2010.

Several features of Table 1 are noteworthy. UI was designed to be a countercyclical program, and the table vividly illustrates its cyclical responsiveness. During 2009 and 2010, total UI benefits (including payments to the long-term unemployed) were four times total benefits of 2007. Total benefits during 2011 were three times the 2007 total. All four payments identified in the table contributed to these increases. During 2010 and 2011, payments from the two extended benefit programs (EUC and EB) exceeded regular UI benefits for the only time in the history of extended benefit programs. Note also that EB and FAC paid large amounts during 2009 and 2010. These benefit payments helped stabilize the incomes of millions of American families and are continuing to do so this year.

Table 1. Unemployment and Annual UI Benefits, 2007–11

	Unemployment	Regular UI Benefits	EUC Benefits	Federal-State EB	FAC	Total UI Benefits
2007	7.1	32.4		0.0	-	32.4
2008	8.9	43.1	7.9	0.0	-	51.0
2009	14.3	78.8	42.3	6.0	9.5	136.6
2010	14.8	58.6	66.0	9.2	10.3	144.0
2011	13.7	47.2	47.2	10.0	-	104.4

Source: Annual data from the U.S. Department of Labor. Unemployment from the Bureau of Labor Statistics and unemployment benefits from the Office of Unemployment Insurance.
Notes: Unemployment in millions of people. Benefit payments in billions of dollars.

The financing of regular UI benefits is the responsibility of the state programs. The $78.8 billion paid in 2009 represented 1.69 percent of payroll. While the 2009 payout rate was high (the highest since 1982), annual payout rates above 1.69 percent occurred during five earlier recessions (1949, 1958, 1961, 1975, and 1982). The high payouts of 2008–11 have caused 36 of 53 state UI programs to borrow sometime during the past four years. Borrowing from the United

States Treasury is well established; seven or more states have borrowed in every recession since the mid-1970s, with much higher numbers during 1975–77 and 1980–83.

The third and fourth factors (the timing of the downturn and continuing low employment during the economic recovery) have both negatively affected UI tax revenue. While each is less important than the low pre-recession trust funds and the severity of the recession, both have had measurable effects on state UI trust fund balances and the volume of borrowing.

The Timing of the Downturn

Most states set UI taxes for the upcoming calendar year based on trust fund reserves as of June 30. Net reserves on June 30 are usually similar to reserves at the end of the year, but not in 2008. Because UI payouts increased sharply during the second half of 2008 (roughly $10 billion more than in the second half of 2007), the end-of-year balance in 2008 was $10.7 billion lower than it had been six months earlier ($29.0 versus $39.7 billion). Thus, employers in most states were taxed at lower rates during 2009 because very little of the late-2008 surge in benefits entered the calculations that determined their 2009 tax rates.

Low Post-Recession Employment

The fourth factor, continuing low employment, has affected UI tax revenue every year since 2008. Covered employment in the decade before the recession grew 1.1 percent a year. If taxable covered employment had grown by 1.0 percent a year after 2007, it would have reached 110.8 million in 2010. Actual employment was 99.5 million in 2010, a shortfall of 10 percent. The employment shortfall has been present every year since 2008, and it will persist for several future years. The depressing effect on UI tax revenue during 2009, 2010, and 2011 has averaged more than $3.0 billion a year.

The combined effects of these four factors caused a large-scale drawdown of reserves in nearly all states and prompted borrowing from the U.S. Treasury by most UI programs. The confluence of the four can be characterized as a perfect storm in their effects on UI trust funds.

UI Benefits in the Great Recession

The benefit payments from all tiers of UI programs as summarized in table 1 have performed an important stabilizing function for the overall economy. The benefits also helped dampen the increase in poverty stemming from higher unemployment.

During 2009 and 2010, I directed a model-based analysis of the stabilizing effects of the UI program.[5] The analysis used the Moody's Economy.com econometric model to assess UI's effect on the time paths of real GDP and employment. The analysis used state-level detail on regular UI benefits, combined EUC and EB benefits, and state UI taxes to trace alternative time paths of real GDP and employment with emphasis on the period from July 2008 to June 2010.

Four findings from that analysis can be highlighted: the increased regular UI benefits closed about one-tenth (0.105) of the real GDP shortfall caused by the recession; extended benefits (EUC plus EB) closed about one-twelfth (0.085) of the real GDP shortfall; because there was very little response of regular UI taxes during 2009 and 2010, there was practically no offsetting tax-related effects; and the multiplier effect on real GDP for each dollar of added regular UI benefits was 2.0 (for extended benefits it was also 2.0). When all parts of the analysis are combined, the effect of UI in closing the GDP gap caused by the recession was 0.183 during the eight calendar quarters between July 2008 and June 2010.

Table 2 uses the multipliers from that earlier analysis and benefit data from Table 1 to estimate the stimulative effects of UI on real GDP during the Great Recession. Column 4 shows the increase in benefits above 2007 with benefits measured in real terms (dollars of 2005 purchasing power). Column 5 shows the effects on real GDP assuming a multiplier of 2.0 for both regular and extended UI benefits. During 2007, real GDP was $13,228 billion. From column 5, the stimulative effect of UI benefits during both 2009 and 2010 exceeded 1.4 percent of real GDP, and it exceeded 0.9 percent in 2011. Applying this methodology in 2012 entails more uncertainties, but it might suggest an increment to real GDP of 0.5 percent, with about half due to the continued payment of extended benefits. Alternative models and alternative analytic approaches would yield different point estimates to those in table 2, but the conclusion that UI benefits had a measurable effect in lessening the recession's severity is widely held.[6]

The increase in UI benefits during the Great Recession affected poverty, especially among households with long-term unemployment. Using 2009 family income data from the Current Population Survey, the Congressional Budget Office (CBO) found that the national poverty rate of 14.3 percent in 2009 would have been 15.4 percent absent UI benefits. Among

[5] Wayne Vroman, "The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession," ETAOP 2010-10 (Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2010).
[6] See Alan Blinder and Mark Zandi, "How the Great Recession was Brought to an End" (Princeton, NJ: Princeton University, Department of Economics, 2010). The CBO's analysis of the American Recovery and Reinvestment Act is at http://www.cbo.gov/ftpdocs/115xx/doc11525/05-25-ARRA.pdf.

families with some unemployment, UI benefits reduced the poverty rate from 24.3 percent to 19.6 percent in 2009. Among families with unemployment and receiving UI benefits, the poverty rate of 11 percent that year would have been 21 percent absent UI benefits. Among the latter group, CBO found that UI benefits represented 5 percent of family income when unemployment duration was 1–13 weeks but 22 percent of income when unemployment duration was 27 weeks or longer. The CBO analysis also found UI had large effects in reducing extreme poverty, defined to be income less than half the poverty threshold.

Table 2. Estimated Effects of Increased UI Benefits on Real GDP, 2008–2011

	Total UI Benefits (1)	GDP Price Deflator 2005 = 1.000 (2)	Real UI Benefits (1)/(2) (3)	Increase in Real Benefits over 2007 (4)	Effect on Real GDP (Mult. = 2.0) (5)
2007	32.4	1.063	30.5	-	-
2008	51.0	1.086	47.0	16.5	33.0
2009	136.6	1.097	124.5	94.0	188.0
2010	144.0	1.110	129.7	99.2	198.4
2011	104.4	1.133	92.1	61.6	123.2

Source: Data on UI benefits from Department of Labor, Employment and Training Administration, Office of Workforce Security. GDP deflators from national income accounts.
Notes: Data in columns 1, 3, 4, and 5 in billions of dollars. Columns 3, 4, and 5 calculated by the author.

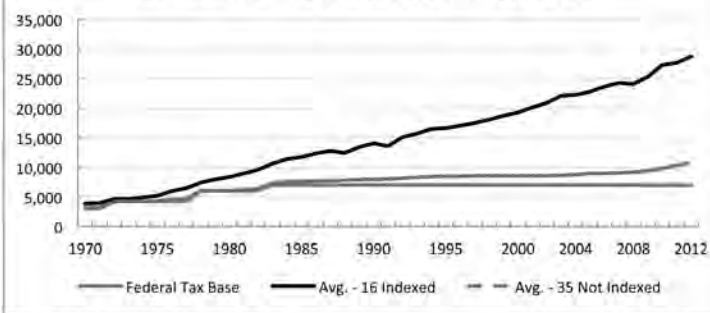
The loss of reserves in the regular UI program during 2009 and 2010 as shown in chart 1 was important in providing income support payments to millions of American families. The challenge now facing state UI programs is how to rebuild their reserves so a similar stabilizing performance can be repeated during the next recession.

Rebuilding State UI Trust Funds

Some important facts should be recognized in considering policies to improve future state UI trust fund levels. Perhaps the most important single fact across the diverse state programs is the important positive role of tax base indexation in fostering solvency. Since the mid-1980s, 16 states and the Virgin Islands have operated with an indexed taxable wage base. Each year, the tax base in these states grows automatically with the growth in statewide wages. The indexation percentages (the ratio of the tax base to annual wages) range from 50 percent (North Carolina and Oklahoma) to 100 percent (Hawaii and Idaho).

While the UI tax bases in non-indexed states can be raised through state legislation, states have been strongly reluctant to enact increases except during financial crises. Even then, the increases have usually been small. Chart 2 vividly illustrates this situation using data from 1970 to 2012. During these 43 years, the federal UI tax base increased from $3,000 in 1970 to $7,000 in 1983 and has remained at $7,000 since 1983. Chart 2 then shows the simple average of the taxable wage base for the 16 indexed states and the 35 that are not indexed.[7] The average tax base for the 35 in 2012 is $10,682, less than $4,000 above the $7,000 federal tax base. In contrast, the simple average this year for the indexed states is $28,700.

Chart 2. State and Federal UI Tax Bases, 1970–2012



Source: Based on state UI tax bases in the Office of Unemployment Insurance *UI Financial Handbook*.

The effect of indexation on UI financing is clear. The indexed states have much higher ratios of the tax base to average wages, higher taxable wage proportions, and higher reserve ratio multiples than non-indexed states. In December 2007, the simple averages of the RRMs for the two groups of states were 0.83 and 0.41, respectively. During the Great Recession, only 6 of the 16 indexed states needed Treasury loans, compared with 29 of 35 non-indexed states. Indexation has definitely improved state trust fund solvency in the long run.

[7] Puerto Rico and the Virgin Islands are not included in the comparison.

During 2011, there were proposals to increase the base for the federal UI tax to $15,000 in 2014 and index the base after 2014 to the growth in average wages.[8] Just two non-indexed states (Connecticut and Rhode Island) have a tax base of $15,000 or more. Because each state must have a tax base at least as high as the federal tax base, an increase to $15,000 would require most of the 35 non-indexed states to raise their bases. If an indexation proposal moves forward this year or next, Congress might consider a larger change to increase the taxable share of covered wages. The federal tax base of $7,000 in 1983 is equivalent to about $21,000 in 2014. An increase to $21,000 (or higher) would have two effects: increase UI tax revenue in many states, and improve the equity of UI taxes by lessening the burden on low-wage employers.

A second fact to recognize is that, on average, the big states have the most serious funding problems. Table 3 helps illustrate this point. The 51 programs[9] have been ranked by their taxable covered employment in 2010. Four features of table 3 are noteworthy.

First, the large states entered the Great Recession with much lower reserves that other states (column 1). The 10 largest had particularly low reserves, but those ranked 11 to 20 also had low reserves. All 10 of the largest states have borrowed, as have 9 of the next 10 (column 2). Washington is the only state among the top 20 that has not borrowed.

Second, the largest 10 states accounted for 70 percent of outstanding loans at the end of 2011, and the largest 20 for 90 percent (column 3). Their debts are substantial, exceeding 0.5 percent of payroll for all 10 of the largest states and for 4 of 10 in the 11–20 group (column 4).

Table 3. Pre-Recession Reserves and Borrowing, 2008 to 2012

State Size Ranking	Average RRM December 2007 (1)	States Borrowing 2008–12 (2)	Total Loans December 2011 (3)	Loans 0.5 Pct. of Payroll (4)
1–10	0.23	10	29.1	10
11–20	0.34	9	8.1	4
21–31	0.61	7	2.9	3
32–41	0.83	5	1.1	3
42–51	0.68	4	0.4	2
All 51 programs	0.36	35	41.5	22

Source: Calculations made at the Urban Institute using data from the Office of Unemployment Insurance.
Notes: RRMs are simple averages of state-level reserve ratio multiples. Loans are measured in billions of dollars.

[8] The Unemployment Insurance Solvency Act of 2011 (S.386.IS). A recent analysis by the GAO also recommended indexing the UI tax base. See U.S. Government Accountability Office, "Unemployment Insurance Trust Funds" Report GAO-10-440 (Washington, DC: GAO, 2010).
[9] Puerto Rico and the Virgin Islands are not included.

Third, the funding situation across the states is highly varied. Some states, especially indexed states, entered the Great Recession with substantial reserves. While their trust funds were sharply reduced, they had sufficient reserves to pass through the recession and recovery without needing to borrow. Some states recognized their funding problems early and acted to raise revenue and make other adjustments to avoid borrowing or to limit the size and duration of their loans. The fact that several states have not borrowed or accumulated large debts must be recognized and addressed by any proposal to provide financial relief to states with large and long-standing debts. Proposals to provide partial debt relief were made in 2011 and may appear later this year or in 2013. If some form of debt relief is to be provided, it should be combined with rewards to the states that avoided large loans for lengthy periods. It must also be recognized that a federal initiative to provide partial debt relief in return for state actions to improve solvency will only slightly reduce the scale of the necessary financial adjustments (higher future UI taxes) required to rebuild the depleted state trust funds.

Finally, borrowing in the private market is a palliative that does not change the total amount of state indebtedness. Idaho, Michigan, and Texas have already secured private loans. Illinois has authorized private bonds, and other states may follow suit this year or next. Much of their motivation is to save on interest charges due on Treasury loans and to avoid automatic Federal Unemployment Tax Act tax credit reductions. Reducing debts to the Treasury through borrowing in the private securities market does not change the fact of state UI program indebtedness, merely the mix of lenders to whom repayment is due. To a large extent, state borrowing in the private market appears to be a strategy to avoid near-term increases in UI taxes. In an economy where the profits share of GDP is historically high[10] and UI taxes are less than 1 percent of employee compensation, it is more appropriate to raise UI taxes sooner to repay loans more quickly and start rebuilding reserves.

There is likely to be another recession later in the present decade. Repaying outstanding loans and building more adequate trust funds now should be a state priority so UI can more adequately perform as an automatic stabilizer of the macroeconomy during the next recession. State UI programs need to be forward-funded to appropriately discharge their stabilization role.

[10] The profits share of GDP in 2011 was 0.129, the highest share in all 65 years between 1947 and 2011.

Chairman DAVIS. Mr. Holmes, you are recognized for 5 minutes.

STATEMENT OF DOUGLAS J. HOLMES, PRESIDENT, UWC–STRATEGIC SERVICES ON UNEMPLOYMENT AND WORKERS' COMPENSATION

Mr. HOLMES. Chairman Davis, Ranking Member Doggett and Members of the Subcommittee, thank you for the opportunity to

testify this morning. I am Doug Holmes, president of UWC Strategic Services on Unemployment and Workers' Compensation.

We recently joined with 36 national and State business associations to send a letter to Secretary of Labor Solis requesting that the Secretary repeal current Federal regulations and develop new regulations consistent with the able to work, available to work and actively seeking work requirements included in the Middle Class Tax Relief and Job Creation Act of 2012. I have attached a copy of that letter to my testimony.

It is the claimant's responsibility to show that the claimant is meeting the requirements of able, available and actively seeking work. There is no authority to permit a claimant to restrict his or her efforts to a period less than an entire week and still be paid unemployment compensation for that week. The State UI agency has a duty not to make payment for a week without first determining that these requirements have been met. The claimant must show that he or she is actively seeking work without applying his or her own subjective evaluation of work that is, quote, "suitable."

One regulation in particular illustrates the inconsistency between current regulations and the act. 20 CFR 604.5(h) provides that, quote, "the requirement that an individual be available for work does not require an active search for work on the part of the individual." The plain language of the act is clear that individuals must be actively seeking work.

With respect to short-time compensation, employers ask what is meant by Section 2163 with respect to the temporary Federal funding provision. There is a provision that provides that any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such a plan.

How will the amount to be paid by the employer be determined? We don't have any instruction on this yet. When is it due? Will the payment be considered contributions for purposes of State UI Trust Fund balances, repayment of Title XII loans and other purposes of the UI program? All questions that still remain to be addressed by instructions from the Department of Labor.

With respect to drug testing, Section 2105 of the act provides that States are not prohibited from enacting legislation that provides for testing of applicants for unemployment compensation for the unlawful use of controlled substances. If a State elects to enact such a provision, it 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.

With respect to reemployment services and REA, the act in Section 2142 provides increased funding for reemployment and eligibility assessment activities, and these have been shown to be effective. We would suggest, however, as I believe Mr. Gates indicated, that many of the enhanced methods that are included for EUC claimants should be addressed as part of serving regular UI claimants. They would be most effective if provided early.

Reemployment efforts should be coordinated with community resources as well as with staffing agencies and employers generally

in the private sector. State agencies should be permitted to use the full range of electronic communication devices to address the in-person contacts. Person-to-person video, as well as audio contact, is increasingly available and should be used to reach a larger number of individual claimants at lower cost to the individual and lower administrative costs.

Thank you very much for the opportunity, Mr. Chairman.

Chairman DAVIS. Thank you, Mr. Holmes.

[The 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 Moving from Unemployment Checks to
Paychecks: Implementing Recent Reforms
April 25, 2012

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Chairman Davis, Ranking Member Doggett, and members of the Subcommittee on Human Resources, thank you for the opportunity to testify on efforts to move from

unemployment checks to paychecks, particularly with reference to unemployment insurance reform as enacted in the Middle Class Tax Relief and Job Creation Act of 2012 (The Act) that was signed into law by President Obama on February 22, 2012.

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 recently joined with 36 national and state business associations interested in unemployment insurance reform in delivering a letter to Secretary of Labor Solis requesting that the Secretary repeal current federal regulations at 20 CFR 604 and to develop new regulations consistent with the able to work, available to work and actively seeking work requirements included in the Act. I have attached a copy of the letter to my testimony.

The Act included a series of important reforms in the unemployment insurance program that require changes in federal regulations and policy as well as changes in state statute, rules and administrative policy.

Of particular importance is the adoption of clear standards in the Act requiring that state laws require that individuals be able to work, available to work and actively seeking work. Section 2101 of the Act adds a requirement to be met by states in order to receive federal funding for the administration of the UI federal/state program. Section 303(a) of the Social Security 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.**

The new federal statute requires that this apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of the Act (February 22, 2012). For those states currently in legislative sessions beginning before February 22, 2012 the time period to enact changes in state law extends through the current legislative session and through the following legislative session providing sufficient time to develop the required changes in law. For those states with legislative sessions beginning in 2013 the time frame may be shorter.

The federal statutory language is a simple expression of some of the basic tenets of the federal/state unemployment insurance program as it was originally enacted. However,

until the enactment of the Act, there was no specific federal statutory requirement that states or the federal government administer the program to meet these specific federal requirements. Instead, the US Department of Labor adopted policy in determining whether an individual is unemployed so as to be eligible to be paid unemployment compensation, based on whether the individual was participating in the workforce.

This policy guideline, although in keeping with the UI program policy, over time has been modified with respect to federal requirements and the implementation of state law, to permit individuals in certain circumstances to be deemed able to work despite being ill or disabled, to be deemed available to work while restricting their availability, and to be permitted to limit their search for work while continuing to claim unemployment compensation.

New regulations and policy should recognize the following points in developing new regulations.

1. **The new able to work, available to work and actively seeking work requirements are conditions of an individual being eligible to be paid unemployment compensation**; the responsibility in providing information upon which a state UI agency may conclude that the claimant is meeting these requirements rests with the claimant.

2. **The payment for a week of unemployment requires that the able to work, available to work and actively seeking work requirements apply to the entire week being claimed**; there is no authority under which to permit a claimant to restrict his or her ability, availability or active search for work to a period less than the entire week.

3. **State UI agencies are without authority to make payments to individuals with respect to weeks of unemployment compensation claimed if there is insufficient documentation upon which to conclude that the individual meets all of these requirements**; the agency has a duty **not** to make payment of a week without there first being a determination that addresses these issues.

4. **The US DOL payment "when due" regulations and performance measures should apply from the point in time that the agency makes a determination with respect to a week, and not with respect to the ending date of a week claimed**; the current US DOL performance measures prioritize speed of payment over quality of determination and integrity.

5. **The "suitable" work definition, is not a federally required limiter on the jobs for which an individual must make himself or herself available as a condition of receiving unemployment compensation**; the individual must show that he or she is available to accept work the individual is capable of performing without applying his own subjective evaluation of work that he or she may find "suitable".

6. **The new amendments to Section 303(a) of the Social Security Act with respect to the able, available and actively seeking work requirements must be read in conjunction with existing provisions in Section 303(a) and new amendments addressing short-time compensation and self employment assistance**.

The UI program is designed to provide temporary partial wage replacement for individuals who become unemployed through no fault of their own in connection with their work and who are able to work, available to work and actively seeking work. Determinations required **before** a payment may be made include 1) a determination that the individual had sufficient employment to meet the state requirements with respect to workforce attachment (e.g. wages paid and/or weeks worked) during a base period, 2) the reason for becoming unemployed is not disqualifying under the applicable state law, and 3) if the individual otherwise meets the requirement to establish eligibility to be paid for weeks of unemployment during a benefit year, that the individual must be able to work, available to work, and actively seeking work. There should be no "waiver" of these requirements. Instead, there should be a determination of the method used to assure that claimants meet the requirements. Clear standards set the appropriate tone for the program and establish and maintain integrity for the UI trust fund.

Able to work

The current federal regulations should be amended to meet the new statutory requirement that an individual be able to work as a condition of being paid unemployment compensation for a week or weeks.

20 CFR 604.3(b) currently provides that whether an individual is able to work "must be tested by determining whether the individual is offering services for which a labor market exists. This requirement does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market. The State must determine the geographical scope of the labor market for an individual under its UC law"

This provision is inconsistent with the new statutory provision in that it limits the ability requirement to a determination of the services that the individual is "offering" and the geographical scope of the labor market. This definition permits individuals to subjectively determine the work that they are able to perform, and requires the agency to determine the geographic area in which the ability test is to be applied. In today's labor market jobs are available through electronic systems and the internet, and in many cases jobs may be performed at a location that is remote from corporate headquarters.

The "ability to work" under the new statutory provision is not limited to the claimant's own determination of what he or she is able to do or a determination by the state agency about the geographic size of the labor market. There should be no artificial statutory geographic limitation as part of the determination of "ability to work".

20 CFR 604.4(a) currently provides that "A state may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all **or a portion** of the week claimed, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market"

Under the new statutory requirements, the determination of "ability" is not based on whether the individual has withdrawn from the labor market. In order to be paid for a week of unemployment an individual must be able to work throughout the week.

20 CFR 604.4(b) currently provides that "if an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the State may consider the individual able to work the week of unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury"

This provision is inconsistent with the Act in that an individual must be able to work with respect to a week to be eligible to be paid for the week. The fact that at some prior time the individual might have been able to work or the fact that an individual may have refused an offer of suitable work are irrelevant to the determination of ability with respect to a particular week. If an individual refuses an offer of work with respect to the week, that would be an additional reason to deny payment as the individual could not then maintain that he or she was available for work for the week.

Available to Work

The current provisions in 20 CFR 604.3(b) are inconsistent with the availability requirements of the new statute because the new requirement is not dependent on a determination of whether the individual is offering services for which a labor market exists or the geographical scope of the availability.

20 CFR 604.5 contains a list of special exceptions to the availability requirement that are inconsistent with the new statute, including

1. **Permits an individual to be available for any work for a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market;**

As previously discussed with respect to ability, the statute does restrict the determination of the availability requirement with reference to a determination of whether the claimant has withdrawn from the labor market. A statement from a claimant that he or she has not withdrawn from the labor market while claiming unemployment compensation is irrelevant to a determination of the availability issue.

2. **Permits an individual to limit his or her availability to work which is "suitable" under the state unemployment compensation law;**

The new statute applies a statutory standard that individuals to be eligible to be paid for unemployment compensation with respect to a week must be able to work throughout the week and available to work throughout the week. The question of "suitability" may be relevant in determining whether there may be a denial of unemployment compensation if the claimant is otherwise eligible, but it is not relevant to the determination of whether the claimant is available for work.

3. **Permits an individual to meet "availability" requirements if he or she is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.**

This provision would permit an individual's availability and eligibility for benefits to be determined only with reference to his or her availability to work for the employer that has temporarily laid-off the individual. While a claimant maintaining his or her availability to work with an employer that has temporarily laid-off the individual may reasonably avoid an availability issue being raised with respect to this employer, the determination of "availability" must be determined with reference to any work that may arise with respect to the week and not be restricted to a single employer.

4. **Permits an individual to meet availability requirements even if not available for work due to jury service.**

There is no special exclusion in the new statute that would permit an individual to meet the availability requirements by attending jury duty. Although there may be good policy reasons to encourage citizens to participate in the judicial system, it is inconsistent with the requirements of the statute to permit individuals to be paid unemployment compensation for weeks for which they admittedly are not available for work.

5. **Prohibits the state from denying unemployment compensation for failure of individual to be available to work during a week if, during such week, the individual is in approved training.**

This provision is inconsistent with the statute as it prohibits a state from denying unemployment compensation with respect to a week when there is no question that the claimant is not available for work. While it may be reasonable to conclude that the fact that an individual is in approved training during a week may not itself mean that the individual is not available for work, the fact that the individual is in training should not be the basis upon which the agency may determine that the individual is available for work to meet the federal statutory requirements.

6. **The availability requirement in Rule 20 604.5(d) with respect to self employment assistance is inconsistent with the provisions of the Act addressing self employment assistance.**

The rule provides that "A State must not deny UC to an individual for failure to be available for work during a week if, during such week, the individual is participating in a self-employment assistance program.

There is no special provision in the Act to provide that the availability requirements are to be applied differently for claimants under Self Employment Assistance (SEA) programs. The fact that an individual is available to be self-employed is some evidence of his or her availability for work, but should not be per se determinative of the availability issue and there is no authority in federal statute for a rule that would prohibit a state from denying benefits to an individual for a week simply because the individual is in an SEA program.

7. **The rule addressing Short-time compensation (STC) is inconsistent with the Act**

20 CFR 604.5 provides that " A State must not deny UC to an individual participating in a short-time compensation (also known as worksharing) program under State UC law for failure to be available for work during a week, but such individual will be required to be available for his or her normal workweek.

There is no such prohibition against denial in the Act. Section 2161(a)(5) of the Act requires that STC employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency. However, since federal law with respect to availability does not provide for special treatment of UC claimants who are receiving STC and the state UI agency is required to follow federal law, a rule flatly prohibiting denial of UC while participating in STC is inconsistent with federal statute.

Actively Seeking Work

The currently effective federal work search regulations are inconsistent with the statutory requirement that claimants be available to work and actively seeking work during a week in order to be eligible to be paid unemployment compensation.

20 CFR 604.5(h) provides that "The requirement that an individual be available for work does not require an active search for work on the part of the individual. States may, however, require an individual to be actively seeking work to be considered available for work, or States may impose a separate requirement that the individual must actively seek work."

The plain language of the Act is clear that individuals must be "actively seeking work" as a condition of being eligible for unemployment compensation for any week.

Short Time Compensation

A number of states are currently considering whether to enact legislation to authorize short time compensation (worksharing) programs, and employers are reviewing the federal and state requirements of participation.

The Employment and Training Administration has begun outreach efforts to explain the terms of the new STC law and included employers in webinars that have begun.

One question of particular import for employers is the interpretation of Section 2163 with respect to the temporary federal financing of short-time compensation agreements. Subsection (a)(3) of this section provides that any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such a plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate.

It would be helpful to know how the amount to be paid by the employer will be determined, when it is due, and whether the payment, although not used to compute the experience rate, is considered to be "contributions" for purposes of state UI trust fund balances, repayment of Title XII loans and other purposes of the UI program.

Improved Overpayment Recovery

Section 2103 of the Act requires that states "shall deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made."

This reciprocal overpayment recovery between states was previously permissive. Many states participated in reciprocal agreements but some did not. The effect of this new requirement will be more effective collection of overpayments across state lines. The deduction from unemployment benefits for previous overpayments is the primary way in which states collect overpayments. Expanding this will improve trust fund solvency and improve integrity.

In order to implement the new requirement guidance and coordination is needed from the US Department of Labor to assist states in the development of common data exchange and collection methods that build on the existing permissive systems.

There should be time to make the necessary systems and process changes before the effective date for this new requirement, but the sooner the process begins the better.

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 Act provides 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.

Reemployment Strategies

The Act included significant new requirements for emergency unemployment compensation claimants in order to be paid emergency unemployment compensation. The requirements included that such claimants 1) be able to work, available to work, and actively seeking work, and 2) that "actively seeking work" means that the claimants must be a) registered for employment services, b) have engaged in an active search for employment available in light of the employment available in the labor market, c) the individual's skills and capabilities, and d) includes a number of employer contacts as determined by the State.

In addition, such claimants must maintain a record of work search, including employers contacted, method of contact, and when requested, provide work search records to the state agency.

These measures included in Section 2141 of the legislation are the kinds of measures that have been shown to be effective in a number of states in improving reemployment and reducing the duration of regular unemployment compensation.

The Act, however, limited these new requirements only to the long term unemployed when attention is needed to reemployment as part of the regular unemployment compensation system.

Reduced duration of regular unemployment compensation not only improves trust fund solvency and reduces employer unemployment tax rates over time, but it minimizes the impacts of longer term unemployment that may otherwise be the result of lesser efforts early in an individual's period of unemployment.

Reemployment Services and Reemployment and Eligibility Assessment Activities (REA)

The Act in Section 2142 provided increased funding for reemployment and eligibility assessment activities that have been shown to be effective in some states, but limited the use of such funds to new EUC applicants, focusing attention on claimants who have already exhausted regular unemployment compensation. Such services would be more cost effective for the federal/state UI system and assist in returning unemployed workers more quickly to work if available at the earliest point in a claimant's period of unemployment.

Such services are most effective when targeted to UI claimants who are able to benefit from them. Instead of implementing these programs across the entire claimant population, agencies should be given guidance and permitted to target services based on resources available.

State employment security agencies generally do not have the capacity to effectively provide the range of REA services to all regular or even all new EUC claimants. If implemented for all claimants, the level of service on average will be diminished and the effectiveness of the services will not demonstrate the level of success of more targeted programs.

To be most effective, REA services should be expanded from the current profiled and REA pilot program participants to an increasing number of non-job attached claimants based on available resources. Reemployment efforts should be coordinated with community resources as well as with staffing agencies and employers generally in the private sector. Consistent with resource limitations, state employment security agencies should also be permitted to use the full range of electronic communication devices to address the "in person" contacts required for EUC and in expanding REA for regular UC claimants. Person to person video as well as audio contact is increasingly available and should be used to reach a larger number of individual claimants at lower cost to the individual and lower administrative cost.

Chairman DAVIS. Mr. Cullen, you are recognized for 5 minutes.

STATEMENT OF MICHAEL CULLEN, MANAGING DIRECTOR, ON POINT TECHNOLOGY, INC.

Mr. CULLEN. Chairman Davis, Ranking Member Doggett and distinguished Members of the Committee, thank you for the opportunity to testify this morning.

I am Mike Cullen, managing director of On Point Technology, a company focused solely on ensuring the integrity of the unemployment insurance system. Prior to joining On Point, I spent 14 years at the Colorado Department of Labor, serving 6 years as the State's unemployment insurance program director.

For over 15 years, On Point Technology has enabled 19 States to find, and collect and properly pay UI benefits. We are proud to provide software solutions to strengthen the UI program and help minimize employer taxes. Over the years we have helped States return over $2 billion to UI Trust Funds and the U.S. Treasury.

To address funding, solvency and integrity issues facing the national unemployment insurance program, On Point Technology would like the committee to consider three recommendations: One, create incentives for sustainable integrity activities; two, propagate proven State solutions that utilize new data sharing and data standardization processes; and three, embrace the use of OMB's recommended do not pay list by the unemployment insurance program.

The unemployment insurance program suffers from some of the worst integrity performance in government. During the last 3 years, the UI program's improper payment rate has steadily increased from 10.3 to 12 percent. At the same time, the average Federal program has decreased its improper payment rate from 5.4 to 4.7 percent. This is even more striking when contrasted with the private sector. For example, the credit card industry has reduced fraud to less than 1 percent.

We believe that misaligned incentives serve as the primary impediment to addressing the integrity problem. Very simply, we believe Congress should allow the States to use 5 percent of any recovered overpayments to support integrity activities. This has been proposed in the Department of Labor's Unemployment Compensation Integrity Act. It would produce an immediate and dramatic effect on the integrity problem. As a partner in administrating the UI program, States must be given the means and incentives to combat fraud and unemployment insurance. Washington, D.C., cannot solve this problem on its own.

There are existing success stories, and there are reasons for hope. On Point Technology believes the U.S. Department of Labor should provide funding to take proven State solutions and aggressively replicate them throughout the country. Just last year Michigan's unemployment insurance agency installed software that increased its collection of overpaid benefits by 79 percent. Similarly, the South Carolina Department of Employment and Workforce's existing investigators completed 450 percent more audits and detected 86 percent more fraud with the new automated system. Both States succeeded by eliminating paper files, automating repetitive activities, and reducing unnecessary tasks. Each State solution was deployed in a matter of months; each State solution paid for itself in a matter of weeks.

It is well documented by the National Association of State Workforce Agencies that 90 percent of the unemployment insurance systems are running on technology that was created before the personal computer was invented. In the past year only two of the UI tax and benefit systems were replaced. The pace of modernization

is simply too slow. Last year the majority of integrity investments went to long-term strategic plans and multiyear development efforts. We believe Congress should direct the UI program to also invest in proven solutions that provide an immediate financial return to the States UI Trust Funds and the United States Treasury.

Finally, we believe the unemployment insurance program should adopt the Office of Management and Budget's call to embrace the do not pay list. This provides a tremendous opportunity for municipal, county, State and Federal Government agencies to exchange data. For example, the do not pay list can provide data on individuals who are not able and available for work for a variety of reasons, including incarceration.

We believe a national do not pay list should be integrated into all UI systems. It would have a dramatic impact similar to the use of the National Directory of New Hires, a database that has produced a 50 percent decrease in the size of overpayments via early detection. Use of the do not pay list could be effective in eligibility determinations in addressing those determinations.

In closing, our unemployment insurance system is a vital lifeline for millions of American workers. We must act to preserve the integrity of the system for those in need. Fortunately, the country is in a position to help strengthen the UI safety net and ease the tax burdens on employers across America. Aligning funding priorities and investing in proven solutions will return precious dollars to State trust funds and to the United States Treasury to ensure viability of the unemployment insurance program for generations to come.

Thank you for the opportunity to testify. I am available for any questions you might have.

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

[The statement of Mr. Cullen follows:]

STATEMENT OF MICHAEL CULLEN
MANAGING DIRECTOR
ON POINT TECHNOLOGY, INC.
BEFORE THE
COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

Hearing on reviewing the implementation of the reforms to the unemployment insurance system contained in Public Law 112-96, *The Middle Class Tax Relief and Job Creation Act of 2012*

April 25, 2012

Chairman Davis, Ranking Member Doggett, and distinguished members of the committee, thank you for the opportunity to testify this morning. I am Mike Cullen, Managing Director at On Point Technology. On Point Technology's entire focus is Unemployment Insurance, and as a company we take pride in our employees' experience and expertise in this arena. Prior to joining On Point, I spent 14 years with the Colorado Department of Labor and Employment, serving six years as the State's Unemployment Insurance Program Director – On Point staff possess similar backgrounds as career state unemployment insurance professionals. For over 15 years, On Point's solutions have enabled 17 states to find and collect improperly paid UI benefits. By our estimate we have helped return over $2 billion to state trust funds and the US Treasury. We are proud to provide software solutions that strengthen UI programs and help minimize tax burdens on employers and now with multiple federally funded extensions, return improperly paid dollars to the US treasury.

Background

The national Unemployment Insurance program continues to face its greatest set of challenges in a generation. The recession's impact on state and federal UI trust funds is clear and stark as millions of unemployed continue to look for work in an economy that struggles to regain its feet. A year ago state trust funds had been forced to borrow a combined $41 billion from the US Treasury. As of April 17, 2012 that total has not decreased with 30 states continuing to borrow $41.5 billion. This DOL statistic doesn't reflect the total debt of the program triggered by the most recent recession as many states have issued billions of dollars in bonds to pay the US treasury. This is equal to paying off your credit card's high interest loan by drawing against your home equity line. The President's 2012 budget addresses the continuing increase in state borrowing; "Heavy borrowing from the Federal Unemployment Account (FUA) is projected to continue over the next few years. The aggregate loan balance is projected to increase from $40.2 billion at the end of FY 2010 to a peak end-of-year balance of $68.3 billion in FY 2013. Up to 40 states are projected to borrow".

Extended payment of benefits to the unemployed, bankrupt trust funds, unparalleled borrowing, and unprecedented levels of improperly paid benefits means that we are placing the future ability of the unemployment insurance program to act as an economic stabilizer at risk. Employers, who are struggling to keep their business afloat, are increasingly bearing the burden of rebuilding the trust funds through repetitive tax increases. In 2010, employers in 24 states saw UI tax increases. In 2011, employers in 35 states saw UI tax increases, and it is projected that by 2013 the vast majority of employers will face significant tax increases. Employers are now experiencing not only the burden of increased taxes to replenish trust funds, but to pay interest on the debt the program has accumulated. The cumulative effect of this situation is that employers are now forced to bear the UI tax burden rather than use the money to create jobs.

Over the last year, despite the focus on improper payments, the rate of improperly paid benefits has gone from 10.3% in 2009 to 11.2% in 2010 and is currently at 12.0%. It is imperative we bring the improper payment problem under control because we are headed in the wrong direction.

The current outdated systems create a tension between timely processing of benefits and ensuring the integrity of these payments. However, this dilemma ultimately represents a false choice. With a recurring investment in proven technology and improvements in the sharing of the data within the UI program, we can both improve states' capacity to process benefits while dramatically enhancing the integrity of these payments.

Administrative Funding

Since 1992, administrative funding for the UI program has remained static. State agencies have been required to cut service levels or compete for other state dollars to administer their UI programs. During the Great Recession administrative funding was provided to deal with the significant increase in workload resulting from the huge increase in claims volume and to support the administration of the federal extensions and federal additional compensation. As the economy recovers the additional funding will begin to dry up and state UI programs will return to pre-recessionary levels; levels barely able to sustain program administration. However, the identification, processing and collection problem will continue if there is no additional funding to help pay for these activities. Administrators' primary focus has been the payment of claims. Investments in improved processes, staff hiring, and automation, were designed to get the money in the hands of the unemployed faster and more efficiently. Integrity has largely remained an under-staffed, manual activity. Post-recession funding for integrity has not been a focus.

The Middle Class Tax Relief and Job Creation Act of 2012

The Middle Class Tax Relief and Job Creation Act of 2012 provided for several areas of specific action on the part of both the states and the US Department of Labor in the area of UI program integrity and collections. The Act included the specific requirement as a condition of a state receiving federal administrative funding for its UI program that a claimant be able to work, available to work and actively seeking work as a condition of being paid for a week of unemployment compensation.

The requirement is very important not only in codifying the basic tenet of the program but also as a way to avoid the trend in recent years in some states and in federal legislation to permit individuals to restrict their availability for work and/or to continue claiming unemployment compensation while unavailable for work and/or not actively seeking work.

The Act mandates that states participate in the interstate collection of overpaid benefits, previously a voluntary election. This will require states for the first time to work together to assure that they are collecting overpayments.

Also included was the specific requirement that the overpayment of federal additional compensation (FAC) be subject to collection and offset along with other federal compensation programs. A review of the approximately $20 billion in FAC payments during the ARRA showed uneven reporting of FAC overpayment collection efforts across the states and raised questions as to the overpayment collection efforts. By requiring overpayment recovery and offset along with other federal programs there will be an increased amount of FAC overpayment collection.

The legislation included the new requirement that USDOL establish an interagency work group to develop data exchange standards and use such standards in the development of a rule to govern reporting under Title III and XII of the Social Security Act.

National Directory of New Hires

Access to the National Directory of New Hires (NDNH) has been available to state workforce agencies since 2004. Use of the directory data has been mandated since 2007. In Unemployment Insurance Program Letter 19-11, issued June 10, 2011, the Department of Labor directed all state UI programs begin using NDNH cross-match data no later than December 2011. This is a positive step forward. Our experience has been that states who use NDNH cross-matching are able to reduce the size of the overpayment by about 50%. It is this early detection that has the potential to bring significant, immediate improvement to addressing the improper payment problem.

However, the challenge we see in relying solely on the NDNH is the unknown participation level by employers. We find that in states where both an NDNH cross-match and another audit called the quarterly benefit / wage cross-match are run, each finds about half of the total overpayments detected around claimants who were working while collecting UI benefits (The USDOL refers to this as a benefit year earnings overpayment). We believe the USDOL should rewire both audits to be run. The USDOL

should also work with the US Department of Health and Human Services, the owner of the NDNH, to find ways to improve employer participation. State UI agencies should be incentivized to improve participation by employers in their states to make complete, accurate timely reports.

Automating the Prevention, Detection and Recovery of Improper Payments

In the past, many Federal and State initiatives encourage the introduction of new and innovative cross-matches. While this is certainly encouraged by On Point Technology, we believe it represents a misunderstanding of the current bottlenecks in the unemployment insurance program. Unfortunately states have too often introduced a new cross-match only to turn off or throttle back existing ones.

Most states still do not have the technology to effectively handle the results of cross-matches or other integrity supporting processes. During the recession, many states realized their integrity efforts would produce mass volumes of potential improper payments data and therefore they simply turned many of the integrity processes off.

The majority of states have automated tools to detect improper payments then manually process the resulting case investigations and adjudication. Performing calculations, interfacing with state systems, and creating documents for employers and claimants are labor intensive processes. Resolving any question regarding a case, generally requires searching through file cabinets to secure the required information. These manual processes prevented states from addressing the overpayment problem before the recession and have proven impossible to ramp up with the increase in workload. Adapting existing technology to eliminate this paper processing will dramatically increase productivity. States should store information in a web-accessible system to enable automated reports, letters, and interfaces thereby increasing productivity. Most states adjudicate every overpayment manually based on state statutes and UI case law. However, technology enables states to translate state law and precedents into business rules in order to issue automated determinations. Using these techniques we have seen states automate over 85% of overpayment decisions. This approach ensures consistency of approach and outcomes. It is our experience that implementing software incorporating these processes improves the overall detection and processing of UI overpayments by at least 300%. One state has had a return on investment of more than 100 times the original cost. We have several recent examples where integrity software implementation costs have been repaid by the detection or collection of improper payments in eight weeks or less.

Implement a National Effort to Combat Organized Fraud

Organized fraud exists. States that are armed with software to find organized fraud can avoid significant losses to their trust funds. In June of 2005, the U.S. Department of Labor's Office of Inspector General testified before Congress about a single organized fraud ring that stole 15,000 identities and committed $58 million of UI fraud. Other large scale cases are being routinely investigated by the OIG. A proactive approach could

have identified this organized fraud earlier, saved millions of UI dollars, and prevented identity theft for thousands of individuals. The use of automated software to search disparate databases for known patterns of fraud can detect and stop these illegal activities. Unfortunately the nature of the UI federal-state partnership and the legal processes involved with prosecuting fraudulent activities has often left state agencies isolated and has precluded the sharing of information. States often are unaware of schemes that are perpetrated in other neighboring states or other regions of the country. A focused effort on the part of the Department of Labor and OIG to address fraud and access unemployment insurance claims data directly is needed.

Future Federal UI Programs and Integrity

As we look forward to future recessions where federal programs such as EUC and FAC are implemented we recommend that legislation contain provisions that protect the integrity of those programs. First, a portion of any administrative funding provided to states to administer such a program on behalf of the federal government should dedicate 10% for integrity activities. Second, language should be included that allows/requires the states use all measures to collect and return to the federal government improperly paid benefits.

Spending Authority and Integrity Activities

Over the past several years Congress has considered and adopted several provisions of the Unemployment Insurance Integrity Act. One provision that has not been adopted is the provision that provides the states the use of 5% of recovered overpayments to support integrity activities. It represents good business practice and solves part of the long term administrative funding issue. This must augment current funding. It must not replace current administrative funding focused on integrity. The concept of a consistent, self-supporting funding stream rather than occasional supplemental grant opportunities just makes sense.

Do Not Pay List

On April 12, 2012 the Office of Management and Budget issued a memorandum titled "Reducing Improper Payments through the 'Do Not Pay List'". We believe it represents an opportunity for data-sharing across programs to improve eligibility verification and assist in indentifying improper payments earlier. In the context of the requirement in the *The Middle Class Tax Relief and Job Creation Act of 2012* that the USDOL create an interagency workgroup to develop data exchange standards we encourage the consideration of using the data contained in the "Do Not Pay" list to support UI integrity activities.

Chairman DAVIS. Where I would like to go in my line of questioning is going to be under the theme of the importance of common data standards in sharing information. I appreciated Mr. Gates' prescient and somewhat wry comment about the use of innovative technologies like the telephone. The ability to share information in the private sector has saved tens of billions of dollars, it has created millions of jobs, and the government, I found, tends to be a bit of a lagging indicator, particularly at the Federal level. And we have a habit in the Congress, certainly in the executive branch, of treating the symptom and not the root cause. However, symptoms can point you to those root causes, and I would like to share an example with you.

In March, the Los Angeles Times reported that convicted murderer Anthony Garcia continued to collect $30,000 in unemployment benefits in checks cashed by family and friends while he

served time in the L.A. County jail system. Not only did his accomplices deposit the money into Garcia's jail account, they shared it among fellow gang members' accounts as well. It is unconscionable to think that the government is helping maintain the financial well-being of a gang while they are in prison for murder and for other crimes.

I note that public assistance programs have worked with the criminal justice system in the past to make sure benefits don't go to criminals. For example, the Social Security Administration was able to work with prisons to stop disability checks from being paid to inmates. I would hope we could do the same thing with unemployment benefits by sharing inmate information with public assistance programs to make sure all our programs are on the same page.

In the conference report on the Middle Class Tax Relief and Job Creation Act, we enacted uniform data standards into TANF, Temporary Assistant to Needy Families, and unemployment insurance programs, so we are taking steps in that direction.

My question is how common are cases like this? What caused the breakdown in this situation? What tools do unemployment benefit agencies like yours have to make sure that unemployment checks only go to those who are eligible and not to those, for example, in jail? Are States able to go after this money and recover it? Tell me in what ways and what is being done to make sure this doesn't happen again.

I have tried to make the focus of the last year and a half on this subcommittee to fix broken processes rather than engage in ideological discussions because I believe there is real money to be saved for the taxpayers there as well as assuring help for folks on the front lines like you. But here is my final point is what, if any, legislative authority or other tools do you need from us to prevent future episodes like this happening?

Mr. Cullen, would you care to start?

Mr. CULLEN. Thank you, Mr. Chairman. I appreciate those comments, because those are simply down the path of an area that we do have some expertise in. We do have the ability, and it is not just us, but the country has the ability to look at disparate databases, bring them together, and either through data mining or through cross-matches eliminate some of this activity. I am sure that others will agree that it is difficult to get that information sometimes out of other government agencies, and I think that is where the focus really needs to be.

The technology is there to make best use of that information, but unfortunately the ability to get to that information, to get it reported on a timely basis so that programs such as unemployment insurance can use it either for the curtailment of benefits when they are not entitled to them or for making eligibility decisions at the very beginning so benefits never go out the door to begin with is where the issue is.

So when you ask where can you help, you can help in making it easier for States to get that information made available to them.

And then, again, I would like to go back to do not pay list. We had the opportunity to testify last year in the Senate, and this issue came up. And I think it is a good tool that starts the con-

versation of how from the Federal level, such as the National Directory of New Hires—how from the Federal level can I look at other information to preclude these activities from going on?

Chairman DAVIS. Something as simple as just being able to have a bio from the uniform criminal registry flagged in social services for an individual who is receiving benefits if they log in.

Mr. CULLEN. Yes, sir.

Chairman DAVIS. I would like Mr. Gates and then Mr. Temple to comment from your States' perspectives. Mr. Gates first. I know we don't want to mess with Texas, but we will start with New Hampshire.

Mr. GATES. I would have to say that it is very difficult, because I think the constant underfunding of our system has caused us to have to do things in technology that makes us not see our customers as often as we should.

And so one of the things that we have tried to do is to establish individual relationships with each of the county corrections facilities as well as the State correctional facility, but we have to do that individually, and that makes it difficult. A central registry would be very, very effective for us to be able to make sure that individuals are not doing things that they are not supposed to be and to be available.

I honestly believe that oversight is the key, and that we need to see our customers more often and to have the ability to do that, because I think that by bringing them into the one-stop and making sure that they are engaged in the work search activity is the best way for us to determine where to help them and to make sure that they are not in prison. If I call them in, and they are in prison, they are not going to be coming, and, you know, that is a simple way.

You know, we try to do things in New Hampshire that are much more simple, but the difficulty that we have is having to do all of these individual cross-matches, and a central registry of services and individuals' unavailability would be very helpful.

Chairman DAVIS. Mr. Temple, quickly.

Mr. TEMPLE. We do quite a few data matches. One is certainly with our criminal justice system. We also monitor pay phones, those that are coming from, for instance, correctional facilities. And we also monitor IP addresses, where we are seeing foreign Internet accounts coming in, and we do investigations on those. We have a big border, and we have a lot of people who go back and forth into Mexico, it is understandable, but we also have a lot of other ones that may necessarily not be legitimate, and we look into them. But we find people who are overseas working who know they are about to get laid off, offshore oil people and whatnot. So there is a lot of legitimate ones, but we still do find those.

And we work a lot with the Federal Government as well. We are doing data matches on unemployment insurance with the U.S. Postal Service now, with IRS on their own employees, and it has been in the paper, several of those cases, where they have gotten criminal charges against a lot of their employees.

Chairman DAVIS. Thank you very much.

With that, I would like to recognize Mr. Doggett from Texas.

Mr. DOGGETT. Thank you very much.

Mr. Temple, if I understand correctly, you got a waiver request in for demonstration projects for Texas within hours of the President signing the law permitting those demonstration projects to come about; is that right?

Mr. TEMPLE. Correct. Yes, sir.

Mr. DOGGETT. And your application was not denied on the basis of any deficiency, but only the fact that it got here before the guidance had been issued by the Department of Labor, which took them, what, less than 2 months to issue, right?

Mr. TEMPLE. That is what our letter said. We——

Mr. DOGGETT. Right. In other words, they didn't fault you for not having met this or that, but simply said, it takes us a few weeks to get the guidance ready. And now that they have their guidance out last Thursday, do you anticipate that Texas will reapply?

Mr. TEMPLE. We are still looking at the guidance. There are some really burdensome requirements in it.

Mr. DOGGETT. What would you say is the most burdensome requirement in the compliance?

Mr. TEMPLE. At first blush the individual-by-individual calculation of weekly benefits and determining what the wage incentive, our subsidy, would be for each individual. We have approximately half a million people in the State receiving unemployment insurance; 290,000 of those are receiving State funded. We plan on serving about 35,000. So technically we could have to have a different agreement for every claimant with each employer where we don't now.

Mr. DOGGETT. You don't believe you can make those calculations easily and promptly in order to reapply?

Mr. TEMPLE. No, sir, I don't think it can be done easily and promptly because it is an individual basis. And then you have to sell it to the employer. So I may bring a $200-a-month wage subsidy, you may bring a $500, and so we have got parity now.

Mr. DOGGETT. You don't envision any problem, for example, with Texas complying with the Fair Labor Standards Act?

Mr. TEMPLE. We do now.

Mr. DOGGETT. Right. And you don't envision any problem complying with minimum wage law standards?

Mr. TEMPLE. We do now.

Mr. DOGGETT. Right. So a number of the things that have been mentioned here this morning as being burdensome in the guidance are simply a restatement of existing Federal law, aren't they?

Mr. TEMPLE. Well, not the one that I talked about.

Mr. DOGGETT. Not the one you talked about. That is the one I want to identify, because there has been a lot of discussion here this morning about burdensome and delaying, and actually it is pretty unusual that you get a guidance out in less than 2 months, but to identify what the specifics are. And many of the specifics that have been mentioned are things that you are already doing and you have no problem complying with, like paying the minimum wage and like complying with the Fair Labor Standards Act.

Mr. TEMPLE. I never cited those as being a hindrance for us.

Mr. DOGGETT. Actually it was difficult to tell in some of the written testimony what was being cited so those were so global. I

am pleased to hear that that it is not a problem in Texas, and I doubt it is a problem anywhere to comply with those.

So it is this matter of how one calculates the amount of subsidy that is an issue for you?

Mr. TEMPLE. That will be an issue for us.

Mr. DOGGETT. Are there any others?

Mr. TEMPLE. Well, it doesn't say that you have to do this random assignment evaluation, but that preference will be given or something to that nature. And, you know, we have been running this program for almost 2 years, and we know—we know it works. And it is almost as DOL is saying, okay, we know yours works in practice; we want you to do a study to see if it works in theory. I mean, we are there.

Mr. DOGGETT. Well, it is the first time that trust funds have been used for a purpose other than paying benefits, and you would expect that in terms of fulfilling its responsibilities as a steward for those trust funds that there would be some examination of your program even if it is an award-winning program.

Mr. TEMPLE. Certainly, understandable.

Mr. DOGGETT. And you didn't expect that by applying on day 1, or almost day 1, that you necessarily should be accorded an advantage, even though I would like Texas to have an advantage, over the other 49 States that might choose to apply for only 10 demonstration projects.

Mr. TEMPLE. We absolutely thought we should have an advantage because we were the first in. Absolutely we thought we would be.

And then I would mention that those trust fund dollars are dollars paid by our employers. They are not Federal dollars, they are State dollars. And every dollar we have ever borrowed we have paid back. We have never missed a benefit, we have never missed a loan, we paid all of our bonds early. We are retiring the one we currently have early.

Mr. DOGGETT. I applaud you for your efforts on that. I hope that you will be able to apply and that Texas will get 1 of those 10 demonstration projects. And as much as I would like Texas to always have the advantage, I think clearly the Department of Labor had a basis for putting out a clear guidance. There may be problems with some aspects of it. I am glad to get a specific rather than just the rhetoric we have heard so far. Thank you for your service.

Mr. TEMPLE. Thank you.

Chairman DAVIS. Thank you very much.

The chair now recognizes Mr. Paulsen from Minnesota for 5 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman.

And we will just follow up with Texas a little bit. I guess your organization won an award in 2011 from the Department of Labor for innovation, right?

Mr. TEMPLE. Yes, sir, we did.

Mr. PAULSEN. That is great. And was that based on your Texas Back to Work program?

Mr. TEMPLE. Yes, sir, it was for that program.

Mr. PAULSEN. All right. And that program did not involve unemployment funds, but it still served unemployment recipients; is that correct?

Mr. TEMPLE. Correct. It was general revenue.

Mr. PAULSEN. Okay. And in concept the idea behind this new waiver authority was that programs like Texas Back to Work would essentially be fully integrated into the unemployment insurance program. Does this guidance allow for that?

Mr. TEMPLE. It eventually would allow if you met those other criteria. That would be the funding source.

Mr. PAULSEN. And how would you need to modify Texas Back to Work in order to meet the DOL requirement? What modifications might have to be met as you look forward?

Mr. TEMPLE. There is a possibility we could need a different work agreement with each employer representing each individual we placed, rather than we just have one agreement that covers everyone, much easier to sell and much easier to explain. And our UI claimants actually go out and sell themselves, that we offer a $2,000 incentive if you hire me. And now we may, as we understand it, I may only offer, you know, $100 to $150 a month; someone else may offer $500. So we don't have the parity in all things. And we ultimately want the employers to pick, obviously, the best candidate that we send them, and there is an incentive here to hire someone on UI. And we thought it was fair when everyone represented the same. And that is the concern we have, one from the parity and one just operationalizing it.

Mr. PAULSEN. Mr. Gates, maybe can you add a little bit to that discussion?

Mr. GATES. Well, to be honest with you, as I indicated in my testimony, I am not sure that New Hampshire is going to apply for one of the demonstration grants only because we are a very small State, and when we applied for the reemployment and eligibility assessment programs back in 2010, that grant was written by me. I don't have a grant writer. You know, we believe in having more staff on the front line helping the public, so we are not very top-heavy. The second year it was written by my director.

The way we read this is that it appeared as if we were going to have to prove our concept would be successful before we could even try it, and that was just going to be very difficult for us and very time-intensive. Currently right now we are over capacity. We are trying to implement SIDES, TALK, Barts. You know, we are just trying to really do a lot of things that are moving us ahead, and we just saw this as just a Herculean challenge that we just couldn't take on at this time.

Mr. PAULSEN. Thank you, Mr. Chairman. I yield back.

Chairman DAVIS. I thank the gentleman.

The gentleman from North Dakota Mr. Berg is recognized for 5 minutes.

Mr. BERG. Thank you, Mr. Chairman.

I appreciate the panel being here. And obviously we are trying to look for innovation and how we can do things better out here. I was a little bit frustrated going into the first panel. To me, it seems like this guidance is stifling the very innovation that we had hoped to get out of this effort.

Mr. Gates, I come from the very large State of North Dakota, so I have no idea what you are talking about, New Hampshire, but I know in your comments you didn't apply for the waiver, and maybe you could expand on that a little bit more.

Mr. GATES. Well, it is mainly, as I said before, one of capacity. And when we read the guidance, we thought the guidance was very well done, don't get me wrong, and we think that there wasn't anything in the guidance we took exception with. We just don't have the ability to write an application that is going to meet the standards. It requires a lot of research before, during and after, and to be honest with you, we have so much going on now.

We have a very effective return to work program that we initiated back in 2010, and through that—which was modeled on the Georgia Works, but took into great length the requirements to make sure that we met the Fair Labor Standards Act. We basically called it an extended interview, because what New Hampshire employers were telling us was that their problem was finding individuals who are going to fit in with their culture and their team.

And so what we did was to make sure that individuals on a voluntary basis would be able to, while they were receiving unemployment, to go in and show what they could not do, because that is forbidden, but to show whether or not they were going to be able to, through observation, pick it up, and through questioning and through interaction with the others to see whether or not they would fit. We applaud the other—you know, any other State that does it.

Mr. BERG. I guess what I hear you saying is it is one thing if we are going to appropriate money for a program or a new program. That is where you tested it, and you pulled all the research together, and you say, okay, we are going to go down this road.

What we are talking about here is innovation. We are talking about something that is going to be risky, something that maybe only 20 percent of these ideas are ever going to work or really get people back to work. And so kind of what I hear you saying is it is a different mind-set in terms of, A, we are not funding a specific program; what we are doing is we are asking the States to take a little risk, try something, and we are not going to chop your head off if there is a mistake.

We had the Secretary here earlier in the first panel, and, you know, her response was—you know, and I asked her what are the barriers that are happening, and she couldn't respond to that. And what I would like to know is if you could be very specific on both New Hampshire and probably Texas, from a State's perspective, in saying here are some things that are specific that we ought to change that will encourage States to step in, complete an application, and encourage States to bring their innovation forward so we can look at it. So can you just respond to that?

Mr. GATES. Well, I guess what would help us to make our return to work program more effective is that we have been very mindful onto the guidance that the individuals can't do anything. They can't produce a product, they can't do a service. And that is very difficult for an employer to determine whether or not—you know, this individual fits in, they report to work, they have a good

attitude, they seem to be catching on, but they haven't done anything yet.

And so what we have done is to try and parlay that into an on-the-job training. So we have been one of the States that has been very effective in maximizing on-the-job training, because that was the missing ingredient in our return to work program. So we actually were a State that actually went back and actually collected some money from other States that were not using their OJT money, because we burned through our money fairly quickly. OJT, as far as I am concerned, is the best tool that the system has to use in order to get individuals back to work and to show employers.

The other thing that we are doing is Work Ready, which is to take individuals on a voluntary basis and to find out what their skills are on day 1, on their first day of unemployment, so we know early on what we need to do to help them to have the skills and abilities to be matched with an employer.

Mr. BERG. And then just briefly, these are things that would not qualify under this waiver.

Mr. GATES. These are things that we are doing now without the waiver.

Mr. BERG. But if you were going to expand those with the waiver flexibility or something, is that a barrier?

Mr. GATES. I honestly don't know.

Mr. BERG. Okay. Thank you.

Mr. Temple, I know we are short on time.

Mr. TEMPLE. Well, and again, as we had talked earlier, we were looking at an extension and expansion of our existing program as we operate it now, and understand there could have been some changes. But we tried to do something that was streamlined. The OJT program, under the Workforce Investment Act On-the-Job Training, still has a lot of paperwork and red tape that is required of employers, and they shy away from it. I know that we have had problems selling the OJT in times, and when we were able to put our general fund dollars and take away those hurdles, it was accepted much greater than our on-the-job training federally funded programs were. And so we were looking at trying to craft it more in that direction.

But as was stated earlier, our big concern is just operational out of this, making it easy to understand both for the employers and for the job seekers. And the one that—and it is supposed to be cost neutral, we understand that, and we demonstrated that we have been cost neutral. And I don't believe that restrictions and requirements they have in place States could monitor how they outreach.

The one thing I would mention, though, we are serving in our program with general revenue State dollars not only people that we fund our trust fund, but also people who are being funded federally. And so savings are enuring to the benefit of Federal dollars. They are all tax dollars, but those are Federal dollars. Under the existing waiver, and under actually the way the legislation was written, it doesn't allow us to serve people who are receiving Federal unemployment—extended unemployment benefits. And that may be something you want to consider, because right now we are serving both populations, and our trust fund is saving money, and we are saving the Federal Government money. And the expansion

of it to include that, I think, would reap a good return on investment.

Mr. BERG. All right. Thank you.

I yield back.

Chairman DAVIS. The gentleman's time is expired.

The chair now recognizes Mr. McDermott from Washington for 5 minutes.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Dr. Vroman, the problems that States have had has not been because they increased benefits, but because they reduced the rate that they were charging employers, an hourly rate that they were charging employers. Is that a fair statement of the problem that we have to date?

Mr. VROMAN. Yes. Going back for the last 60 years, if you then look at the trust fund situation following the two previous recessions, taxes never came back up to where they had been in the previous recoveries, and as a consequence there was no major rebuilding of the trust funds in the mid-1990s or between 2004 and 2007. So when we went into the recession in 2007, the net reserves of the system were at their lowest position of any recession post-World War II. And the benefit side was actually lower in the decades of the 1990s and prior to 2007 than it had been in the 1970s, than it had been in the 1950s, than it had been in any of the previous periods. So the funding problem was not excessive benefit outlays that the States were responsible for, but the failure of taxes to bring the trust funds back to previous balances.

Mr. MCDERMOTT. Can you compare the benefit, the average benefit, of the State of Washington and the benefit of Texas or Kansas?

Mr. VROMAN. Certainly, yes. In terms of benefit levels, Washington is a little bit more generous. The maximum as a ratio to the statewide wage is a little bit higher in Washington. But the contrast, the big contrast, between Washington and Texas is the share of the unemployed who collect benefits. In Washington State it averages 40 to 45 percent in most years, most nonrecession years, whereas in Texas it is closer to 20 to 25 percent.

There is a big range of recipiency rates across the system, and the variance from one State to the next is much larger in terms of what share the unemployed collect compared to what the payment levels are relative to past wages.

Mr. MCDERMOTT. How does that work? I mean, how does Texas exclude three-quarters of the people?

Mr. VROMAN. They have harder eligibility requirements, for example, misconduct determinations by the State affect more than 30 percent of applicants in Texas, whereas in Washington State they affect fewer than 15 percent. That is a major factor. It is sort of like a race of hurdles where if you are a claimant trying to go down the track, it is a lot easier if the hurdles are lower. And Texas has higher hurdles than Washington State.

Mr. MCDERMOTT. How about the indexing of the average wage in the State?

Mr. VROMAN. To the tax base?

Mr. MCDERMOTT. I mean, the tax base in Washington State—or the Federal one has not been changed, I think, since 1983.

Mr. VROMAN. 1983, correct, yes.
Mr. MCDERMOTT. Which is $8,000.
Mr. VROMAN. $7,000.
Mr. MCDERMOTT. Seven thousand dollars. It is practically nothing.
Mr. VROMAN. Yes, very low.
Mr. MCDERMOTT. What would it be if it had been indexed since 1983?
Mr. VROMAN. Average wages in the country since 1983 have roughly tripled, so the 7- would be $21,000 had the Federal tax base maintained its position to the average wage. And Washington State, which indexes at 80 percent of the statewide wage, now has a number like, I think, $38,000, something like that.
There is a graphic in my written testimony that compares the average tax base in the 16 indexed States against the 35 nonindexed. The 35 nonindexed in 2012 have an average tax base that is below $11,000 and is less than $4,000 above the Federal tax base. States without indexation could raise it by State legislation, but there is extreme reluctance, and that reluctance has been present for a very long time.
Mr. MCDERMOTT. Let me just switch here to this issue of the guidance that was issued by the Department with respect to this waiver. My understanding is that it requires that—what we put out requires neutrality in the trust funds, that they not cost more to do these.
Now, is there—we have heard complaints about it. They have said, oh, it is too cumbersome, and we are going to have to individually look at everybody, and we have got all kinds of reasons. Is there a way to guarantee that neutrality, or should we just throw the money to Texas and say, go and do whatever you want with it, we don't care what it does to your trust funds?
Mr. VROMAN. I do not have enough expertise in the evaluation that will accompany these waivers to have a judgment about what the net effect on the trust fund is likely to be. I am sorry to pass on your question, but I don't think I am the right person to answer it.
Mr. MCDERMOTT. We are trying to figure out how to make it work. I think that is probably the most important thing.
I yield back the balance of my time.
Chairman DAVIS. I thank the gentleman.
And Mr. Reed from New York will have the last word.
Mr. REED. Thank you, Mr. Chairman.
Following up on this conversation of my colleague Mr. McDermott, Mr. Holmes, do you have anything you would like to offer on the differing tax rates being discussed here?
Mr. HOLMES. Yes. I think that, at least from an employer's perspective, each State is different. You know, each State has a different industrial make-up. Each State has negotiated and has a mature sense about what the tax rate should be with respect to funding unemployment insurance. In some States it is a lower tax base and a higher contribution rate schedule.
I think that it is difficult to draw the conclusion that all States should have an indexed wage base unless you also evaluate benefit payout and also the make-up of the State. I know a number of

States in which there have been significant increases in benefits. And, in fact, the trendline with respect to the replacement rate across the country, replacement of wage rate, has been up at least since 1988, according to the Department of Labor.

So I think that we have to look at all the different pieces of the puzzle before making a conclusion about what should be done at the national level.

The other thing I would say is that I think you should pay attention to the FUTA tax revenue for the purposes that it is dedicated for, which primarily should be administration of the programs, State and Federal, with some money for extended benefits if we trigger on.

But as far as the State goes, that is a much different conversation, and we can't really link the two and say one needs to be increased because the other one hasn't been raised for a while.

So those would be my thoughts about it.

Mr. REED. Well, I appreciate that comment.

Dr. Vroman, I can't miss this opportunity. I was reading your testimony, and on page 10 you indicate a conclusion, "There is likely to be another recession later in the present decade." What is your source? It is not footnoted. What is your source for that conclusion?

Mr. VROMAN. Since World War II, we have had 11. World War II has 60 years roughly to the present. Our economy tends to have a cyclical nature to it, and that is the basis for my comments.

Mr. REED. So just based on patterns of history, you are projecting.

Mr. VROMAN. Yes. And we have been fortunate in the last three decades. 1982, 1991, 2001, and the great recession. That is only four over about a 30-year period, so, in fact, the length between recessions has tended to grow, but there is going to be another one, and it is most likely——

Mr. REED. I am very interested. You put a timeline on it of the end of the decade, so I am interested in what your thoughts would be to the White House as to what we could do to avoid this recession that is coming down the pipeline according to you. What should the White House be doing right now?

Mr. VROMAN. Pray? No one has that good a crystal ball, and I am trained as an economist. The surprise that the economics profession received at the depth and duration of the current recession should be a sobering reminder to all economists that our ability to forecast is extremely limited. And so——

Mr. REED. So your own conclusion is probably just a guess, just a shot in the dark?

Mr. VROMAN. Yes.

Mr. REED. Okay. I appreciate that then.

Mr. Holmes, what I would be interested in is following up a little bit on the drug-testing issue that we talked about previously with the prior witness. From your perspective in the private sector, how big of an issue is reemployment and folks potentially that have a drug issue? Could you comment on that?

Mr. HOLMES. Certainly it is a significant issue with respect to not just the controlled substances which are addressed in the bill, but also abuse of prescription drugs. It is a significant cost for em-

ployers with respect to their employees, their performance on the job, and also making decisions about firing people or hiring people. Obviously their background with respect to drugs and whether they are testing positive or not, that becomes a significant part of the hiring decision process, and it hits the bottom line for employers.

So I think we recognize that it is a big problem, and as I think I said in my testimony, it is something that we would like to have the business community, if a State chooses to go in that direction, be part of the evaluation of what really works, since we do have significant experience in how to address these issues.

Mr. REED. Well, I appreciate that. When you say a big problem, is there any way to quantify it when you reference "big problem" in your testimony?

Mr. HOLMES. I would have to go back and pull some data. I don't have it with me today.

One of the difficulties about UI as compared to public assistance programs is there is a fair amount of data that addresses this with respect to public assistance programs; less data that addresses it with respect specifically to UI, because it just hasn't been done as much.

Mr. REED. Appreciate that information. Thank you very much.

With that, Mr. Chairman, I yield back.

Chairman DAVIS. I thank the gentleman.

I would also like to thank all of our witnesses and the staff for coming and joining us today. I appreciate your help in understanding this issue further. We look forward to working with you in the time ahead.

Members may have additional questions. If they do, they will submit them directly to you in writing, and we would appreciate your responses back to the subcommittee for the record that it could be shared with all concerned.

Chairman DAVIS. Thank you again, and with that the committee stands adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

[Member Submissions for the Record follows:]

Statement of The Honorable Tom Reed

About the Respondents

Staff size categories of respondents:

- The majority of organizations had fewer than 2,500 employees (80%).
  - More than one-third of organizations had 100 to 499 employees (36%).
  - Nearly one-quarter of respondents had 1 to 99 employees (24%).
  - One-fifth of respondents had 500 to 2,499 employees (20%).

Sectors of respondents:

- The majority of organizations were publicly owned for-profits (50%).
  - Almost one-fifth each were from privately owned for-profits (19%) and nonprofit organizations (19%).

Industry of respondents:

- The largest proportion of organizations were from the manufacturing (18%) and health care (14%) industries.

Key Findings

- **What percentage of organizations conducted pre-employment drug testing in 2011?** More than one-half of organizations (57%) indicated that they conduct drug testing on *all job candidates*. More than one-quarter (29%) of the organizations do not have a pre-employment drug testing program.
- **Is there a tie between drug testing programs and absenteeism?** Yes. In organizations with high employee absenteeism rates (more than 15%), the implementation of a drug testing program appears to have an impact. Nine percent of organizations reported high absenteeism rates (>15%) prior to a drug testing program, whereas only 4% of organizations reported high absenteeism rates after the implementation of a drug testing program, a decrease of approximately 50%.
- **Are workers' compensation rates affected by drug testing programs?** Yes. In organizations with high workers' compensation incidence rates (>6%), the implementation of a drug testing program appears to have an impact. Fourteen percent of organizations reported high workers' compensation incidence rates prior to a drug testing program, whereas only 6% of organizations reported similar rates of workers' comp after the implementation of a drug testing program, a decrease of approximately 50%.
- **Do drug testing programs improve employee productivity rates?** Nearly one-fifth (19%) of organizations experienced an increase in productivity after the implementation of a drug testing program.
- **How much of an impact do drug testing programs have on employee turnover rates?** Sixteen percent of organizations saw a decrease in employee turnover rates after the implementation of drug testing programs.
- **Do multinational organizations apply similar drug testing protocols/policies in the United States and globally?** Nearly three-quarters (72%) of organizations that have multinational operations indicated that all, almost all or some of the same protocols/policies are applied while conducting drug tests outside the United States.

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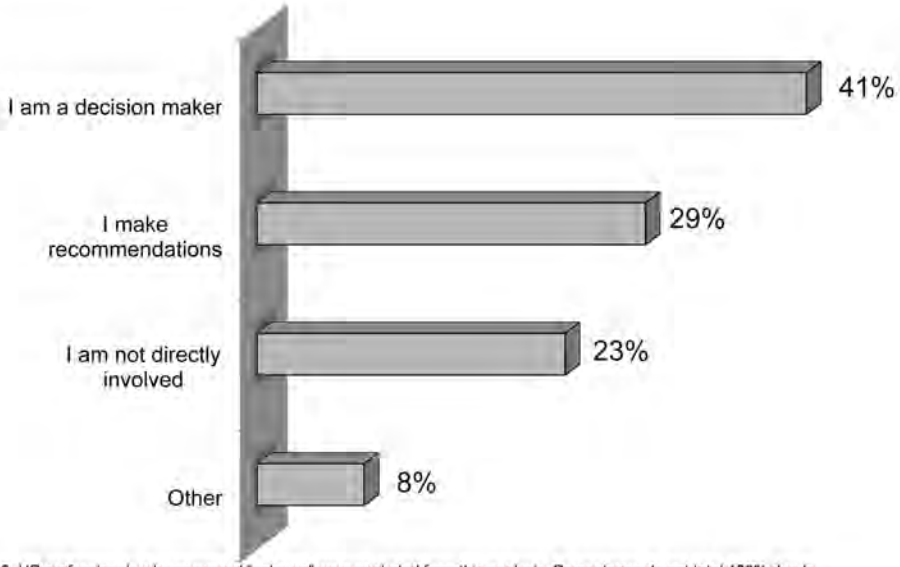
Organizations with Drug Testing Programs

- Pre-employment with job candidates
- Post-employment with employees
- Pre-and/or post-employment with contract employees

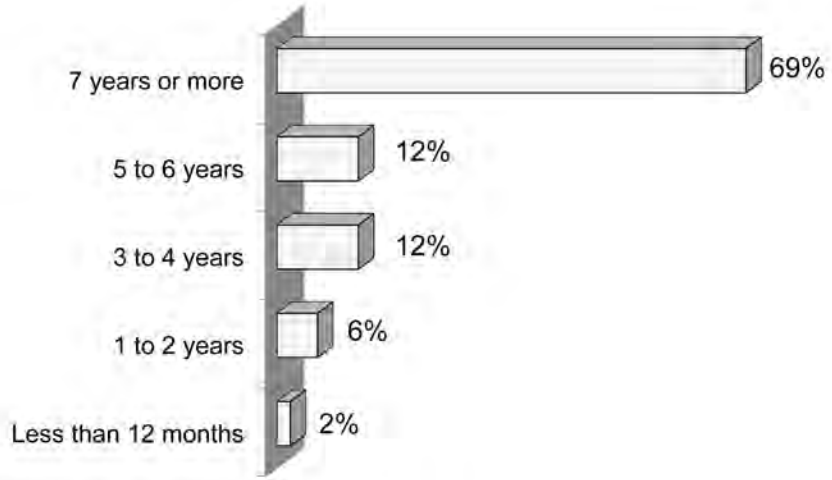
How are you involved in your organization's drug testing program?



Note: n = 636. HR professionals who answered "not sure" were excluded from this analysis. Percentages do not total 100% due to rounding.

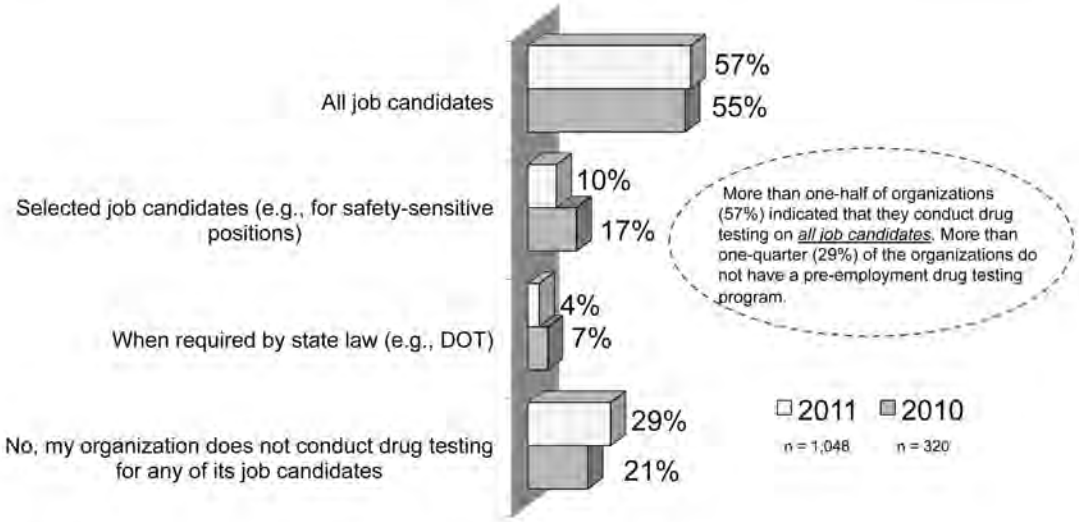
SHRM/DATIA Poll: Drug Testing Efficacy ©SHRM 2011

For approximately how many years has your organization been conducting pre- and/or post-employment drug testing?



Note: n = 626. Percentages do not total 100% due to rounding. HR professionals were asked to round to the highest year.

Does your organization conduct pre-employment drug testing with job candidates?



Note: HR professionals who answered "not sure" were excluded from this analysis.

Does your organization conduct <u>pre-employment</u> drug testing with job candidates?

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Comparison by Organization Staff Size

Larger organizations (2,500 or more employees) are **more likely** to conduct pre-employment drug testing for **all job candidates** compared with smaller organizations (fewer than 2,500 employees).

Smaller Organizations	Larger Organizations	Differences Based on Organization Staff Size
•1 to 99 employees (39%) •100 to 499 employees (56%) •500 to 2,499 employees (62%)	•2,500 to 24,999 employees (71%) •25,000 + employees (71%)	Larger organizations > smaller organizations

Comparison by Organization Sector

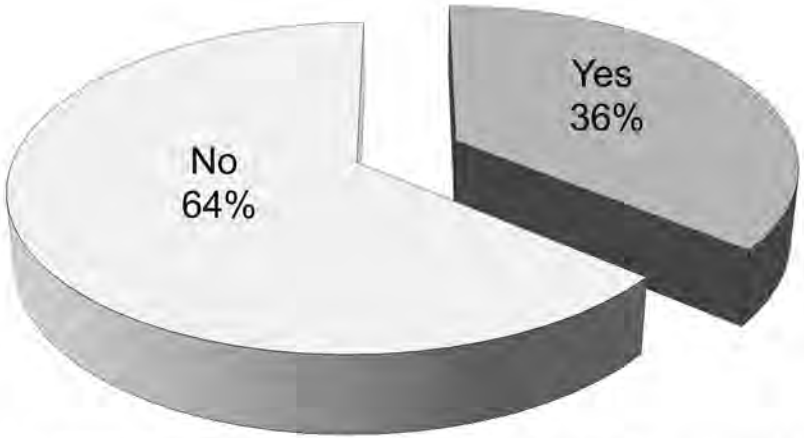
Publicly owned for profit organizations are **more likely** to conduct pre-employment drug testing for **all job candidates** compared with privately owned organizations, nonprofit organizations and government agencies.

Organization Sector		Differences Based on Organization Sectors		
•Publicly owned for profit (71%)	•Privately owned for profit (55%) •Nonprofit organizations (49%) •Government agencies (51%)	Publicly owned for -profit	>	•Privately owned for-profit •Nonprofit organizations •Government agencies

Government agencies are **more likely** to conduct pre-employment drug testing for **selected job candidates** compared with publicly owned for-profit organizations, privately owned for-profit organizations and nonprofit organizations.

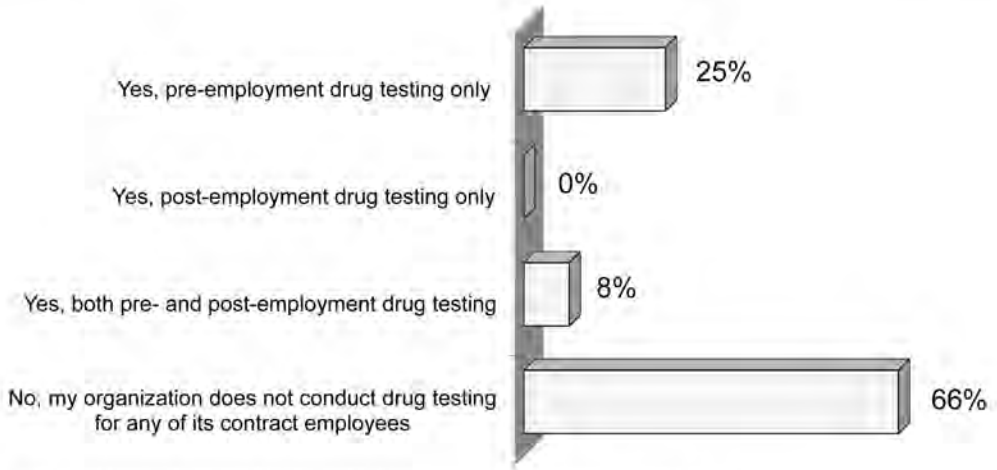
Organization Sector		Differences Based on Organization Sectors		
•Government agencies (23%)	•Publicly owned for-profit (8%) •Privately owned for-profit (8%) •Nonprofit organizations (6%)	Government agencies	>	•Publicly owned for-profit •Privately owned for-profit •Nonprofit organizations

Does your organization conduct post-employment drug testing with current employees?



Note: n = 1,029. Percentages do not include HR professionals who indicated that they were "not sure" if their organizations conducted post-employment drug testing with current employees.

Does your organization conduct pre- and/or post-employment drug testing with its contract employees?



Note: n = 754. HR professionals who responded "not applicable" and "not sure" were excluded from this analysis.
Percentages do not total 100% due to rounding.

Does your organization conduct pre- and/or post-employment drug testing with its contract employees?

Comparison by Organization Staff Size

Larger organizations (500 or more employees) are **more likely** to conduct pre-employment drug testing for **contract employees** compared with smaller organizations (fewer 500 employees).

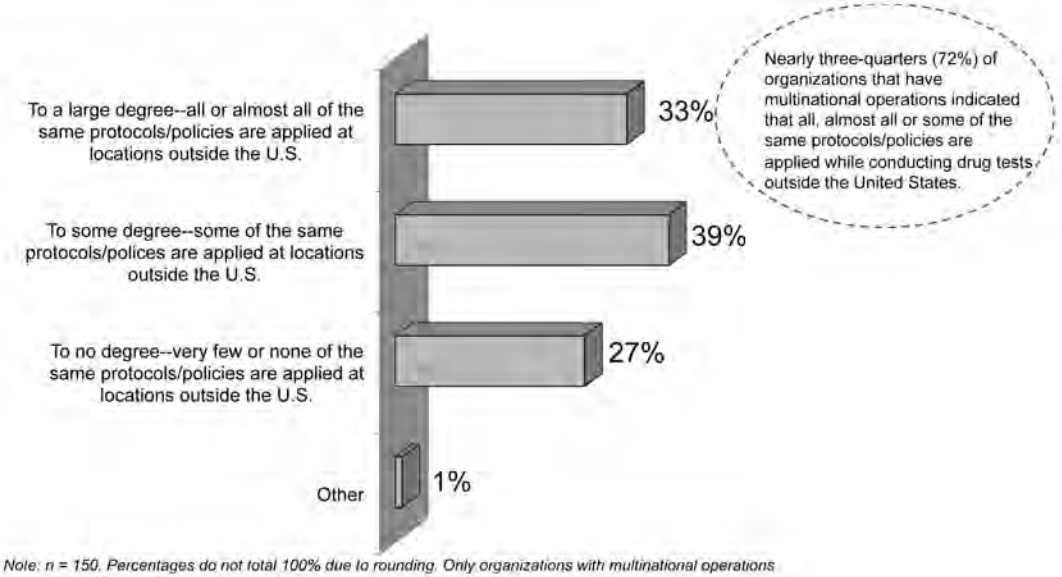
Smaller Organizations	Larger Organizations	Differences Based on Organization Staff Size
•1 to 99 employees (17%) •100 to 499 employees (19%)	•500 to 2,499 employees (30%) •2,500 to 24,999 employees (36%) •25,000+ employees (44%)	Larger organizations > smaller organizations

Which of the following post-employment drug tests does your organization conduct?

Drug Test Used	2011 (n = 313)	2010 (n = 222)	2006 (n = 222)
Post-accident testing (administered to all employees who are or may have been involved in a workplace accident)	51%	69%	58%
Random testing (conducted on an unannounced basis using a neutral selection process and has the highest deterrence and detection impacts; a certain portion of the employee population is randomly selected periodically throughout the year)	47%	46%	39%
Reasonable suspicion testing (occurs when an employer has reason to believe that an employee is under the influence of drugs and/or alcohol)	35%	80%	73%
Follow-up testing (conducted during and after an employee has been referred to an employee assistance or other rehabilitation program)	20%	30%	*
For-cause testing is based on indicia that an employee may have a substance-abuse problem (e.g. excessive absenteeism, performance problems, dramatic mood swings, etc.).	19%	*	*
Site testing (based on suspicion of a significant drug-abuse problem—e.g., based on employee complaints—at a specific work site and involves testing of all employees at that site on a one-time basis)	8%	13%	*
Baseline testing (conducted to establish the level of drug use at implementation of a program; this method essentially "cleans house" to establish a drug-free workplace)	6%	22%	1%
Other	4%	*	*

Note: Percentages do not total 100% due to multiple responses.
"" indicates question was not asked.*

To what degree are the U.S. pre- and/or post-employment protocols/polices also applied at locations outside the United States?



Note: n = 150. Percentages do not total 100% due to rounding. Only organizations with multinational operations were asked this question.

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Impact of Drug Testing Programs

- Absenteeism
- Workers' compensation
- Employee productivity
- Employee turnover

Absenteeism rates at organizations before and after drug testing program implementation

	Before implementation of a drug testing program *(n = 162)*	After implementation of a drug testing program *(n = 218)*
0-15%	91%	96%
More than 15%	9%	4%

9% of organizations reported high absenteeism rates, (more than 15%). After implementation of a drug testing program only 4% of organizations reported high absenteeism rates, a decrease of approximately 50%.

Note. HR professionals who answered "not sure" were excluded from this analysis.

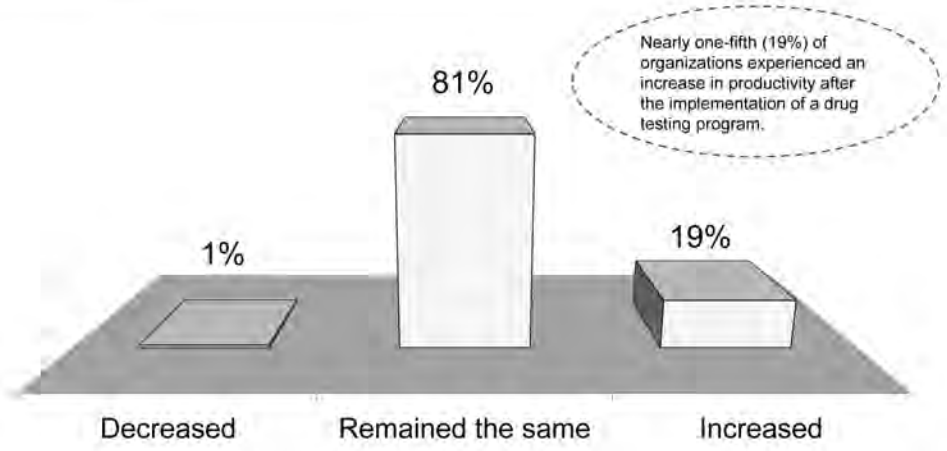
Workers' compensation incidence rates at organizations before and after drug testing program implementation

	Before implementation of a drug testing program *(n = 255)*	After implementation of a drug testing program *(n = 312)*
0-6%	86%	94%
More than 6%	14%	6%

14% of organizations reported high workers' compensation incidence rates prior to a drug testing program, whereas only 6% of organizations reported similar rates of workers' comp after the implementation of a drug testing program, a decrease of approximately 50%.

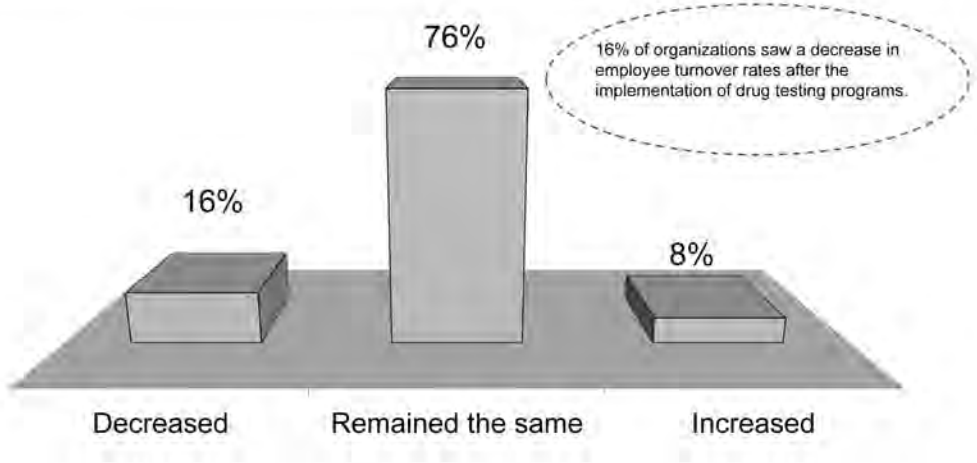
Note: HR professionals who answered 'not sure" were excluded from this analysis.

Change in employee productivity in organizations after drug testing program implementation



Note: n = 513. HR professionals who answered "not sure" were excluded from this analysis. Percentages do not total 100% due to rounding.

Change in employee turnover rates in organizations after drug testing program implementation



Note: n = 520. HR professionals who answered "not sure" were excluded from this analysis.

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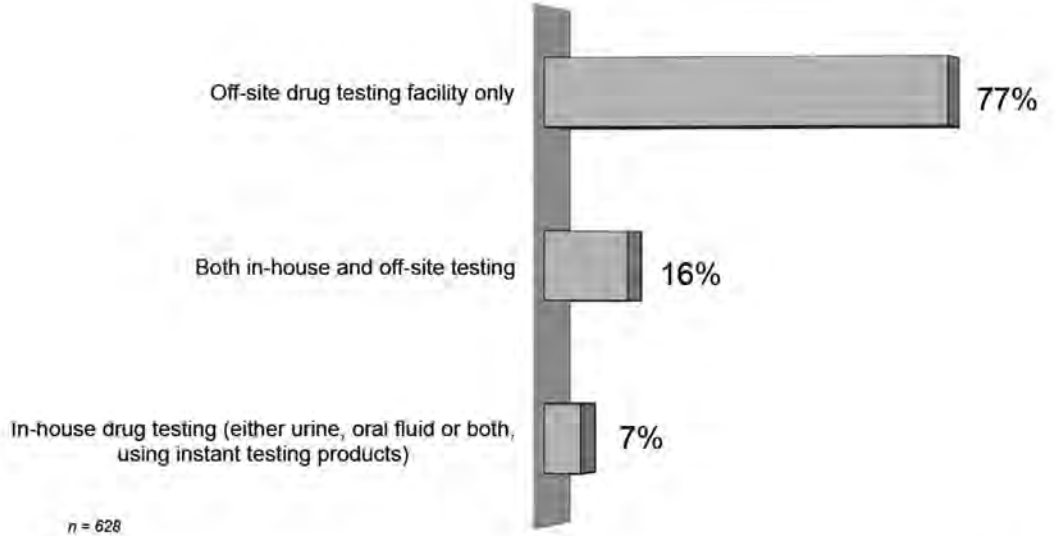
How Drug Tests Are Performed

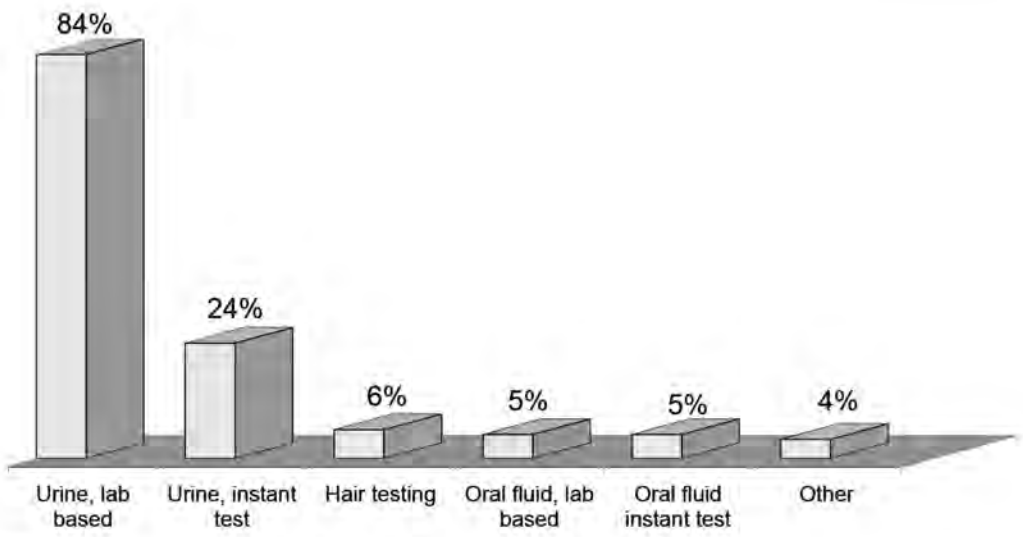
- Where?
- What type?
- How much?

Does your organization conduct drug testing in-house or at an off-site testing facility run by another entity?



n = 628

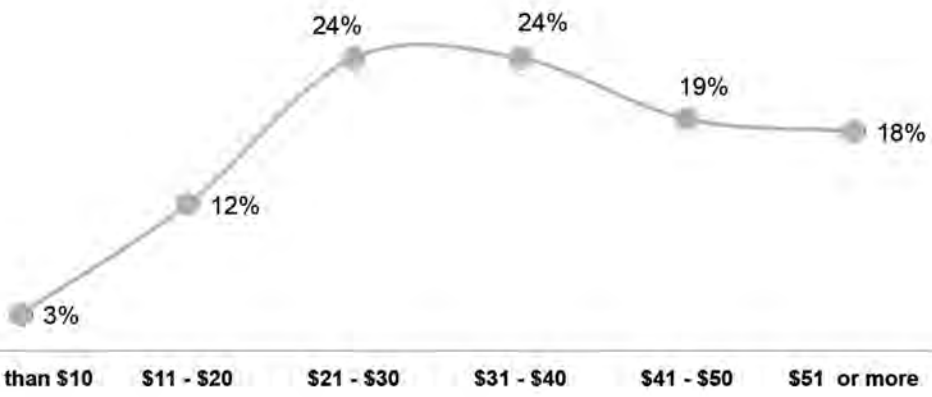
What type of sample is used for your organization's drug testing program?



Note: n = 634. Percentages do not total 100% due to multiple responses.

SHRM/DATIA Poll: Drug Testing Efficacy ©SHRM 2011

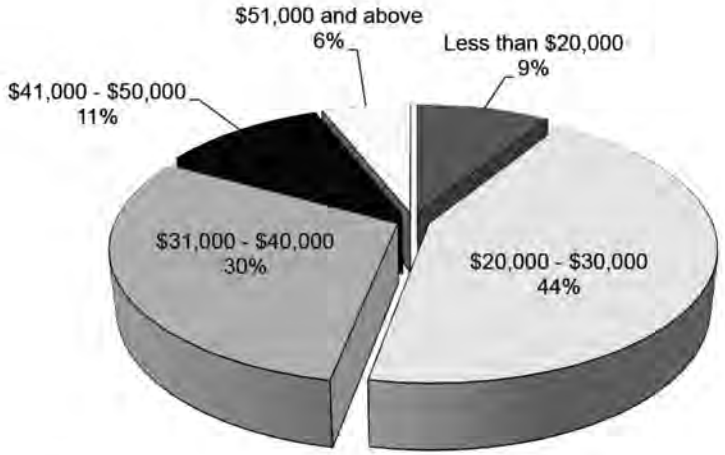
How much does it cost your organization each time a drug test in conducted (per employee or job candidate)?



n = 633

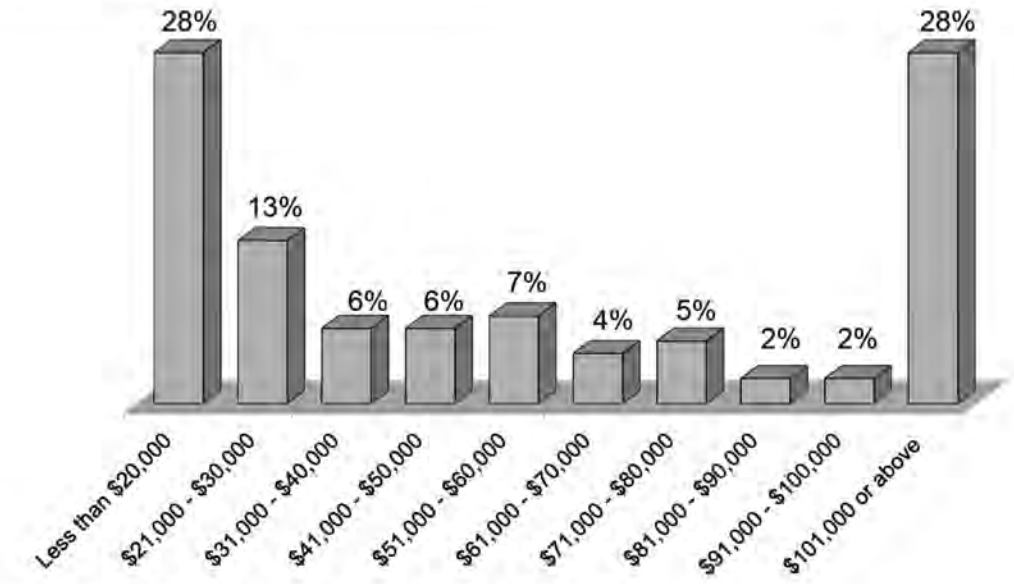
Characteristics of Organizations With Drug Testing Programs

What is the average entry-level full-time annual salary at your organization?



n = 632.

In 2010, how much did your organization spend on recruiting, training and drug testing combined?

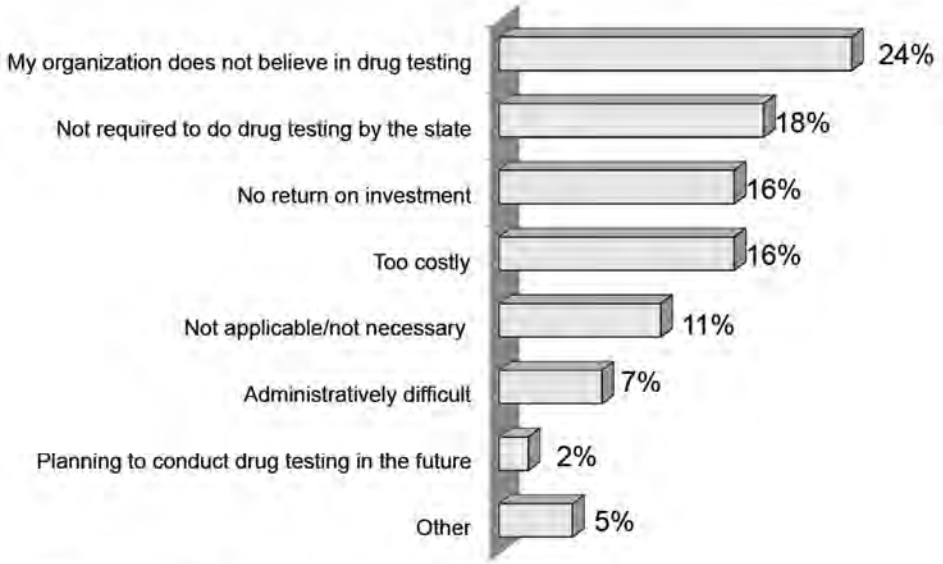


Note: n = 595. Percentages do not total 100% due to rounding.

SHRM/DATIA Poll: Drug Testing Efficacy ©SHRM 2011

Organizations that Do Not Have Drug Testing Programs

What are the primary reasons your organization *does not* conduct pre-and/or post-employment drug testing?



Note: n = 262. Percentages do not total 100% due to rounding.

What is the primary reason your organization *does not* conduct pre- and/or post-employment drug testing?

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Comparison by Organization Staff Size

	1-99 employees (n = 104)	100-499 employees (n = 95)	500-2,499 employees (n = 36)	2,500-24,999 employees (n = 21)	25,000 or more employees (n = 6)
My organization does not believe in drug testing	23%	22%	28%	19%	17%
Not required to do drug testing by state	21%	6%	25%	24%	33%
No return on investment	11%	19%	25%	5%	0%
Too costly	14%	19%	11%	19%	17%
Not applicable/not necessary	15%	10%	0%	0%	0%
Administratively difficult	4%	9%	3%	19%	0%
Plan to conduct drug testing in the future	4%	3%	0%	0%	0%
Other	7%	11%	8%	14%	33%

Note: n = 262. Some row percentages do not total 100% due to rounding. Caution should be used when generalizing results when the sample size is less than 30 for any category.

Demographics

Demographics: Industry

Industry	
Manufacturing	18%
Health care and social assistance	14%
Professional, scientific and technical services	11%
Finance and insurance	9%
Educational services	5%
Public administration	5%
Retail trade	4%
Accommodation and food services	3%
Construction	3%
Utilities	3%
Arts, entertainment and recreation	2%
Information	2%

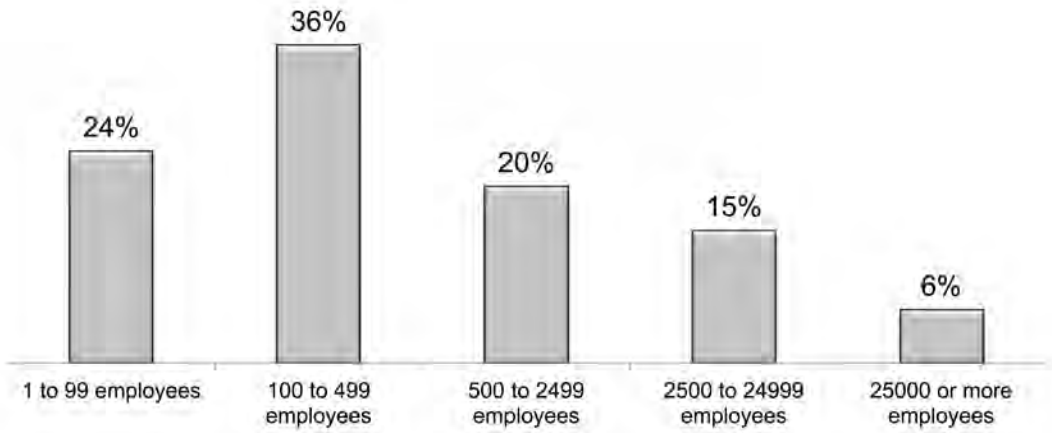
n = 1,024

Demographics: Industry (Continued)

Industry	
Real estate and rental and leasing	2%
Religious , grant-making, civic, professional and similar organizations	2%
Transportation and warehousing	2%
Wholesale trade	2%
Administrative and support and waste management and remediation services	1%
Agriculture, forestry, fishing and hunting	1%
Management of companies and enterprises	1%
Mining	1%
Repair and maintenance	1%
Personal and laundry services	--
Private households	--
Other services except public administration	8%

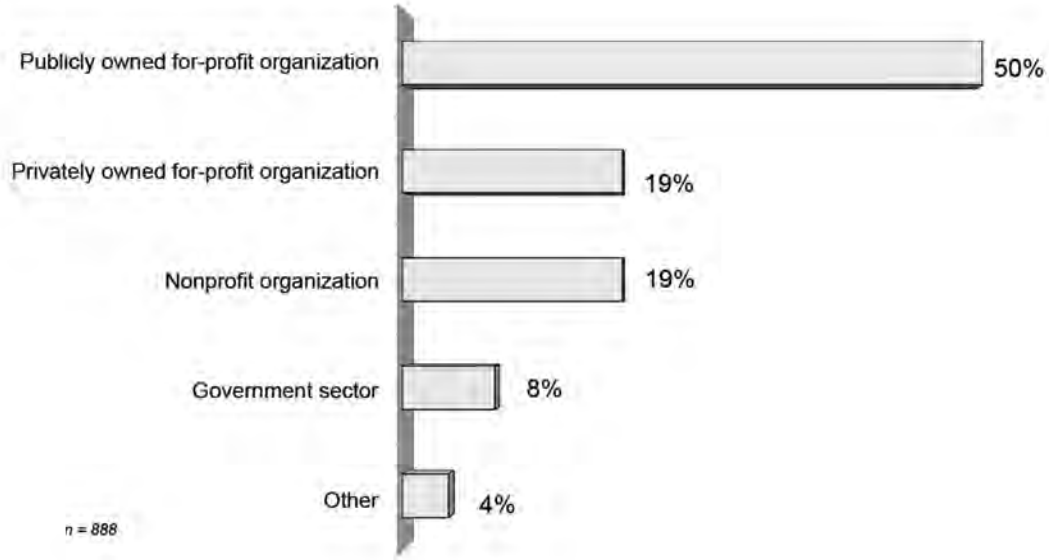
n = 1,024

Demographics: Organization Staff Size



Note: n = 899. Percentages do not total 100% due to rounding.

Demographics: Organization Sector



Demographics: Other

Does your organization have U.S.-based operations (business units) only or does it operate multinationally?

U.S.-based operations	78%
Multinational operations	23%

Note: n = 906. Percentages do not total 100% due to rounding.

Is your organization a single-unit company or a multi-unit company?

Single-unit company: A company in which the location and the company are the same.	32%
Multi-unit company: A company that has more than one location.	68%

Note: n = 863

Are HR policies and practices determined by the multi-unit corporate headquarters, by each work location or both?

Multi-unit headquarters determines HR policies and practices	57%
Each work location determines HR policies and practices	3%
A combination of both the work location and the multi-unit headquarters determine HR policies and practices	40%

Note: n = 619

Level of HR department/function for which you responded through this survey.

Corporate (company wide)	75%
Business unit/division	14%
Facility/location	11%

Note: n = 621

[Member Questions for the Record follows:]

Questions for the Record from Chairman Davis to The Honorable Jane Oates

Hearing on Moving from Unemployment Checks to Paychecks: Implementing Recent Reforms

April 25, 2012

Ways and Means Subcommittee on Human Resources

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

The Honorable Geoff Davis
Chairman
Subcommittee on Human Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Davis:

Thank you for the opportunity to testify at the April 25, 2012 hearing, regarding implementation of the changes to unemployment compensation law in the Middle Class Tax Relief and Job Creation Act of 2012.

I am enclosing my agency's response to your questions, including the unnumbered questions in your letter, to complete the record of the hearing.

We welcome the opportunity to work with Congress on these changes and on any other legislation that addresses the needs of America's unemployed workers.

If you have additional questions, you may contact Mr. Adri Jayaratne, Senior Legislative Officer, Office of Congressional and Intergovernmental Affairs, at (202) 693-4600.

Sincerely,

Jane Oates

Jane Oates
Assistant Secretary

Enclosure

First, how does the Department believe it is justified in issuing guidance for this provision, when the statute did not call for such guidance (in contrast with other provisions for which guidance was specifically required by statute).

In general, the Department of Labor (Department) issues guidance every time Congress enacts a statute affecting the unemployment insurance (UI) program. For example, though not mandated but to ensure appropriate implementation, the Department issued Unemployment Insurance Program Letter No. 02-12 about the UI integrity provisions in the Trade Adjustment Assistance Extension Act of 2011. Rarely has an enactment specifically required that the Department issue guidance. Guidance is necessary because it provides information concerning practical, operational considerations about which states must be aware, or details about the applicability of a statutory provision to specific circumstances that states encounter on which the statute is silent. In short, guidance is necessary to ensure uniform implementation of a statute in all states. We issued guidance on section 2102 of the Middle Class Tax Relief and Job Creation Act of 2012 to ensure that states understand the statutory requirements for a demonstration project application to be approved and the criteria that will be considered when their applications are being reviewed. Thus, all states will have a fair opportunity to become one of the 10 states the Secretary may approve to operate a demonstration project.

Second, how does the Department believe that each of the additional requirements for State demonstration project applications included in the program letter that fall beyond the scope of the statutory requirements are justified.

The Secretary of Labor (Secretary) has not imposed requirements that exceed the statute's requirements. The statute gives the Secretary wide discretion to decide whether to enter into demonstration project agreements with states, providing simply that she "may" enter into "up to 10" such agreements. The Department's guidance, Unemployment Insurance Program Letter (UIPL) No. 15-12, provides important information to the states about the priorities that will guide the Secretary as she exercises this discretion. Accordingly, the UIPL, in an effort to maximize transparency, suggests that states should include information in their applications that is relevant to those priorities. While the statute does provide that applications "shall include" certain information, it does not preclude the submission of other relevant information. Given the 10-project limitation and the stated purposes of the demonstration project, i.e., testing and evaluating cost-effective strategies for expediting reemployment and improving the effectiveness of states' reemployment efforts, the Secretary's attempts to obtain the information she needs to select the most appropriate applications is an appropriate exercise of her statutory authority.

We note that much of the guidance provides information about what states must submit in their applications to show that they meet the statutory requirements for approval and reminds them of the applicable Federal or state laws that cannot be waived and must be considered when developing a proposed demonstration project. Further, the Secretary's priorities reflect the importance of maintaining critical worker protections and ensuring that state unemployment

funds are not put to undue risk while maximizing the opportunity to learn about the best approaches to helping unemployed workers find good jobs.

1. Page 4 of your written testimony discusses how "states with antiquated information technology struggle with" implementing program changes, like the changes in the number of weeks of extended benefits that are now payable. What is the Department of Labor doing to address this issue? What role does program modernization and the improvement of IT play when the Employment and Training Administration does its strategic planning? What is the level of priority it receives?

Many states' UI programs are operated with aging information technology systems, some dating back to the 1970s. States with these antiquated systems have had difficulty ramping up to process recession-level workloads and modifying their systems to accommodate the Emergency Unemployment Compensation, Federal Additional Compensation, and Extended Benefit programs. These difficulties have resulted in delayed payments to eligible unemployed workers, challenges in implementing new tools to quickly detect and recover improper payments, and negative media attention. In addition, the older systems were not designed to meet the public's (claimants and employers) expectations for electronic and online web-based services. The lack of investment in modernizing the information technology infrastructure of state UI programs over the past decade has left those systems at risk of failure to meet their essential mission.

Based on the experience of a few states that recently have developed new benefits or tax systems and those currently in development, the cost for a new customized tax or benefit system averages about $40 to $50 million; most states are in need of a new benefit or tax system or both. The cost of funding individual customized state systems, even if costs were spread over multiple years, is unaffordable in the current budget environment; therefore, states must seek collaborative solutions to address the challenge.

In Fiscal Year (FY) 2009, the Department's Employment and Training Administration (ETA) began testing a consortium strategy to reduce costs and accelerate the replacement of outdated UI benefit and tax systems. As a first step, we accepted proposals from state consortia to determine the feasibility of developing the functional requirements of a core UI IT Benefits and/or Tax System that could be used by multiple states. Two consortia were funded through two separate grants for that purpose.

Consortium #	Partner States	Purpose	Amount Awarded
1	Arizona, Idaho, North Dakota and Wyoming	Development of functional requirements for an integrated benefits and tax system	$18.6 million
2	Georgia, North Carolina, South Carolina and	Development of functional	$9.9 million

	Tennessee	requirements for a benefits system	

The consortium test was successful; the states were able to jointly develop the functional requirements for a UI benefit and/or tax system that could be used by multiple states without the need for significant customization of the system while allowing for modifications to accommodate the needs of individual states. The consortium strategy requires states to standardize procedures to the maximum extent possible to build a "core" system, which once developed and tested could then be customized to address unique state laws and integrated into the existing state IT environment. As a result of the initial investment in the two state consortia in 2009 to carry out this process, the consortia were positioned in 2011 to proceed to secure a vendor for implementation.

In FY 2011, funding became available to enable the two existing state consortia to proceed to system development and implementation, and to fund addition consortia to begin collaboration on creation of functional requirements using the products and building on the work of the first two state consortia. Currently, there are three state consortia eleven states at various stages of developing new systems:

Consortium #	Partner States	Purpose	Amount Awarded[1]
1	Arizona, Colorado, North Dakota and Wyoming	Development of an integrated benefits and tax system	$72 million
2	Georgia, North Carolina, South Carolina and Tennessee	Development of a benefits system	$50 million
3	Vermont, West Virginia and Maryland	Develop business requirements using products from the two consortia as baseline	$6 million

All three consortia have developed the framework to support the system development effort, including formal roles and responsibilities for each of the partner states within the consortia, memorandum of understanding, service level agreements, and other contractual agreements. They are the models ETA plans to use going forward.

Modernization of IT systems in states is a top priority for the Department, and we expect additional consortia to come together in FY 2012 to take advantage of available funding for both UI modernization and integrity-related projects. On May 11, 2012, we issued UI Program Letter 18-12, offering states the opportunity to apply for FY 2012 funding for this purpose.

Finally, ETA works closely with the National Association of State Workforce Agencies' Information Technology Support Center (ITSC) to support and oversee the state UI IT modernization efforts. ITSC is a collaboration of State Workforce Agencies (SWAs), the

[1] In addition, individual state funds are expected to be utilized for system modernization effort.

Department and private sector partners. The ITSC is dedicated to advance the appropriate application of information technology, which states may adopt, to provide more accurate, efficient, cost effective, and timely service for UI customers.

2. On April 3, 2012 a group of business leaders wrote asking you to fix regulations that pre-date the new law related to when and under what terms someone is considered "able and available for work" and thus eligible for UI benefits. According to their letter, current regulations contradict provisions of P.L. 112-96.

Do you believe there is a contradiction between the law and current regulations? If so, what is your plan, including timeframes, for addressing this issue?

As we noted in our response to the National Federation of Independent Businesses (NFIB), the Department has long interpreted certain provisions of Federal law to require that state law require that UI benefits only be paid to individuals who are able to work and are available for work. This interpretation was codified in regulation at 20 CFR Part 604 (January 16, 2007). In addition, all states currently require individuals to actively search for work to be eligible for UI benefits.

We are reviewing our current guidance and regulations to determine if any revisions need to be made based on the new Federal requirements that individuals must be able to work, available to work, and actively seeking work. As the UI program is a federal-state partnership, based on Federal law but paid under state law, states have considerable flexibility to determine how to apply specific provisions to the unique circumstances of individual claimants. The Department expects to provide guidance that gives states reasonable parameters but that retains some state flexibility, recognizing that individuals do not have to be available for work or seeking work 24 hours a day, seven days a week to be eligible for benefits.

3. The last item mentioned in your written testimony is data exchange standardization with a reference to activities that were begun prior to enactment of P.L. 112-96. Can you please provide additional detail on how these activities fulfill the objectives of this section of the law and plans for meeting statutory timelines? Also, please describe your interactions with the Office of Management and Budget and other Federal agencies on this issue.

Section 2104 of P.L. 112-96, concerning data exchange standardization for improved interoperability, requires, to the extent practicable that the Department incorporate existing nonproprietary standards, such as the eXtensible Markup Language. (XML).

Before enactment of P.L. 112-96, the Department was a proponent of data exchange standardization, and strongly advocated the use of open source technologies and data exchange standards for the development of IT systems supporting critical UI functions for state UI IT modernization efforts. These included:

1. In the FY 2009 and FY 2011 solicitations, which provided grants for state consortia efforts described in the response to #1 above ETA required that the technology tools developed should use open source components to the extent feasible, be transferable and be available to be shared by multiple state workforce agencies without the need to significantly customize the system or be hosted in one state that will provide automated services to other states. The goal is for multiple states to share common systems/tools that accommodate each state's individual needs.

2. In FY 2005, to reduce improper payments because of the lack of accurate and timely claimant separation information available to states, the Department facilitated the implementation of the State Information Data Exchange System (SIDES) – an automated employer response system for use by employers and third-party administrators (TPAs) to standardize the collection of information on employee separations. This system uses the XML format for this information exchange between the state and employers.

3. The Department facilitated and provided funding for the conversion of data exchange formats from Extended Binary Coded Decimal Interchange Code (EBCDIC) to XML for the Interstate Connection Network (ICON) – a multi-purpose telecommunications network that supports the transfer of data among states. EBCDIC is a format specifically used for mainframes and is not an interoperable standard.

   ICON supports:
   - Interstate Benefit (IB)/Combined Wage Claims (CWC);
   - Unemployment Compensation Federal Employee (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX) programs;
   - The Wage Record Interchange System (WRIS) that enables states to obtain wage record information for performance measurement;
   - The Unemployment Insurance Inquiry (UIQ) data exchange with the Social Security Administration (SSA) that enables states to validate SSNs with SSA; and
   - The Health Coverage Tax Credit (HCTC) that enables SWAs to transmit information on eligible individuals who can receive assistance in covering a portion of their healthcare insurance coverage to Internal Revenue Service.

   Though ICON has been modernized to use XML, it continues to also operate the proprietary EBCDIC format for states that have been unable to complete their modernization efforts. The Department is providing necessary technical assistance to support the transition of states to use standardized XML exchange formats.

The Department is in preliminary discussions with the Office of Management and Budget and the Department of Health and Human Services, as well as with states through the Information Technology Support Center operated by the National Association of State Workforce Agencies, to explore the most fruitful opportunities for additional data exchange standardization moving forward.

Payment Recapture Activities in the Unemployment Insurance Program

Benefit Payment Control (BPC) is the component of the states' Unemployment Insurance (UI) program that is responsible for promoting and maintaining integrity of the program through prevention, detection, investigations, establishment, and recovery of improper payments. The BPC units also prepare cases for prosecution. This work is performed at the state level by state staff to meet the following requirements:

- Section 303(a)(1) of the Social Security Act (SSA) requires that a state's UI law include a provision for: "Such methods of administration...as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."
- Section 303(a)(5) of the SSA also requires that a state law include provision for: "Expenditure of all money withdrawn from an unemployment fund of such state, in the payment of unemployment compensation...."
- The Secretary of Labor has interpreted these Federal law provisions, together with the provisions of Sections 3306(h) and 3304(a)(4) of the Internal Revenue Code, in Part V, Section 7500, Employment Services Manual, Secretary's Standard for Fraud and Overpayment to require that a state's law include provisions for such methods of administration as are, within reason, calculated:
    - To detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others.
    - To deter claimants from obtaining benefits through willful misrepresentation.
    - To recover benefits overpaid under certain circumstances.

Overpayment Recovery

The states must hold the claimants liable to repay benefits that were received improperly and take an active role to recover improper payments (payment recapture audits). States may waive repayments for non-fraud overpayments when it would be against equity and good conscience pursuant to their state's law. The tools used by states for recovering overpayments vary from state to state. Below is a list of some of the recovery activities and tools used by states:

- Offsets from benefits
- Offsets from state and Federal income tax refunds
- Offsets from lottery winnings, homestead exemptions and other benefits including the Alaska Mineral Refund
- Interstate recovery agreements
- Repayment plans
- Civil actions including wage garnishments and property liens
- Skip tracing, collection agencies, and credit bureaus
- Probate and bankruptcy
- Referral to Office of Inspector General and other law enforcement agencies
- State and Federal prosecution

- Establishment of interest and penalties onto overpayments which adds an incentive repay quickly.

On January 28, 2011, the regulations for the offset of Federal tax refund payments to collect unemployment insurance compensation (UIC) debts due to fraud or a person's failure to report earnings were published. The Department worked closely with the Treasury Department to provide technical guidance to the states for the implementation of the Treasury Offset Program (TOP). Since the inception of the UIC Debt program with TOP, $119.2 million of overpayments have been recovered through almost 100,000 offsets against Federal tax refund payments. As of March 8, 2012, 9 states have implemented the TOP and several other states are in different stages of testing and implementation.

State	UI Overpayments Recovered through TOP as of March 8, 2012
Alabama	$2,377,896.50
Arizona	$451,527.20
Illinois	$25,147,143.45
Maryland	$12,446,969.00
Michigan	$3,886,347.42
Mississippi	$12,507,234.25
New York	$43,758,231.68
Pennsylvania	$6,507,049.27
Wisconsin	$12,123,614.69
Total $ Recovered	**$119,206,013.46**

Source: Financial Management Services, U.S. Treasury

When improper payments are recovered they are returned to the states' UI trust fund account from which they were paid. States are required to report quarterly on overpayment detection and recovery activities on the Employment and Training Administration (ETA) 227 report. The information reported on the ETA 227 report is based on actual counts of UI overpayments identified and recovered by the state agencies. Refer to attached report on state level recoveries for calendar year 2011. Currently, UI recovery data is not available on the Department's UI Improper Payments webpage (http://www.dol.gov/dol/maps/map-ipia.htm). We plan to publish the recovery data on the webpage by May, 2012.

	Calendar Year 2011			Method of Recovery				
St	UI & EB total established	UI & EB adjusted established+	UI & EB total recoveries	UI & EB Total Cash	UI & EB Total Benefit offset	UI & EB Total state income tax offset	UI & EB Total by other states	UI & EB Total by other method (Includes TOP)
US	$1,924,316,188	$1,834,235,659	$982,700,009	$289,010,933	$557,677,959	$77,884,483	$2,914,851	$55,211,783
AK	$8,767,280	$8,767,280	$4,174,099	$793,923	$2,375,745	$0	$54,628	$949,803
AL	$28,116,393	$28,008,197	$10,038,736	$2,245,796	$5,452,669	$2,276,394	$63,877	$0
AR	$17,423,758	$16,936,812	$3,389,380	$1,258,435	$1,327,509	$690,341	$0	$113,095
AZ	$28,812,663	$28,151,057	$13,133,061	$4,266,481	$5,803,959	$2,485,326	$166,005	$411,290
CA	$200,627,335	$175,774,222	$62,134,795	$24,924,333	$29,367,264	$4,190,130	$37,775	$3,615,293
CO	$25,197,066	$18,197,917	$17,400,005	$6,747,278	$10,438,646	$0	$214,081	$0
CT	$13,826,737	$13,734,530	$8,431,044	$2,607,322	$4,229,147	$1,002,740	$0	$591,835
DC	$8,727,183	$8,719,808	$2,900,944	$988,834	$1,584,207	$278,067	$29,466	$20,370
DE	$5,454,998	$5,405,980	$2,664,723	$665,974	$1,558,538	$420,120	$0	$20,091
FL	$87,797,035	$85,669,907	$28,696,013	$9,198,712	$17,689,339	$0	$59,922	$1,748,040
GA	$17,671,458	$17,236,516	$6,945,505	$2,565,318	$2,453,740	$1,926,447	$0	$0
HI	$1,715,192	$1,435,057	$799,896	$351,251	$401,261	$0	$0	$47,384
IA	$10,749,816	$10,694,173	$6,450,456	$1,906,755	$3,721,904	$640,379	$34,804	$146,614
ID	$10,282,334	$9,876,791	$5,918,716	$1,771,999	$1,171,627	$508,061	$59,745	$2,407,284
IL	$114,725,562	$114,725,562	$53,902,570	$15,197,142	$28,297,636	$10,407,792	$0	$0
IN	$26,751,481	$26,751,481	$17,957,359	$3,236,794	$11,154,041	$3,285,567	$0	$280,957
KS	$22,285,950	$22,133,679	$8,053,463	$2,925,172	$2,596,642	$2,439,364	$92,285	$0
KY	$11,898,442	$11,898,442	$5,655,340	$2,394,282	$2,358,406	$902,652	$0	$0
LA	$24,109,596	$23,004,763	$5,806,043	$1,328,118	$2,682,263	$1,770,076	$825	$24,761
MA *	$30,195,350	$28,472,254	$11,173,896	$2,465,265	$6,063,525	$2,645,106	$0	$0
MD	$46,412,447	$45,982,142	$19,654,040	$4,741,985	$10,410,453	$2,383,594	$117,650	$2,000,358
ME	$6,422,686	$6,100,722	$3,219,674	$845,792	$1,561,036	$607,152	$0	$205,694
MI *	$79,430,226	$77,964,484	$35,177,671	$27,420,915	$7,756,756	$0	$0	$0
MN	$37,053,755	$37,053,755	$22,651,764	$9,303,446	$8,971,375	$1,414,501	$43,946	$2,918,496
MO	$26,732,031	$26,732,031	$13,355,920	$3,522,379	$6,180,886	$1,497,494	$355,805	$1,799,356
MS	$15,870,501	$15,870,501	$7,935,582	$3,245,440	$2,528,661	$2,088,126	$6,824	$66,531
MT	$5,889,872	$5,846,808	$2,781,947	$767,136	$1,654,067	$208,950	$75,739	$76,055
NC	$28,895,973	$27,466,137	$15,011,036	$2,951,857	$8,821,866	$2,797,547	$54,422	$385,344
ND	$1,981,078	$1,968,468	$1,272,492	$851,087	$346,160	$75,245	$0	$0
NE	$6,335,680	$6,335,680	$4,100,065	$716,566	$2,417,820	$836,671	$41,089	$87,919
NH	$5,078,955	$3,517,829	$1,550,538	$1,188,968	$361,570	$0	$0	$0
NJ **	$223,613,064	$223,051,648	$173,855,268	$18,965,372	$147,157,360	$7,732,536	$0	$0
NM	$17,146,103	$17,146,103	$5,465,837	$1,539,852	$3,087,923	$808,766	$17,482	$11,814
NV	$35,444,474	$33,621,463	$9,665,341	$3,210,739	$6,454,602	$0	$0	$0
NY **	$113,221,418	$78,517,738	$103,901,094	$11,802,425	$57,309,700	$11,848,546	$0	$22,940,423
OH	$89,622,269	$89,488,599	$35,133,244	$13,179,705	$21,940,478	$9,811	$0	$3,250
OK	$9,209,466	$9,209,466	$4,677,965	$1,811,689	$2,380,379	$471,657	$14,240	$0
OR	$27,749,493	$26,548,004	$11,225,234	$3,663,719	$4,091,921	$491,334	$197,037	$2,781,223
PA	$95,314,393	$94,371,270	$38,912,310	$16,998,587	$21,913,723	$0	$0	$0
PR	$6,351,638	$6,351,638	$3,277,187	$211,668	$3,065,519	$0	$0	$0
RI	$9,764,383	$9,098,288	$3,842,064	$1,483,950	$1,719,163	$621,593	$0	$17,358
SC	$21,640,860	$21,466,481	$9,986,012	$3,019,106	$5,261,920	$1,637,193	$67,498	$295
SD	$1,863,963	$1,819,488	$1,067,039	$616,387	$378,420	$0	$39,111	$33,121
TN	$18,906,087	$18,312,988	$7,727,747	$4,781,014	$2,893,779	$0	$52,954	$0
TX	$133,854,519	$133,329,049	$67,610,569	$16,479,419	$50,542,976	$0	$588,154	$0
UT	$13,477,304	$13,351,699	$7,830,650	$3,301,378	$2,728,943	$478,984	$69,997	$1,251,348
VA	$28,688,331	$28,688,331	$11,645,019	$4,563,782	$4,085,148	$2,950,616	$45,473	$0
VT	$2,297,563	$1,582,376	$780,418	$307,684	$276,484	$175,060	$856	$20,334
WA	$71,110,674	$69,083,817	$44,824,040	$29,964,806	$14,859,234	$0	$0	$0
WI	$41,306,015	$40,441,179	$35,340,036	$8,386,173	$13,873,951	$2,880,545	$0	$10,199,367
WV	$4,897,880	$4,897,880	$1,924,655	$756,852	$1,119,553	$0	$11,570	$36,680
WY	$3,597,458	$3,445,199	$1,671,527	$571,871	$798,065	$0	$301,591	$0

Notes: Source ETA 227 reports - UI includes State UI, UCFE, and UCX overpayments

* One or More Reports missing

** Reporting inconsistencies under investigation

\+ Overpayments established excludes overpayment waived under state law

Questions for the Record from Rep. McDermott to The Honorable Jane Oates

Hearing on Moving from Unemployment Checks to Paychecks: Implementing Recent Reforms

April 25, 2012

Ways and Means Subcommittee on Human Resources

Question: What is already being done under Federal law to regarding states' outstanding advances (loans)?

Answer: Under permanent Federal law, advances states receive to pay unemployment compensation begin to accrue interest after a period of time. As you know, the American Recovery and Reinvestment Act of 2009 waived interest accrual and payment on these advances for two years. When that ended, advances began to accrue interest and the first interest payment was due by September 30, 2012. The amount of interest each state paid is in the table on the next page. In addition, permanent Federal law includes a mechanism to help states repay the principal of these advances. Typically, employers in a state receive a 5.4%credit against the full Federal Unemployment Tax Act (FUTA) tax. However, if states have outstanding advances for a specified period of time, that credit begins to be reduced. The first year of reduction, employers pay an additional 0.3% FUTA tax with the reduction generally increasing in 0.3% increments in succeeding years. These additional FUTA payments are used to pay down the principal of the state's advances. Information about the FUTA credit reductions applicable in each of the states is in the table on the last page.

State Interest Payments

The first interest payment on advances (loans) was due on September 30, 2011. The amount of interest states paid for Fiscal Year (FY) 2011 is listed below.

State	Title XII Interest Payments for FY 2011 ($ millions)
Alabama	3.90
Arizona	8.24
Arkansas	10.11
California	303.46
Colorado	11.43
Connecticut	22.65
Delaware	1.73
Florida	56.11
Georgia	21.04
Hawaii	0.21
Idaho	5.53
Illinois	71.42
Indiana	60.37
Kansas	4.60
Kentucky	28.15
Michigan	106.03
Minnesota	14.89
Missouri	23.25
New Jersey	47.98
New York	95.44
North Carolina	78.45
Ohio	70.74
Pennsylvania	104.56
Rhode Island	7.14
South Carolina	26.48
Vermont	2.12
Virgin Islands	0.66
Virginia	8.77
Wisconsin	42.26
Total	1,237.72

Actual and Potential FUTA Credit Reductions (Tax Increases) to Repay Advances
(Payable on a $7,000 taxable wage base)

State	CY 2009	CY 2010	CY 2011	CY 2012*
Alabama			**	0.6%
Arizona				0.3%
Arkansas			0.3%	0.6%
California			0.3%	0.6%
Colorado				0.3%
Connecticut			0.3%	0.6%
Delaware				0.3%
Florida			0.3%	0.6%
Georgia			0.3%	0.6%
Illinois			0.3%	0.6%
Indiana		0.3%	0.6%	0.9%
Kansas				0.3%
Kentucky			0.3%	0.6%
Michigan	0.3%	0.6%	0.9%	***
Minnesota			0.3%	0.6%
Missouri			0.3%	0.6%
Nevada			0.3%	0.6%
New Jersey			0.3%	0.6%
New York			0.3%	0.6%
North Carolina			0.3%	0.6%
Ohio			0.3%	0.6%
Pennsylvania			0.3%	0.6%
Rhode Island			0.3%	0.6%
South Carolina		0.3%	****	0.9%
Vermont				0.3%
Virgin Islands			0.3%	0.6%
Virginia			0.3%	0.6%
Wisconsin			0.3%	0.6%

* These rates assume each state still has a loan balance on November 10, 2012, and no state qualifies for an additional reduction under FUTA, Section 3302(c), avoidance under Section 3302(g) or cap under Section 3302(f).
** AL did not have a loan balance on 11/10/11
*** MI did not have a loan balance on 1/1/12
**** SC qualified for avoidance for 2011

Credit Reduction	Cost per $7,000 Worker
0.3%	$21
0.6%	$42
0.9%	$63

NOTE: FUTA credit reductions essentially result in increased FUTA taxes that employers in a state pay. The additional amounts paid are used to pay back the state's advances (loans).

Actual and Potential FUTA Credit Reductions
(Payable on a $7,000 taxable wage base)

State	CY 2009	CY 2010	CY 2011	CY 2012*
Alabama			**	0.6%
Arizona				0.3%
Arkansas			0.3%	0.6%
California			0.3%	0.6%
Colorado				0.3%
Connecticut			0.3%	0.6%
Delaware				0.3%
Florida			0.3%	0.6%
Georgia			0.3%	0.6%
Illinois			0.3%	0.6%
Indiana		0.3%	0.6%	0.9%
Kansas				0.3%
Kentucky			0.3%	0.6%
Michigan	0.3%	0.6%	0.9%	***
Minnesota			0.3%	0.6%
Missouri			0.3%	0.6%
Nevada			0.3%	0.6%
New Jersey			0.3%	0.6%
New York			0.3%	0.6%
North Carolina			0.3%	0.6%
Ohio			0.3%	0.6%
Pennsylvania			0.3%	0.6%
Rhode Island			0.3%	0.6%
South Carolina		0.3%	****	0.9%
Vermont				0.3%
Virgin Islands			0.3%	0.6%
Virginia			0.3%	0.6%
Wisconsin			0.3%	0.6%

* These rates assume each state still has a loan balance on November 10, 2012, and no state qualifies for an additional reduction under FUTA, Section 3302(c), avoidance under Section 3302(g) or cap under Section 3302(f).
** AL did not have a loan balance on 11/10/11.
*** MI did not have a loan balance on 1/1/12.
**** SC qualified for avoidance for 2011.

Credit Reduction	Cost per $7,000 Worker
0.3%	$21
0.6%	$42
0.9%	$63

[Public Submissions for the Record follows:]

STATEMENT FOR THE RECORD

OF

JOANNA S. MONROE
VICE PRESIDENT, DEPUTY GENERAL COUNSEL
AND CHIEF COMPLIANCE OFFICER
TRUEBLUE, INC.

FOR THE HEARING ON

"MOVING FROM UNEMPLOYMENT CHECKS TO PAYCHECKS: IMPLEMENTING RECENT REFORMS"

BEFORE

THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES

APRIL 25, 2012

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Chairman Davis, Ranking Member Doggett, and members of the House Ways and Means Human Resources Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of TrueBlue, Inc. ("TrueBlue"). We applaud the Committee and Subcommittee for their attention and work on the critical issue of unemployment and, in particular, on policies designed to promote reemployment.

Our nation continues to grapple with the stalled economic recovery and persistent unemployment. As reforms are considered to unemployment insurance, we strongly urge Congress to consider opportunities to expand temporary employment, which can play a significant role in increasing reemployment.

TRUEBLUE

TrueBlue is a leading supplier of temporary work. In 2011, TrueBlue connected approximately 300,000 people to work, paying nearly $600 million in wages and serving nearly 150,000 businesses in the service, retail, wholesale, manufacturing, transportation, and construction industries. TrueBlue also employs 2,500 regular headquarter and branch staff.

TrueBlue provides temporary blue collar and skilled work through five lines of business: Labor Ready; Spartan Staffing; CLP Resources; Plane Techs; and Centerline. The TrueBlue family of companies is committed to providing individuals with opportunities for growth and customers with the help they need to succeed in today's competitive environment.

TEMPORARY WORK

Temporary employment plays a critical role in the economy by providing employment flexibility for workers and businesses. Temporary staffing firms employ more than 10 million people each year. These jobs offer millions of people the opportunity to work, particularly as the economy continues its fragile recovery.

Temporary employment is critical to mitigating unemployment, while offering a significant opportunity to find permanent employment through temporary jobs. Temporary employment also provides people with on-the-job training, allowing them to learn new skills and expand their knowledge base, which can later be transferred to other employers and strengthened.

At the same time, temporary employment provides businesses with the opportunity to support or supplement their workforce in various work situations, such as employee absences, skill shortages, seasonal workloads, and special assignments or projects. Moreover, in the current economy, temporary employment is leading the jobs recovery by allowing employers to gauge business and economic conditions before committing to permanent hires.

In TrueBlue's experience, the average tenure of a temporary employee is approximately one month per year. However, even if someone works for us for *one day*, that person is an employee of the company rather than an independent contractor. Employee status integrates workers into the U.S. economy, ensuring that they are eligible to work in the U.S., that all

workers' compensation, unemployment, and income taxes – as well as any court-ordered garnishments – are withheld and collected, and that W-2s report income accurately.

COMBINED COMPENSATION PROGRAM

Issue

For many of the unemployed, temporary staffing agencies are an integral part of their job search. Even in today's tough economy, TrueBlue is experiencing a shortage of qualified individuals seeking temporary employment. The current unemployment insurance system, in certain instances, creates a disincentive for individuals who receive unemployment insurance to work in a temporary job, which could serve as a working interview and possibly lead to permanent placement.

The following example provides an illustration. Let's say that an individual, who previously held a job as a carpenter, is now unemployed and receives $350 per week in unemployment insurance. If she goes to a branch of a temporary staffing agency and applies as part of her required job search, she is often incentivized to turn down an offer for a temporary job because she is likely to lose her unemployment insurance and/or she may receive more money by collecting unemployment insurance. This keeps her from accepting a job that may teach her new skills or that could lead to an offer of permanent employment.

Proposal

One option for addressing this issue is to establish a "Combined Compensation Program" ("Program"). The Program would modify the incentive structure of the unemployment insurance system by encouraging individuals to accept temporary or seasonal employment while maintaining their eligibility to remain on unemployment insurance.

Under the Program, an individual who accepted a temporary or seasonal job would continue to be eligible to receive unemployment insurance, but at a reduced amount. The reduced unemployment insurance payment *would compensate the individual for the gap* between their earnings and their standard unemployment insurance payments, plus an additional incentive amount.

For example, assume that an individual accepted a temporary or seasonal job that paid $325 per week. In order to compensate for her lower weekly earnings (she received $350 on unemployment insurance) and provide an additional incentive to work, unemployment insurance would pay a flat percentage of her standard unemployment insurance payment. For example, if the unemployment insurance payment percentage was 20 percent, she would receive an unemployment insurance payment of $70 per week, bringing the total received to $395 per week.

The Program would have a number of benefits. First, the unemployed individual is back at work. Second, businesses that are unable to hire full-time workers due to fluctuating demand can still grow the economy and provide jobs through temporary employment. Third, the government benefits as unemployment insurance payments provided to these individuals would be reduced. In the example above, the amount of unemployment insurance payments are

reduced from $350 per week to $70 per week. Finally, the unemployed individual also wins because this job could teach her new skills for her next job or turn into a permanent job with one of the businesses to which she is assigned by the temporary staffing company. Taken together, the approach of the Program is more efficient and likely more effective when compared to alternatives that fully subsidize the cost of employing an unemployed worker for a short period of time.

CONCLUSION

TrueBlue greatly appreciates the opportunity to submit this statement. As Congress considers policies and programs to assist our nation's unemployed, we strongly urge adoption of proposals similar to the Combined Compensation Program, which are a win for the unemployed individual, a win for the business, and a win for the government. We are pleased to serve as a resource to the Subcommittee, Committee, and Congress and we look forward to our continued work together on these important issues.

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