

**STATEMENT OF  
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U.S. DEPARTMENT OF LABOR  
BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
SELECT COMMITTEE ON ECONOMIC DISPARITY AND FAIRNESS IN GROWTH**

**“Economic Security Programs Supporting American Livelihood”**

**July 28, 2022**

**Introduction**

Thank you Chairman Himes, Ranking Member Steil, and members of this committee for the opportunity to testify today.

Just prior to the pandemic, unemployment insurance experts were concerned that the Unemployment Insurance (UI) system had dwindled to the point where it would not serve claimants appropriately during a downturn and serve the countercyclical function (macroeconomic stabilization) that it is intended to play. Fortunately, pandemic era benefits expanded access, sufficiency, and duration, so the economic calamity tied to the health crisis remained contained. The UI system has served as a critical lifeline to workers, helping 53 million workers stay afloat during a pandemic and economic crisis and putting over \$870 billion into the economy – and staving off an even deeper recession. However, benefits did not always reach people on time and sometimes reached the wrong people, including organized criminal enterprises, in shockingly high numbers. Critically, lack of access disproportionately affects workers of color, people with disabilities, poorly paid individuals, and people on the other side of the digital divide.

During the pandemic, as states struggled to get the right benefits to the right people at the right time, heroic civil servants sacrificed tremendously. They worked significant overtime hours while under tremendous scrutiny, enduring verbal abuse and threats, and dealing with claimants who were at wits’ end and sometimes suicidal. The career civil servants at the Department of Labor similarly have quietly and competently kept this program running despite their limited resources. But those resources are depleted. Particularly in state agencies, turnover has been very high, further decreasing the limited capacity. Unless we invest in these systems, they will be even less effective in responding to the next crisis.

Congress provided \$2 billion to the Department of Labor to improve unemployment insurance systems to ensure timely payment of benefits, promote equitable access, and detect and prevent fraud. While we have made considerable progress with these funds, a one-time infusion of funding will not provide the lasting change needed to ensure that UI continues to accomplish

what it was designed to do. Passing comprehensive UI reform and providing sustained, sufficient administrative funding that the Administration has proposed are necessary for the system to function appropriately in normal economic times and be prepared to counter the next recession.

Looking back at two key past bipartisan commissions on unemployment compensation reform, the 1980 National Commission on Unemployment Compensation final report and the 1996 Advisory Council on Unemployment Compensation (ACUC) recommendations, the reform principles laid out in the FY 2023 President’s Budget neatly line up with past findings. This document will discuss how the vast majority of reforms promoted today by advocates and Members of Congress also line up with recommendations that these two commissions spent years deliberating and putting forth in a bipartisan manner.

### **Key purposes of unemployment insurance**

Unemployment Insurance was included in the Social Security Act in 1935. On the heels of the Great Depression, the Roosevelt Administration and Congress were keenly aware of the hardship that involuntary unemployment places on people, families, communities, and the economy. This program was intended not just to alleviate individual suffering but provide wage stabilization by making sure that individuals have time to seek a suitable replacement for their old job so that wages would not be driven down as a result of mass layoffs. The method of employer taxation, referred to as “experience rating,” charges employers more as they lay off more workers. This is intended to serve as a means of layoff aversion. The program was also intended to provide macroeconomic stimulus during times of economic downturn. This is particularly important to keep in mind when we consider groups excluded from UI eligibility – it is not just individuals that suffer, it is their entire community. People who have never been involuntarily unemployed can still thank the UI program for preventing the contagion of economic suffering, particularly during the pandemic. This means there is also a cost to communities when claimants cannot access benefits. Finally, the program keeps workers attached to the workforce by requiring that claimants are able to work, available for work, and actively seeking employment. An individual’s connection to UI benefits also facilitates connection to Employment Services and re-employment and retraining opportunities.

This macroeconomic stabilization effect has serious implications for the program’s capacity to facilitate equitable recovery from lulls in the economic cycle. Throughout the business cycle, Black workers remain twice as likely to be unemployed as white workers and bear the brunt of the insufficiency of regular UI benefits. In addition, states with the lowest unemployment benefit levels available under state law generally have the largest Black populations. According to the Bureau of Labor Statistics, while Black workers were far more likely to apply for benefits during the pandemic, they had a far lower success rate at receiving benefits than white workers (72.8% versus 78.2%) and Hispanic workers had a lower success rate than non-Hispanic applicants (75.6% versus 77.6%). The fact that some states with disproportionately large Black populations offer fewer than 26 weeks of benefits has an especially pernicious racial impact, since Black unemployed workers were more likely to be unemployed for over 26 weeks than any other group before the crisis. Lower reciprocity rates also correlate with states with more diverse populations, and states with low reciprocity prior to the pandemic carried those characteristics over into the COVID-19 crisis, which resulted in lower application success rates across programs for

claimants in states that had poor access to benefits prior to the pandemic. The General Accountability Office recently noted this significant concern in their report titled [Pandemic Unemployment Assistance: Federal Program Supported Contingent Workers Amid Historic Demand, but DOL Should Examine Racial Disparities in Benefit Receipt | U.S. GAO](#)

That lack of access has a multiplier effect when considering both the wage stabilization effect of UI reciprocity as well as the macroeconomic stabilization effect. When whole categories of workers cannot access an unemployment benefit, an economic downturn means that a whole community loses the macroeconomic stabilizer effect. Additionally, the economic downturn and lack of an income replacement makes workers more desperate to accept a significantly worse replacement job, which can drive down workers' earning potential for years. Lack of access to UI means that every economic downturn sets communities of color back.

### **Pre-pandemic groundwork**

As of February 2020, unemployment systems were particularly unprepared for any recession, much less a catastrophic global pandemic, the intentional shut down of the economy, and standing up three entirely new federal unemployment programs with new eligibility guidelines. Administrative funding for states was at a fifty-year low. In 2020, administrative funding flowing to states was \$2.14 billion. Twenty years earlier, in 2000, that same funding was \$2.2 billion not adjusted for inflation. Taking into account inflation and population growth, states were asked to do a great deal more work with already greatly diminished resources. Similarly, insufficient resources were provided for federal staff to support the Office of Unemployment Insurance, the group tasked with doing a tremendous amount of guidance, enforcement, assistance, and problem solving during the pandemic. The enacted levels of funding for program administration in the area of Workforce Security, which funds UI program staff in the Department's national and regional offices, declined significantly from a level of 419 full time positions in FY 2006 to 168 in FY 2021.

That lack of resources made the states' development of appropriate, modern, technology entirely unfeasible. The most cited metric is that fewer than 20 states had fully "modernized" IT systems entering the pandemic, but upgraded technology alone was not necessarily a predictor of the state system's resilience. That only paints a small part of the picture. The reality is that while state systems that had upgraded from antiquated COBOL mainframes often were more agile and adaptable, some states on those mainframes were able to adapt. At the same time, many states that had transferred their systems to the cloud still struggled. Due to chronic under-resourcing, it is fair to say that there is not a single system in the nation that was sufficiently resourced to take on the kind of surges experienced during the pandemic, as well as the implementation of new programs that were required. While many states are performing quite admirably considering the level of funds available, they all need the kind of improved enhanced, reliable annual funding requested in the 2023 Budget, in addition to the policy improvements that are discussed later in this document, to avoid catastrophic failures in the next economic crisis.

Further, administrative funding and improvements alone will not make UI systems recession ready – setting meaningful floors for benefit accessibility with UI reform is key to the program's

future success. As observed in the 1996 ACUC commission’s findings, minimum eligibility and benefit standards are necessary to preserve the program’s ability to effectively serve as a countercyclical stabilizer for the 53 states and territories. Absent this baseline, other reform measures would likely create a race to the bottom across states to reduce taxes, and that competition would “adversely and disproportionately affect low-wage workers.” In the absence of such a floor, states have, as predicted, enacted increasingly punitive eligibility standards and lowered benefit levels, particularly in the wake of the Great Recession. This is not just a function of natural state competition for low taxes, but also a function of financing mechanisms that levy the greatest tax burden on employers right at the tail of economic downturns. Additionally, as involuntary unemployment is a temporary state, people who identified as unemployed during a downturn will return to employment and formerly unemployed workers tend to lose the focus of UI policymakers just as employer taxes are increasing. Therefore, at the state level, the main focus around the unemployment system tends to tip toward employers over claimants between recessions.

States have reduced benefit amounts in several ways. Some states continue to enact laws to reduce the duration of benefits below what had been considered the standard of 26 weeks. States have reduced benefit amounts. Some states have also lowered standards for what constitutes “suitable work” so that claimants will have to accept jobs that replace less of their former income, eroding the wage stabilization goals of the program. Some states have increased the difficulty to achieve continuing eligibility by adding requirements such as increasing work search expectations. Absent overt qualification standards, some states have also increased administrative hurdles to access the system. Some of those administrative hurdles created the greatest friction during the pandemic.

### **What happened during the pandemic**

On the first week of March 2020, seasonally adjusted initial claims for unemployment were 211,000. By the last week of March, that number jumped to 6.6 million new claims—a 3,000 percent increase. Initial claims for all programs remained at over 1 million every week for the next year. The highest week on record prior to the pandemic was 695,000 in October 1982. In March 2020, Congress passed emergency legislation, the Coronavirus Aid, Relief and Economic Security Act (CARES) Act, setting up three new benefit programs: one to increase benefit levels by \$600 per week called Federal Pandemic Unemployment Compensation (FPUC), one to extend duration of current benefit programs by 13 weeks called Pandemic Emergency Unemployment Compensation (PEUC), and one to establish an entirely new program called Pandemic Unemployment Assistance (PUA) meant to cover workers affected by COVID-19 that regular benefit programs did not cover. Because states had reduced benefit eligibility, prior wage replacement, and duration in the regular unemployment compensation (UC) program in recent years, these additional federal programs were especially necessary for the unemployment system to achieve its intended goals.

These three programs did help the UI system to achieve one of its primary goals – countercyclical stabilization. The recession following widespread shutdowns is dramatically “v-shaped.” However, due to historic underfunding and inattention to systems between recessions,

millions of Americans – including workers at unemployment agencies – suffered. First, many claimants waited months for benefits and had difficulties even filing an initial claim as technology failed – sometimes shutting entire systems down - and a combination of high call volumes and limited state agency staffing resources kept applicants on the phone for hours. Then, around May 2020, major fraud rings began to use stolen identities and other criminal tactics to apply for unemployment benefits, shutting down systems again as states worked to identify the criminals in their queues. Because it took time to fully understand the rules of brand-new programs, including the unprecedented PUA program, states began to identify claims that had been paid incorrectly and issue overpayment notices. Until the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) was enacted in December 2020, states could not waive any overpayment in the PUA program even when it was the result of agency error and would cause massive hardship. Nor could states request documentation substantiating the individual’s employment or self-employment status, relying instead on self-certification as required by the CARES Act. As two last minute extensions of the CARES Act UC programs were added with the Continued Assistance Act in December 2020 and the American Rescue Plan Act (ARPA) in March 2021, as well as additional eligibility requirements, states then faced lag times in paying timely benefits as reprogramming systems and training staff cannot happen overnight.

Largely as a result of the impact of the pandemic on UI systems, and the additional attention that brought to the programs, the General Accountability Office recently issued a thoughtful analysis of the myriad of challenges that this program faces. With this report, entitled [Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks](#), the GAO put this program on their “high risk list.” It correctly identifies challenges that can be addressed administratively at the state and federal level, as well as the need for comprehensive UI reform, which we stand ready to work with Congress to achieve.

While a deadly global pandemic was certainly not anticipated, this level of chaos was unnecessary. Passing the President’s Budget Request to appropriately fund state agencies, along with UI reform, are the most important steps that Congress can take to ready states for future crises. The technical assistance, direct grant funding to states, and technology modernization work that the Department of Labor is undertaking with the \$2.0 billion appropriation under ARPA will create a foundation to prepare state systems for the challenges they face. In addition, states are taking their own initiative in many cases to make their systems more resilient, and it is important to recognize their efforts.

### **The need for UI reform**

While the benefits that Congress passed to support unemployed workers during the pandemic were critical, and saved lives, communities, and the economy as a whole, they were a temporary stopgap that masked deficiencies in payment sufficiency, access, and duration for the permanent UI program under state laws. The need for additional reform is urgent, and the Administration is eager to work with Congress on broad changes to modernize the program as well as advance racial, geographic, and gender equity in the UI system. A more sufficient and well-resourced underlying UI program would have prevented the chaos that left too many workers stranded during the pandemic.

The President's Budget includes specific principles for reform:

- **A reformed UI system must provide adequate benefits in every state.** Induced by financial strain after the last recession, a number of states reduced UI benefit duration or cut benefit levels below a sustainable living income in an attempt to keep low taxes on employers. In 2020, these cutbacks were disproportionately felt by people of color, women, and low-wage workers, particularly in southern and western states. This was compounded by the fact that these same groups are also overrepresented in the service industries that were most affected by pandemic-related shutdowns, namely education, health care, leisure, hospitality, and retail. UI reform must improve benefits across states by ensuring that benefit levels and benefit duration are adequate to allow unemployed workers—particularly those who have historically been excluded from or struggled to access UI benefits—to receive the income support and job placement services they need to find their next job. This will prevent states from racing to the bottom by cutting benefits in an attempt to keep employers' taxes low.
- **A modern UI system must be easily scalable and respond automatically to economic downturns.** This would allow UI benefits to ramp up quickly and automatically when the economy weakens and would tie the expiration of these benefits to improvements in the economy, rather than arbitrary deadlines. Restructuring the existing Extended Benefits program so it responds better to recessions and increases in long-term unemployment would provide certainty for workers and avoid the scenarios in which political dysfunction leads to delays in benefits when people need them most. This would also make it easier for states to prepare for extensions in advance.
- **The UI system must reflect the modern economy and labor force.** This starts with a federal floor on states' eligibility rules, so they no longer use formulas that unnecessarily penalize workers with limited work histories and requiring states to allow workers seeking part-time employment or who lost work for family-related reasons to claim benefits. Additionally, workers currently incorrectly classified as independent contractors, but who should be considered employees, need adequate coverage.

The Administration also supports ensuring that more struggling employers take advantage of Short-Time Compensation (also called work-sharing, a layoff aversion program) in order to avoid layoffs, something that happened too rarely during the COVID crisis. In addition, the Administration supports finding a way to address the lack of support in the existing UI system for many workers, including independent contractors, low-income and part-time workers, and workers with nontraditional work histories.

- The pandemic severely drained state unemployment trust funds, and comprehensive UI reform must improve state and federal solvency and **ensure more equitable and progressive financing mechanisms.**

- Strengthen the UI program’s role in helping workers find a job that is a good match **with investments that expand reemployment services** for unemployed workers receiving benefits.
- **Any reform should ensure the UI program’s access and integrity** before the next crisis. The pandemic revealed deficiencies in states’ ability to administer their UI programs and illuminated inadequate staffing levels, incomplete performance measures, and poor IT infrastructure. In the span of a few weeks, states were inundated with millions of claims, leading to crashing websites and inaccessible, overloaded call centers. Sophisticated criminal networks also targeted the UI system using stolen and fabricated identities to siphon off benefits. These factors led to unprecedented delays in processing for legitimate claimants and potentially significant monetary losses for both the states and the federal government.
- Comprehensive UI reform should include additional authority for the Department to help states combat improper payments, including fraud. To further address the difficulties that many states face, the federal government should develop and maintain a modern, user-friendly system that is accessible to all workers and eases the burden on states. The Department should also have direct access to all claim and wage data used by state agencies to conduct research, evaluation, and performance assessments of state UI programs. Finally, the Department needs improved enforcement mechanisms to ensure that states are equitably paying benefits in a timely manner to all eligible applicants. The American Rescue Plan contains a vital down payment on this effort by giving the Department the funding necessary to combat fraud, improve equitable access, and begin creating a federal benefits delivery system that states can adopt instead of developing their own.

### **Examples of Bipartisan Reform Proposals**

To help to illustrate potential reform components in line with these broad principles, below are proposals that have been recommended by prior Administrations, proposed in the current Congress, recommended by past bipartisan commissions, or proposed by economic and policy experts outside government. These policy levers are all interconnected, so it is important to consider how addressing one plank could create pressure to reduce benefits through other levers. Establishing a benefit duration floor for example, in a vacuum, could simply result in states finding another mechanism to reduce access or benefit levels.

The two bipartisan commissions cited here are the 1996 ACUC and the 1980 National Commission on Unemployment Compensation (NCUC). The main UI reform proposal in the current Congress cited in this document is The Unemployment Insurance Improvement Act proposed by Senators Wyden, Bennett, and Brown.

The reforms proposed by these commissions underscore that a modern UI system must:

- (1) Provide adequate benefits in every state;**

- (2) **Be easily scalable and respond automatically to economic downturns;**
- (3) **Reflect the modern economy and labor force; and**
- (4) **Ensure more equitable and progressive financing mechanisms.**

**(1) A reformed UI system must provide adequate benefits in every state.** The bipartisan commissions and other experts have offered several proposals on how to ensure benefit adequacy, including:

- **Set a standard on benefit duration.** Until 2011, all states offered at least 26 weeks as a maximum duration, but trust fund shortfalls after the Great Recession caused states to cut the number of weeks of benefits. Currently ten states provide fewer than 26 weeks, with at least two more states enacting reforms to reduce benefits by next year.
- **Consider increasing the maximum benefit.** This would improve the replacement rate – the percent of prior income replaced – in many states to a more livable weekly benefit amount.
- **Consider minimum replacement rate formulas.** Experts recommend replacement rates varying from 50 percent to 80 percent, all of which would be a vast improvement over the status quo in which some states average around a third of income replaced.
- **Consider a minimum weekly benefit.** The above policies would result in much higher replacement rates for workers, but low-wage workers with sporadic work histories or unstable schedule would still receive low benefit amounts. Ensuring that all eligible workers get access to benefits by establishing a minimum weekly benefit amount can help them remain afloat during a period of unemployment and find suitable work.
- **Consider adding minimum dependent allowances.** Thirteen states provide dependent allowances where benefits are increased per dependent, recognizing that workers whose families depend on them require more resources. The allowances typically range between \$5 and \$25 per dependent.
- **Establishing an operational Alternate Base Period (ABP).** States determine UI benefit eligibility using a Base Period (*i.e.*, look-back period for prior wages earned), typically the first four of the last five completed quarters. Some states provide for an ABP, such as the last four completed quarters, which specifically helps the lowest income workers with the most unsteady work to qualify for benefits. Additionally, some have an ABP but are not properly utilizing it.
- **Expand coverage to more agricultural workers, domestic workers, and seasonal workers.** Agricultural workers and domestic workers were left out of UI coverage in 1935. While they were broadly included in the 1970's reforms, agricultural employers



with fewer than 10 employees are still exempted. No other small employers are exempted except those employing domestic workers paid less than \$1,000 per year. Given that both agricultural and domestic workers, both at that time and today are largely workers of color, further improving on these policies would promote equity. Similarly, states are permitted to exclude wages from seasonal workers under certain conditions.

- **Eliminate exemptions added during the 1970's amendments.** The 1970s amendments to the Social Security Act established restrictions such as taxation of unemployment benefits, excluding certain wages from the base period for educational employees “between and within terms” of school sessions, and establishing a mandatory pension offset. These changes have the impact of limiting benefits for workers, particularly low-wage workers and workers of color, and making it more difficult for unemployed workers to achieve sufficient wage replacement.
- **Improve Short-Time Compensation (STC).** STC, or work-sharing, allows businesses to reduce workers’ hours and supplement their reduced earnings with UI benefits instead of laying them off. This program was underutilized during the pandemic. Improvements to make the program easier to use are a priority for claimant advocates and the businesses that would like to be better able to utilize this workforce retention tool.

**(2) A modern UI system must be easily scalable and respond automatically to economic downturns.**

- **Improved Triggers for the Next Recession with 100 percent federal funding.** The Extended Benefits (EB) program is a permanent program that provides up to an additional 13 or 20 weeks of benefits when states are experiencing periods of elevated unemployment and after an individual exhausts regular UI benefits. Stakeholders have noted the inadequacy of the EB program in recessions for over 40 years, including by both the NCUC and ACUC. Reforming the EB program is the proposal favored by economic experts where—in theory—Congress would not be required to enact discretionary UI legislation in downturns. Additionally, it would provide a reliable extension program that states can prepare for in advance, avoiding expedited and inaccurate implementation of new temporary programs that may be enacted.

**(3) The UI system must reflect the modern economy and labor force.**

- **Consider a more expansive definition of employee.** To be considered a non-employee, the ABC test requires that a worker must: (A) be free from control or direction; (B) the work is performed outside the usual course of business for an employer; and (C) the individual is customarily engaged in an independent trade. Thirty-five states use an employee definition that is some version of ABC or A+B, with twenty-three states having all of A+B+C in their laws. After the success of PUA in keeping workers who were otherwise disqualified from receiving regular UI benefits afloat, it seems worth considering covering more workers going forward.

- **Allow workers seeking part-time work to receive benefits.** Many states do not allow workers seeking part-time work to receive benefits, which is especially detrimental to racial and gender equity.
- **Improve qualifications standards for partial UI.** Part-time work can often lead to full-time work, and we should encourage workers to accept part-time work as a means to re-enter the work force. Currently, many states only allow for an individual to earn up to 100 percent of the weekly benefit amount to still qualify for a partial unemployment benefit, with a de minimis amount of earnings disregarded before the individual's benefit amount is reduced. Encouraging individuals to work part-time while collecting UI benefits helps to maintain attachment to the workforce and enhances equity. One state had great success during the pandemic by increasing their threshold to \$300 of earnings disregarded (*i.e.*, an individual could earn up to \$300 in part-time work before their UI benefit was reduced).
- **Consider expanding good causes to quit.** Mandatory good personal causes could include moving to follow a spouse whose job moved, quitting to escape domestic violence, harassment, or stalking, as well as quitting to accommodate caregiving options. Mandatory work-related causes to quit should include health and safety risks, being asked to violate the law, being asked to engage in strikebreaking, erratic scheduling, the jobsite moved and would create an unreasonable commute, as well as being subject to harassment or a hostile work environment.
- **Consider a ceiling on minimum earnings required to establish eligibility.** Monetary eligibility is the minimum amount of earnings a worker is required to have earned in a period to receive UI benefits. During the pandemic, there was a correlation between states with the highest monetary eligibility standards and states with the highest proportion of PUA claims (*i.e.*, individuals who were disqualified from receiving regular UI benefits and were either separated from their job or unable/unavailable to work because of the pandemic). Lowering the monetary eligibility threshold would help include more part-time and low-wage workers in the regular UI program.
- **Consider eligibility of workers completing a temporary work assignment.** UI coverage could be provided to workers who complete a temporary assignment. Some states require workers to report back to a temp agency after completing an assignment or else the separation is considered a voluntary quit, oftentimes without good cause, and results in benefits being denied.
- **Consider eliminating waiting weeks.** The practice of not paying claimants for their first week of unemployment is a relic of the past, when mail played a greater role in confirming prior income. Every state eliminated waiting weeks for at least some period of the pandemic, and this helps workers the most who need benefits for every week as quickly as possible.

- **Consider permitting states to allow claimants to receive UI for some period after commencing new work.** States are currently prohibited by federal law from letting recipients who do not meet the definition of “unemployed” receive any benefits. It is understandable that workers would need a benefit for the first week of new employment, as most jobs do not pay the first check for anywhere from two weeks to a month. If given permission and states adopted this change, it would make the transition from unemployment to employment far easier for claimants and help reduce improper payments in the UI program.
- **Study a Jobseekers Allowance (JSA) and PUA-like Emergency Program.** The reforms outlined above, while impactful, would still not result in more universal coverage for unemployed workers. Some UI reform proposals have proposed a federally funded Jobseekers Allowance (JSA) that would help cover additional workers, including graduating students and bona-fide independent contractors. Similarly, the NCUC advised both the “establishment of a program of income-tested benefits, administered completely separately from unemployment insurance, to provide some minimum protection for all unemployed persons exhausting or not eligible for” UI and even a separate non-UI program for “homemakers” displaced. The PUA program helped cover these workers during the pandemic and Congress could also consider standing up a PUA-like program to cover more workers in emergencies. The GAO made a similar recommendation in the recent report cited earlier.

**(4) Ensuring more equitable and progressive financing mechanisms.**

- **Indexing the federal wage base while reducing the effective rate.** Expanding the federal wage base has been at the core of several UI reform proposals and would spread out the tax liability for employers over more months.
- **Consider improving DOL’s enforcement authority.** Currently, the federal government has two enforcement authorities that are so draconian they are never used. If a state does not conform or is substantially non-compliant with federal UC law, the Department has the authority to not certify the state’s UC laws. By not certifying the state’s UC laws, the state can lose access to their federal administrative funding, and employers in that state can lose the up to 5.4 percent tax credit against federal unemployment taxes owed (resulting in employers paying up to \$420 per employee per year instead of up to \$42). This denial is mostly all or nothing—the state’s employers either get the full credit or none at all, making it a difficult tool to use.
- **Impose stricter solvency requirements to receive the federal UI tax credit.** Many states entered the COVID crisis with trust funds that were not prepared for a normal recession and currently states have over \$30 billion of outstanding loans. One recommendation in the FY2017 Obama Budget would reduce the FUTA tax credit of up to 5.4 percent for employers in a state which has an unemployment trust fund with

an Average High Cost Multiple less than 0.5 for two or more consecutive January firsts (a value of 1.0 indicates that a state has sufficient funds in its account to pay benefits for one year of an average recession). This would address the long-term issue of insufficient trust funds, though this proposal runs the risk that states may try to meet this solvency standard by reducing unemployment benefits instead of raising taxes. Both historic bipartisan commissions had recommendations to push better forward funding of UI.

- **Consider Experimenting with Experience Rating.** States are currently required to use “experience rating,” which generally requires UI taxes increasing for an employer when more of their workers use the UI system. The 1996 ACUC included discussion about whether experience rating was more of a net positive in layoff prevention or a negative in inhibiting access as employers work to limit tax liability. This encourages employers to challenge benefits and turns them into a political constituency that opposes efforts to boost UI reciprocity. On the other hand, it is proven to reduce layoffs so it may be inadvisable to entirely eliminate the requirement. In keeping with past bipartisan interest in wanting to learn more about incentives, it might make sense to allow for experimentation on the state level to explore alternatives.

### **What we are doing in the Administration**

A great deal of our work is funded by ARPA. This included an appropriation of \$2 billion to DOL which was designated to promote equitable access; detect and prevent fraud; and ensure the timely payment of benefits within the UI system. These funds are provided in addition to existing funding sources for states to pay unemployment insurance benefits and administer unemployment insurance programs.

The underlying challenge for the Department is how to both prevent fraud, including the types of fraud seen at the onset of the pandemic, much of which was perpetrated by sophisticated criminal enterprises, while addressing long-standing equity and payment timeliness challenges in partnership with the 53 states and territories that administer UI benefits, each of whom has its own system.

- **Promote equitable access:** Inequity is pervasive in the UI system, with significant racial and ethnic disparities in UI access and duration levels that were exacerbated during the pandemic. In addition, some states have taken aggressive approaches to fighting fraud that, in some cases, result in disproportionately shutting workers of color out of the system, further exacerbating inequities. Finally, some states have added new administrative hurdles for initial and continuing claims that have made the system less accessible to workers of color, people on the other side of the digital divide, people with disabilities, and low-income earners.
- **Prevent and detect fraud:** The scale of fraud in UI increased dramatically in 2020, largely because of criminal enterprises that adopted sophisticated techniques to exploit the increase in benefits available as well as the proliferation of stolen identity

information from decades of data breaches. States initially did not have the staff or resources in place to implement the new pandemic UI programs, process an unprecedented number of claims, and catch fraud in real time. While states have since implemented new controls, many UI agencies are still contending with fraud rings that find innovative ways to attack systems, such as sophisticated phishing schemes preying on vulnerable current UI claimants to hijack their claims. These efforts are only expected to continue to evolve.

- **Ensure timely payment of benefits:** Even before the pandemic, states lacked sufficient funding and resources for basic administration, much less support for long-needed modernization. During the third week in March 2020, three million new people filed initial claims and six million filed claims each week during the next two weeks. By comparison, the previous all-time claims record was 695,000 in October 1982. Naturally, systems were plagued with capacity issues, resulting in significant benefit delays. Unprecedented fraud attacks bogged systems for weeks, and in some cases months, as states worked to flag and clear potentially fraudulent claims, leading to even larger backlogs in the system.

Informed by feedback from multiple rounds of stakeholder engagement with state workforce staff, the National Association of State Workforce Agencies, and advocates, the Department are working with state UI agencies to address these persistent challenges.

**The Department has allocated \$615 million in ARPA funds to immediately help states begin addressing these challenges through a series of grants and projects.** In addition, the Administration is committed to creating a framework for a more resilient and equitable Unemployment Insurance system for the long term.

#### **Efforts to Advance Equity:**

- **Grants to strengthen states' fraud prevention and detection capacities, while ensuring equitable access.** Using ARPA funds, the Department **awarded \$133.86 million in grant funds to 50 states and territories**, to aid in the detection and prevention of fraud. As part of the grantmaking process, the Department specifically instructed states that as they “consider additional tools to incorporate into their fraud management operations, equitable access to unemployment benefits must be at the forefront of the decision-making process.
- **Grants to states to advance equity.** The Department awarded **\$81.5 million in grants to 18 states**. These grants are innovative in requiring states to specify the metrics used to measure improvement for the historically underserved populations they have identified. The Department is reviewing additional applications from 31 other states that were received by the deadline of December 31, 2021, to provide up to a total of \$260 million to carry out activities that promote equitable access to UI programs, which include eliminating administrative barriers to benefit applications, reducing state workload backlogs, improving the timeliness of UI payments to

eligible individuals, and ensuring equity in fraud prevention, detection, and recovery activities.

- **Deploying teams of experts into 24 states to help identify process improvements.** Under the “**Tiger Team**” project, the Department has deployed teams of experts into 24 states to date on a voluntary basis to help identify process improvements. Equity efforts include helping all claimants in underserved communities, including women, standardizing and expanding translation services, simplifying communications, expanding mobile and offline access for workers who have limited internet access, and building partnerships with community-based organizations to assist claimants in successfully applying for their benefits. The Department has **allocated \$200 million** to fund state implementation of Tiger Team recommendations.
- **Helping workers access UI benefits through a pilot UI Navigator Program.** The Department awarded **\$18 million in ARPA funds** to pilot a new UI Navigator Program in seven states. The purpose of this program is for state UI agencies to partner with community-based organizations in helping historically underserved workers learn about, apply for and, if eligible, receive unemployment insurance benefits and related services, as well as to support state agencies in delivering timely benefits to workers.
- **Creating equity indicators through state UI data partnerships.** The Department is launching a series of pilot data partnerships with volunteering states to develop high-quality, consistent indicators of access to the UI program—such as through application rates, reciprocity rates, denials rates, and timeliness measures. These indicators will be disaggregated by characteristics such as race, ethnicity, gender, age, disability status, occupation, industry, and education. Currently, five states have expressed interest in participating in the initial cohort of data partnerships and they are currently negotiating data sharing agreements with the Department.

#### **Efforts to Address Fraud:**

- **Grants to States** – ETA provided four grant opportunities to states using CARES Act and ARPA funds (\$100 million on August 31, 2020, \$100 million on January 15, 2021, and grants of \$100 million and \$140 million on August 11, 2021) to assist states with their efforts to prevent and detect fraud and identity theft and recover fraud overpayments in PUA, PEUC programs, and regular UC programs. In addition, ETA provided up to \$260 million to states on August 17, 2021, for activities that promote equitable access to UC programs. This includes eliminating administrative barriers to benefit applications, reducing state workload backlogs, improving the timeliness of UC payments to eligible individuals, and ensuring equity in fraud prevention, detection, and recovery activities.
- **ID Verification Assistance** – ID verification is a critical tool in paying unemployment benefits to eligible individuals. Yet too few states have the resources,

expertise, and capacity needed to address effectively the wide-ranging attacks that the UI system has experienced from organized criminal enterprises. The nature of fraudulent activity in UC programs will continue to be highly dynamic and states will require additional support and continuous monitoring for evolving threats.

- **Website Resource for Victims of UI ID Fraud** – On March 22, 2021, the Department launched [www.dol.gov/fraud](http://www.dol.gov/fraud), a new website created for people to understand UI ID fraud, how to report it, and provide resources to help victims. ETA worked closely with other federal agencies, as well as state workforce agencies to consolidate the necessary steps to help victims of UI ID fraud and conducted user testing to confirm the website’s instructions were clear and easy to understand. The collaboration across government and with stakeholders created new partnerships. The Department continues to update the website and seek opportunities to streamline communications regarding UI ID fraud across government and with the public.
- **The UI Integrity Center** – The Department created and funds the UI Integrity Center, which is operated in partnership with the National Association of State Workforce Agencies (NASWA). The resources of the UI Integrity Center include state-specific consultation and technical assistance services, virtual and in-person UI program trainings, and a central repository of integrity resources of including recommendations, best practices, and proven strategies. The Center also operates the Integrity Data Hub (IDH).

The IDH supports states in detecting fraud and improper payments by enabling cross-matching with key data sources and other functionality, including an Identity Verification (IDV) dataset; a Suspicious Actor Repository (SAR); the Multi State Cross-Match (MSCM) to identify where UI claims data are being used across multiple states; and Fraud Alerting capabilities.

State participation in the IDH increased significantly from the number of states using its services prior to the pandemic. Only 34 states had executed an agreement to participate in IDH cross-matching in March 2020, whereas now all 53 states have an agreement in place. Only three states were participating in MSCM in March 2020, and now 43 use this important cross-match. Additionally, IDV functionally went live in July 2020, and now 34 states are currently using the IDV solution. All states and the DOL-OIG participate in the IDH’s Fraud Alerting.

The Department also pursues additional datasets for integration into the IDH to enhance state cross-match efforts and strengthen fraud prevention and detection, and provided the UI Integrity Center with funding to acquire a service to allow states to proactively identify and authenticate bank account information provided on a UI claim. The new Bank Account Verification (BAV) service went into IDH production for states’ use on February 16, 2022. States can now access the BAV to validate the status of a bank account (*e.g.*, account is open or closed) and receive confirmation that the individual identified as the claimant is the bank account owner and/or authorized user prior to initiating the UI benefit payment.

On October 28, 2021, the UI Integrity Center launched the much-anticipated Behavioral Insights (BI) toolkit which brings together practices from the field of behavioral science to promote unemployment integrity and reduce UI improper payments. The BI Toolkit offers a collection of resources to help UI agencies improve integrity and customer compliance through targeted changes to program communications and processes. Some of the Toolkit's features include overviews of 20 behavioral strategies developed through engagements between the UI Integrity Center and states, as well as helpful articles on topics such as *What UI Challenges Are a Good Fit for Behavioral Insights?*, *Designing a Behavioral Insights Project*, *Applying Behavioral Insights Effectively: Common Mistakes & How to Avoid Them*, along with tools and templates to help states plan and report on behavioral strategies. The Department announced the availability of the BI toolkit in November 2021.

- **Access to Prisoner Data** – The Department worked in partnership with the Social Security Administration (SSA) to recently establish an incarceration data exchange to aid states in making eligibility determinations for UI by cross-matching UI claims data with SSA's Prisoner Update Processing System (PUPS) prisoner records. The Department provided guidance to states on how to access the data exchange.
- **Workgroups** – The Department participates in several fraud/integrity workgroups and reoccurring meetings to enhance partnerships, develop relationships, and strategize to find innovative integrity solutions to prevent and detect fraud and recover improper payments. These groups have representation from DOL-OIG, the Federal Bureau of Investigations (FBI), DOJ, Secret Service, and other law enforcement entities, banking and financial institutions, state workforce agencies, and the UI Integrity Center.
- **Coordination with DOL-OIG** – The Department continues to encourage states to work collaboratively with its OIG and other federal, state, and local law enforcement to investigate and prosecute fraud. For example, in April 2021, DOL-OIG conducted data analysis on UI claims data obtained from states to identify potentially fraudulent claims activity. At DOL-OIG's request, ETA shared the results of this analysis with the states to aid state efforts in preventing fraud and in pursuing investigations on these particular claims. Additionally, the Department published updated guidance for states reminding them of their obligation to refer allegations of UC fraud, waste, abuse, mismanagement, or misconduct to DOL-OIG and to disclose information related to the CARES Act to DOL-OIG for purposes of both UC fraud investigation and audits. To continue this partnership of states sharing their state-owned data for both UC fraud investigation and audits beyond the CARES Act UC programs (which expired September 6, 2021), the Department conditioned the award of ARPA-funded fraud prevention grants on states continuing to provide such data through December 2023. As noted above, we welcome further collaboration with Congress in regard to providing DOL-OIG with more efficient access to confidential UC data that is owned by the states administering these UC programs in a way that includes the security and safeguards necessary to protect this sensitive information.



Furthermore, ETA and DOL-OIG are holding quarterly joint calls with the ETA regional offices and states to share information regarding fraud trends and analysis, provide recommendations for responding to emerging fraud schemes, and offer updates on prosecution efforts.

- **Recovering Funds Stolen by Fraudsters** – The Department has gathered information, at the request of DOJ and DOL-OIG, to support federal law enforcement's efforts to pursue seizure and forfeiture to recover fraudulently obtained UC funds. This information supports ETA's efforts to connect states with financial institutions to facilitate the return of intercepted funds and reduce the need for forfeiture actions. The Department recently provided guidance on how to distribute recoveries from banks of fraudulent funds across multiple states.

### **Efforts to Improve UI Systems Broadly**

- **Modernizing UI Information Technology (IT) Systems** – The pandemic has only underscored states' desperate need for technological support and improvements. Many state systems have and continue to operate on outdated technology, which made it difficult for them to rapidly respond to changes in law and economic conditions. In addition, antiquated technology often requires extensive programming resources to make changes or the development of manual processes due to technological limitations, adding to current challenges states face in addressing large backlogs and combatting fraud, and further delaying UI benefits to those most in need. Funding from ARPA enables the Department to develop strategies to tackle the most acute problems facing the UI system, which includes addressing long-term technology challenges by improving state processes and service delivery through UI IT modernization efforts. The Department partnered with U.S. Digital Service (USDS) to start the transformative project of centrally developing open, modular technology solutions that states may adopt as part of ongoing modernization and improvement efforts. As part of the UI IT modernization project, the Department will be engaging with multiple state partners to collaboratively develop a series of pilot IT projects. Additional plans include shared IT solutions designed to integrate with state systems and provide software to support various aspects of administration of UI, and working with states' IT staff to develop and implement plans that build resilience in UI systems across the country.

Because this is a tremendously ambitious initiative, the bulk of the \$2 billion in ARPA funding has been reserved for this effort. These efforts are going to be iterative and based on lessons learned in pilots, that will inform the direction and scope of future pilots. The initial pilots focused on claimant experience have resulted in Arkansas partnering with GSA's login.gov as an alternative to the state's existing in-person ID verification process. As a result, hundreds of claimants have saved hours traveling to state offices. A second partnership with New Jersey is now in beta testing with a live reference site hosted by the Department that will include open-source code to assist states in improving the claimant experience of applying for benefits. The Department is now in the process of prioritizing the next round of pilots, which will

continue to focus on optimizing customer experience while also using priorities that state agencies have identified.

**Multidisciplinary Tiger Teams Providing Direct Assistance to States** – States are facing acute and varied challenges that need to be better identified and addressed around the process of preventing and detecting fraud, promoting equitable access, eliminating backlogs, and ensuring timely payment of benefits. The Department is addressing these challenges by sending experts directly to the states to work hand in hand with states to identify solutions. Despite ongoing efforts to add staff, deploy innovations, and address backlogs, many states continue to deal with adjudication and appeals backlogs. The systems Department is making up to \$200 million available in grants to support states with improving UI processes. States must first engage with the Department to complete a consultative assessment of their UCUI program. During this assessment, the Department will leverage a multi-disciplinary team of experts (*i.e.*, Tiger Teams) designed specifically to analyze state UCUI systems and process challenges. The Department has completed negotiated recommendations for: Colorado, Kansas, Nevada, Virginia, Washington, and Wisconsin. The Department has also completed recommendations for: Alabama, Connecticut, Iowa, Kentucky, Nebraska, and Pennsylvania. The Department has completed the discovery and interview phases of the engagements in the following states and moving now to delivery of final project recommendations: Arizona, Delaware, Illinois, Michigan, New Hampshire, and Oregon. The Department commenced consultative assessments with a fourth cohort of states (mid-June through July). Those states include Idaho, Indiana, Maryland, Missouri, Rhode Island and Wyoming. This brings the total number of Tiger Team initiatives in year one of the project to 24. Alaska and California have committed to participate in the fifth cohort of the project this fall. The Department continues discussions with numerous other states to begin the process in the coming Federal Fiscal year. The Department’s goal is to identify 30 state partners for the Tiger Team consultative assessment initiative by September 30, 2022.

### **Conclusion**

I thank the Committee for the opportunity to present this testimony. I think that we all share some basic concerns that UI continue to play the key roles that it is intended to play for individuals and the economy. While the \$2 billion provided in ARPA for improving UI systems is already helping to develop a solid path forward, states will need more stable, reliable annual appropriations for administering the systems going forward, and we need to work together to advance basic reform elements that have been bipartisan for decades. The Department of Labor stands ready to provide Congress with any follow up information that would be helpful.