

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



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,

A handwritten signature in cursive script that reads "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	
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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	\$1,415,057	\$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	\$1,968,488	\$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	\$67,610,549	\$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	\$1,582,326	\$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