

**STATEMENT OF MICHAEL CULLEN
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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.