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STATE OF MICHIGAN
IN THE SUPREME COURT

FRANK LUCENTE,
Claimant-Appellant,

v.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS/ UNEMPLOYMENT INSURANCE AGENCY
Agency-Appellee.

SC: 160843
Court of Appeals: No. 342080
Lower Court: Macomb Circuit Court
LC No. 2017-000125-AE

MICHAEL HERZOG,
Claimant-Appellant,

v.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS/ UNEMPLOYMENT INSURANCE AGENCY
Agency-Appellee.

SC: 160844
Court of Appeals No. 345074
Lower Court: Wayne Circuit Court
LC No. 18-003162-AE

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

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BRIEF OF AMICUS CURIAE ON BEHALF OF CENTER FOR CIVIL JUSTICE IN SUPPORT OF CLAIMANT-APPELLANT FRANK LUCENTE AND MICHAEL HERZOG'S BRIEF

RECEIVED by MSC 12/9/2020 3:51:27 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES ii
QUESTIONS PRESENTED v
STATEMENT OF INTEREST vi
INTRODUCTION 1
STATEMENT OF PROCEEDINGS BELOW 2
STANDARD OF REVIEW 2
ARGUMENT 3
I. The purpose of unemployment insurance is to promote security and stability for workers. 3
A. The historical context of unemployment insurance shows the importance of promoting security and stability for workers. 3
B. The plain language of MCL 421.2(1) offers explicit policy goals for the Act, in line with providing stability and security for workers facing involuntary unemployment 4
C. Courts have continuously affirmed the importance of considering the explicit purposes of the Act when interpreting the provisions of the Act. 6
D. Such statutory limits are especially important for fraud determinations considering the context of recovering from the MiDAS false fraud scandal. 8
II. The Agency's Failure to Consider the Purpose of the Act in its Analysis and Implementation Unfairly Penalized Michigan's Workers 12
A. MiDAS falsely accused Michigan's workers of fraud. 13
B. A confusing system leads to denials of benefits and frustrates claimants. 13
C. Issuing untimely fraud decisions disincentivize workers from applying for unemployment 17
III. Conclusion 19

RECEIVED by MSC 12/9/2020 3:51:27 PM

INDEX OF AUTHORITIES

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Bauserman v. Unemployment Ins. Agency, 503 Mich. 169 (2019) 9, 10
Bauserman v. Unemployment Ins. Agency, No. 333181, 2017 Mich. App. LEXIS 1154 (Ct. App. July 18, 2017) 10
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42 U.S.C. 501-6 3
MCL 421.2 ..... 4, 5
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MCL 421.32(a) 6
MCL 421.32(f) 6, 13
MCL 421.32a ..... v, 7, 11
MCL 421.32a(2) 17
MCL 421.33 14
MCL 421.54(b)(i)-(ii) 18
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RECEIVED by MSC 12/9/2020 3:51:27 PM

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RECEIVED by MSC 12/9/2020 3:51:27 PM

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QUESTIONS PRESENTED

I. **In § 32(a)(2) of the Michigan Employment Security Act ("the Act") the Michigan Legislature gave the Unemployment Insurance Agency ("the Agency") limited authority to reconsider a determination either within 30 days, or—after showing good cause for missing this deadline—within one year. Otherwise, the statute provides that a "reconsideration shall not be made." MCL 421.32a. In this case, the Agency reconsidered Claimant-Appellants' cases after the statutory deadline passed, without establishing good cause. Did the Court of Appeals err when it held that the Agency can ignore the statutory time limits under § 32a when collecting restitution under MCL 421.62?**

Claimant-Appellants' Answer: Yes.
Commission Answered: Yes.
Circuit Court Answered: Yes.
Court of Appeals Answered: No.
Agency-Appellee Answers: No.

II. **In MCL 421.32 and 32a of the Act, the Michigan Legislature established that the Agency must first issue a determination of the claimant's eligibility to receive benefits before issuing a redetermination as to that claimant's eligibility. The protest of a determination mandates that the Agency review its initial fact-finding. The appeal of a redetermination transfers the matter to an ALJ for review. Did the Court of Appeals err in its analysis of §§ 32, 32a, and 62 of the Act, when it held that the Agency could bypass its statutory obligation by issuing a redetermination without first issuing, and reviewing, its initial determination?**

Claimant-Appellants' Answer: Yes.
Commission Answered: Yes.
Circuit Court Answered: Yes.
Court of Appeals Answered: No.
Agency-Appellee Answers: No.

RECEIVED by MSC 12/9/2020 3:51:27 PM

STATEMENT OF INTEREST[1]

The Center for Civil Justice ("CCJ") is a Michigan-based, non-profit organization with expertise in laws and policies affecting low-income people. The organization acts as a voice for low-income Michigan residents and enables them to receive assistance through social safety net programs. CCJ engages in impact litigation, policy, and administrative advocacy to improve the policies affecting Michigan's low-income population.

The legal question presented by Claimant-Appellants' case affects hundreds of thousands of Michigan families every year. Unemployment-related issues leave Michigan citizens and their families in precarious financial situations. Unfortunately, the Unemployment Insurance Agency's actions often exacerbate the issues facing Michigan families by driving claimants deeper into poverty and into other dire issues, such as bankruptcy, foreclosure, homelessness, and depression. The Court of Appeals wrongfully interpreted the Agency's authority to reconsider determinations outside of statutory deadlines when collecting restitution, and erroneously held that the Agency's issuance of redeterminations without the requisite antecedent determination and protest was simply an issue of labeling rather than a failure to abide by two statutorily different agency actions with distinct appeal rights. CCJ believes that it is in the best interest of the people of Michigan for the Michigan Supreme Court to overturn the decision of the Court of Appeals.

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[1] Students from the Workers' Rights Clinic at the University of Michigan Law School, who were not involved in writing the Lucente Brief on Appeal or any other filings for this claimant to this Court, collaborated with the filing attorneys in drafting this amicus brief. The Clinic did not make any monetary contribution to fund the preparation or submission of this brief.

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INTRODUCTION

The Michigan Unemployment Insurance Agency ("the Agency"), in pursuing spurious claims of fraud long after claimants reasonably expect their interactions with the Agency to be finalized, operates directly in contravention of the explicit purpose of the unemployment insurance system, as laid out in the Michigan Employment Security Act ("the Act"). Unemployment insurance was enacted specifically to lighten the burden of involuntary unemployment on workers. When the Agency reconsiders benefit entitlements long after the fact without following the statutorily defined process, it works against these purposes by exacting harsh, unfair penalties on workers simply trying to claim unemployment benefits as envisioned by the Act.

In 2013, the Agency began to use an automated system to review claims. This system, MiDAS, used a faulty algorithm that baselessly accused over 48,000 Michigan workers of fraud.[2] These workers faced penalties so high that many were forced into bankruptcy or faced eviction.[3] This false fraud scandal led the legislature to amend the Act to protect Michigan's workers. However, the Agency has continued to insist that it can bring fraud claims against Michigan workers outside of the statutory timeframe put in place by the legislature and deny claimants their due process rights under the Act.

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[2] David Eggert, State Apologizes for Fraud Fiasco, Wants to Reduce Penalties, AP NEWS (January 28, 2017) https://www.apnews.com/c0e2346e85854a5b827ca42653c1fb40 (Appendix 1).

[3] Jonathan Oosting, False Fraud Scandal Goes to Michigan Supreme Court, THE DETROIT NEWS (Oct. 9, 2018) https://www.detroitnews.com/story/news/local/michigan/2018/10/09/false-fraud-scandal-michigan-supreme-court/1579079002/ (Appendix 2).

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This case holds implications for all the victims of the false fraud scandal who are still dealing with the consequences of the Agency's actions. It will decide whether they are entitled to due process under the timeline set by the Legislature, or whether the Agency is able to disregard the Legislature's intent and the purpose of the Act.

STATEMENT OF PROCEEDINGS BELOW

We adopt Claimant-Appellants' statement of proceedings as set forth in the Introduction of their merits brief.

STANDARD OF REVIEW

This Court reviews whether the Agency exceeded its scope of authority—a question of law—de novo. *In re Reliability Plans of Elec. Utilities for 2017-2021*, No. 158305, 2020 WL 1649885, at *11 (Mich Apr. 2, 2020), reh'g denied, 943 NW2d 137 (Mich 2020). It also reviews de novo questions of statutory interpretation. *Id.* (citing *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019)). Reviewing an issue de novo means that the Court reviews the legal issue independently, without deference to the lower court. *Id.* (citing *People v Bruner*, 501 Mich 220; 912 NW2d 514 (2018)). Final decisions, rulings, and orders of the Agency must be authorized by law. *Id.* (citing 1963 Const, art 6, § 28). Courts give the Agency's statutory interpretation respectful, nonbinding consideration and do not overturn it absent cogent reasons. *Id.* (citing *In re Complaint of Rovas Against SBC Mich.*, 482 Mich 90, 103, 754 NW2d 259 (2008).

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ARGUMENT

I. The purpose of unemployment insurance is to promote security and stability for workers.

In order to assess the Appellants' case, this Court will perform statutory interpretation that considers the historical context of unemployment insurance, why the Legislature implemented it, and the plain language of the Act.

A. The historical context of unemployment insurance shows the importance of promoting security and stability for workers.

Unemployment insurance arose in the United States in response to the massive unemployment of the Great Depression through the Social Security Act of 1935 ("the SSA").[4] The SSA envisioned a federally funded program administered by the states. *See* 42 U.S.C. 501-6. The President's Committee on Economic Security, in its January 1935 Report to the President providing the blueprint for the SSA, explained the purpose of such a program was to promote economic security and stability, with the understanding that "[t]he one almost all-encompassing measure of security is an assured income."[5] Broadly, then, the SSA aimed to provide assured income at various stages in workers' lives, including periods of unemployment, in order to "provide safeguards against all the hazards leading to destitution and dependency." *Id.* Unemployment insurance, specifically, is a "front line of defense" in increasing security and maintaining purchasing power. *Id.* In signing the SSA into law, President Roosevelt expressed

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[4] *See generally* Daniel N. Price, *Unemployment Insurance, Then and Now, 1935-85* (October 1985). Available at: https://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p22.pdf. (Appendix 3).
[5] *Report to the President of the Committee on Economic Security* (January 1935). Available at: https://www.ssa.gov/history/reports/ces5.html (Appendix 4).

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his desire to "frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job."[6]

In 1936, Michigan signed into law the Act with the explicit purpose of lightening the burden of involuntary unemployment because "[s]ocial security requires protection against this hazard of our economic life." MCL 421.2. Similar to the federal Social Security Act, the purpose of the Act was to "provide protection against the evils incident to involuntary unemployment, and thus, to foster social and economic security for the people of our State." *Dwyer v. Unemployment Comp. Comm'n*, 321 Mich. 178, 188 (1948). In fact, the Michigan Supreme Court has noted that the statute was "designed to benefit a class and society as a whole by cushioning the effect of unemployment." *Nordman v. Calhoun*, 332 Mich. 460, 465 (1952).

Therefore, the historical context behind both the federal unemployment insurance system as implemented through Michigan's state unemployment insurance system speak to the motivation of the state and federal Legislatures to provide for the stability and security of workers who face unemployment, both for the good of the individual workers and for the broader good of society.

B. The plain language of MCL 421.2(1) offers explicit policy goals for the Act, in line with providing stability and security for workers facing involuntary unemployment.

Within the Act, MCL 421.2(1) offers a broad declaration of public policy and provides invaluable insight into the intention of the state legislature in creating a system for unemployment insurance. Section 421.2(1) reads:

> The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: **Economic**

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[6] *Presidential Statement Signing the Social Security Act* (August 14, 1935). Available at: https://www.ssa.gov/history/fdrsignstate.html. (Appendix 5).

RECEIVED by MSC 12/9/2020 3:51:27 PM

> **insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life.** Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state. (Emphasis added).

Thus, consistent with the historical context referenced in Section II.A. *supra*, the explicit and unambiguous policy of the Act is broadly to ameliorate the negative consequences of unemployment and particularly to lighten the burden on unemployed workers and their families. This policy specifically envisions accumulating funds and setting aside reserves in order to provide benefits to workers in times of involuntary unemployment, linking such benefits to the public good and the general welfare of the state of Michigan. The declaration of policy, here, "is significant in the interpretation of the various provisions of the statute through which the ultimate result sought was to be attained." *I.M. Dach Underwear Co. v. Michigan Employment Sec. Comm'n*, 347 Mich. 465, 472 (1956), *overruled in part on other grounds by Michigan Employment Sec. Comm'n v. Vulcan Forging Co.*, 375 Mich. 374 (1965). As such, "all of the provisions of the act must be read and construed with this public policy in mind." *Dwyer*, 321 Mich. at 188 (referring specifically to MCL 421.2). In the face of such a clear declaration of policy, "courts are without power to deprive those entitled thereto of the benefits of the act,

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unless they are expressly precluded therefrom by its provisions." *Copper Range Co. v. Unemployment Comp. Comm'n*, 320 Mich. 460, 470 (1948).

Moreover, the Michigan Legislature specifically tasked the Agency with the crucial task of fulfilling the Act's purpose by paying benefits to those who are involuntarily unemployed. *See* MCL 421.32. The Agency perplexingly contends in its brief that "a benefit payment is not a formal Agency adjudication." *Agency's Brief to the Supreme Court*, 24. The reality, however, is that the Act is unambiguous that the Agency is to "promptly examine claims and make a determination on the facts," after which the "claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination." MCL 421.32(a). In addition to initial eligibility determinations, the Act specifically designates that "[t]he issuance of each benefit check shall be considered a determination by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits." MCL 421.32(f). Thus, the Legislature specifically tasked the Agency with initially determining a claimant's eligibility for benefits and then actually issuing the claimant a benefit check. Each payment establishes that the Agency determined that the claimants were eligible and qualified. There is nothing informal about this process. It is the core of what the Legislature tasked the Agency to do, and it is the very basis of the statutory purpose of paying benefits to those affected by involuntary unemployment in order provide stability and security for workers and their families.

C. Courts have continuously affirmed the importance of considering the explicit purposes of the Act when interpreting the provisions of the Act.

In light of the specified goals of the Act and in line with its historical context, the Michigan Supreme Court has concluded that the Act "deserves liberal application by the courts." *Noblit v. Marmon Grp.-Midwest Foundry Div.*, 386 Mich. 652, 654 (1972). More specifically, in

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interpreting the provisions of the Act, the Supreme Court should narrowly construe sections of the Act that disqualify claimants and liberally construe sections that provide claimants with benefits. *Tomei v. Gen Motors Corp*, 194 Mich. App. 180, 184 (1992). The significance of this interpretive guidance is to provide that the Act is not to be read as a exclusionary scheme in which the Agency seeks any possible recourse to prevent an unemployed worker from getting benefits – or worse, to embark on delayed and flawed investigations seeking fraud penalties from unemployed workers. Rather, the Act is to be read in line with the purpose of supporting the stability and security of unemployed workers by broadly providing benefits, and only disqualifying claimants when the statute explicitly allows for it, both substantively and procedurally. Indeed, this Court has repeatedly noted the importance of considering the legislative purpose to "get 'money into the pocket of the unemployed worker at the earliest point that is administratively feasible.'" *Storey v. Meijer, Inc.*, 431 Mich. 368, 377 (1988), *quoting California Dep't of Human Resources Development* v *Java*, 402 U.S. 121, 135 (1971); *see also Paschke v. Retool Indus.*, 445 Mich. 502, 511 (1994).

Construing the provisions with consideration of the explicit purpose of the Act helps guide courts' analysis to reach decisions that effectuate the legislative intent behind the Act. *See, e.g., Holland Motor Express v. Mich. Empl. Sec. Comm'n*, 42 Mich. App. 19, 26-7 (1972) (holding that claimants were capable of working but were prevented from doing so by a lockout by the employer, rather than their own acts, and therefore were eligible for benefits when considering the clear purpose of the statute delineated in MCL 421.2). The claimant-appellants' brief in *Lucente* does this necessary analysis by properly construing the Act's explicit time limits to reconsider its prior decisions and establishing a consistent procedure for Agency decisions and initiating review thereof. These limits, and particularly that of MCL 421.32a allowing up to one

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year with good cause for review of a previous Agency decision, protect the stability and security of unemployed workers by providing a clear timeline of when an Agency decision is actually finalized and providing claimants with their statutorily-guaranteed right to protest or appeal every Agency determination.

D. Such statutory limits are especially important for fraud determinations considering the context of recovering from the MiDAS false fraud scandal.

In 2013, Michigan attempted to modernize its unemployment IT system by implementing a system called MiDAS. This upgrade had disastrous effects for workers across the state. The new system, MiDAS, used a faulty algorithm that falsely accused claimants of fraud, as well as flagging meritorious claims for disqualification. Based on the MiDAS algorithm, the Agency sent over 60,000 of these fraud determinations between 2013 and 2015[7]– and 93% of them were completely baseless claims.[8] In these two years, the Agency issued more fraud determinations than it had in the previous two decades. The consequences for claimants were disastrous. Some claimants faced over $100,000 in fraud penalties. People who had relied on the support of the state to help them through a period of unemployment faced foreclosure and bankruptcy because of these allegations.[9] Thousands of workers who the state had no evidence of fraud against were

[7] Michael Gerstein, Lawyers Say Thousands in Michigan Mistakenly Charged with Unemployment Fraud, CRAIN'S DETROIT BUSINESS May 09, 2016), https://www.crainsdetroit.com/article/20160509/NEWS01/160509844/lawyers-say-thousands-in-michigan-mistakenly-charged-with (Appendix 6).

[8] Paul Egan, Data Glitch was Apparent Factor in False Fraud Charges Against Jobless Claimants, DETROIT FREE PRESS (July 30, 2017), https://www.freep.com/story/news/local/michigan/2017/07/30/fraud-charges-unemployment-jobless-claimants/516332001/. (Appendix 7).

[9] Oosting, *supra* at note 2.

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accused. Instead of making sure that unemployment assistance was accessible to workers, MiDAS turned unemployment claims into massive financial disasters.[10]

MiDAS issued these robo-adjudications years after claimants finished collecting benefits. Because the Agency no longer had a relationship with these clients, it would send the robo-adjudications to the last address on file – which was often not where many of the innocent claimants were still living.[11] Other robo-adjudications were only sent to the claimants MiWAM accounts, which the claimants would have no reason to check since their relationship with the Agency ended years earlier. *See, e.g., Bauserman v. Unemployment Ins. Agency*, 503 Mich. 169, 176 (2019) ("Broe sent the Agency a letter appealing its redeterminations and claiming that he had not received the Agency's previous communications because they had been sent to him through his online account with the Agency, which he no longer accessed because he was reemployed and no longer seeking unemployment compensation"). These claimants had no reason to think that Agency would be reconsidering their case three, four, five, and up to as many as six years later. When the claimants did not appeal the decisions within 30 days – even when the claimants did not receive them – the Agency would start garnishing their wages, seizing their

[10] The devastation caused by MiDAS has been frequently reported in the news. *See, e.g.,* Alejandro De La Garza, States' Automated Systems Are Trapping Citizens in Bureaucratic Nightmares With Their Lives on the Line, TIME (May 28, 2020), https://time.com/5840609/algorithm-unemployment/ (Appendix 8); Paul Egan, State of Michigan's mistake led to man filing bankruptcy, DETROIT FREE PRESS (December 22, 2019), https://www.freep.com/story/news/local/michigan/2019/12/22/government-artificial-intelligence-midas-computer-fraud-fiasco/4407901002/ (Appendix 9).

[11] In response to a 2016 Auditor General report, the Agency admitted that it had a "serious problem" with returned or undeliverable mail to claimants, including mail with notices of adjudications against claimants. OFFICE OF THE AUDITOR GENERAL PERFORMANCE AUDIT REPORT, CLAIMANT SERVICES (April 2016), 5. Available at: https://audgen.michigan.gov/finalpdfs/15_16/r641031814.pdf (Appendix 10).

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tax returns, and sending them bills.[12] Interestingly, the Agency's bills would be mailed to claimants' actual, updated residence, unlike the robo-adjudications reversing their access to benefits and the fraud accusations. In response to the Agency's use of the MiDAS system, a slew of class actions were filed in state and federal court. *See Cahoo, Zynda, and Bauserman.*[13]

One such class action, *Bauserman*, pursued claims that the Agency's use of robo-adjudications and subsequent collections based on robo-adjudicated fraud determinations deprived UIA claimants of property without due process. *See, generally, Bauserman v. Unemployment Ins. Agency*, 503 Mich. 169, 173-179 (2019). In December 2019, the Michigan Court of Appeals rightfully followed the approach described in Sections I.B. and I.C., *supra*, when considering a question of damages for this MiDAS false fraud scandal. The Court of Appeals explicitly weighed the outrageousness of Agency misconduct against the purpose of the Act, concluding that it weighed in favor of a judicially inferred damage remedy. *Bauserman v. Unemployment Ins. Agency*, No. 333181, 2019 Mich. App. LEXIS 7683, at *38 (Ct. App. Dec. 5, 2019) (Appendix 15). Specifically, the Court considered that the purpose of the Act was to safeguard the general welfare through the dispensation of benefits intended to ameliorate the disastrous effects of involuntary unemployment, and found that the allegations by the *Bauserman* plaintiffs that the Agency's actions in systematically and wrongfully accusing thousands of

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[12] Ryan Felton, Michigan unemployment agency made 20,000 false fraud accusations – Report, THE GUARDIAN (December 18, 2016), https://www.theguardian.com/us-news/2016/dec/18/michigan-unemployment-agency-fraud-accusations (Appendix 11).

[13] *Cahoo v. SAS Institute*, 377 F.Supp.3d 769 (2019); *Zynda v. Arwood*, 175 F.Supp.3d 791 (2016); Stipulated Order of Dismissal, *Sugar Law, et al, v. Arwood*, Case No. 2:15-cv-11449 (February 2, 2017), available at: https://www.bwlawonline.com/wp-content/uploads/2017/02/Zynda-ORD-2017-02-02-Robo-Fraud-Settlement-and-Dismissal.pdf (Appendix 12); *Bauserman v. Unemployment Ins. Agency*, No. 333181, 2017 Mich. App. LEXIS 1154 (Ct. App. July 18, 2017) (Appendix 13); *Bauserman v. Unemployment Ins. Agency*, 503 Mich. 169 (2019).

innocent citizens of fraud would be an egregious "undermining of the due process rights of thousands of innocent citizens across this state at a particularly vulnerable time in their lives, having lost their gainful employment for one reason or another." *Id.*

A ruling against claimant-appellants in *Lucente* would further harm the innocent workers harmed by the false fraud scandal by validating the Agency's disregard for statutorily defined procedures. The Act specifically provides for claimant protest and appeal rights at each step of the way to further the purpose of protecting workers' security and stability, providing this limit on the Agency's authority to protect claimants like those mentioned in *Bauserman*.

The long-established jurisprudence on this topic, then, is committed to interpreting the statute in a manner consistent with the purpose of the Act and, to that end, approaches questions of interpretation bearing in mind that the Act exists to provide benefits to those who are qualified and require them. Unemployment insurance was instituted for the express purpose of maintaining basic living standards for unemployed workers. Legislators decided that having such a program to provide benefits to workers would not only help the individual workers and their families, but also act as an important safeguard for the public welfare and the public good of the entire state. Unemployment insurance not only alleviates the burden on individual workers and their families who face involuntary unemployment, but also helps maintain those individuals' purchasing power in order to help the economic well-being of the community more broadly and prevents the need for more serious social assistance.

Because the Agency is tasked by the Act with carrying out these purposes, the Agency has a duty to pay out unemployment benefits responsibly. Considering the explicit purposes of worker security and stability, a fundamental part of paying out benefits responsibly is providing claimants the opportunity to protest or appeal decisions they disagree with, as well as providing a

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sense of finality to claimants who reasonably expect their relationship with the Agency to end. Claimant-appellants' brief addresses these concerns, showing that the legislature was clear that the Agency has 30 days to change its mind about a claimant's benefit entitlement, or up to one year with a showing of good cause. *See Claimant-Appellants' Brief*, 19-22.

Written into the statute, then, is a predictable and final deadline so claimants can move on with their lives. By applying the deadline in MCL 421.32a to all parties, the legislature indicated intent to limit Agency power to unilaterally reopen proceedings far after claimants reasonably expect their relationship with the Agency to end. *Id*, 14-16. If the Agency does allege within the timeline set forth in § 32a that the claimant committed fraud or owes restitution, the claimant has statutorily defined rights to protest or appeal that decision. *Id*, 38-41. Only when that decision is final, then, can the Agency issue a restitution determination under the authority of MCL 421.62(a). *Id*, 28-30. The Agency's reading, on the other hand, contradicts the explicit statutory purposes of the Act by unilaterally claiming broad authority to issue restitution and other determinations within three years while bypassing the requirements of § 32a to provide opportunity for protest, appeal, and review the underlying determination that the claimant was ineligible for benefits. *See Agency's Brief*, 14-16. The Agency's assertion claims broad powers that are not provided for by the statute, abrogating statutorily mandated claimant appeal rights in the process at the expense of claimants' security and stability. *See Claimant-Appellants' Brief*, 38-41. As such, the Agency's assertions directly contradict the explicit purposes of the Act, while the Claimant-appellants' argument actually takes into account the effect on claimants' security and stability during periods of unemployment.

II. The Agency's Failure to Consider the Purpose of the Act in its Analysis and Implementation Unfairly Penalized Michigan's Workers

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Through its failure to consider the purpose of the Act, the Agency has created a system that is difficult for claimants to navigate, that is unresponsive to its concerns, and that too frequently fails to pay workers or issue determinations in a timely manner. Ultimately, Michigan's UI system can be so difficult to navigate that claimants abandon their claims, leaving workers without the benefits to which they are entitled.

A. MiDAS falsely accused Michigan's workers of fraud.

The high rate of wrongful fraud allegations attributed to MiDAS did not occur by chance. It was programmed, and the Agency decided to pursue potential fraud more aggressively and recover the high penalties associated with it. In 2011, the state Auditor General released a report finding that the Agency may have been able to collect more in overpayments and fraud penalties than it had been doing;[14] this, combined with the general financial strain the state of Michigan faced due to the 2008 recession, motivated the Agency to find ways to collect more from potential overpayments and fraud cases. Claimants are still dealing with the consequences of these fraud determinations. By aggressively pursuing fraud cases, the Agency acted contrary to its statutory purpose. Instead of protecting workers from the financial stress caused by periods of unemployment, it resulted in extreme financial devastation. While it may have been algorithmic issues with MiDAS that led to such rampant accusations of fraud, the Agency faced incentives to pursue more fraud cases and collect more fraud penalties.

B. A confusing system leads to denials of benefits and frustrates claimants.

When Michigan's workers apply for UI, they face a confusing, slow moving, and poorly designed system that leaves them discouraged and unfairly denied benefits. Because the Agency

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[14] OFFICE OF THE AUDITOR GENERAL PERFORMANCE AUDIT OF UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS AND NONMONETARY ELIGIBILITY DETERMINATIONS (March 2011), 3. Available at: https://audgen.michigan.gov/finalpdfs/10_11/r641031510.pdf (Appendix 15).

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fails to abide with the procedure set up by the legislature in MCL § 421.32 and 32a, claimants lose access to due process to which they are entitled, and the UI system is more difficult to navigate.

MCL § 421.32 explicitly requires that the Agency issue a determination when it makes a decision about whether or not to issue benefits. The Agency issue a determination denying benefits or it can issue a benefit payment, which is a determination that the claimant is qualified and eligible. See MCL 421.32; MCL 421.32(f). Section 32a allows the Agency to reconsider the decision on its own motion within 30 days or up to 1 year with good cause. MCL 421.32a. In addition, claimants and employers also have the right to protest that determination if they disagree and provide the Agency with more information; §32a requires that the Agency review its prior decisions if either the claimant or the employer protests it. A party's protest of a determination is the only time the Agency is required to review the party's objection to the Agency's decision. In response to a protest, the Agency can affirm, reverse, or modify its decision by issuing a redetermination. See MCL 421.32a. If the party then appeals the redetermination, the Agency sends it to and ALJ. MCL 421.33. The only guaranteed appeal of right where the Agency is required to review the protest is after the Agency issued a determination. By failing to issue a fraud determination in this case and starting with a fraud **re**determination, the Agency skipped the statutorily proscribed appellate right for the Lucente and Herzog. In other words, when the claimants appealed the redetermination, the Agency did not review their cases. It only sent it on to the ALJ, skipping the claimants' only appeal of right with the Agency.

What's more, the Agency also programed MiDAS to issue fraud **re**determinations, not determinations. In the cases of Mr. Lucente and Mr. Herzog, or for anyone else involved in the

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false fraud scandal, there were no initial determinations of fraud at all. The Agency programed MiDAS to skip that step, despite the rights of claimants to Agency review of a protest of an initial determination. Claimants were only issued redeterminations, without the right to Agency review of a protest. The legislature intended for the Agency to provide claimants with the opportunity for an initial review of an Agency decision, but by skipping the initial determinations, the Agency deprived claimants of due process. Even though the Agency's appeal rights on the documents and its own guidance explain the clear procedures for issuing determinations and redeterminations and their different tracks for review, it programmed a computer system to systematically skip a statutorily proscribed appeal of right for over 60,000 adjudications[15]. When the system is supposed to be set up for laypeople to navigate alone, claimants only have the Agency to rely on for assistance. If the Agency's own documents designed for the parties in the system describes the process the Legislature set up, but then the Agency uses a different process, the system becomes even more unworkable.

The Agency can be exceptionally difficult to reach for claimants with questions about their claims or benefits, and it processes payments and determinations slowly, leaving workers without the support they need. A 2016 report from the Auditor General found that the Agency did not answer 89% of calls made to its call center; a February 2020 follow-up report showed that this problem remained, as long wait times led to almost one in three callers to abandon their calls to the Agency.[16] In the fall of 2019, the Agency upgraded its phone system and added an

[15] A Guide to Unemployment Insurance Appeals Hearings, Michigan Office of Administrative Hearings and Rules (2008) (Appendix 16); Auditor General Report of April 2016, *supra* at note 11; OFFICE OF THE AUDITOR GENERAL FOLLOW-UP REPORT ON PRIOR AUDIT RECOMMENDATIONS (February 2020). Available at: https://audgen.michigan.gov/wp-content/uploads/2020/02/r641031814F-0088.pdf (Appendix 17).

[16] Auditor General Report of February 2020, *supra* at note 15.

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online chat function for claimants.[17] However, this was not enough to address the volume of calls the Agency has received since the beginning of the COVID-19 pandemic. While workers could not reach the Agency, their benefit payments or redeterminations were often delayed. The 2016 Auditor General report found that the Agency did not meet its standards for completing nonmonetary determinations, for the average age of pending lower authority appeals, or for issuing initial benefit payments.[18] In its February 2020 report, the Auditor General found that the Agency still did not meet its standard for nonmonetary determinations and initial benefits payments.[19] While the Agency lagged on making determinations and payments, Michigan's workers waited for the money they should be able to rely on to get them through temporary unemployment.

MiDAS hurts Michigan's workers beyond just false fraud allegations. MiDAS consistently flagged fraud for seemingly innocent statements. Individuals who marked that they felt they were entitled to benefits because they "needed the money" were immediately flagged for fraud. The form contained no option to check a box that individuals were legally entitled to benefits.[20] Claimants are forced to pick from confusing drop-down, menus while filling out forms to respond to the Agency's application and certifications, and the options available do not always include answers that accurately describe their situations. The questions presented to claimants on these forms can be confusing, and when claimants are unsure of how to answer them, they are frequently unable to reach the Agency by phone. This leads to more applications

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[17] *Supra* note 11.
[18] *Id.* at 14.
[19] Auditor General Report of February 2020, *supra* at note 15.
[20] Luke Shaefer and Steve Gray, *Michigan Unemployment Agency: Unjust Fraud and Multiple Redeterminations*, https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Shaefer-Gray-USDOL-Memo_06-01-2015.pdf (accessed Feb. 27, 2020) (Appendix 18).

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that are flagged as ineligible for benefits, leading to more eligible workers without the benefits that they need. Claimants are also unfairly penalized for mistakes or misunderstandings because MiDAS automatically flags applications as ineligible for benefits without human review.[21] But according to Employment and Training Administration data on erroneous denials, the state's rate of erroneous denials more than doubled for both separation and non-separation issues after the implementation of MiDAS.[22] While the exact reasons for this increase are unknown, MiDAS's automatic flags and the confusing forms presented to claimants may contribute.

C. Issuing untimely fraud decisions disincentivize workers from applying for unemployment.

The Agency's lack of timely action, lack of rigor, and extreme penalties on repayment disincentivizes workers from applying for unemployment, which undermines the purpose of providing temporary relief from involuntary unemployment.

Although the Agency claims it has the authority to reconsider its prior decisions years after it determined the claimants were eligible and qualified by issuing a benefit check determination, MCL § 421.32a of the Act requires that if the Agency wishes to reconsider a claimant's eligibility for benefits, it must do so within 30 days or up to a year with good cause.[23]

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[21] The Agency has not published the logic formulas it uses to flag and deny benefits, and it has not published any data on the number of non-fraud claims that MiDAS flags but that are eventually reversed upon human review. Without these formulas, it is impossible to know if MiDAS is making decisions in accordance with the Act and with Agency policy.

[22] According to Employment and Training Administration data on erroneous denials, the state's error rate for separation-related issues in 2007 was 8%—and it increased to 17.44% in 2017. A similar jarring increase is also seen for non-separation issues—from 9.9% to 17.54% between 2007 - 2017. IMPROPER DENIALS BY CAUSE, BENEFIT ACCURACY MEASUREMENT ANNUAL REPORT, United States Department of Labor Employment and Training Administration (2017). Available at: https://oui.doleta.gov/unemploy/bam/2017/IPIA_2017_Benefit_Accuracy_Measurement_Annual_Report.pdf (Appendix 19).

[23] As amended effective July 1, 2018.

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Id. The Legislature intended Section 32a to be the time limit for the Agency to reconsider a claimant's entitlement to benefits – including the Agency's ability to review a case for fraud. In fact, the Legislature amended Section 32a to further clarify that the Agency's power to reconsider paying out benefits is indeed covered under Section 32a, not Section 62. In the 2018 amendment, the Legislature added in language to 32a to state that the Agency "shall not" reconsider its decision to pay out benefits unless the weeks in question "involved a finding of fraud." See MCL 421.32a(2) as amended. If there is fraud, the Legislature extended the 1 year with good cause requirement to "3 years after the date of mailing or personal service of the original determination," which in many cases will be the issuance of a benefit check. *Id.* Prior to the amendment, the deadline was only 1 year with good cause.

Even if the Agency had made initial determinations of fraud that allowed claimants their protest rights, untimely reconsiderations are still harmful to claimants. Redeterminations made more than a year after an original determination are less likely to reach claimants because they have no reason to anticipate that their eligibility for benefits will be questioned long after they have received them. Claimants are less likely to keep the Agency appraised of their address or check their MiWAM accounts for years after their benefits have ended. This leads massive penalties, without a true opportunity for claimants to timely protest because they never received them. Even if the Agency's decisions do reach claimants, they can face penalties and restitution payments for issues that the Agency should, under the law, have raised years ago, unfairly burdening claimants for Agency errors.

The lack of rigor in the Agency's decisions also unfairly burdens claimants. Any discrepancy between a claimant's version of the facts and that of the employer can lead to an adjudication against a claimant, which can lead to a denial of benefits, a fraud accusation, or

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months of drawn out administrative procedures. Error rates wrongly denying benefits have more than doubled since MiDAS's implementation.[24] The penalties, too, that claimants face are extreme – up to four times the amount allegedly overpaid, until 2018.[25] Taken together, the chance of a sloppy, inaccurate determination from the Agency, years after claimants initially file for benefits, that could lead to incredibly high penalties discourages eligible workers from filing for unemployment benefits. Besides unfairly penalizing workers for Agency errors, this goes against the purpose of the Act by reducing the number of workers who will file for the benefits that they need. By issuing these decisions outside of the statutory timeline set by MCL § 421.32a, the Agency deprives claimants of their due process rights and makes claiming UI benefits appear risky to workers, such that they may be less likely to claim the benefits to which they are entitled in the first place.

III. Conclusion

The purpose of the Act and the institution of unemployment insurance is to protect workers during periods of involuntary unemployment, providing them with financial security and preserving the welfare of the people of the state generally. When the Agency acts aggressively to collect overpayments from workers or accuse them of fraud, often with no factual basis for doing so, it undermines the financial security of the workers and trust in the unemployment insurance system and, in doing so, impacts the financial welfare of the state as a whole. As long as the

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[24] See footnote 22.

[25] DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY, WHAT ARE THE PENALTIES FOR FRAUDULENTLY COLLECTING UNEMPLOYMENT BENEFITS? (Last visited Dec. 7, 2020) https://www.michigan.gov/leo/0,5863,7-336-94422_97241_93360_102650-135317--,00.html (Appendix 20). In 2018, the penalty amounts were reduced to 1 times the amount overpaid for first offenses, although 4x penalties can still be levied in cases of identity theft. MCL 421.54(b)(i)-(ii).

Agency continues these practices, it is not following the purpose of the Act or protecting Michigan's workers.

Respectfully submitted,

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Dated: December 9, 2020

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STATE OF MICHIGAN
IN THE SUPREME COURT

FRANK LUCENTE,
Claimant-Appellant,

v.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS/ UNEMPLOYMENT INSURANCE AGENCY
Agency-Appellee.

SC: 160843
Court of Appeals: No. 342080
Lower Court: Macomb Circuit Court
LC No. 2017-000125-AE

MICHAEL HERZOG,
Claimant-Appellant,

v.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS/ UNEMPLOYMENT INSURANCE AGENCY
Agency-Appellee.

SC: 160844
Court of Appeals No. 345074
Lower Court: Wayne Circuit Court
LC No. 18-003162-AE

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

PROOF OF SERVICE

I certify that a copy of the foregoing Motion, Brief of Amicus Curiae, and related Appendices were served pursuant to the electronic filing system to the Department of the Attorney General's office this December 9, 2020. Further, courtesy copies of the forgoing Motion and Brief of Amicus Curiae were sent via mail to the employers below listed addresses this December 9, 2020:

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APPENDIX TABLE OF CONTENTS

RECEIVED by MSC 12/9/2020 3:51:27 PM

Pages	Title	Description
001-003	Appendix 1	David Eggert, State Apologizes for Fraud Fiasco, Wants to Reduce Penalties, AP NEWS (January 28, 2017) https://www.apnews.com/c0e2346e85854a5b827ca42653c1fb40
004-007	Appendix 2	Jonathan Oosting, False Fraud Scandal Goes to Michigan Supreme Court, THE DETROIT NEWS (Oct. 9, 2018) https://www.detroitnews.com/story/news/local/michigan/2018/10/09/false-fraud-scandal-michigan-supreme-court/1579079002/
008-019	Appendix 3	Daniel N. Price, *Unemployment Insurance, Then and Now, 1935-85* (October 1985). Available at: https://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p22.pdf
020-073	Appendix 4	*Report to the President of the Committee on Economic Security* (January 1935). Available at: https://www.ssa.gov/history/reports/ces5.html
074-076	Appendix 5	*Presidential Statement Signing the Social Security Act* (August 14, 1935). Available at: https://www.ssa.gov/history/fdrsignstate.html
077-079	Appendix 6	Michael Gerstein, Lawyers Say Thousands in Michigan Mistakenly Charged with Unemployment Fraud, CRAIN'S DETROIT BUSINESS May 09, 2016), https://www.crainsdetroit.com/article/20160509/NEWS01/160509844/lawyers-say-thousands-in-michigan-mistakenly-charged-with
080-085	Appendix 7	Paul Egan, Data Glitch was Apparent Factor in False Fraud Charges Against Jobless Claimants, DETROIT FREE PRESS (July 30, 2017), https://www.freep.com/story/news/local/michigan/2017/07/30/fraud-charges-unemployment-jobless-claimants/516332001/
086-094	Appendix 8	Alejandro De La Garza, States' Automated Systems Are Trapping Citizens in Bureaucratic Nightmares With Their Lives on the Line, TIME (May 28, 2020), https://time.com/5840609/algorithm-unemployment/
095-098	Appendix 9	Paul Egan, State of Michigan's mistake led to man filing bankruptcy, Detroit Free Press (December 22, 2019), https://www.freep.com/story/news/local/michigan/2019/12/22/government-artificial-intelligence-midas-computer-fraud-fiasco/4407901002/
099-150	Appendix 10	OFFICE OF THE AUDITOR GENERAL PERFORMANCE AUDIT REPORT, CLAIMANT SERVICES (April 2016), 5. Available at: https://audgen.michigan.gov/finalpdfs/15_16/r641031814.pdf
151-154	Appendix 11	Ryan Felton, Michigan unemployment agency made 20,000 false fraud accusations – Report, THE GUARDIAN (December 18, 2016), https://www.theguardian.com/us-

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		news/2016/dec/18/michigan-unemployment-agency-fraud-accusations
155-169	Appendix 12	Stipulated Order of Dismissal, *Sugar Law, et al, v. Arwood*, Case No. 2:15-cv-11449 (February 2, 2017), available at: https://www.bwlawonline.com/wp-content/uploads/2017/02/Zynda-ORD-2017-02-02-Robo-Fraud-Settlement-and-Dismissal.pdf
170-178	Appendix 13	*Bauserman v. Unemployment Ins. Agency*, No. 333181, 2017 Mich. App. LEXIS 1154 (Ct. App. July 18, 2017)
179-193	Appendix 14	*Bauserman v. Unemployment Ins. Agency*, No. 333181, 2019 Mich. App. LEXIS 7683, at *38 (Ct. App. Dec. 5, 2019)
194-250	Appendix 15	OFFICE OF THE AUDITOR GENERAL PERFORMANCE AUDIT OF UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS AND NONMONETARY ELIGIBILITY DETERMINATIONS (March 2011), 3. Available at: https://audgen.michigan.gov/finalpdfs/10_11/r641031510.pdf
251-275	Appendix 16	A Guide to Unemployment Insurance Appeals Hearings, Michigan Office of Administrative Hearings and Rules (2008)
276-304	Appendix 17	OFFICE OF THE AUDITOR GENERAL FOLLOW-UP REPORT ON PRIOR AUDIT RECOMMENDATIONS (February 2020). Available at: https://audgen.michigan.gov/wp-content/uploads/2020/02/r641031814F-0088.pdf
305-323	Appendix 18	Luke Shaefer and Steve Gray, *Michigan Unemployment Agency: Unjust Fraud and Multiple Redeterminations*, <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Shaefer-Gray-USDOL-Memo_06-01-2015.pdf> (accessed Feb. 27, 2020)
324-361	Appendix 19	IMPROPER DENIALS BY CAUSE, BENEFIT ACCURACY MEASUREMENT ANNUAL REPORT, United States Department of Labor Employment and Training Administration (2017). Available at: https://oui.doleta.gov/unemploy/bam/2017/IPIA_2017_Benefit_Accuracy_Measurement_Annual_Report.pdf
362-363	Appendix 20	DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY, WHAT ARE THE PENALTIES FOR FRAUDULENTLY COLLECTING UNEMPLOYMENT BENEFITS? (Last visited Dec. 7, 2020) Available at: https://www.michigan.gov/leo/0,5863,7-336-94422_97241_93360_102650-135317--,00.html

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APPENDIX 1

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State apologizes for fraud fiasco, wants to reduce penalties

By DAVID EGGERT

LANSING, Mich. (AP) — A state official who is conducting a wide-ranging review of Michigan's embattled unemployment benefits office apologized for the fiasco that led at least 20,000 people to be falsely accused of defrauding a system that provides the jobless with temporary financial assistance.

Talent Investment Agency Director Wanda Stokes, whose agency includes the state Unemployment Insurance Agency, added that lawmakers should consider reducing what she said are the country's highest financial penalties for unemployment fraud.

"I really feel horrible about this whole situation," she told The Associated Press in an interview Friday. "At the most vulnerable and stressful time in their life, they are now being accused of fraud. ... I understand that they're angry and I'm angry, too. It shouldn't have happened."

Stokes, who took charge of the umbrella agency that oversees the unemployment office in July, said Republican Gov. Rick Snyder appointed her to "assess the situation and then fix it."

The state is reviewing about 50,000 cases from a nearly two-year period that cover roughly 40,000 people who were determined to have committed fraud — either solely by an automated computer system or by a mix of the software and some level of staff involvement. That typically means they were flagged for receiving "overpayments" to which they had not been entitled.

In many cases between October 2013 and August 2015, however, they did not commit fraud and — to compound being forced to pay restitution — were hit with interest along with penalties equaling two or four times the overpayment. Their wages and income tax refunds were garnished. Lawyers for people suing the state say some suffered worse credit ratings, job prospects and consequences from not being able to spend money they needed.

On Jan. 11, U.S. District Judge Robert Cleland approved an agreement by which the state is halting all collection activities against people who were subject to fraud determinations in the period in question, "unless and until individually reviewed by agency staff and affirmed with new notice to claimant." The state must comply by late February.

Separately, the Michigan Court of Appeals is expected to soon schedule arguments in a 2015 class-action lawsuit that seeks economic damages.

"People have suffered greatly in addition to the financial losses that they've experienced. I think it's only just that they receive some compensation from the state for the stress and the strain," said Jennifer Lord, a Royal Oak-based attorney representing the plaintiffs in state court.

The state started using the Michigan Integrated Data Automated System (MiDAS) in 2013. The "robo-" or "auto-adjudication" system issued fraud determinations based on discrepancies in reported earnings, hours worked and other information.

The problem, Lord said, is three-fold.

The state rushed the implementation of a "fatally" designed computer program, which led to improper fraud claims. And a faulty notification process ensured many people were unaware of alleged discrepancies and unable to respond quickly before determinations were finalized, she said. For instance, questions were sent to online accounts for claimants who no longer were

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getting benefits and had no reason to check.

“I want them to know that we apologize for this situation and that we are looking at now going forward with a system that works for them and one that they can trust in the future,” said Stokes, who previously held top roles at the Michigan Department of Licensing and Regulatory Affairs, the state attorney general’s office and in the private sector. She reassigned the director of the Unemployment Insurance Agency more than three weeks ago.

Stokes said the agency cannot “unilaterally” lower 400 percent penalties that are codified in law, but she plans to talk to legislators about more “reasonable” penalties. While she did not specify an amount, she said penalties should be designed to encourage compliance and “shouldn’t be too harsh.”

A review of unemployment fraud cases made public in December found an error rate of 93 percent for about 22,000 cases in which determinations were solely made by the computer system between 2013 and 2015. The state now is reviewing 28,000 other cases from that time that were handled by the computers and staff.

A new law prevents the agency from adjudicating a claimant’s case as fraud without human verification and reduces the statute of limitations so it can pursue fraud three years back instead of six. But legislators plan to propose more bills in the new two-year session as needed.

Senate Minority Leader Jim Ananich, a Flint Democrat, wants to create a fund so people are paid back and to address a potential statute of limitations issue — which may be resolved in court — for people who were flagged for fraud involving benefits they had gotten years ago.

“This was something the government did wrong, and the citizens didn’t, so we’ve got to solve it,” he said.

Ann Arbor-based lawyer David Blanchard, who represents individuals in the federal case whose plaintiffs also include the United Auto Workers union and the Sugar Law Center in Detroit, said he is hopeful after the state agreed to stop collections.

“It’s sad that it’s taken so long. But it’s good that it’s finally gotten to the point where it’s impossible to deny that the system is broke and that it needs to be fixed,” he said. “That was not the first response from the state.”

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APPENDIX 2 2

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The Detroit News

MICHIGAN

False fraud scandal goes to Michigan Supreme Court

Jonathan Oosting The Detroit News

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Lansing — Out-of-work residents who were falsely accused of unemployment insurance fraud continue to suffer financial and personal consequences, say attorneys and advocates urging the Michigan Supreme Court to revive a class-action lawsuit.

Justices will hear oral arguments Wednesday afternoon in a case that has major implications for tens of thousands of claimants who were wrongly flagged for fraud and penalized by the Michigan Unemployment Insurance Agency. The state relied on an error-prone automated computer system over a nearly two-year span beginning in 2013.

“Five years later, we’re still seeing people who are filing for bankruptcy, losing homes or can’t pass credit checks,” said Jennifer Lord, an attorney representing the named plaintiffs in the suit.

The agency reversed more than 40,000 determinations made by the computer system between October 2013 and August 2015. The state has acknowledged errors and changed various policies and protocols as a result, but it is fighting the suit.

The case boils down to a technical argument: Were plaintiffs harmed when the state accused them of fraud, or when it seized their income tax refunds and garnished their wages?

A Michigan Court of Appeals panel sided with the state last year, ruling that plaintiffs failed to file their case within six months “following the happening of the event giving rise to the cause of action,” as required in suits seeking financial damages against the state.

Michigan Attorney General Bill Schuette’s office, which is representing the unemployment insurance agency in the case, is asking the Supreme Court to uphold the dismissal. Plaintiffs did not sue, or file a notice of intent to sue, within six months of receiving notice of the fraud determination, the state argues.

“The agency does not mean to suggest the consequence of having their claim dismissed are not real or important to plaintiffs,” state attorneys wrote in a brief asking justices to deny appeal.

“They no doubt are, and the agency has taken many actions to address the issues raised by plaintiffs

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and other claimants. But those consequences do not change the fact that the Court of Appeals correctly applied the law to the facts presented."

Claimants who say the state violated their due process rights argue the six-month clock should have started ticking when the state seized their property. Lead plaintiff Grant Bauserman, who was accused of fraud after receiving a delayed bonus from a previous job, had his federal income taxes seized in June 2015 and sued in September of the same year.

Plaintiffs who sued early in the process would have been kicked out of court "so fast" for premature claims, Lord said, calling the seizures a form of "state-approved and state-sponsored theft from tens of thousands of innocent victims."

Rebecca Williams, a former Michigan resident now living in North Carolina, said she did not realize she'd been accused of fraud in 2014 until her $3,850 federal income tax refund was seized in early 2017. Because of penalties and interest, she owed $100,600, she said, and had to hire an attorney to fight related criminal charges that have been dismissed but continue to make it difficult for her to find steady work.

"I put myself through college going to school day and night, raising three kids and working full time, and for all of this to just be taken away from me because of some computer system is simply amazing," Williams said in a conference call organized Tuesday by the Michigan AFL-CIO ahead of the Supreme Court arguments. "I'm still suffering from it."

Michigan settled a federal lawsuit over the unemployment insurance scandal in 2017, agreeing to a series of reforms designed to prevent a similar situation from happening in the future. Gov. Rick Snyder last year also signed a bipartisan reform package into law.

Schuette, a Republican who is running for governor, on Tuesday sought to distance himself from the case that his office is fighting to dismiss. As attorney general," it is my responsibility to defend all of Michigan's laws, whether I personally agree or not, and regardless of whether the law is a good one," he said in a statement.

"Tomorrow's hearing at the Michigan Supreme Court is one that is difficult for all involved," Schuette continued. "The MiDAS computer system was flawed. The result of this flaw was 44,000 people being wrongly accused of fraud and 186 people wrongly charged by local prosecutors' offices, all of whom are terrified of the long-term consequences. The MiDAS system failed Michigan and all of its citizens."

Schuette has chosen to remove his office from some state cases in the past. In 2016, the attorney general declined to join Gov. Rick Snyder in appealing a court ruling that directed the state to reimburse public school employees for "unconstitutional" paycheck deductions. The Michigan Supreme Court last year rejected the appeal and ordered refunds.

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While the Unemployment Insurance Agency has touted reforms, "we will not discuss the case prior to the arguments before the Supreme Court tomorrow," said spokesman Chris DeWitt.

The agency announced in August 2017 it was in the process of refunding affected residents more than $20.8 million. But Lord questioned the claim, pointing to an audited financial statement showing the agency listed $5.7 million in claimant reimbursement through September 2017.

The state has refunded the nearly $21 million, DeWitt said Tuesday. "Ninety-eight percent of the individuals have been contacted," he said in an email, "There are a few individuals that we have been unable to contact, but are still attempting to find."

Anecdotally, Lord said many claimants calling her law firm say they received a partial refund with no explanation why they did not get the full amount that was initially been seized from them. Williams said that in her case, the state seized $3,800 from her and refunded her roughly $1,700.

“This was after I had to come back to Michigan and go before a judge,” Williams said. “I was scared as hell to cash the check because I didn’t know if it was accurate.”

State reforms and refunds to not fully address the harms that have been done to residents who suffered from false fraud accusations, said Steve Gray, director of the University of Michigan’s Unemployment Insurance Clinic that provides services to claimants.

Beyond financial penalties, many claimants suffered reputational or relationship damage because of the stress that was put on then, their marriages and their families, Gray said. “Even if (the lawsuit) is successful, state leadership is going to have to do more work to make sure everyone is whole.”

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APPENDIX 3

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Unemployment Insurance, Then and Now, 1935–85

by Daniel N. Price*

At the same time that solutions were being sought for the problems of people reaching old age without income and savings in the depressed American economy of the 1930's, another income-maintenance problem was being intensively scrutinized—unemployment among able-bodied workers of all ages. If poverty in old age represented a burden no longer to be accepted, so, too, did the involuntary unemployment of millions of American workers. The Great Depression resulted in job loss for many workers and brought destitution to them and the families who depended on them. Amid controversy about the best way to deal with poverty in old age and with unemployment, the Congress established the old-age and unemployment insurance programs. As with old-age insurance, the unemployment insurance program was incorporated in the legislative package enacted as the Social Security Act of 1935. This article reviews the origins, development, and status of unemployment insurance on its 50th anniversary, and indicates some of the issues still faced by the unemployment insurance system.

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Before the Social Security Act was passed, a variety of plans already in operation were providing benefits for unemployment. Several European countries had established public programs of benefits. Most notably, the English and German systems were studied by many reformers and legislators as potential models for an American program. Domestically, a number of States had considered providing benefits to unemployed workers, but only one—Wisconsin—actually enacted a program, in 1932. In addition, a number of voluntary unemployment compensation schemes were operating in the 1920's and 1930's. They were instituted by forward-looking businesses concerned with stabilizing the economic cycle, including the recurrent layoffs that troubled industry.

The existence of private voluntary plans paying benefits to unemployed workers highlighted the issue of whether or not a public mandatory program should be established. Some of these plans were quite successful for periods of time, but eventually even the larger ones could not continue to pay benefits as the Great Depression deepened. Representatives of many of these plans appeared before Congress to testify about the need for a general unemployment insurance system. Throughout the debates in Congress, however, there continued to be strong advocates for solving the problem of unemployment through voluntary action. Arguments continued to be made also that a public system of unemployment benefits would weaken workers' willingness to work and be detrimental to the economy.

To bolster their views, proponents of a public program could refer to other programs already in operation. Each of the plans already in existence offered insight into some of the issues and pitfalls in establishing a successful public program of unemployment compensation. Many advocates of a public system in the United States, for example, were loath to follow Great Britain's example. That country had established the first successful national compulsory system in 1911. The program that ultimately became law in the United States incorporated some of the English principles of social insurance, especially the conditions under which benefits are payable.[1] But the British system experienced various difficulties because of long periods of severe unemployment. In trying to meet the needs of workers, the government repeatedly liberalized eligibility requirements and extended the potential duration of benefits, encountered severe financial difficulties, and began paying benefits on the basis of need to many workers who were not qualified under the insurance program. Great Britain's experience influenced the determination of the Congress to avoid a "dole" and to avoid any benefit plan that might lead to insolvency of the new system.

The principles incorporated in Wisconsin's 1932 legislation also had pervasive influence on the national program that emerged. The Wisconsin program, drawing on the experience of the States in their workers' compensation laws, emphasized the responsibility of individual employers for unemployment in their firms. This was accomplished through a funding system based on individual employer experience. The Wisconsin emphasis on preventing or minimizing unemployment through employer action was later reflected in the "experience rating" feature of the Federal-State program. Under experience rating, uniform tax rates to fund unemployment benefits may be modified for individual employers who have been responsible for less unemployment than other employers.

Perhaps the most crucial question to be decided about enacting an unemployment insurance program nationally was at what level of government the program would be controlled and operated. Drawing on the experience of some of the European countries and aware of the weakness of the fragmented voluntary programs in the United States, many reformers urged a strong national program under the Federal Government. If they could not have voluntary programs, others preferred State legislation to establish unemployment compensation. But each State hesitated to impose on employers the higher costs entailed in establishing an unemployment insurance program. It was believed that such extra costs might drive employers out of the State or make it less likely for new businesses to enter that State. Hence, through 1934 this fear of the adverse effects of interstate competition kept all States but Wisconsin from passing such a law. Pressure mounted for the Congress to enact legislation. Because of concern that the Supreme Court would declare a national program unconstitutional, a novel arrangement was created under which the States would be given strong incentive by a Federal tax measure to set up their own programs.

The Social Security Act of 1935

Federal Law and Objectives

On August 14, 1935, the Social Security Act was signed. It included the mechanism for establishing an unemployment insurance system in all States. The unemployment insurance provisions of the new law were contained in titles III and IX. A payroll tax on covered employers was established. It was 1 percent of payroll in 1936, 2 percent in 1937, and 3 percent in 1938 and thereafter. However, up to 90 percent of this tax (or 2.7 percent beginning in 1938) could be reduced by contributions that employers paid under an approved State unemployment insurance law. In addition, employers could credit against the 2.7 percent Federal tax any re-

[1] See Edwin E. Witte, **Some Aspects of Unemployment Insurance in the United States**, paper delivered at American Economic Association meeting, "Unemployment Insurance and Relief," Chicago, December 28, 1936.

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ductions in the State tax made under an approved State experience rating plan. That is, if the State tax was less than 2.7 percent as a result of reductions allowed employers who laid off fewer workers than other employers, the difference between 2.7 percent and the actual tax rate was also creditable against the Federal tax.

Employers of eight persons or more in at least 20 weeks in a year were subject to the Federal payroll tax, which, in effect, made this size firm the minimum size to be covered. Railroad workers were covered, but in 1938 a separate, completely Federal system of railroad retirement and unemployment insurance was legislated, superseding the Social Security Act coverage. Farm workers, government employees, employees in nonprofit industry or in domestic service, family members of employers, and seamen were the main groups excluded from coverage.

In addition, the Federal law provided broad standards still in effect today for approval of State programs. For example, compensation cannot be denied to any otherwise eligible claimant who refuses to accept new work that violates labor standards (such as work at a subminimum wage). As another condition of approval of a State program, all State tax funds must be deposited in the Federal Unemployment Trust Fund created by the Federal law. These deposits are credited to the State's account and may be withdrawn only to pay unemployment insurance benefits.

Grants are authorized to each State to administer the State unemployment insurance program. To receive these grants, the States are required to meet certain standards of administration, including procedures to pay benefits when due, allowing unemployed workers an appeal procedure if they are denied benefits, and providing information about the operation of the program to the Federal Government. All compensation under the State plan has to be paid through public employment offices or other approved agencies. The State staff administering the program must be employed in accordance with personnel standards on a merit basis.

The unemployment insurance provisions of the Social Security Act established a different system than that enacted for the old-age insurance and later the survivor, disability, and health insurance parts of the law. A tax offset device was used to promote passage of the unemployment insurance laws in all the States. The Federal Government retains an overseer's role in assuring that the States' programs meet certain broad standards of administration and in channeling the collection and disbursal of funds for benefit payments. But the States operate their programs directly and they determine eligibility conditions, the waiting period to receive benefits, benefit amounts, minimum and maximum benefit levels, duration of benefits, disqualifications, and other administrative matters.

What are the objectives of this program created by the Social Security Act? On the program's twentieth anniversary in 1955, the Secretary of Labor published this list:[2] (1) Unemployment insurance is intended to offer workers income maintenance during periods of unemployment due to lack of work, providing partial wage replacement as a matter of right; (2) it is to help maintain purchasing power and to stabilize the economy; and (3) it is to help prevent dispersal of the employer's trained labor force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment.

Translating these general objectives into more specific goals, the Secretary recommended as Federal policy that unemployment insurance should cover as far as feasible all workers subject to the risk of involuntary unemployment; that workers should qualify for benefits if they have had recent and substantial attachment to the labor force; that weekly benefits should be sufficient to cover nondeferrable expenses (a benefit of at least 50 percent of gross wages); that the duration should be sufficient to protect workers through periods of temporary unemployment (at least 26 weeks for all eligible workers); that the disqualification provisions should assure that claimants be involuntarily unemployed through no fault of theirs and that they be able and available for work, but the provisions should not be punitive; that the States should facilitate the payment of benefits to workers who move from one State to another; that financing should be sufficient to insure the payment of benefits in economic downturns, increasing reserves in good years; and that opportunities for the reemployment of claimants should be increased through the coordination of efforts with the Employment Service.

State Laws

The Social Security Act instituted broad guidelines for the States to follow. The enacted State laws matched the minimum requirements and, in many instances, exceeded them. In terms of the workers to be protected, table 1 shows that, as of 1938, 31 States and the territory of Alaska covered only firms with eight employees or more in at least 20 weeks in a year, as called for by the Federal law. The other 20 jurisdictions covered more firms (and workers) than required—including eight States, the District of Columbia, and the territory of Hawaii, which protected workers in firms with one employee or more, generally in at least 20 weeks. Other exclusions from coverage, in most instances, were the same under State law as under Federal law (agricultural workers and government workers, for example).

When the laws were first enacted, the State legislators

[2] **Employment Security Review**, Bureau of Employment Security, Department of Labor, August 1955.

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Table 1.—State unemployment insurance laws in effect May 1, 1938, and January 1, 1985, by State and selected benefit provisions

State	May 1, 1938			January 1, 1985		
	Waiting period (in weeks)	Maximum benefits payable		Waiting period (in weeks)	Maximum benefits payable	
		Weekly amount	Number of weeks		Weekly amount	Number of weeks
Alabama	3	$15	20	0	$120	26
Alaska	2	15	16	1	188 D	[1] 26
Arizona	2	15	14	1	115	26
Arkansas	2	15	16	1	154 A	26
California	4	15	20	1	166	[1] 26
Colorado	2	15	16	1	206 A	26
Connecticut	2	15	13	0	180 A D	[1] 26 U
Delaware	2	15	13	0	165 A	26
District of Columbia	3	15 D	26.6	1	206 D	26
Florida	3	15	16	1	150	26
Georgia	2	15	16	[2] 1	125	26
Hawaii	3	15	15	1	194 A	[1] 26 U
Idaho	3	15	20	1	173 A	26
Illinois	3	15	16	1	161 A D	26 U
Indiana	2	15	15	1	84 D	26
Iowa	2	15	15	[2] 1	143 A D	26
Kansas	2	15	[3] 16	1	175 A	26
Kentucky	3	15	15	0	140 A	26
Louisiana	4	15	25	1	205 A	26
Maine	2	15	16	1	139 A D	26
Maryland	2	15	16	0	175 D	26 U
Massachusetts	3	15	28.8 +	1	196 A D	30
Michigan	3	16	16	0	197 D	26
Minnesota	2	15	16	[4] 1	198 A	26
Mississippi	2	15	14	1	115	26
Missouri	3	15	12	[4] 1	120	26
Montana	3	15	16	1	171 A	26
Nebraska	2	15	16	1	120	26
Nevada	2	15	18	0	162 A	26
New Hampshire	3	15	16	0	141	26 U
New Jersey	2	15	16	[4] 1	203 A D	26
New Mexico	2	15	16	1	150 A	26
New York	3	15	16	1	180	26 U
North Carolina	2	15	16	1	167 A	26
North Dakota	2	15	16	1	185 A	26
Ohio	3	15	16 U	[4] 1	147 A D	26
Oklahoma	2	15	16	1	197 A	26
Oregon	2	15	16	1	204 A	26
Pennsylvania	3	15	13	1	224 A D	26
Rhode Island	2	15	20	1	174 A D	26
South Carolina	2	15	22.6	1	125 A	26
South Dakota	3	15	14	1	129 A	26
Tennessee	3	15	16	1	120	26
Texas	2	15	16	[4] 1	189 A	26
Utah	2	15	16	1	186 A	26
Vermont	3	15	14	1	146 A	26 U
Virginia	2	15	16	0	150	26
Washington	2	15	16	1	185 A	30
West Virginia	2	15	12	1	225 A	28 U
Wisconsin	3	15	20	0	196 A	26
Wyoming	2	18	14	1	183 A	26

[1] Benefits extended by 50 percent under State program when unemployment in State reaches specified level.

[2] In Georgia, the waiting week is waived for claimants unemployed through no fault of their own; in Iowa, the waiting week will be repealed on January 1 of the first calendar year for which a contribution rate table other than the highest is in effect.

[3] For beneficiary at maximum weekly benefit amount and maximum qualifying wages (8 percent of wages is credited to the account).

[4] Waiting week becomes payable: after receiving benefits for 9 weeks in Missouri; 3 weeks in New Jersey, Ohio (after 1985), and Texas; and after 4 weeks if reemployed full-time in Minnesota.

Note: A denotes that the maximum automatically increases each year with rising wages; D denotes dependents' allowance also payable, but in the District of Columbia, Maryland, and New Jersey, the same maximum applies with or without dependents; U denotes uniform maximum applies to all beneficiaries.

Source: **Comparison of State Unemployment Insurance Laws**, Department of Labor, Unemployment Insurance Service, 1938 and 1985.

were committed to establishing programs that would be fiscally sound and would not provide more in benefits than could be prudently financed. They first provided for a 2.7 percent tax rate on employers to build up reserves as required by the Social Security Act and they established conservative benefit provisions. All the laws provided that after the unemployment began, a worker who met the monetary qualification and eligibility re-

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quirements [3] could start drawing benefits only after a 2–4 week waiting period. There was widespread agreement among the States that workers should receive a benefit equal to about 50 percent of their recent earnings. This goal was reflected in the benefit formulas of all the States. However, because of concern about excessive costs and because of a desire to limit the extent of benefits provided to higher paid workers, weekly maximums were also established in each State ($15 in all but two). The weekly maximum benefit, of course, limits the attainment of a 50-percent replacement rate to individuals whose earnings were below certain wage levels.

As shown in table 1, the potential maximum duration of benefits varied considerably, ranging from 12 to 28.8+ weeks. But four-fifths of these maximums were for 16 weeks or less. Further, duration was generally fixed by a formula that varied the number of weeks allowed in proportion to the amount of previous earnings or employment. Thus, in a State with a specified maximum, a substantial number of claimants were eligible for less than the maximum number of weeks.

Experience Under the Program

In 1938, when all the State laws were in place and benefit payments began in most of them, 20 million workers were covered by the program nationally. This number represented less than two-thirds of employed wage-and-salary workers in that year. From then until 1985, the labor force has grown and so has the extent of statutory protection—to 92.5 million workers covered (96 percent of wage-and-salary workers) in January 1985. Thus, aside from some workers in very small firms and in agricultural work, and some specialized occupational groups such as elected officials and persons who work for family members, almost all wage-and-salary workers are now covered by the unemployment insurance laws.

In 1940, the second year for which benefits were paid in all States, 5.2 million workers received an average of $10.56 per week for almost 10 weeks. Altogether, $519 million was paid under the State programs in that year. By 1982, the year with the highest unemployment insurance expenditures, $20.6 billion was paid by the States to 11.6 million workers (excluding amounts under extended benefits programs). In that year, an average beneficiary received $119.39 per week for almost 16 weeks. Most recently, as the economy has improved, the total amount of benefits has declined: The $1.0 billion in benefits paid for August 1984 represented a $12 billion annual rate in benefit expenditures.

[3] Monetary qualification requirements are specified amounts of work or earnings to establish that the worker had substantial and recent employment. Eligibility requirements pertain to the claimant's being able to work and available for employment, being involuntarily unemployed, and meeting other tests of a valid claim.

In general, the basic structure of unemployment insurance continues today much the same as when it originally was enacted 50 years ago: Joint Federal-State administration, weekly benefits of about 50 percent of a worker's wage (up to a stated maximum) for workers with recent work experience, protection for temporary periods with a set maximum duration, program financing through a payroll tax on employers, and experience rated tax schedules. Nevertheless, unemployment insurance has also changed. As indicated, the proportion of workers with this type of income-maintenance protection has grown to a point where coverage is nearly complete.[4] The scope of protection has been enhanced in a major way by the provision for automatic increases in weekly benefit maximums to account for rising wages in about two-thirds of the States and through the extension of the maximum potential duration of benefits under the regular program and the establishment of extended benefit provisions.

The Federal agency originally responsible for overseeing the operation of the State programs was the Social Security Board, which also administered the old-age insurance and income-support provisions of the law. In August 1949, the Federal responsibility was transferred to the Department of Labor, where it remains. A number of the financing provisions also have been changed from those in the original program—namely, a much wider range of payroll tax rates on employers, but with a corresponding cutback from taxing all covered payrolls to taxing up to a set maximum (currently $7,000 per worker under Federal requirements). Further, when they first were enacted, 10 State laws called for employee contributions as well as employer contributions. By 1940, only five States required employee contributions, and since 1955 only three have retained this provision. These changes resulted from a number of amendments to the Federal law as well as changes in the State programs. A discussion of some of the more significant legislative changes follows.

Federal Developments

Coverage. The first changes in coverage under Federal law were the new restrictions imposed in 1939 and 1948. By broadening the definitions of the groups already excluded, still more farm workers, employees of nonprofit organizations, insurance agents, commission salesmen, and certain employees under the "master-servant" definition in common law were removed from covered employment. The 1939 amendments did add certain government instrumentalities to coverage, including bank members under the Federal reserve system.

[4] Some persons might argue that certain groups traditionally not considered insurable under unemployment insurance should be included, such as new labor-market entrants.

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The size-of-firm restriction was eliminated in two steps: The 1954 amendments reduced the restriction to four workers or more in 20 weeks, and the 1970 amendments extended the Federal tax to all firms with one worker or more in 20 weeks or with a quarterly payroll of $1,500 or more. All State laws cover at least firms of this size, and currently about one-third provide even broader coverage. For example, some laws specify coverage for firms of one worker or more at any time.

The other major extension of coverage was the addition of specific occupational or industrial groups of workers. The 1954 amendments provided a separate program to cover Federal civilian employees (Unemployment Compensation for Federal Employees—UCFE). Benefits are the same as for other workers in the State where the employee last worked, and claims are filed through State offices.

The UCFE program is financed directly by the Federal Government. Military personnel separated from active duty had been provided unemployment benefits through temporary programs enacted in 1944 and 1952. A permanent program for those benefits was established in 1958 (Unemployment Compensation for Ex-Servicemen—UCX). Benefit amounts and duration were governed by the law of the State in which the ex-serviceman filed a claim. This program has been amended and currently provides limited benefits: A maximum of 13 weeks duration, after a waiting period of 4 weeks following separation from the military, for personnel discharged (1) at the completion of a first full term of active duty or (2) for the convenience of the Government or under certain personal or family hardship conditions.

The next major expansion of coverage after 1954 was enacted in 1970 (effective in 1972) when, in addition to expanding coverage to firms with one employee or more, coverage was mandated for specified nonprofit organizations with four employees or more, State institutions of higher education and State hospitals, agricultural processing firms, and work performed overseas by American citizens for American employers. In addition, definitional changes in the term "employee" added agent-drivers, outside salesmen, and others who had not been covered under the more restrictive previously used common law definition of employee.

The last significant Federal addition to the groups of workers protected was incorporated in the 1976 amendments (effective in 1978). About 8.6 million jobs were added to the 72.4 million already covered, including: Farm employment (in operations with a payroll of at least $20,000 in a quarter or 10 employees in 20 weeks), domestic employment in private households (where at least $1,000 in wages was paid in a recent calendar quarter), State and local government employment, and employment in nonprofit elementary and secondary schools (with four employees or more in 20 weeks).

Other Federal coverage provisions have been enacted over the years affecting small groups of workers. Seamen have been covered to different degrees since 1946 but, as recently as 1984, crews in certain small fishing vessels were temporarily excluded.

Duration of benefits. Since the inception of the program, more major Federal legislation on unemployment insurance has pertained to the duration of benefits than to any other topic. The large number of temporary programs extending duration of benefits and the permanent program established in 1970 and amended many times since then reflect both the importance of this problem and the difficulty that unemployment insurance programs have in dealing with it.

No Federal changes were made in duration provisions through 1957, even though the economy experienced recessions in 1948–49 and 1953–54. States had improved the duration provisions of their programs considerably since 1938. Most States provided a maximum of 16 weeks or less in 1938, and variable duration provisions in all but one State meant that many claimants were entitled to even shorter duration than the stated maximum. By 1948, the maximum duration in the large majority of States was 20–26 weeks, and by the mid-1950's more than half the States had maximums of at least 26 weeks. By 1958, however, during the third postwar recession, unemployment reached 7.4 percent nationally, the highest level since before World War II. The Congress responded by passing the Temporary Unemployment Compensation Act of 1958. This law offered interest-free loans to States that increased by 50 percent the duration of benefits to unemployed workers who exhausted regular program benefits. Seventeen States participated in this voluntary program. (Five States enacted their own programs and also paid extended benefits.)

In the next downturn, the first mandatory extension of benefits applicable to all States was legislated: The Temporary Extended Unemployment Compensation Act of 1961. This law authorized additional weeks of benefit payments to individuals who had exhausted their benefits. The extended benefit period could equal up to 50 percent of the regular program entitlement period as long as it did not exceed 13 weeks or a combined maximum of 39 weeks in conjunction with the regular program benefit period. The extended benefits were funded from a temporary addition to the Federal payroll tax on employers.

Throughout the 1960's, the Congress considered proposals to establish a permanent program of extended benefits, which was, however, not enacted during that prosperous decade. The Extended Unemployment Compensation Act of 1970 instituted a mandatory permanent program that paid extended benefits (EB) nationally or in individual States with high unemployment, according to whether specified unemployment

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rates were reached. The number of extended benefit weeks again was established at the lesser of either half of the worker's regular program duration or 13 weeks, with an overall combined maximum of 39 weeks. The Federal Government and the States shared equally in the financing of these benefits through increases in their respective unemployment insurance payroll taxes.

Even with this permanent program in place, through 1985 more than a dozen Federal laws have been passed concerning extended benefits. Many of these attempted to fine tune the trigger provisions of the EB program as unemployment conditions changed. Others added temporary extensions on top of the permanent benefit provisions. As many as 65 weeks of benefits were available to an individual under the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975, the longest extension ever provided of these various benefits. In addition, special assistance was provided in 1974 and 1975 to groups not protected under the regular program. (Many of these workers were included in the regular program by the 1976 coverage amendments.)

In the 1980's, two major developments have occurred. The 1981 amendments modified the permanent EB program as follows:

(1) The national trigger was rescinded so that EB is payable only in individual States meeting the State trigger requirement.
(2) The State trigger, effective September 25, 1982, is an insured unemployment rate of 5 percent rather than the 4-percent rate previously used. (The rate must also be at least 120 percent of the average rate of the previous 2 years.)
(3) The States can provide EB at their option, even if the current insured unemployment rate is not at least 120 percent of the average rate for the corresponding rate of the previous 2 years, as long as the current rate is 6 percent (previously 5 percent).

Most recently, a new temporary program of extended benefits, Federal Supplemental Compensation, was enacted, in September 1982. This program added a varying number of weeks of benefits (up to 14, in the most recent amendments of 1983) for workers who exhausted regular program benefits and EB, if they had been eligible for them. This program ended in March 1985.

Starting in 1958, the various Federal enactments over the years to supplement regular program benefits have added a major new facet to the original 1935 law. However, it is also evident from the many legislative changes in the 1970's and through the early 1980's that, in providing these extended payments, the program continues to evolve.

Financing. The first important change in financing unemployment insurance came in 1939. At that time, the Federal unemployment tax base was changed from total covered wages to the first $3,000 of covered wages in order to match the tax (and benefit) base under the old-age insurance provisions. When the cap on the wage base was legislated, it had very little effect because most workers earned less than this amount. However, as wages rose sharply, the $3,000 base significantly changed the distribution of unemployment insurance taxes in various industries and areas. Pressure to update the base resulted in amendments raising the Federal tax base to $4,200 in 1970 (effective in 1972), to $6,000 in 1976 (effective in 1978), and to $7,000 in 1982 (effective in 1983). Under the $7,000 Federal base, about 43 percent of all covered payrolls were taxable in 1983. Of course, the States can, and many have, enacted higher tax bases. As of January 1985, 32 States had a higher tax base than the Federal level.

The Federal tax rate has been changed a number of times since 1935. The first increase was from 3.0 percent to 3.1 percent in 1961, with the maximum offset credit remaining at 2.7 percent. This change left an additional 0.1 percent for the net Federal tax, to be used to defray the growing administrative expenses of the system and to replenish a loan fund established earlier to make advances available to the States (as needed for benefit payments). Subsequently, the Federal rate has been raised several times, sometimes on a temporary basis, and, in most cases, to provide for the costs of extended benefit programs. Effective January 1, 1985, the Federal tax rate became 6.2 percent, including a 0.2-percent temporary levy that will stay in effect until general revenue advances made to finance the Federal share of extended benefits in recent years have been repaid. The maximum offset credit for employers is 5.4 percent, so that the net Federal tax is 0.6 percent (plus the temporary 0.2 percent tax).

The Federal law has been changed in other ways that affect program financing. The tax credit granted to employers for experience rating could begin only after 3 years of experience under the original legislation. In 1954, this period was shortened to 1 year, and subsequently the law was modified again to permit the full tax credit without any waiting period to employers taking over already established businesses. Employer credits are affected by the Federal legislation concerning delinquent repayment of loans made to the States.

Federal standards. Major changes in Federal rules concerning State operations were enacted in the 1970 amendments. At that time, States were prohibited from: (1) paying benefits to a claimant in a second successive benefit year unless the claimant had intervening employment; (2) totally eliminating benefit rights except for misconduct in connection with the job, fraud, or disqualifying income, or from reducing benefits to workers from another State; (3) denying benefits of claimants taking approved training on the grounds of lack of availability for work or work refusal; and (4)

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refusing to participate in arrangements for determining benefits based on combining wages in more than one State.

Under legislation enacted from 1976 through 1983, other Federal requirements have been established concerning the denial of benefits under certain circumstances (for example, for school employees between academic years); an offset of unemployment insurance payments by the amount of retirement benefits; [5] and coordination by State unemployment insurance agencies with State child support enforcement agencies to ensure the payment of child support.

A number of changes were instituted over the years besides those related to coverage, benefit duration, financing, and Federal standards. One of these that subsequently has also had legislative effects on the social security program (in 1983) was the taxation of unemployment insurance benefits. Under the Federal laws of 1978 and 1982, unemployment insurance benefits were made taxable under Federal income tax. Currently, a taxpayer must include in gross income for income tax purposes the lesser of the amount of unemployment benefits paid or half the excess of adjusted gross income plus unemployment benefits plus excludable disability income in excess of $12,000 (for single taxpayers) or $18,000 (for married taxpayers filing jointly).

State Programs

Every year a number of changes occur in State laws, including some to conform with Federal requirements. Throughout the past 50 years, the States truly have served as a laboratory for trying the many different ideas for operating an unemployment insurance system. In almost every aspect, the States have differed in their approach—on having benefit allowances for dependents; establishing flexible maximum benefit provisions; providing uniform or variable maximum potential duration; disqualifying claimants involved in labor disputes; basing benefit formulas on weekly, quarterly, or annual wage records; maintaining employer tax contributions in separate employer accounts or a statewide pool; or allowing claims by mail, to name a few.

Except for a limited number of Federal requirements, the States have had primary or exclusive responsibility for most facets of unemployment insurance. As can be seen from table 1, the State programs have converged in certain respects over the years. In 1938, waiting period requirements varied considerably; by 1985, four-fifths of the States required a 1-week uncompensated period before unemployment benefits began. Similarly, maximum potential duration has reached 26 weeks in almost all States. Both these provisions represent a greater degree of protection for unemployed workers.

There have been marked changes in the extent to which the States provide the same duration ("uniform duration") to all claimants who qualify for benefits, rather than provide duration that varies according to the worker's most recent length of employment. Only one State had uniform maximum duration in 1938. By 1941, 16 States provided uniform duration. But the trend since then clearly has been away from uniform duration provisions, reflecting a preference for relating the extent of protection to the extent of recent labor-force experience. Currently, eight States have uniform duration.

All the States have raised benefit maximums greatly but by considerably different amounts over the years. All but two States provided a maximum weekly benefit of $15 in 1938; all the States provided a range of maximums from $84 to $225 by 1985. The States generally still adhere to the principle of paying a weekly benefit that replaces about half of the worker's wage. However, the benefit formulas vary considerably in implementing this general goal. Some States have a weighted formula to give lower paid workers a somewhat higher proportion of lost earnings; others provide an allowance for dependents.

The most noteworthy development in the State laws dealing with benefit amounts was the adoption of flexible maximum weekly benefit provisions—that is, provisions that automatically raise the maximum, usually as the State average weekly wage rises. In 1949, only Kansas had such a provision. By 1985, two-thirds of the States had flexible maximums. This type of provision keeps benefit levels current as workers' wages increase. In States that must rely on ad hoc statutory increases, the maximum benefit tends to lag behind wages. However, even in States with flexible maximums, many beneficiaries are entitled to benefits that represent less than half their wages. This discrepancy results when the relationship between the maximum benefit and the State average weekly wage in covered employment is set too low (in eight States with flexible maximums, for example, the maximum benefit is set at less than 60 percent of the State's covered wage). Further, as of January 1985, seven States had frozen their maximum benefit amounts, temporarily setting aside the automatic provision.

The question of disqualification from benefits is another area in which the States have acted with great diversity—both in defining what types of circumstances should result in disqualification and in determining the appropriate manner of reducing (or eliminating) benefits because of specified disqualifying acts. More important, in certain respects, the State laws have become more stringent with the passage of time. In the first 25

[5] The unemployment benefit is reduced dollar-for-dollar by receipt of a private pension to the extent that the pension is provided by the same employer who provided the unemployment insurance coverage, and that work counted toward the pension rights. Social security retirement insurance benefits also serve to reduce the unemployment benefit. In figuring the reduction, States can take into account the effect of employee contributions on the pension or social security benefit.

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years of the program, "The causes for which benefits are denied have multiplied and the periods of disqualification have been made more severe." [6]

Since 1960, the same patterns have continued. For refusal to accept suitable work, for instance, just 15 States imposed a disqualification for the duration of unemployment in January 1960 (as opposed to disqualification for a specified fixed or variable period), but 40 States imposed this disqualification in January 1985. Similarly, for voluntarily leaving the job or for discharge for misconduct, the number of States disqualifying a claimant for the duration of his unemployment rose significantly:

Date	Voluntarily leaving	Misconduct
January 1960	17	10
January 1985	47	39

These changes and other similar changes represent an attempt to discourage inappropriate use of the unemployment insurance program and to conserve funds, especially during periods of high unemployment when large amounts of benefits are being paid.

Experience rating has become a basic part of the unemployment insurance financing structure to maximize employment stabilization efforts by employers. Under experience rating, employers who maintain a stable work force are assigned favorable tax rates compared with the rates of other employers. Table 2 indicates a few of the trends in experience rating over the years. First, although many States have encountered difficulties in financing benefits, especially during recessions, some States continue to allow a tax rate as low as zero to employers under the most favorable schedule (11 States in 1985). The conservative approach used in financing benefits early in the history of the program is discernible from the fact that, even under the most favorable schedule, the majority of States imposed a rate of at least 0.9 percent in 1937, but the minimum rate in almost all States had declined to 0.5 percent or less in 1960 and remained at that level in 1985. The maximum tax rates rose sharply between 1960 and 1985 for employers with unfavorable experience. But this change is largely a result of the federally mandated increase in the Federal tax instituted in 1985 (raising the Federal tax from 3.5 percent to 6.2 percent). One result of the most recent changes is that the range of experience rates has been expanded, allowing the States to better match employers' experience with their tax rate.

As indicated above, a number of States have raised their taxable wage base above that required by Federal law. In the early years, few States exceeded the Federal requirement. As wages rose by substantial amounts, however, and the Federal bases remained at low levels, more and more States took the initiative and revised their tax base. By 1970, 27 States had legislated higher bases than the original $3,000 Federal base still in effect. The growing pressure that higher costs exerted on the system during periods of high unemployment (and hence high benefit payments) has induced 32 States to raise their tax base above the Federal level, even though the Federal amount has been increased a few times, reaching $7,000 by 1985.

[6] R. Gordon Wagenet, "Twenty-Five Years of Unemployment Insurance in the United States," **Social Security Bulletin**, August 1960, page 56.

Table 2.—Number of States with specified minimum and maximum contribution rates in 1937, 1960, and 1985

Minimum rate (most favorable schedule)	Number of States			Maximum rate (least favorable schedule)	Number of States		
	1937	1960	1985		1937	1960	1985
Total [1]	40	48	50	Total [1]	37	50	51
0	12	15	11	2.7	10	34	0
0.01-0.1	0	16	17	2.9-4.0	27	15	0
0.11-0.2	0	3	3	4.2-5.2	0	1	7
0.21-0.3	0	6	7	5.4	0	0	14
0.4-0.5	1	6	8	5.5-6.0	0	0	6
0.6-0.8	0	1	1	6.1-7.0	0	0	14
0.9	13	0	1	7.1-8.0	0	0	3
1.0 or more	14	1	2	8.1 or more	0	0	7

[1] Includes District of Columbia. States not included did not provide variable rates according to individual employer experience (11 States in 1937; 1 in 1960), or provided variable rates other than through specification in the law.

Source: **Comparison of State Unemployment Insurance Laws**, Department of Labor, Unemployment Insurance Service, 1960 and 1985, and **Employment Security Review**, Bureau of Employment Security, Department of Labor, August 1955.

Current Issues

How has the unemployment insurance program met its goals over the past 50 years? Clearly, in broad terms unemployment insurance has developed into a valuable segment of the Nation's income-maintenance structure by providing income to replace lost wages to the unemployed through more than 2,000 local offices. In transferring large amounts of money to workers and their families during economic downturns, it has been a significant force in stabilizing the economy.[7] In providing a readily available source of replacement of wages to unemployed workers, it has helped employers by preventing dispersal of their trained labor force, the loss of skills, and the breakdown of labor standards during periods of temporary unemployment.

The rate of progress has varied for different aspects of the protection offered by the unemployment insurance program. Extension of coverage has been almost complete, in contrast to the moderate scope of the program mandated in the Social Security Act. Waiting periods have been reduced and benefit duration has been extended since the early days of the program.

[7] It has been cited as second only to the Federal income tax as the major economic stabilizer of the economy. See George M. von Furstenberg, "Stabilization Characteristics of Unemployment Insurance," **Industrial and Labor Relations Review**, April 1976, page 364.

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And yet, some of the current questions about the program point to inconsistencies inherent in the different goals of the system. The adequacy of the weekly benefit amount is an important case in point. One long-accepted goal of the program has been to provide a benefit/wage-replacement rate of 50 percent to the great majority of unemployment insurance beneficiaries. Almost all the statutory formulas call for this level of benefits. On the other hand, much concern has been expressed—especially in recent years—about the disincentive effects of unemployment insurance benefits on a worker's motivation to return speedily to work. "Considerable empirical evidence supports the conclusion that higher replacement rates induce longer spells of insured unemployment when unemployment is low." [8] This effect might signify that benefits are sufficiently high to produce "a disincentive to return to work or an opportunity for more intensive job search efforts and ultimately better matching of workers and jobs." [9]

These conflicting concerns probably have influenced the trends in statutory benefits. The maximum weekly benefit amount is an indicator of the adequacy of benefits. For the States' 50-percent replacement goal to be achieved, the maximum must be set high enough to prevent too many workers from having their benefits cut off by the maximum rather than having them determined by the formula that would pay 50 percent of the worker's wage. It has been estimated that the State maximum weekly benefit amount should be almost two-thirds of the State average covered wage to ensure that the great majority of beneficiaries receive a benefit replacing 50 percent of their wage.[10]

In the tabulation in the next column, the average of State maximum weekly benefit amounts is shown as a percentage of wages in covered employment for several periods. The States have increased weekly statutory maximum benefits many times over the decades. But the data show that the ratio of the average State maximum weekly benefit amount to the average weekly wage in covered employment nationally (1) was highest at the beginning of the program, (2) has improved gradually from immediately after World War II, and (3) is still well under two-thirds. Thus, it can be expected that under current laws many beneficiaries do not receive a benefit equal to half their wage.[11]

As of—	Average statutory maximum weekly benefit amount [1]	Average (gross) weekly wage in covered employment [2]	Benefit/wage ratio (percent)
May 1, 1938	$15.08	$25.36	59.5
September 1, 1947	21.02	51.59	40.7
January 1, 1960	38.43	90.90	42.3
July 2, 1972	66.51	155.12	42.9
January 6, 1985	169.40	[3] 348.69	48.6

[1] Weighted by covered employment in each State.
[2] For calendar year including or immediately preceding effective date of statutory maximum benefit amount.
[3] Preliminary data.

What many persons consider the most intractable and most important issue in unemployment insurance today is that of the appropriate potential duration of benefit payments. The problem represents a conflict between two program premises: (a) The goal of paying benefits for a temporary—that is, limited—period of unemployment, and (b) the need for providing income maintenance to individual workers experiencing involuntary long-term unemployment during periods of high unemployment. Realization of the latter goal helps fulfill the goal of stabilizing the economy.

As the present system evolved, three legislative patterns developed concerning duration of benefits. First, the number of weeks of benefits allowed under regular State programs increased substantially and stabilized at 26 weeks as a typical maximum amount for workers with substantial work experience before a period of unemployment. Second, despite the program objective stated through the mid-1950's—that benefit duration should be at least 26 weeks for all claimants who qualify for benefits—the States have moved in a different direction since 1941. All but eight States now vary potential duration—from 4 weeks to 26 weeks (except for a 28-week maximum in Washington)—by the extent of previous work experience. Variable duration provides some limited degree of protection even to workers who have not had stable full-time employment. Third, some States, and, in 1970, all States (under Federal law), added a supplementary set of benefits to regular program duration. This extended benefit feature for periods of high unemployment continues to be reexamined. The Congress has modified the duration provisions to meet the needs of the unemployed in succeeding business cycles, which have been accompanied by different patterns of unemployment.

It may be that still untried approaches will be considered in the future. One comprehensive alternative to the present system, for example, has been published by the Upjohn Institute for Employment Research, for many years a leading private research organization on employment security programs. This proposal concentrates on tailoring unemployment insurance to the

[8] Bruce Vavrichek, **Promoting Employment and Maintaining Incomes with Unemployment Insurance**, Congressional Budget Office, March 1985, page 21.

[9] National Commission on Unemployment Compensation, **Unemployment Compensation: Final Report**, July 1980, page 40.

[10] William Haber and Merrill Murray, **Unemployment Insurance in the American Economy**, Richard D. Irwin, Inc., 1966, page 184.

[11] Much available literature focuses on the adequacy of unemployment insurance benefits, including such complicated issues as whether or not a worker's benefit should be related to some measure of "net" wages and, if so, whether fringe benefits should also be counted. See, for example, **Unemployment Compensation Studies and Research**, National Commission on Unemployment Compensation, vol. I, July 1980.

economic circumstances of the worker rather than of the economy. It presents a three-tier duration system, totaling 39 weeks of benefits. Each succeeding, 13-week tier of benefits would be available only if the claimant satisfied more stringent qualifying requirements at each stage, rather than on the basis of changing economic conditions as in the current EB program. The three-tier program would be followed by a new permanent special assistance program that would extend benefits on the basis of need after workers can no longer qualify for unemployment insurance benefits.[12]

As already indicated, substantial improvements to adequately finance the program have been made in recent years. But it is also evident that additional steps are necessary if the costs of unemployment insurance benefits in future economic downturns are to be provided for in an orderly, planned-for fashion rather than through ad hoc emergency legislation. The need for improving this part of the system was highlighted by the National Commission on Unemployment Compensation, which recommended a number of ways that the Federal law and State laws should be amended to strengthen the funding of the program.[13] Their recommendations included proposals to raise the taxable wage base and establish a flexible level to rise as wages increase; strengthen requirements for borrowing from the loan fund; provide the States with protection against unusually heavy benefit costs to maintain State solvency; eliminate zero minimum tax rates and establish maximum rates in terms of anticipated benefit costs; and ensure effective charging of all benefits in fund replacement provisions of solvency arrangements.

These are a few of the issues that still need to be resolved in the area of unemployment insurance. Other facets of the program such as administration, partial unemployment, taxation of benefits, and disqualifications have been addressed in recent years and continue to receive considerable attention from policymakers and legislators. Because unemployment insurance is part of a dynamic economic system, it will always have to adjust and adapt to new challenges and new problems. But, based on the experience of the past 50 years, it can be predicted without doubt that the system will continue to make the changes needed to maintain its role as one of the Nation's major income-maintenance programs.

[12] See Saul J. Blaustein, **Job and Income Security for Unemployed Workers**, W. E. Upjohn Institute for Employment Research, Kalamazoo, Mich., 1981.

[13] **Unemployment Compensation: Final Report**, op. cit., pages 2 and 3.

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APPENDIX 44

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Social Security

Reports & Studies

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CES Report

REPORT OF THE COMMITTEE ON ECONOMIC SECURITY

NEED FOR SECURITY

The need of the people of this country for " some safeguard against misfortunes which cannot be wholly eliminated in this man-made world of ours " is tragically apparent at this time, when 18,000,000 people, including children and aged, are dependent upon emergency relief for their subsistence and approximately 10,000,000 workers have no employment other than relief work. Many millions more have lost their entire savings, and there has occurred a very great decrease in earnings. The ravages of probably the worst depression of all time have been accentuated by greater urbanization, with the consequent total dependence of a majority of our people on their earnings in industry.

As progress is made toward recovery, this insecurity will be lessened, but it is not apparent that even in the "normal times " of the prosperous twenties, a large part of our population had little security. From the best estimates which are obtainable, it appears that in the years 1922 to 1929 there was an average unemployment of 8 percent among our industrial workers. In the best year of this period, the number of the unemployed averaged somewhat less than 1,500,000.

Unemployment is but one of many misfortunes which often result in destitution. In the slack year of 1933, 14,500 persons were fatally injured in American industry and 55,000 sustained some permanent injury. Nonindustrial accidents exacted a much greater toll. On the average, 2.25 percent of all industrial workers are at all times incapacitated from work by reason of illness. Each year above one eighth of all workers suffer one or more illnesses which disable them for a week, and the percentage of the families in which some member is seriously ill is much greater. In urban families of low incomes, above one-fifth each year have expenditures for medical and related care of above $100 and many have sickness bills of above one-fourth and even

Historical Links

History Home Page

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one-half of their entire family income. A relatively small but not insignificant number of workers are each year prematurely invalided, and 8 percent of all workers are physically handicapped.

At least one-third of all our people, upon reaching old age, are dependent upon others for support. Less than 10 percent leave an estate upon death of sufficient size to be probated.

There is insecurity in every stage of life.

For the largest group, the people in middle years, who carry the burden of current production from which all must live, the hazards with which they are confronted threaten not only their own economic independence but the welfare of their dependents.

For those now old, insecurity is doubly tragic, because they are beyond the productive period. Old age comes to everyone who does not die prematurely and is a misfortune only if there is insufficient income to provide for the remaining years of life. With a rapidly increasing number and percentage of the aged, and the impairment and loss of savings, this country faces, in the next decades, an even greater old-age security problem than that with which it is already confronted.

For those at the other end of the life cycle--the children--dependence is normal, and security is best provided through their families. That security is often lacking. Not only do the children under 16 constitute above 40 percent of all people now on relief, as compared to 28 percent in the entire population, but at all times there are several millions in need of special measures of protection. Some of these need individual attention to restore, as fully as may be, lives already impaired. More of them--those who have been deprived of a father's support--need only financial aid which will make it possible for their mothers to continue to give them normal family care.

Most of the hazards against which safeguards must be provided are similar in that they involve loss of earnings. When earnings cease, dependency is not far off for a large percentage of our people. In 1929, at the peak of the stock-market boom, the average per capita income of all salaried employees at work was only $1,475. Eighteen million gainfully employed persons, constituting 44 percent of all those gainfully occupied, exclusive of farmers, had annual earnings of less than $1,000; 28,000,000, or nearly 70 percent, earnings of less than $1,500. Many people lived in straitened circumstances at the height of prosperity; a considerable number live in chronic want. Throughout the twenties, the number of people dependent upon private and public charity steadily increased.

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With the depression, the scant margin of safety of many others has disappeared. The average earnings of all wage earners at work dropped from $1,475 in 1929 to $1,199 in 1932. Since then, there has been considerable recovery, but even for many who are fully employed there is no margin for contingencies.

The one almost all-embracing measure of security is an assured income. A program of economic security, as we vision it, must have as its primary aim the assurance of an adequate income to each human being in childhood, youth, middle age, or old age--in sickness or in health. It must provide safeguards against all of the hazards leading to destitution and dependency.

A piecemeal approach is dictated by practical considerations, but the broad objectives should never be forgotten. Whatever measures are deemed immediately expedient should be so designed that they can be embodied in the complete program which we must have ere long.

To delay until it is opportune to set up a complete program will probably mean holding up action until it is too late to act. A substantial beginning should be made now in the development of the safeguards which are so manifestly needed for individual security. As stated in the message of June 8, these represent not "a change in values " but" rather a return to values lost in the course of our economic development and expansion." " The road to these values is the way to progress." We will not " rest content until we have done our utmost to move forward on that road."

SUMMARY OF MAJOR RECOMMENDATIONS

In this report we discuss briefly all aspects of the problem of economic security for the individual. On many phases our studies enable us only to call attention to the importance of not neglecting these aspects of economic security and to give endorsement to measures and policies which have been or should be worked out in detail by other agencies of the Government.

Apart from these phases of a complete program for economic security with which we deal only sketchily, we present the following, major recommendations:

EMPLOYMENT ASSURANCE

Since most people must live by work, the first objective in a program of economic security must be maximum employment. As the major contribution of the Federal Government in providing a safeguard

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against unemployment we suggest employment assurance-- the stimulation of private employment and the provision of public employment for those able-bodied workers whom industry cannot employ at a given time. Public-work programs are most necessary in periods of severe depression, but may be needed in normal times, as well, to help meet the problems of stranded communities and overmanned or declining industries. To avoid the evils of hastily planned emergency work, public employment should be planned in advance and coordinated with the construction and developmental policies of the Government and with the State and local public-works projects.

We regard work as preferable to other forms of relief where possible. While we favor unemployment compensation in cash, we believe that it should be provided for limited periods on a contractual basis and without governmental subsidies. Public funds should be devoted to providing work rather than to introduce a relief element into what should be strictly an insurance system.

UNEMPLOYMENT COMPENSATION

Unemployment compensation, as we conceive it, is a front line of defense, especially valuable for those who are ordinarily steadily employed, but very beneficial also in maintaining purchasing power. While it will not directly benefit those now unemployed until they are reabsorbed in industry, it should be instituted at the earliest possible date to increase the security of all who are employed.

We believe that the States should administer unemployment compensation, assisted and guided by the Federal Government. We recommend as essential the imposition of a uniform pay-roll tax against which credits shall be allowed to industries in States that shall have passed unemployment compensation laws. Through such a uniform pay-roll tax it will be possible to remove the unfair competitive advantage that employers operating in States which have failed to adopt a compensation system enjoy over employers operating in States which give such protection to their wage earners.

We believe also that it is essential that the Federal Government assume responsibility for safeguarding, investing, and liquidating all reserve funds, in order that these reserves may be utilized to promote economic stability and to avoid dangers inherent in their uncontrolled investment and liquidation. We believe, further, that the Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem experience very necessary with particular provisions of unemployment compensation

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laws in order to conclude what types are most practicable in this country.

OLD-AGE SECURITY

To meet the problem of security for the aged we suggest as complementary measures non-contributory old-age pensions, compulsory contributory annuities, and voluntary contributory annuities, all to be applicable on retirement at age 65 or over.

Only non-contributory old-age pensions will meet the situation of those who are now old and have no means of support. Laws for the payment of old-age pensions on a needs basis are in force in more than half of all States and should be enacted everywhere. Because most of the dependent aged are now on relief lists and derive their support principally from the Federal Government and many of the States cannot assume the financial burden of pensions unaided, we recommend that the Federal Government pay one-half the cost of old-age pensions but not more than $15 per month for any individual.

The satisfactory way of providing for the old age of those now young is a contributory system of old-age annuities. This will enable younger workers, with matching contributions from their employers, to build up a more adequate old-age protection than it is possible to achieve with non-contributory pensions based upon a means test. To launch such a system we deem it necessary that workers who are now middle-aged or older and who, therefore, cannot in the few remaining years of their industrial life accumulate a substantial reserve be, nevertheless, paid reasonably adequate annuities upon retirement. These Government contributions to augment earned annuities may either take the form of assistance under old age pension laws on a more liberal basis than in the case of persons who have made no contributions or by a Government subsidy to the contributory annuity system itself. A portion of these particular annuities will come out of Government funds, but because receipts from contributions will in the early years greatly exceed annuity payments, it will not be necessary as a financial problem to have Government contributions until after the system has been in operation for 30 years. The combined contributory rate we recommend is 1 percent of pay roll to be divided equally between employers and employees, which is to be increased by 1 percent each 5 years, until the maximum of 5 percent is reached in 20 years.

There still remains, unprotected by either of the two above plans, professional and self-employed groups, many of whom face dependency in old age. Partially to meet their problem, we suggest the establishment of a voluntary Government annuity system, designed

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particularly for people of small incomes.

SECURITY FOR CHILDREN

A large group of the children at present maintained by relief will not be aided by employment or unemployment compensation. There are the fatherless and other "young" families without a breadwinner. To meet the problems of the children in these families, no less than 45 States have enacted children's aid laws, generally called "mothers' pension laws." However, due to the present financial difficulty in which many States find themselves, far more of such children are on the relief lists than are in receipt of children's aid benefits. We are strongly of the opinion that these families should be differentiated from the permanent dependents and unemployables, and we believe that the children's aid plan is the method which will best care for their needs. We recommend Federal grants-in-aid on the basis of one-half the State and local expenditures for this purpose (one third the entire cost).

We recommend also that the Federal Government give assistance to States in providing local services for the protection and care of homeless, neglected, and delinquent children and for child and maternal health services especially in rural areas. Special aid should be given toward meeting a part of the expenditures for transportation, hospitalization, and convalescent care of crippled and handicapped children, in order that those very necessary services may be extended for a large group of children whose only handicaps are physical.

RISKS ARISING OUT OF ILL HEALTH

As a first measure for meeting the very serious problem of sickness in families with low income we recommend a Nation-wide preventive public-health program. It should be largely financed by State and local governments and administered by State and local health departments, the Federal Government to contribute financial and technical aid. The program contemplates (1) grants in aid to be allocated through State departments of health to local areas unable to finance public-health programs from State and local resources, (2) direct aid to States in the development of State health services and the training of personnel for State and local health work, and (3) additional personnel in the United States Public Health Service to investigate health problems of interstate or national concern.

The second major step we believe to be the application of the principles of insurance to this problem. We are not prepared at this time to make recommendations for a system of health insurance. We have enlisted the cooperation of advisory groups representing the

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medical and dental professions and hospital management in the development of a plan for health insurance which will be beneficial alike to the public and the professions concerned. We have asked these groups to complete their work by March 1, 1935, and expect to make a further report on this subject at that time or shortly thereafter. Elsewhere in our report we state principles on which our study of health insurance is proceeding, which indicate clearly that we contemplate no action that will not be quite as much in the interests of the members of the professions concerned as of the families with low incomes.

RESIDUAL RELIEF

The measures we suggest all seek to segregate clearly distinguishable large groups among, those now on relief or on the verge of relief and to apply such differentiated treatment to each group as will give it the greatest practical degree of economic security. We believe that if these measures are adopted, the residual relief problem will have diminished to a point where it will be possible to return primary responsibility for the care of people who cannot work to the State and local governments.

To prevent such a step from resulting in less humane and less intelligent treatment of unfortunate fellow citizens, we strongly recommend that the States substitute for their ancient, out-moded poor laws modernized public-assistance laws, and replace their traditional poor-law administrations by unified and efficient State and local public welfare departments, such as exist in some States and for which there is a nucleus in all States in the Federal emergency relief organizations.

ADMINISTRATION

The creation of a social insurance board within the Department of Labor, to be appointed by the President and with terms to insure continuity of administration, is recommended to administer the Federal unemployment compensation act and the system of Federal contributory old-age annuities.

Full responsibility for the safeguarding and investment of all social insurance funds, we recommend, should be vested in the Secretary of the Treasury.

The Federal Emergency Relief Administration is recommended as the most appropriate existing agency for the administration of noncontributory old-age pensions and grants in aid to dependent children. If this agency should be abolished, the President should

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designate the distribution of its work. It is recommended that all social welfare activities of the Federal Government be coordinated and systematized.

EMPLOYMENT ASSURANCE

A program of economic security for the Nation that does not include those now unemployed cannot possibly be complete. They, above all, are in need of security. Their tragic situation calls attention not only to their own desperate insecurity but to the lack of security of all those who are dependent upon their own earnings for a livelihood. Therefore, any program for economic security that is devised must be more comprehensive than unemployment compensation, which of necessity can be given only for a limited period. In proposing unemployment compensation we recognize that it is but a complementary part of an adequate program for protection against the hazards of unemployment, in which stimulation of private employment and provision of public employment on a security-payment basis are other major elements.

PRIVATE EMPLOYMENT

In our economic system the great majority of the workers must find work in private industry if they are to have permanent work. The stimulation and maintenance of a high level of private employment should be a major objective of the Government. All measures designed to relieve unemployment should be calculated to promote private employment and also to get the unemployed back into the main channel of production. We believe that provision of public employment in combination with unemployment compensation will most effectively serve these purposes. Both will operate to maintain purchasing power, and public employment will indirectly give work to many more persons in private industry who otherwise would have none. At the same time it will stimulate workers to accept and seek private employment when it becomes available.

PUBLIC EMPLOYMENT

What the Federal, local, and State governments would be called upon to do in providing work depends upon many complicated factors: financial resources, advance planning, the general industrial trend and methods; but it is a sound principle that public employment should be expended when private employment slackens, and it is likewise sound that work in preference to relief in cash or in kind should be provided

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for those of the unemployed who are willing and able to work.

The experience of the past year has demonstrated that making useful work available is a most effective means of meeting the needs of the unemployed. Further, it has been demonstrated that it is possible to put large numbers of persons to work quickly at useful tasks under conditions acceptable to them. The social and economic values of completed projects represent a considerable offset to the economic losses occasioned by millions of unemployed workers. Work maintains occupational skill. The required expenditures have an important stabilizing effect on private industry by increasing purchasing power and employment, and the completed works frequently produce self-liquidating income.

In periods of depression public employment should be regarded us a principal line of defense. Even in prosperous times it may be necessary, on a smaller scale, when " pockets " develop in which there is much unemployment. Public employment is not the final answer to the problem of stranded communities, defining industries, and impoverished farm families, but is necessary supplement to more fundamental measures for the solution of such problems. And it must be remembered that a large part of the population will not be covered by unemployment compensation. While it will not always be necessary to have public employment projects to give employment assurance, it should be recognized as a permanent policy of the Government and not merely as an emergency measure.

Such an employment program must be related to unemployment compensation; and the resources of all public bodies--Federal, State, and local--must be coordinated if the policy of employment assurance is to be effectively realized. It would be advantageous to include in the program many types of public employment other than those which are considered necessary for the regular operations of government. This would include not only public construction of all kinds, but also appropriate work to employ usefully the professional and self-employed groups in our population. Because of the predominant importance of State and local construction in total public construction it is also essential that such Federal agencies as are established be empowered to incorporate State and local construction into the work program. It would also be desirable to extend Federal loans at low rates of interest to States and local governments for employment purposes. Such loans, once established, should be on a self-liquidating basis, and should become a revolving fund to be used over and over again as loans are repaid.

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This entire program points immediately and inevitably toward practical advance planning--on a broad scale to make the potential resources of a region available for the general welfare of the people involved and toward detailed development of individual projects. To this end we endorse the recommendations of the National Resources Board for the establishment of a permanent national planning board.

We propose that public employment be made as nearly like private employment as possible. Applicants should be selected for their apparent ability to do the work offered as well as on the basis of their need; and we believe the public employment officers should be extensively utilized for this purpose. Only those who really work should be kept at work; the others should be discharged as in private employment.

COORDINATION WITH UNEMPLOYMENT COMPENSATION

We believe it is desirable that workers ordinarily steadily employed be entitled to unemployment compensation in cash for limited periods when they lose their jobs. It is against their best interests and those of society that they should be offered public employment at this stage, thus removing them from immediate consideration for reemployment at their former work. Very often they will need nothing further than unemployment compensation benefits, for they will be able to reenter private employment after a brief period, but if they are unable to do so and remain unemployed after benefit rights are exhausted, we recommend they should be given, instead of an extended benefit in cash, a work benefit--an opportunity to support themselves and their families at work provided by the Government.

Similarly we deem provision of work the best measure of security for able-bodied workers who cannot be brought under unemployment compensation. Such workers will become eligible for public employment soon after the loss of regular employment; but more care will have to be exercised in their selection, to be certain that only workers who are ordinarily employed are given public employment.

UNEMPLOYMENT COMPENSATION

DESCRIPTION

Unemployment compensation as we use this term includes both unemployment insurance and unemployment reserves. It is a device through which reserves are accumulated during periods of employment to be paid out in periods of unemployment. In every system of unemployment compensation set up thus far, these reserves are built

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up through contributions paid by the employers alone, the employers and employees; or the employers, employees, and the Government. Except in England (where the contributions are uniform amounts per employee), the contributions everywhere are expressed as percentages of pay roll, and only in Belgium is a distinction made in the rate of contribution in different industries in accordance with their risk of unemployment.

All European systems create pooled unemployment insurance funds for the entire state or nation, in which the contributions of all employers are commingled. The systems voluntarily established by a number of employers in this country and also the Wisconsin law (which is the only unemployment compensation act in force in this country) establish, instead, industry or company unemployment reserves, in which each employer (or industry) is responsible for his own employment and his employees must look exclusively to his reserve fund for their compensation.

Some European unemployment insurance systems are voluntary, but the experience everywhere has been that compulsory coverage is necessary to include a majority of the industrial workers. Even with compulsory coverage large groups of workers cannot readily be brought under unemployment compensation; among them employees in very small establishments, and, of course, all self-employed persons.

Benefits from unemployment insurance funds are payable only for involuntary unemployment which is not due to the employee's own misconduct. An employee who is discharged or laid off is required to register at his nearest employment office, but draws no benefits during a specified waiting period. (In the basic calculations of our actuaries, a waiting period of 4 weeks was assumed.) If still unemployed after the waiting period, the worker becomes entitled to unemployment compensation at a specified percentage of his average wages prior to his discharge or lay-off, subject to an absolute maximum and, usually, also an absolute minimum. (In our calculations a 50 percent compensation rate and a maximum of $15 per week, but no minimum, were assumed.) Payments are usually made weekly and, an important condition in any unemployment compensation system, the unemployed worker must keep in touch regularly with the employment office and cannot draw any further benefits if he refuses to accept suitable employment offered him. In any event, the maximum number of weeks of benefit that may be drawn is definitely limited through a ratio of weeks of benefit to weeks of previous employment (1 to 4 in our calculations) and by absolute limitations. (We suggest to the States in framing, their laws that on the basis of 3-percent-contribution rate the

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maximum benefit period cannot safely exceed 16 weeks and should be reduced to 15 weeks, if it is desired to give workers who have been long, employed without drawing benefits an additional (maximum) week of compensation for each 6 months they have been employed without drawing benefits, up to a maximum of 10 additional weeks.)

After an unemployed worker has exhausted his rights to benefits, European systems generally permit him to draw extended benefits on a means-test basis, for additional periods, the entire cost of which is borne by the government. As we have stated, such extended cash benefits seem to us far less desirable than work benefits, and we recommend that an employee, after he has exhausted his contractual rights, be certified to the authorities in charge of the Federal work program as entitled to a work benefit. Such certification shall entitle the unemployed insured worker, who has exhausted his cash benefits, to employment on any available public employment project, without a means test, but with the proviso that he must be dependent upon his own earnings and that not more than one member of any family or household will be given public employment.

PLACE IN SECURITY PROGRAM

The actuaries and other technicians we have consulted estimate that if the plan we suggest had been in operation throughout the country in 1933, somewhat less than an average of 16,000,000 employed workers would have been included in the system, and that had there been in that year 100 percent employment, slightly more than 26,000,000 would have been included--one-half of the entire number of those gainfully occupied. These figures give the approximate minimum and maximum number of workers who can be brought under unemployment compensation; the total, at any given time depending upon the state of industrial activity and the extent to which the system is really Nation-wide in operation.

If a system of unemployment compensation had been in operation everywhere in this country during the years from 1922 to 1933, it is estimated that a 3 percent contribution rate with this coverage would have resulted in average total collections of approximately $825,000,000 per year, or $10,000,000,000 in the entire period. The estimated collections would have varied from a high of approximately $1,040,000,000 in 1929 to a low of $560,000,000 in 1932. During the twenties the contributions would have considerably exceeded the benefits paid and at the maximum point in 1929 approximately $2,000,000,000 would have been accumulated in the unemployment reserve funds, which would have been spent quite rapidly after the

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depression set in. In comparison with the emergency relief expenditures now approximating $1,800,000,000 per year, or the $1,000,000,000 annually invested by the workers of the country in industrial insurance even during the depression, and the more than $20,000,000,000 of assets of life-insurance companies, the total annual contributions and maximum reserves in a Nation-wide unemployment compensation system are small, but they are by no means negligible.

Unemployment compensation does not lend itself to actuarial determination of benefits of the same precision as is possible in other forms of insurance. We have now in this country only very limited statistics of unemployment. One of the values of a Nation-wide system of unemployment compensation will be the collection of accurate and comprehensive unemployment statistics which it will make possible.

On the assumption, however, that the past experience during the entire business cycle does furnish at least an approximate guide to possible future unemployment, our actuaries and statisticians have computed the maximum benefit periods which could have been allowed at varying contribution rates. These computations were made on the basis of the unemployment experience of the years 1922 to 1933 and 1922 to 1930, respectively, as shown in table I.

Table I: Actuarial estimates of the maximum number of weeks of benefits that could have been paid at various contribution rates and waiting periods under a nation-wide unemployment compensation system on the basis of the unemployment rates from 1922 to 1933, and from 1922 to 1930

Contribution Rate	Waiting Period (in weeks)	Standard Maximum Weeks of Benefits			
		1922-1933 Experience		1922-1930 Experience	
		Unadjusted	With Actuarial Adjustments	Unadjusted	With Actuarial Adjustments
3 percent	4	14	10	20	15
3 percent	3	13	9	18	14
3 percent	2	12	8	17	12
4 percent	4	21	15	36	24
4 percent	3	20	14	32	21

RECEIVED by MSC 12/9/2020 3:51:27 PM

4 percent	2	18	12	28	18
5 percent	4	35	21	48	38
5 percent	3	31	19	48	35
5 percent	2	27	17	46	30

Assumptions in the unadjusted computations

(1) Nation-wide coverage, including all establishments employing six or more employees, but applying to the first $50 per week as a wage or salary to any employee; (2) 1 year of contributions before benefits became payable; (3) deficits in reserve funds after end of period, and (4) benefits of 50 percent of the average weekly wages.

Adjustments

On the columns diving the estimated maximum weeks of benefit "with actuarial adjustments " the above assumptions are basic but allowance is made for all factors likely to increase or decrease costs, among them (1) the rule that no employee may draw benefits for whom contributions have not been pain for at least 40 weeks in the preceding years nor for 10 weeks after he has exhausted his benefit rights; (2) savings through employees voluntarily quitting their work and discharges for proven misconduct; (3) allowance of an additional maximum week of benefits for each 6 months of contribution without drawing benefits, up to a maximum of 10 additional weeks; (4) limitation of benefits in the ratio of 1 week of benefits to 4 weeks of contributions; (5) compensation for part-time unemployment; (6) limitation of compensation in seasonal industries to unemployment occurring within the normal season; (7) limitation of the maximum benefit to $15 per week; (8) estimated increases in costs resulting from the fact that benefits will be paid on a full-time wage basis while the contributions are made on actual pay roll, including much part time; (9) inadequacy of data; and (10) allowances for various contingencies, among them the probability of increased costs in the course of time, as is the experience in all other forms of insurance. Weighting all these and some other factors the actuaries arrived at a loading of 28 percent above the unadjusted cost figures.

While the maximum benefit periods, set forth in table I, are mere approximations, they very clearly indicate that on a contractual basis, benefits can be paid only for periods which, to many people, will seem short. The benefits are small, although considerably higher on the average than relief grants. While unemployment compensation is far from being a complete protection, it is a valuable first line of defense for the largest group in our population, the industrial workers ordinarily steadily employed. Unemployment compensation should permit such a

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worker, who becomes unemployed, to draw a cash benefit for a limited period during which there is expectation that he will soon be reemployed. This should be a contractual right not dependent on any means test. Normally the insured worker will return to his old job or find other work before his right to benefits is exhausted. If he does not find work, we recommend that his further period of unemployment should be met by a work benefit, as described in the section of this report dealing with employment assurance. This correlation between the cash benefit and the work benefit is recommended, and it seems to us that the combination is both fair and desirable. It will carry workers over most, if not all, periods of unemployment in normal times, without resort to any other form of assistance. While the maximum benefit periods indicated by the actuarial calculations are short in relation to the unemployment suffered by the people now on relief, it must be remembered that in ordinary industrial periods the great majority of workers who become unemployed find other work in a much shorter time.

But unemployment compensation is also valuable in depressions. If the benefits are kept within the limits we suggest, the funds should prove adequate for all minor depressions. In a depression of such depth as that which has prevailed since 1929 the funds are likely to be exhausted but will prove very helpful in the early stages. Had $2,000,000,000 been available for distribution to the workers when depression set in in 1929--as it might have been, had an unemployment-insurance system with a 3-percent contribution rate been in operation from 1922 on--it would have had a most pronounced stabilizing effect at a very crucial time. Within a year, or a little more, these accumulated reserve funds would have been exhausted, but considerable amounts would still have continued to be collected in contributions and distributed to the unemployed in benefits, thereby reducing relief costs and lightening the financial load on the public and the Government.

Some economists urge that, instead of using a tax on pay rolls, unemployment compensation should be paid through Federal Government borrowings to be repaid hereafter out of other types of Federal taxes. Without expressing any judgment on that contention, we deem it desirable, at the present time, to employ a pay-roll tax for unemployment compensation, although it may be possible that experimentation under the proposed statute will show that at some time in the future a plan built upon the other alternative suggestion should be substituted, in whole or in part, for that which we are proposing.

In not recommending any contributions derived from bond issues or

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income or other general tax sources we have had in mind that the Government under the plan we suggest will incur large expenditures in providing a work benefit, which will complement the cash benefits from unemployment compensation. It is our conviction that, at least at this time, general tax revenues should be drawn upon rather for employment assurance than for unemployment compensation.

GENERAL SKETCH OF LEGISLATION

Unemployment insurance has been in successful operation in England and many other European countries for some years. While the English system suffered some discredit through the combination, from 1924 to 1931, of insurance with relief and in all countries the unemployment-insurance funds have had to be governmentally aided and/or the rate of contributions increased and benefits decreased during the present depression, unemployment insurance everywhere has survived the depression. (Russia, however, has paid no benefits since 1930.) While unemployment insurance has not proved a panacea for unemployment, it has in all countries provided a self-respected method of support, far superior to relief, for a large percentage of the unemployed.

In this country there has been considerable interest in unemployment insurance ever since the enactment of the pioneer British law of 1911, especially since the depression of 1920-21. In the years that have intervened, considerable controversy has developed over the type of unemployment compensation legislation that should be enacted; particularly over such questions as unemployment insurance versus unemployment reserves, employee contributions, governmental contributions, extended benefits, and the type of unemployment to be benefited. It is our conviction that these controversies have developed largely because there has been no action, and, therefore, no practical experience on this subject. Further investigations and other devices for delay will merely enhance the negative character of the debate. What is needed at this state is demonstration, not further debate and research.

This background, it seems to us, is an important consideration in determining the type of unemployment compensation legislation to be recommended. It clearly suggests the desirability of permitting considerable variation, so that we may learn through demonstration what is best. This, we believe, can at this time best be secured under a cooperative Federal-State system, which permits variations in State laws but insures uniformity in respects in which uniformity is absolutely essential.

A federally administered system of unemployment compensation is undoubtedly superior in some respects, particularly in relation to

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employees who move from State to State. This presents a problem, involved in State administration, which we do not at this time know how to solve, although we do not regard it as insoluble and recommend that it should be made one of the major subjects of study of the Federal administrative agency. We recognize also that in other respects State administration may develop marked inadequacies. Should these fears expressed by the champions of a federally administered system prove true, it is always possible by subsequent legislation to establish such a system. We recommend that it be expressly provided in the Federal act that all States must include in their statutes provisions to the effect that those acts shall not be deemed to create any vested interests preventing modification or repeal and that a similar reservation of power be made by the Federal Government. Accordingly, the Congress can at any time increase the requirements which State laws must fulfill and may, if it sees fit, at some future time, substitute a federally administered system for the cooperative Federal-State system we recommend.

All things considered, however, we deem it the safest and soundest policy to confine the role of the Federal Government with respect to this problem at this time to removing obstacles to State action, safeguarding and liquidating the reserve funds, and aiding the States with their problems, leaving to them primary responsibility for administration.

Federal cooperation is essential, because the States cannot establish systems of unemployment compensation with reasonably favorable conditions unless there is assistance from the Federal Government. So long as there is danger that business in some States will gain a competitive advantage through failure of the State to enact an unemployment compensation law, few such laws will be enacted. This obstacle to State action can be removed only through the imposition by the Federal Government of a uniform tax (rate of contribution) on all employers throughout the country, so that no State will have an unfair advantage. We therefore recommend legislation which will impose a uniform Federal tax on payrolls with an offset permitted to any employer who contributes to an unemployment insurance fund under a compulsory State law. This we believe will encourage the speedy enactment of State laws which meet minimum standards of security and fairness.

The Federal Government has a further important obligation in the safeguarding and investment of the reserve funds. Unemployment reserve funds are peculiar in that the demands upon them will fluctuate violently with industrial conditions. In good years these funds will have

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receipts far in excess of disbursements; when serious depression sets in, the reserves will be used up rapidly. Unemployment compensation should not operate to increase unemployment, but there is danger that it will do so unless there is intelligent and unified handling of the reserve funds. One of the most important elements in attaining economic stability is the credit policy of the Government. Unless the investment and liquidation of the unemployment reserve funds is coordinated with this credit policy, these funds may operate to nullify the attempts of the Government to maintain stability. Particularly, when the Government is trying to prevent a depression the unemployment reserve funds should not be thrown on the markets, as they are likely to be if held by the States or in private hands. Intelligently handled, unemployment reserve funds can be made an important factor in preventing a depression; but utilization for this purpose is possible only if their investment and liquidation is within control of the United States Treasury. We deem this an absolute essential if unemployment compensation is to accomplish the purposes for which it is designed.

Beyond this, the respective spheres of the State and local governments in unemployment compensation are not clearly defined. Some standardization is desirable, but we believe that this should not be a matter of Federal control, but of cooperative action. A cooperative Federal-State unemployment compensation system should include the essentials be have outlined. In making definite recommendations as to the technique of establishing such a system, we are proceeding in the conviction that our purpose could be most promptly and effectively accomplished by Federal legislation which would (1) produce uniformity in the burden, by levying a pay-roll tax; (2) stimulate the passage of complete and self-sustaining unemployment compensation laws in the States, by allowing a credit against the Federal tax for contributions paid under State laws; and (3) to allow the necessary central control of the reserve funds in order to prevent their operating toward instability. We prefer a tax credit device to one in which the tax would be wholly collected and then remitted, as grants-in-aid, to the States, because under the latter system the States would not have self-supporting laws of their own, and as with all compensation having its source in Federal grants there would be great and constant pressure for larger grants exceeding the money raised by the tax, with a consequent confusion of compensation and relief.

OUTLINE OF FEDERAL ACT

We earnestly recommend prompt enactment by the Congress of legislation which will (1) impose a uniform pay-roll tax on the employers to whom the act is applicable, beginning with the year 1936,

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and (2) create machinery for participation in the administration of unemployment compensation.

The tax should be imposed upon all employers who have employed four or more employees for a reasonable period of time (any 13 weeks of the taxable year for example), and should be measured by a percentage of the employer's pay roll. By 1938 the rate of tax should be 3 percent of the pay roll; but in the first 2 years, if economic recovery has not progressed satisfactorily, we recommend a lower rate, and suggest that the index of industrial production of the Federal Reserve Board may well be used to determine whether the rate in the first and second years shall be 1 percent, 2 percent, or 3 percent. We are opposed to exclusions of any specified industries from the Federal act, but favor the establishment of a separate nationally administered system of unemployment compensation for railroad employees and maritime workers

Against the tax imposed in the Federal law, a credit, up to 90 percent of the tax, should be allowed for the money the employer has paid to the proper State authority as contributions for unemployment compensation purposes pursuant to State law. These credits, however, should be permitted only if the State is cooperating with the Federal Government in the administration of unemployment compensation, expending the money raised solely for benefits, and is depositing all contributions as collected in an unemployment trust fund in the United States Treasury, as hereafter recommended.

If a State, to encourage stabilization of employment, permits particular industries or companies to have individual-reserve or guaranteed-employment accounts--accounts to be kept by the State authority but deposit of the funds in the United States Treasury--or allows lower rates of contributions to employers not having such individual accounts on the basis of their favorable experience, an additional credit beyond the amount contributed in a particular year may be granted in the Federal act. We recommend, however, that such credit be allowed in all cases only on the condition that the employer has discharged in full his obligations under the State law and continues to pay at least 1 percent into the pooled State fund. Further, such an employer with an individual-reserve account, before becoming entitled to any additional credit, must have and maintain a reserve equal to at least 15 percent of his pay roll, and an employer with a guaranteed-employment account, a reserve of 7 percent of his pay roll; while no additional credit for any reduction in rates payable to a pooled State fund may be allowed until after the State law has been in operation for 5 years.

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To encourage efficient administration, without which unemployment insurance will fail to accomplish its purpose, we believe that the Federal Government should aid the States by granting them sufficient money for proper administration, under conditions designed to insure competence and probity. Among these conditions we deem selection of personnel on a merit basis vital to success. We also recommend that as a condition, both of grants-in-aid for administration and of the allowance of any tax credits for payments made under any State unemployment compensation act, the State must have accepted the provisions of the Wagner-Peyser Act and provide for the payment of unemployment compensation through the public employment offices established under such act. A grant-in-aid for administration would not create any new burden on the Federal Government, as it would be paid for by the amount of the pay roll tax over and above the credits allowed for contributions to State funds.

As an essential part of the Federal law it should be made a requirement for any tax credits that all moneys collected for unemployment compensation purposes under State laws--including those credited to individual industry or company accounts--be deposited as collected in the Treasury of the United States in a trust account to the credit of the State, to be invested and liquidated as the Secretary of the Treasury may from time to time direct. Interest on the average amount so deposited in each State fund shall be allowed at regular intervals, at a rate equal to the average yield of all outstanding primary obligations of the Federal Government, less one-eighth of 1 percent. Withdrawals from the fund are to be made only for unemployment compensation purposes, under regulations to be prescribed by the Secretary of the Treasury.

The collection of the Federal tax and investment of the reserve funds should be made under the control of the Secretary of the Treasury. All other aspects of Federal participation in unemployment compensation should be a responsibility of the Department of Labor. We recommend the creation within the Department of Labor of a social insurance board. We recommend that the board consist of three members appointed by the President. They should devote full time to their duties and be appointed for terms of 6 years, which should be varied at the outset to insure continuity in administrative policies. We recommend that this board be given power to decide what State laws comply with the Federal requirements and that it be made its duty to assist States in setting up unemployment compensation administrations and in the solution of the problems they will encounter; also that it conduct continuous studies to correlate and make useful the experience developed under State laws. The social insurance board should,

RECEIVED by MSC 12/9/2020 3:51:27 PM

likewise, have responsibility for the administration of the compulsory and voluntary systems of old-age annuities, whose establishment we suggest in another section of this report, and should study the advisability of instituting other forms of social insurance.

The plan for unemployment compensation that we suggest contemplates that the States shall have broad freedom to set up the type of unemployment compensation they wish. We believe that all matters in which uniformity is not absolutely essential should be left to the States. The Federal Government, however, should assist the States in setting up their administrations and in the solution of the problems they will encounter.

SUGGESTIONS FOR STATE LEGISLATION

This committee plans the preparation of a model State unemployment-compensation bill, with alternate clauses at many points. In this report it seems unnecessary to discuss all of the details of this model bill, since the legislature will determine the policy in each State. On some major points, however, comment seems appropriate.

Contributions.--The States should make all contributions compulsory and may require them from employers alone, or from employers and employees, with or without contributions by the State government.

Benefits.--The States should have freedom in determining their own waiting periods, benefit rates, maximum benefit periods, etc. We suggest caution lest they insert benefit provisions in excess of collections in their laws. To arouse hopes of benefits which cannot be fulfilled is invariably bad social and governmental policy.

It is our recommendation that the benefit periods be kept within the maximum limits of the last column of table I, which has been presented earlier in this report, and in no event should they exceed those of the second last column. If it is considered desirable that the unemployment-compensation funds should give protection in depression periods as well as in normal times, the maximum periods of the first two columns should be regarded as standard. While unemployment varies greatly in different States, there is no certainty that States which have had less than normal unemployment heretofore will in the future have a more favorable experience than the average for the country. State whose industries are such that they will probably continue to have a high rate of unemployment should not pay benefits up to the maximum amounts permitted in the actuarial calculations. With industry or company funds, longer benefit periods can be permitted if the employers guarantee payment of these benefits in full

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and furnish security adequate to insure fulfillment of these guaranties; but in all other cases it is preferable, at the outset, to err on the side of safety than of too great liberality.

At this point we call attention to the desirability of allowing additional weeks of benefit to employees who have been long employed without drawing, benefits. The British experience has been that a very large percentage of all employees draw no benefits over periods of many years. These are the workmen longest retained, who, particularly if they are required to contribute, have a very good claim for additional benefits when, because of a depression or change in technique, they lose their jobs and are unable to find other work. Our actuarial estimates indicate that if 1 week is taken off the ordinary benefit period for all workers, a special maximum of an additional week of benefits can be allowed to workers who have not drawn benefits for 6 months, 2 weeks for those who have not drawn benefits for 12 months, etc., up to a maximum of 10 weeks additional benefits for workers who have not drawn any benefits for 5 years.

Provisions to protect funds against heavy drains by particular classes of employees.--The provision last suggested is in line with the world experience that unemployment compensation is best adapted to employees who normally have some degree of security in their employment. Such workers, we feel, should be given some protection against exhaustion of the funds by others who work only intermittently.

English experience has demonstrated that seasonal industries will cause a heavy drain on the unemployment-insurance funds unless the benefits to seasonal workers are limited to unemployment occurring within the usual season for that particular industry. Determination of what this season is for each distinct seasonal industry must necessarily be left to the administrative authority.

Similarly the funds need to be protected against too heavy drain by the casual workers. This can best be done (1) through a ratio which relates the maximum weeks of benefit to the weeks of employment, the usual ratio suggested being 1 to 4; and (2) allowing benefits only if the employee has worked with some degree of regularity.

Partial unemployment creates another special problem. It is desirable, within limits, that work shall be shared when orders fall off, rather than that some employees shall be laid off altogether. It is also desirable that an unemployed man take part-time or odd-job employment when possible. Therefore, to encourage this, we advise that State laws should provide that the combination of part-time wages and benefits is better than benefits alone.

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Willingness to work test.--To serve its purposes, unemployment compensation must be paid only to workers involuntarily unemployed. The employees compensated must be both able and willing to work and must be denied benefits if they refuse to accept other suitable employment. Workers, however, should not be required to accept positions with wage, hour, or working conditions below the usual standard for the occupation or the particular region, or outside of the State, or where their rights of self-organization and collective bargaining would be interfered with.

Individual industry and company accounts.--The primary purpose of unemployment compensation is to socialize the losses resulting from unemployment, but it should also serve the purpose of decreasing rather than increasing unemployment. We favor leaving it optional with the States whether they will permit any " contracting out" from State-pooled funds in the sense that separate accounts may be set up for the exempted industries or companies, but without any change in the methods of collection or deposit and investment of funds. We strongly urge, however, that only plants which furnish adequate security to guarantee payment in full of all unemployment compensation which may become due to their employees shall be permitted to have separate accounts, and only upon condition that they pay 1 percent of their pay roll into the general State fund. We further advise that if "contracting out" is permitted, the State law should contain provisions under which employees will not lose their unused benefit rights, or any contributions which they may have made to such accounts above benefits received when they voluntarily leave the employ of an employer with a separate reserve account, lest such accounts operate to interfere with the mobility of labor. Experimentation with individual industry and company reserve accounts under proper restrictions will undoubtedly be permitted in some States; therefore, the importance of adequately safeguarding both the rights of the workers and the pooled State funds is emphasized.

We are opposed to any provision in the Federal act under which any industries or companies are exempted from State laws prescribing an exclusive State pooled fund.

Guaranteed employment.--Guaranteed employment is a device which, if properly safeguarded, will effectually secure all of the purposes of unemployment compensation. There would be no unemployment problem if all workers were guaranteed a sufficient annual wage. We feel it to be desirable that employers be permitted to experiment with guaranteed employment under the State laws, but also that such experiments should be conducted only under safeguards. Guaranteed

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employment, we believe, should be recognized as a reason for reduced contribution in State laws, only if the employees get at least as much protection as that afforded to employees by unemployment compensation. The period of guaranteed employment, when it is claimed as an offset, should be for at least 40 weeks of full-time employment during the year, although less than full-time employment may be counted toward fulfillment of the guaranty, if the number of weeks of guaranteed employment is correspondingly increased. Employees should be further protected by a provision in State laws under which they will receive at least half of the normal unemployment compensation benefits if they lose employment at the end of the guaranty period. Employers claiming contribution credits by guaranteeing employment should be permitted to do so only if the plan includes all their employees or all employees of entire plants. They should be required to make some contribution to the pooled State unemployment compensation fund and should be entitled to additional credits against the Federal tax only if they fulfill all obligations of their guaranty and have accumulated an adequate reserve. Sufficient security should be required by the State authority to insure fulfillment of the guaranty.

GENERAL COMMENTS

The plan of unemployment compensation, we suggest, is frankly experimental. We anticipate that it may require numerous changes with experience, and, we believe, is so set up that these changes can be made through subsequent legislation as deemed necessary. If we are to wait until everyone interested in the subject is in agreement as to what is a perfect measure before enacting unemployment compensation legislation, there will be a long and unwarranted postponement of action.

The plan we suggest is one that will secure the much-needed experience necessary for the development of a more nearly perfect system. It is in accord with American traditions and the message of the President which initiated our study of this subject.

We submit that the Federal part of the program should be enacted into law by the Congress at the earliest date possible. This is urgently necessary if the State legislatures are to act in time to permit the legislation to go into effect January 1, 1936. In the coming year, 44 of the 48 States will hold regular sessions of their legislatures. Most of these will convene in January, and will be in session 3 months or less. Unemployment compensation in this country will suffer another year of delay unless there is prompt action by the Congress.

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OLD-AGE SECURITY

THE OLD-AGE PROBLEM

In 1930 there were 6,500,000 people over 65 years of age in this country, representing 5.4 percent of the entire population. This percentage has been increasing quite rapidly since the turn of the century and is expected to continue to increase for several decades. It is predicted, on the basis of the present population and trends, that by 1940, 6.3 percent of the population will be 65 years of age; by 1960, 9.3 percent; and by 1975, 10 percent. In 25 to 30 years the actual number of old people will have doubled, and this estimate does not take into account the possibility of a decrease in the mortality rate, which would further increase the total.

No even reasonably complete data are available regarding the means of support of aged persons, and the number in receipt of some form of public charity is not definitely known. The last almshouse survey was made more than 10 years ago, and the number of people in institutions of this kind can only be approximated. There are about 700,000 people over 65 years of age on F. E. R. A. relief lists, and the present cost of the relief extended to these people has been roughly estimated at $45,000,000 per year. In addition there are a not definitely known but large number of old people in receipt of relief who are not on F. E. R. A. relief lists. All told, the number of old people now in receipt of public charity is probably in excess of 1,000,000.

The number in receipt of some form of pension is much smaller. Approximately 180,000 old people, most of them over 70 years of age, are receiving pensions under the State old-age assistance laws, the average pension last year being $19.74 per month.

A somewhat smaller number of the aged are receiving public retirement or veterans' pensions, for which the expenditures exceed those under the general old-age assistance laws. Approximately 150,000 aged people are in receipt of industrial and trade-union pensions, the cost of which exceeds $100,000,000 per year.

The number of the aged without means of self-support is much larger than the number receiving pensions or public assistance in any form. Upon this point the available data are confined to surveys made in a few States, most of them quite a few years ago. Connecticut (1932) nod New York (1929) found that nearly 50 percent of their aged population (65 years of age and over) had an income of less than $25 per month;

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34 percent in Connecticut had no income whatsoever. At this time a conservative estimate is that at least one-half of the approximately 7,500,000 people over 65 years now living are dependent.

Children, friends, and relatives have borne and still carry the major cost of supporting the aged. Several of the State surveys nave disclosed that from 30 percent to 50 percent of the people over 65 years of age were being supported in this way. During the present depression, this burden has become unbearable for many of the children, with the result that the number of old people dependent upon public or private charity has greatly increased.

The depression will inevitably increase the old-age problem of the next decades. Many children who previously supported their parents have been compelled to cease doing so, and the great majority will probably never resume this load. The depression has largely wiped out wage earners' sayings and has deprived millions of workers past middle life of their jobs, with but uncertain prospects of ever again returning to steady employment. For years there has been some tendency toward a decrease in the percentage of old people gainfully employed. Employment difficulties for middle-aged and older workers have been increasing, and there is little possibility that there will he a reversal of this trend in the near future.

Men who reach 65 still have on the average 11 or 12 years of life before them; women, 15 years. A man of 65, to provide an income of $25 per month for the rest of his life (computing interest at 3 percent) must have accumulated approximately $3,300; a woman nearly $3,600. If only this amount of income is allowed to all of the people of 65 years and over, the cost of support of the aged would represent a claim upon current national production of $2,000,000,000 per year. Regardless of what may be done to improve their condition, this cost of supporting the aged will continue to increase. In another generation it will be at least double the present total.

GENERAL OUTLINE OF RECOMMENDATIONS

An adequate old-age security program involves a combination of noncontributory pensions and contributory annuities. Only noncontributory pensions can serve to meet the problem of millions of persons who are already superannuated or shortly will be so and are without sufficient income for a decent subsistence. A contributory annuity system, while of little or no value to people now in these older age groups, will enable younger workers, with the aid of their employers, to build up gradually their rights to annuities in their old age. Without such a contributory system the cost of pensions would, in

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the future, be overwhelming. Contributory annuities are unquestionably preferable to noncontributory pensions. They come to the workers as a right, whereas the noncontributory pensions must be conditioned upon a " means " test. Annuities, moreover, can be ample for a comfortable existence, bearing some relation to customary wage standards, while gratuitous pensions can provide only a decent subsistence.

Difficult administrative problems must be solved before people who are not wage earners and salaried employees can be brought under the compulsory system, and it is to be expected that some people from higher income groups will come to financial grief and dependence in old age. Until literally all people are brought under the contributory system, noncontributory pensions will have a definite place even in long-time old-age-security planning.

There also is need for a voluntary system of annuities to supplement the compulsory system we advocate, intended primarily for persons of low and moderate income who are not included in the compulsory system. While the latter is not as important as the noncontributory pensions and the compulsory system of contributory annuities, we recommend the establishment of a related, but distinct, voluntary system of Government old-age annuities, for restricted groups in the population who do not customarily purchase annuities from commercial insurance companies.

Finally, in any complete program for old-age security, those aged should be considered who must be cared for in institutions--those who need custodial care which friends and relatives will not provide. Factual data bearing on the institutions for the care of the aged and their inmates are very scant and most of them out of date. We therefore recommend that the United States Department of Labor undertake at once a special survey of such institutions for the purpose of developing a constructive program for the improvement of institutional maintenance of the aged.

NONCONTRIBUTORY OLD-AGE PENSIONS

Old-age pensions are recognized the world over as the best means of providing for old people who are dependent upon the public for support and who do not need institutional care. In this country 28 States and 2 Territories now have laws providing for the payment of noncontributory pensions to dependent aged persons. The minimum age specified in these laws is either 65 or 70. All of them require long periods of residence within the State and allow pensions only if the aged applicants are without any substantial amount of property or income and have no relatives legally responsible for their support. In

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most of these acts the pensions are limited to a maximum of $1 per day less any other income the pensioners may receive from any source. A few of the laws are less restrictive, but not more than two or three of the entire number can be regarded as even reasonably adequate. The administrative provisions in many of the laws are likewise defective; the officials who grant the pensions have no facilities for investigation and there is no machinery for supervision. Many laws place the entire cost of pensions on the local governments, and about one-third of these acts are optional in the sense that counties may or may not operate under the pension system as they see fit.

Many of these old-age-pension laws are entirely nonfunctioning; many pension authorities because of financial pressure have cut benefits below a proper minimum, and there are long waiting lists of needy persons. While some improvement along these lines is to be expected with the insistent popular demand for old-age pensions; financial limitations are such that local and State action alone cannot be relied upon to provide either adequate or universal old-age assistance.

As has been stated, there are four times as many old people over 65 on relief lists as are in receipt of old-age pensions. These aged people do not belong on emergency-relief lists and, very properly, are now being eliminated therefrom. They should, instead, be provided for under old-age pension laws, operating in all States.

There is little likelihood, however, that an appreciable number of the dependent aged will receive pensions unless the financing of such measures is put on a radically different basis than at present. Both State and Federal participation are vital if the dependent aged are to be cared for through the human pension method.

Federal grants-in-aid will encourage the enactment of liberal old-age pension laws in all States and the granting of pensions to all of the aged who are dependent upon the public for support and who do not need institutional care. We, therefore, recommend a system of Federal grants-in-aid to States and Territories which provide old-age assistance for their needy aged under plans approved by the Federal Emergency Relief Administration or its successor agency. These grants-in-aid, we suggest, should be one-half of the total expenditures for old-age pensions, including administrative expenses, but with a proviso limiting the Federal subsidy to $15 per month for any individual and the aid for administrative expenses to 5 percent of the State's total expenditures for old-age assistance.

Conditions of grants

Since the Federal Government, under the plan we recommend, is to

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assume one-half the cost of old-age pensions, we deem it proper that it should require State legislation and administration which will insure to all of the needy aged pensions adequate for their support. We recommend that aid be granted only to those States which enact laws that are state-wide or territory-wide in scope, and, if administered by political subdivisions, are mandatory upon them. Such laws may limit the granting of pensions to citizens of the United States and residents of the State or Territory, but may not require a longer period of residence than 5 years, within the last 10 years preceding the application for a pension. Property and income limitations may, likewise, be prescribed but no aged person otherwise eligible may be denied a pension whose property does not exceed $5,000 in value, or whose income is not larger than is necessary for a reasonable subsistence compatible with decency and health. The pension to be allowed must be an amount sufficient, with the other income of the pensioner, for such a reasonable subsistence. Federal grants-in-aid are to be paid only on account of pensions granted to persons over 65 years of age but until January 1, 1940, States may maintain a 70-year age limit, which must thereafter be reduced to 65. No Federal aid is to be extended for aged persons cared for in institutions, and so much of the total pensions paid to any pensioner as was derived from the United States Government shall constitute a lien on the estate of the aged recipient, which, upon his death shall be enforced by the State or Territory and refunded to the Federal Government. The administration of the old-age pension laws must be under the supervision of a designated State department, and must be so conducted as to insure fulfillment of the intent of the Federal grants-in-aid; namely, to give all dependent aged persons not in need of institutional care a decent subsistence in their own homes.

Costs

Only approximate estimates can be given regarding the costs of the proposed grants-in-aid. If a compulsory contributory annuity system is not established at the same time, actuarial estimates indicate that the Federal share of the cost of the noncontributory old-age pensions may in the first year reach a total of $136,600,000; in the second year, $199,000,000, and would increase steadily thereafter until it reaches a maximum of $1,294,300,000 by 1980. We believe that these estimates are too high, particularly in the earlier years, as they do not allow sufficiently for the lag likely to occur before all the dependent aged will actually be granted pensions. Since the total now expended for old-age pensions is less than $40,000,000 per year, and more than half of the entire population of the country is in States which have old-age pension laws, we are of the opinion that $50,000,000 will be sufficient in

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the first year to pay the Federal share of the old-age-pension costs. Thereafter, this figure will tend to increase rather rapidly and by 1980 may reach the great total estimated by the actuaries. The estimates of the actuaries consulted by this committee are, in our judgment, so high in estimated figures for 1980 that further careful studies must be given to them, with the objective of finding ways and means for reduction and limitation of estimated Government contributions as of that year.

Obviously these figures will be reduced if a compulsory system of contributory annuities is established simultaneously with the Federal grants-in-aid. Sound financing demands this simultaneous action. The estimates of the actuaries indicate that if a compulsory system of contributory annuities is started by January 1, 1937, Federal grants-in-aid to the noncontributory pensions will by 1980 total less than 40 percent of the amount they will reach by that date if a contributory system is not started.

Furthermore, the actuarial figures assume that contributory annuities will not cover a large percentage of our population comprising those who are not actual wage earners. It is essential that as soon as possible these persons be brought into the compulsory system of contributory annuities, else the annual Government contributions will be so high as to constitute an impossible charge on the taxpayers.

CONTRIBUTORY ANNUITIES (COMPULSORY SYSTEM)

It is only trough a compulsory, contributory system of old-age annuities that the burden upon future generations of the support of the aged can be lightened. With an increasing number and even more rapidly increasing percentage of the aged, the cost of supporting old persons will be a heavy load on future generations regardless of any legislation that may be enacted. Pensions sufficient for a decent subsistence for all of the aged who are dependent upon the public for support are approved by the overwhelming majority of the people of this country. In order to reduce the pension costs and also to more adequately provide for the needs of those not yet old but who will become old in time, we recommend a contributory annuity system on a compulsory basis, to be conducted by the Federal Government. Because of the large number of people involved and the other duties imposed on the Social Insurance Board (which we recommend should have responsibility for the administration of all types of social insurance), we deem it desirable that the taxes to finance this system should not become effective until January 1, 1937, but believe that the necessary legislation should be enacted at an early date, to enable the Board to make the necessary studies and other preparations for putting this plan into operation.

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Outline of plan

We recommend that the contributory annuity system include, on a compulsory basis, all manual workers and nonmanual workers earning less than $250 per month, except those of governmental units and those covered by the United States Railroad Retirement Act. (In the first 5 years that the act is in effect only employees who on the effective date are less than 60 years of age are to be included.) Employees who lose compulsory coverage (by becoming employers, ceasing to work, etc.) after they have made at least 200 weekly contributions are to be permitted to continue membership on a voluntary basis by paying a contribution equal to the combined contributions required from employers and employees.

The compulsory contributions are to be collected through a tax on pay rolls and wastes, to be divided equally between the employers and employees. To keep the reserves within manageable limits, we suggest that the combined rate of employers and employees be 1 percent in the first 5 years the system is in effect; 2 percent in the second 5 years; 3 percent in the third 5 years; 4 percent in the fourth 5 years and 5 percent thereafter. If it is deemed desirable to reduce the burden of the system upon future generations, the initial rate may well be doubled and the taking effect of each higher rate advanced by 5 years.

Both the tax on employers and the employees is to be collected through the employers, who shall be entitled to deduct the amount paid in the employees' behalf from wages due them. The necessary rules and regulations for collection of contributions are to be prescribed by the Secretary of the Treasury.

We suggest that the Federal Government make no contribution from general tax revenues to the fund during the years in which income exceeds payment from the funds, but that it guarantee to make contributions, when the level of payment exceeds income from contributions and interest, sufficient to maintain the reserve at the level of the last year in which income exceeded payments. According to our actuarial estimates the reserve on this basis would be maintained at about $15,250,000,000.

No benefits are to be paid until after the system has been in operation for 5 years, nor to any person who has not made at least 200 weekly contributions, nor before the member has reached the age of 65 and retired from gainful employment. Persons retiring after having passed the age of 65 will receive only the same pension as if they had retired at that age. The benefits are normally to take the form of annuities payable during the remainder of the life of the annuitant. Should a

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member die before the age of 65 or before the amount of his own contributions has been paid to him as an annuity, the difference between his contributions and the amount which he may have received as an annuity, with interest at 3 percent, is to be paid as a death benefit to his dependents. Members who have made contributions for a short time but who, on reaching the age of 65 are not entitled to an annuity (because they have not made 200 contributions) are to be refunded their own contributions with 3 percent interest.

Under one proposal considered by the committee, the annuity payable to members in whose behalf contributions are first paid during the years 1937 to 1941 shall be computed as follows: If they are eligible to retirement in the sixth year after becoming members, their annuity shall be equal to 15 percent of the average weekly wage during the period they have been within the system, not counting that portion of the wage in excess of $150 per month. For those retiring in the next 6 years this annuity is to be increased by 1 percent of the average weekly wage for each additional 40 weeks of contributions, but the increase shall not exceed 1 percent for each year of membership in the system. Thereafter the initial annuity is to be increased by 2 percent for each 40 weekly contributions, but not more than 2 percent per year, until a maximum pension of 40 percent of the first $150 average monthly wages, upon which contributions have been paid shall be reached.

The minimum annuity payable to persons in whose behalf contributions are first paid in 1942 or subsequent thereto shall on retirement at age 65 or over and after 200 weekly contributions be 10 percent of the first $150 average monthly wages upon which contributions have been paid. To this 10 percent shall be added 1 percent for each 40 weekly contributions subsequent to the first 200 payments made within the first 5 years of membership in the system, but not to exceed 1 percent for each year of membership after the qualifying period of 5 years.

An annuitant with a spouse, if he or she so desires, may chose in lieu of an annuity on the basis outlined, an actuarially equivalent joint survivorship annuity. In all cases, also, members shall not receive less than the actuarial equivalent of their own contribution.

The administration of the compulsory old-age annuity system we recommend should be vested in the Social Insurance Board. All reserve funds of the system, however, shall be invested and managed by the Secretary of the Treasury, on the same basis as the unemployment compensation funds.

Explanation

The plan outlined above contemplates that workers who enter the

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system after the maximum contribution rate has become effective will receive annuities which have been paid for entirely by their own contributions and the matching contributions of their employers. Workers now middle aged or older will receive annuities which are substantially larger than could be purchased by their own and the matching contributions, although considerably less than the annuities which will be paid to workers who contribute for longer periods. Larger annuities than on a strictly earned basis would seem desirable because annuities build up only very slowly-- for instance, a 4-percent contribution rate on a wage of $100 per month will produce at age 65 an annuity of only $2.58 per month if contributions were made for 6 years beginning at 60 years; $5.95 after 10 years, contributions beginning at 55; and $10.19 after 15 years, contributions beginning at age 50.

The allowance of larger annuities than are warranted by their contributions and the matching contributions of their employers to the workers who are brought into the system at the outset, will involve a cost to the Federal Government which if payments are begun immediately will total approximately $500,000,000 per year. Under the plan suggested, however, no payments will actually be made by the Federal Government until 1965, and will, of course, be greater than they would be if paid as incurred, by the amount of the compound interest on the above sum. This plan, thus, involves the creation of a debt upon which future generations will have to pay large amounts annually, the Federal contributions representing the interest at 3 percent on the debt thus incurred to pay (partially) unearned annuities in the early years of the system.

While the creation of this debt will impose a burden on future generations which we do not wish to minimize, we, nevertheless, deem it advisable that the Federal Government should not pay its share of the cost of old-age annuities (the unearned part of annuities to persons brought into the system at the outset) currently. To do so would create a reserve which would reach a total of about $75,000,000,000. Further, to pay this cost now would unfairly burden the younger part of the present generation, which would not only pay for the cost of its own annuities but would also pay a large part of the annuities to the people now middle-aged or over. Expressed differently, the plan we advocate amounts to having each generation pay for the support of the people then living who are old. However, we favor showing the debts to the fund currently incurred by the Government, which debts should be evidenced by formal Government obligations issued to the fund. We accordingly recommend that an actuarial audit of the annuity fund be made and published annually which shall set forth clearly the present

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status of the fund taking into account future payments and future income and will show the present worth of the obligations being incurred by the Federal Government.

This plan also contemplates only small contributions by employers and employees during the early years of the system. Somewhat larger payments in the early years may be advisable, to reduce the necessary Government contributions later on. If the initial rate were increased to 1 percent each on employers and employees and each higher rate come into operation 5 years earlier than we recommend (which is modification of our plan that has considerable merit), the rescue funds would at the maximum amount to $28,200,000,000, and the ultimate Federal contribution decreased by $350,000,000 per year.

Costs

Actuarial estimates based on the plan we have described indicate that the income of the compulsory annuity fund will in the first 5 years that the system is in operation amount to a little more than $300,000,000. With increases in rates and interest earnings on the reserve this income will increase quite rapidly until by 1980 it will amount to $2,200,000,000 per year. Benefit payments will be light in the early years, but will increase steadily until by 1965 they will exceed the annual receipts. It is at this stage, that the Federal Government would begin to make contributions to the annuity system, which, under the figures submitted by the actuaries reach a maximum of above $1,400,000,000 per year by 1980. (These contributions by the Federal Government, as has been stated, represent the unearned part of the pensions paid to people now approaching old age, with interest on these amounts calculated at 3 percent).

We realize that there may be valid objection to this plan, in that it involves too great a cost upon future generations. This cost can be reduced by putting the rate of 5 percent into effect at an earlier date; it can be entirely eliminated only through not paying any annuities that have not been fully earned. If the Congress deems it advisable to make either or both of these changes, we are prepared to suggest detailed plans for doing so.

Instead of a Government subsidy to the contributory annuity system it may be advisable to supplement the earned annuities of people now old (and whose earned annuities are, therefore small) by granting them assistance under noncontributory old-age pension laws, on a more liberal basis then in the case of persons who have accumulated no rights under the contributory annuity system. Thus, one of the required provisions of a State old-age pension law might be that in no event,

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prior to the year 1960, shall an annuity to which a person is entitled under the contributory annuity system be taken into account in determining the need of such person for assistance.

In considering the costs of the contributory system, it should not be overlooked that old-age annuities are designed to prevent destitution and dependency. Destitution and dependency are enormously expensive, not only in the initial cost of necessary assistance but in the disastrous psychological effect of relief upon the recipients, which in turn, breeds more dependency.

The contributions required from employers and employees have an equally good justification. Contributions by the employees represent a self-respecting method through which workers make their own provision for old age. In addition many workers themselves on the verge of dependency will benefit through being relieved of the necessity of supporting dependent parents on reduced incomes, and at the expense of the health and well-being of their own families. To the employers, contributions toward old-age annuities are very similar to the revenues which they regularly set aside for depreciation on capital equipment. There can be no escape from the costs of old age, and, since these costs must be met, an orderly system under which employers, employees, and the Government will all contribute appears to be the dignified and intelligent solution of the problem.

VOLUNTARY OLD-AGE ANNUITIES

The voluntary system of old-age annuities we suggest as a supplement to the compulsory plan contemplates that the Government shall sell to individuals on a cost basis deferred life annuities similar to those issued by commercial insurance companies; that is, in consideration of premiums paid at specified ages, the Government would guarantee the purchasers a definite amount of income starting at 65 for example, and continuing throughout the lifetime of the annuitant. The primary purpose of the plan is to offer persons not included within the compulsory system a systematic and safe method of providing for their old age. It could also be used by insured persons as a means of supplementing the old-age income provided under the compulsory plan.

Without attempting to outline in detail the terms under which Government annuities should be sold, it is believed that a satisfactory and workable plan, based on the following principles, could be developed without great difficulty:

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1. The plan should be self-supporting, and premiums and benefits should be kept in actuarial balance by any necessary revision of the rates which periodic examinations of the experience would indicate.

2. The terms of the plan should be kept as simple as practicable in the interest of economical administration and to minimize misunderstanding on the part of individuals utilizing these arrangements. This could be accomplished by limiting the types of annuity offered to two or three of the most important standard forms.

3. The plan should be designed primarily for the same income groups as those covered by compulsory system; hence, provision should be made for the acceptance of relatively small premiums (as little as $1 per month) and the maximum annuity payable to any individual should be limited to the actuarial equivalent of $50 per month.

4. The plan should be administered by the social insurance board along with the compulsory old-age insurance system, but as a separate undertaking.

5. The social insurance board should study the feasibility of Government contribution toward the annuities of people now middle aged or older with income of $2,500 per year or less who come under this voluntary plan, comparable to the unearned part of the annuities which will be paid by the Government to people of middle age or older who are brought under the compulsory system. This is but a fair deal to farm owners and tenants, self-employed persons and other people of small incomes whose economic situation may be not one whit better than that of many workers covered by the compulsory system. Further study will be necessary, however, before a practical method of accomplishing this purpose can be suggested, one which will avoid the danger of benefiting those persons who need assistance least.

SECURITY FOR CHILDREN

It must not for a moment be forgotten that the core of any social plan must be the child. Every proposition we make must adhere to this core. Old-age pensions are in a real sense measures in behalf of children. They shift the retroactive burdens to shoulders which can bear them with less human cost, and young parents thus released can put at the disposal of the new member of society those family resources he must be permitted to enjoy if he is to become a strong person, unburdensome to the State. Health measures that protect his family from sickness and remove the menacing apprehension of debt, always

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present in the mind the breadwinner, are child-welfare measures. Likewise, unemployment compensation is a measure in behalf of children in that it protects the home. Most important of all, public-job assurance which can hold the family together over long or repetitive periods of private unemployment is a measure for children in that it assures them a childhood rather than the premature strains of the would-be child breadwinner.

There are at the moment over 7,400,000 children under 16 years of age on the relief rolls. The lives of some of these children, who have never known a time when their father had a steady job, and who, until Federal relief provided the family with a weak cohesive agent, have known nothing but the threat of being scattered, are lost beyond full restoration to their physical and social fulfillment. Their childhood is already destroyed and their future dark and uncertain. In this age group are 300,000 dependent and neglected children; 300,000 to 500,000 children who are physically handicapped; 200,000 who come as delinquents annually before the courts; and the 75,000 illegitimate children born each year. Special kinds of care must be provided for them to save them from a future more tragic than their impaired childhood.

Most of the children on relief lists are less conspicuously unfortunate, but all of them lack at least one major essential for a childhood which will prepare them in 5, 10, or 15 years to be the mainstay of society. Nothing is wrong with their environment but their parents' lack of money to give them opportunities which are taken for granted in more fortunate homes.

AID TO FATHERLESS CHILDREN

Among these children most especial attention must be given to the children deprived of a father's support usually designated as the objects of mothers' aid or mothers' pension laws, of whom there are now above 700,000 on relief lists. The very phrases " mothers' aid " and ' mothers' pensions " place an emphasis equivalent to misconstruction of the intention of these laws. These are not primarily aids to mothers but defense measures for children. They are designed to release from the wage-earning role the person whose natural function is to give her children the physical and affectionate guardianship necessary not alone to keep them from falling into social misfortune, but more affirmatively to rear them into citizens capable of contributing to society.

Legislation for "mothers' pensions" has been in operation in this country for more than 20 years. Such laws exist in 45 States. Yet less than one-third the number of similar families on relief are now actually

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receiving mothers' pensions. The cost of these pensions is $37,200,000 a year. Six million dollars of this comes from State government; local units supply the balance. Less than one-half of the local units authorized to grant mothers' aid are actually doing so. Many others are granting amounts insufficient to defend the children involved. Part of this situation is due to indifference, but in part it is due to the poverty of many local governmental units and to the fact that the Federal Government has been paying the major costs when fatherless families are placed on relief, whereas it makes no contribution to mothers' aid.

When the Federal Government terminates Federal relief, the situation will become immeasurably worse. Neither the return of prosperity nor any of the measures sited in this report will meet the problem. Mothers' pensions will only partially and inadequately do so as long as the cost falls almost entirely on local governmental units. To meet the situation effectually increased State appropriations and Federal grants-in-aid are essential.

Such Federal grants-in-aid are a new departure, but it is imperative to give them, if the mothers' care method of rearing fatherless families is to become nationally operative. The amount of money required is less than the amount now given to families of this character by the Federal Government by the less desirable route of emergency relief. An initial appropriation of approximately $25,000,000 per year is believed to be sufficient. If the principle is adopted of making grants equal to one-half of the State and local expenditures (one-third of the total cost), with special assistance to States temporarily incapacitated, this sum might in time rise to a possible $50,000,000. Federal grants should be made conditional on passage and enforcement of mandatory State laws and on the submission of approved plans assuring minimum standards in investigation, amounts of grants, and administration. After a specified date State financial participation should be insisted upon. This might take the form either of equalization grants to local units or of per capita grants, as the several States may prefer.

CHILD CARE SERVICES

Local services for the protection and care of dependent and physically and mentally handicapped children are generally available in large urban centers, but in less populous areas they are extremely limited or even nonexistent. One-fourth of the States, only, have made provisions on a State-wide basis for county child-welfare boards or similar agencies, and in many of these States the services are still inadequate. With the further depletion of resources during the depression there has been much suffering among many children because the services they

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need have been curtailed or even stopped. To counteract this tendency and to stimulate action toward the establishment of adequate State or local child-welfare services, a small Federal grant-in-aid, we believe, would be very effective.

CHILD AND MATERNAL HEALTH SERVICES

The fact that the maternal mortality rate in this country is much higher than that of nearly all other progressive countries suggests the great need for Federal participation in a Nation-wide maternal and child-health program. From 1922 to 1929 all but three States participated in the successful operation of such a program. Federal funds were then withdrawn and as a consequence State appropriations were materially reduced. Twenty-three States now either have no special funds for maternal and child health or appropriate for this purpose $10,000 or less. In the meantime, the need has become increasingly acute.

Crippled children and those suffering from chronic diseases such as heart disease and tuberculosis constitute a regiment of whose needs the country became acutely conscious only after the now abandoned child and maternal health program was inaugurated. In more than half the States some State and local funds are now being devoted to the care of crippled children. This care includes diagnostic clinics, hospitalization, and convalescent treatment. But in nearly half the States nothing at all is now being done for these children and in many the appropriations are so small as to take care of a negligible number of children. Since hundreds of thousands of children need this care the situation is not only tragic but dangerous.

We recommend that the Federal Government through the agency of the Children's Bureau should again assume leadership in a Nation-wide child and maternal health program. Such a program should provide for an extension of maternal and child health services, especially in rural areas. It should include (a) education of parents and professional groups in maternal and child care; supervision of the health of expectant mothers, infants, pre-school and school children, and children leaving school for work, (b) provision for transportation, hospitalization, and convalescent care of crippled children in areas of less than 100,000 population. This program should be developed in the States under the leadership of the State departments of health in cooperation with medical and public-welfare agencies and groups concerned with these problems. Federal participation is vital to its success. It should take the form of both grants-in-aid, and of consultative, educational, and promotional work by the Children's Bureau in cooperation with the State health departments.

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The appropriation suggested by our Advisory Committee on Security for Children of $7,000,000 per year is large in proportion to the $41,139 now appropriated to the Children's Bureau for child and maternal health work. But its cost is small when it is compared with the expenditures for many purposes having far less direct relation to human welfare. Whether the precise amount suggested should be appropriated is a matter for the determination of other agencies. But we cannot too strongly recommend that the Federal Government again recognize its obligation to participate in a Nation-wide program saving the children from the forces of attrition and decay which the depression turned upon them above all others.

RISKS ARISING OUT OF ILL HEALTH

Illness is one of the major causes of economic insecurity which threaten people of small means in good times as in bad. In normal times from one-third to one-half of all dependency can be traced to the economic effects of illness. The money loss caused by sickness in families with less than $2,500 of income per year has been estimated at a total of $2,400,000,000 per annum, of which $900,000,000 represents wage loss and $1,500,000,000 the expenses of medical care.

The seriousness of this hazard, however, lies less in the total loss involved than in its unequal distribution. Nearly half of all people suffer no illness during a normal year, but 7 percent have three or more illnesses and nearly 15 percent have illnesses that disable them for more than a week. Studies of the actual expenditures for medical care in a large number of urban families with incomes ranging from $1,200 to $2,000 per year, relating to the years 1928 to 1931, disclosed that of each 1,000 families, 218 lead medical bills in excess of $100 and 80 in excess of $200; among the 80, 16 had medical costs ranging, from $400 to $700, and 4, sickness bills amounting to more than one-half of their incomes.

The figures cited explain why many millions of American families live in dread of sickness. Families with small incomes are compelled to sacrifice other essentials of decent living when serious illness strikes some member, go without needed medical care, or depend upon the gratuitous or near gratuitous services of doctors and hospitals. A mere statement of this situation is sufficient to show that it is both unfair to the medical profession and very costly to the public.

PUBLIC HEALTH SERVICES

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As stated by the medical advisory board of this committee, in a brief progress report recently filed:

A logical step in dealing with the risks and losses of sickness is to begin by preventing sickness so far as is possible.

Much progress has been made in this respect, yet the fact remains that despite great advances in medicine and public-health protection, millions of our people are suffering from diseases and thousands die annually from causes that are preventable. The mortality of adults of middle and older ages has not been appreciably diminished. With the changing age composition of our population the task of health conservation must be broadened to include adults as well as children. Even minimum public-health facilities and services do not now exist in many large areas. Of 3,000 counties, only 528 have full-time health supervision and only 21 percent of the local health departments were rated in 1933 as having, developed a personnel and service providing a satisfactory minimum for the population and the existing problems.

Evidence is accumulating that the health of a large proportion of the population is being affected unfavorably by the depression. The rate of disabling sickness in 1933 among families which had suffered the most severe decline in income during the period 1929 to 1932 was 50 percent higher than the rate in families whose incomes were not reduced. For the first time in many decades the death rate in our large cities is higher this year than it was last year despite the absence of any serious epidemics. In the face of these evidences of increased need local appropriations for public health have been decreased on the average by 20 percent since 1930. The average per capita expenditures from tax funds for public health in 77 cities in 1934 there 58 cents as contrasted with 71 cents in 1931. It is not too much to say that in many parts of the country the men and women in public-health work are very discouraged.

In this situation there is great need for a Nation-wide program for the extension of preventive public-health services. As was well stated by the medical advisory board:

At the present time appropriations for public-health work are insufficient in many communities, whereas a fuller application of modern preventive medicine made possible by larger public appropriations would not only relieve such suffering but would also prove an actual financial economy. Federal funds expended through the several states, in association with their own State and local public-health expenditures, are, in our opinion, necessary to accomplish these purposes and we recommend that substantial grants be made.

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In accord with these principles and following the specific suggestions of the Advisory Committee on Public Health, we recommend: (1) Grants-in-aid to local areas unable to finance public health programs with State and local resources, to be allocated through State departments of health; (2) direct aid to States in the development of State health services and the training of personnel for State and local health work; (3) additional personnel within the United States Public Health Service for the investigation of disease and sanitary problems which are of interstate or national interest and the detailing of personnel to other Federal bureaus and to States and localities. The Advisory Committee on Public Health suggested that in order to carry out these policies the total appropriation to the Public Health Service be increased to $10,000,000 per year, in contrast with $5,000,000--4 cents per capita--now spent by the Federal Government in all its departments for human health services. The advisory committee also reported that the needs of the country are considerably in excess of the additional expenditures suggested but expressed the view that a larger amount cannot be efficiently spent until necessary additional personnel has been trained and further tests of practical procedures have been made through which certain diseases can be more effectively controlled. It is not within our province to say whether the precise amount suggested should be appropriated, but we strongly endorse the recommendation for increased Federal participation in the prevention of ill health.

It has long been recognized that the Federal, State, and local Governments all have responsibilities for the protection of all of the population against disease. The Federal Government has recognized its responsibility in this respect in the public-health activities of several of its departments. There also are well-established precedents for Federal aid for State health administration and for local public facilities, and for the loan of technical personnel to States and localities. What we recommend involves no departure from previous practices, but an extension of policies that have long been followed and are of proven worth. What is contemplated is a Nation-wide public-health program, financially and technically aided by the Federal Government, but supported and administered by the State and local health departments.

HEALTH INSURANCE

The development of more adequate public-health services is the first and most inexpensive step in furnishing economic security against illness. There remains the problem of enabling self-supporting families of small and moderate means to budget against the loss of wages on account of illness and against the costs of medical services needed by their members. The nature of this problem and the nature of the risks

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which it involves calls for an application of the insurance principle to replace the variable and uncertain costs for individuals by the fixed and predictable costs for large groups of individuals

Insurance against the costs of sickness is neither new nor novel. In the United States we have had a long experience with sickness insurance both on a nonprofit and commercial basis. Both forms have been inadequate in respect to the protection they furnish, and the latter--commercial insurance--has in addition been too expensive for people of small means. Voluntary insurance holds no promise of being much more effective in the near future than it has been in the past. Our only form of compulsory insurance has been that which is provided against industrial accidents and occupational diseases under the workmen's compensation laws. In contrast other countries of the world have had experience with compulsory health or sickness insurance applied to over a hundred million persons and running over a period of more than 60 years. Nearly every large and industrial country of the world except the United States has applied the principle of insurance to the economic risks of illness.

The committee's staff has made an extensive review of insurance against the risks of illness, including the experience which has accumulated in the United States and in other countries of the world. Based upon these studies the staff has prepared a tentative plan of insurance believed adequate for the needs of American citizens with small means and appropriate to existing conditions in the United States. From the very outset, however, our committee and its staff have recognized that the successful operation of any such plan will depend in large measure upon the provision of sound relations between the insured population and the professional practitioners or institutions furnishing medical services under the insurance plan. We have accordingly submitted this tentative plan to our several professional advisory groups organized for this purpose. These advisory groups have requested an extension of time for the further consideration of these tentative proposals, and such an extension has been granted until March 1, 1935. In addition, arrangements have been effected for close cooperative study between the committee's technical staff and the technical experts of the American Medical Association.

Until the results of these further studies are available, we cannot present a specific plan of health insurance. It seems desirable, however, to advise the professions concerned and the general public of the main lines along which the studies are proceeding. These may be indicated by the following broad principles and general observations which appear to be fundamental to the design of a sound plan of health

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insurance.

1. The fundamental goals of health insurance are: (a) The provision of adequate health and medical services to the insured population and their families; (b) the development of a system whereby people are enabled to budget the costs of wage loss and of medical costs; © the assurance of reasonably adequate remuneration to medical practitioners and institutions; (d) the development under professional auspices of new incentives for improvement in the quality of medical services.

2. In the administration of the services the medical professions should be accorded responsibility for the control of professional personnel and procedures and for the maintenance and improvement of the quality of service; practitioners should have broad freedom to engage in insurance practice, to accept or reject patients, and to choose the procedure of remuneration for their services; insured persons should have freedom to choose their physicians and institutions; and the insurance plan shall recognize the continuance of the private practice of medicine and of the allied professions.

3. Health insurance should exclude commercial or other intermediary agents between the insured population and the professional agencies which serve them.

4. The insurance benefits must be considered in two broad classes: (a) Cash payments in partial replacement of wage-loss due to sickness and for maternity cases, and (b) health and medical services.

5. The administration of cash payments should be designed along the same general lines as for unemployment insurance and, so far as may be practical, should be linked with the administration of unemployment benefits.

6. The administration of health and medical services should be designed on a State-wide basis, under a Federal law of a permissive character. The administrative provisions should be adapted to agricultural and sparsely settled areas as well as to industrial sections, through the use of alternative procedures in raising the funds and furnishing the services.

7. The costs of cash payments to serve in partial replacement of wage loss are estimated as from 1 to 1 1/4 percent of pay roll.

8. The costs of health and medical services, under health insurance, for the employed population with family earnings up to $3,000 a year, is not primarily a problem of finding new funds, but of budgeting present

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expenditures so that each family or worker carries an average risk rather than an uncertain risk. The population to be covered is accustomed to expend, on the average, about 4 percent of its income for medical care.

9. Existing health and medical services provided by public funds for certain diseases or for entire populations should be correlated with the services required under the contributory plan of health insurance.

10. Health and medical services for persons without income, now mainly provided by public funds, could be absorbed into a contributory insurance system through the payment by relief or other public agencies of adjusted contributions for these classes.

11. The role of the Federal Government is conceived to be principally (a) to establish minimum standards for health insurance practice, and (b) to provide subsidies, grants, or other financial aids or incentives to States which undertake the development of health insurance systems which meet the Federal standards.

RESIDUAL RELIEF

Unemployment has become an agglomeration of many problems. In the measures here proposed we are attempting to segregate and provide for distinguishable groups in practical ways.

One of these large groups is often referred to as the " unemployables." This a vague term, the exact meaning of which varies with the person making the classification. Employability is a matter of degree; it involves not merely willingness and ability to work but also the capacity to secure and hold a job suited to the individual. Relatively few people regard themselves as unemployables, and, outside of the oldest age groups, the sick, the widowed, and deserted mothers, most adults would, in highly prosperous times, have some employment.

The fact remains that even before the depression there were large numbers of people who worked only intermittently, who might be described as being on the verge of unemployability--many of them practically dependent on private or public charity. These people are now all on relief lists, plus many others who, before the depression, were steady workers but who have now been unemployed so long that they are considered substandard from the point of view of employability.

There are also large numbers of young people who have not worked or have worked but little in private employment since they left school,

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primarily because they came into the industrial group during the years of depression. Then there are the physically handicapped, among whom unemployment has been particularly severe. Included on the relief lists also are an estimated total of 100,000 families in "stranded industrial communities," where they have little likelihood of ever again having steady employment. There are 300,000 impoverished farm families whose entire background is rural and whose best chance of again becoming self-supporting lies on the farm.

Policies which we believe well calculated to rehabilitate many of these groups are now being pursued by the Government. These clearly need to be carried through and will require considerable time for fruition. This is especially true of the program for rural rehabilitation and the special work and educational programs for the unemployed young people. There are other serious problems, among them those of populations attached to declining overmanned industries. Only through the active participation of the Federal Government can these problems be solved and the many hundreds of thousands of individuals involved be salvaged.

As for the genuine unemployables--or near unemployables--we believe the sound policy is to return the responsibility for their care and guidance to the States. In making this recommendation we are not unmindful of the fact that the States differ greatly as regards wealth and income. We recognize that it would impose an impossible financial burden on many State and local governments if they were forced to assume the entire present relief costs. That, however, is not what we propose. We suggest that the Federal Government shall assume primary responsibility for providing work for those able and willing to work; also that it aid the States in giving pensions to the dependent aged and to families without breadwinners. We, likewise, contemplate the continued interest of the Federal Government for a considerable time to come in rural rehabilitation and other special problems beyond the capacity of any single State. With the Federal Government carrying so much of the burden for pure unemployment, the State and local governments we believe should resume responsibility for relief. The families that have always been partially or wholly dependent on others for support can best be assisted through the tried procedures of social case work, with its individualized treatment.

We are anxious, however, that the people who will continue to need relief shall be given humane and intelligent care. Under the stimulus of Federal grants, the administration of relief has been modernized throughout the country. In this worst depression of all time, human suffering has been alleviated much more adequately than ever before.

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It is not too much to say that this is the only great depression in which a majority of the people in need have really received relief. It would be tragic if these gains were to be lost.

There is some danger that this may occur. While the standards of relief and administration have been so greatly improved in these last years of stress and strain, the old poor laws remain on the statute books of nearly all States. When relief is turned back to the States it should be administered on a much higher plane than that of the old poor laws.

The States should substitute modernized public assistance laws for the ancient, outmoded poor laws. They should replace uncentralized poor-law administrations with unified, efficient State and local public-welfare departments such as already exist in some States and for which all States have a nucleus in their State Emergency Relief Administrations. The Federal Government should insist as a condition of any grants in aid that standard relief practice shall be used and that the States who receive Federal moneys preserve the gains that have been made, in the care and treatment of the "unemployables." Informed public opinion can also do much and we rely upon it to thus safeguard the welfare of these unfortunate human beings and fellow citizens.

ADMINISTRATION

The Federal Government has long had important functions in relation to social welfare. In the depression these activities have grown apace, particularly in connection with relief. For some time the Government has had the major responsibility for the assistance to above one-sixth of the entire population of the country. Hereafter, the Federal Government will still have large and continuing responsibility for many parts of the heretofore undifferentiated relief problem and some of our recommendations contemplate expansion in Federal social-welfare activities.

The importance which the social-welfare activities of the Federal Government have assumed is such that they should clearly all be administratively coordinated and related. The detailed working out of such coordination does not fall within the scope of this committee, but we deem it important to direct attention to the desirability of early action in this matter.

ACCIDENT COMPENSATION

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Industrial accidents were the first of the major hazards of the modern economic system against which safeguards were provided in this country. These are represented on the one hand by safety laws and orders and the voluntary efforts of employers to reduce accidents, and, on the other, by the workmen's accident compensation laws now in force in all but four States.

These safeguards have, on the whole, worked quite beneficially, but we still have far too many industrial accidents, and the accident compensation laws are sadly lacking in uniformity and many of them are very inadequate. In view of the start we have made, substitution of the continental European form of contributory accident insurance for our noncontributory accident compensation laws, nationalization of accident compensation, or any other fundamental change is unwarranted. There should be no complacency, however, regarding either the progress we have made toward the prevention of industrial accidents or the adequacy of our compensation laws.

In outlining a long-time program for economic security, we make the following recommendations looking toward more adequately meeting the hazard of industrial accidents.

(1) The Department of Labor should further extend its services at promoting uniformity and raising the standards of both the safety laws and the accident compensation laws of the several States and their administration.

(2) The four States which do not now have accident compensation laws are urged to enact such laws, and passage of accident compensation acts for railroad employees and maritime workers is recommended.

EMPLOYMENT SERVICE

Great progress has been made in the last 18 months in the development of a more efficient employment service in this country. The National Reemployment Service, set up to facilitate enrolling labor for Public Works projects, has been extended into every State. Under the Wagner-Peyser Act, cooperative arrangements have been developed in the majority of the leading industrial States for the joint conduct of employment offices connected with the United States Employment Service. Through insistence upon a merit basis for selection, an efficient personnel is being developed within the Employment Service.

The Employment Service, however, will have to be still further expanded

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and improved if the measures for economic security we have suggested are to be put into efficient operation. It is through the employment offices that the unemployment compensation benefits and also the old-age annuities are to be paid. These offices must function as efficient placement agencies if the "willingness-to-work" test of eligibility for benefits in unemployment compensation is to be made effective. They now function to select the employees on Public Works projects and should have a similar relation to any expanded public-employment program. Above all, the employment offices should strive to become genuine clearing houses for all labor, at which all unemployed workers will be registered and to which employers will naturally turn when seeking employees.

To perform these important functions, a Nation-wide system of employment offices is vital. The nucleus for such a system exists in the United States Employment Service and the National Reemployment Service, which have always been combined " at headquarters " and are now being consolidated in States where both have existed. No fundamental change in the relation of the federal and State Governments to the employment offices is deemed necessary, but some amendment of the Wagner-Peyser Act is needed to enable the employment offices to perform all the functions our program contemplates. The larger funds required will come from the portion of the Federal pay-roll tax retained for administrative purposes.

Closely related to the development of a more efficient Employment Service is the Federal regulation of private employment agencies doing an interstate business. The interstate business of such private agencies cannot be regulated by the States, and, for the protection no less of the reputable agencies than of the workers, should be strictly regulated by the Federal Government.

EDUCATIONAL AND REHABILITATION SERVICES

Education, training, and vocational guidance are of major importance in obtaining economic security for the individual and the Nation. And we have at various points in this report made brief references to the importance of vocational guidance and training in the readjustments which are necessary in a coordinated attack on the problem of individual economic security. We here wish to further emphasize that the educational and vocational equipment of individuals is a major factor in their economic security.

At this time it is tragically evident that education and training are not a

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guarantee against dependency and destitution. Yet there is no reason for losing faith in our democratic system of education; the existing situation merely has brought into bold relief the fact that education, to fulfill its purposes, must be related much more than it has been to the economic needs of individuals. It has become apparent particularly that education cannot be regarded as completed upon leaving school. It has brought out poignantly the difference between schooling and education. In a day and age of rapidly changing techniques and market demands, many people will find it necessary to make readjustments long after they have first entered industry. Adjustment of our educational content and technique to this situation is a vital need in a long-range program for economic security.

In the years immediately ahead, when there is certain to be a large problem in the economic rehabilitation of so many individuals, there is a peculiar need for educational and training programs which will help these worst victims of the depression to regain self-respect and self-support. While men have so much leisure time, those who can profit from further education and training should be afforded an opportunity to make such use of their leisure. Particularly for the young workers and those who have little hope of returning to their old occupations, the need for educational and vocational training and retraining programs is clearly indicated.

Education has been regarded in this country as a responsibility of the State and local governments and should remain so. In the joint attack on economic security which we suggest, Federal participation, however, is most desirable. To a considerable extent the Federal Government is already participating in this endeavor, and we believe that it should continue to do so, if possible, on an extended scale.

What to do with regard to the army of unemployed youths continues to be one of the gravest problems of this Nation. Obviously what the great majority need is a chance to work at some job, a chance to develop skills and techniques. In any program of employment they must be given their fair share of available jobs. For many, however, a training program would be of great benefit. This can be developed satisfactorily only with the assistance of the Federal Government. The local school facilities are not able to take care of their normal tasks, and find it impossible to develop needed vocational-training programs at all commensurate with this problem.

At this point, we desire to call special attention to the importance of special programs for the physically handicapped, of whom there are many millions in this country. Since the passage in 1920 of the Federal

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Vocational Rehabilitation Act, the Government has been assisting the States in a service of individual preparation for and placement in employment of persons vocationally handicapped through industrial or public accident, disease, or congenital causes.

Forty-five States are now participating in this program and, since it was launched, approximately 68,000 permanently disabled persons have benefited from this service. The work done has shown gratifying annual increases, even in the depression, but is still small in comparison with the need. The desirability of continuing this program and correlating it with existing and contemplated services to workers in the general program of economic security we believe to be most evident.

OTHER MEASURES FOR ECONOMIC SECURITY

We have expressed our views upon many different measures and policies which we deem essential in a program to protect individuals against the many hazards which lead to destitution and dependency, but we have by no means exhausted the subject. We have dealt with the hazards which afflict the largest numbers--unemployment, old age, ill health, premature loss of the family breadwinner, industrial accidents, lack of training--but we have not dealt with other hazards equally serious for some individuals, such as invalidity, nonindustrial accidents, and other afflictions.

Parts of the program we suggest apply to practically the entire population, particularly the grants-in-aid to the noncontributory old-age pensions, the expansion of preventive public-health services, the aid to mothers' pensions, the maternal and child-health services for rural areas, the services for crippled children, the expansion of the Employment Service, and the policy of employment assurance. Two of the major measures suggested--old-age insurance and unemployment compensation--have more limited application. The former will apply to all employed persons, but will not include in its compulsory provisions proprietors, tenants, or the self-employed. Unemployment compensation will have slightly narrower scope, excluding those in small establishments.

Agricultural workers, domestic servants, home workers, and the many self-employed people constitute large groups in the population who have generally received little attention. In these groups are many who are at the very bottom of the economic scale. We believe that more attention will have to be given to these groups than they have received heretofore. We cannot be satisfied that we have a reasonably complete

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program for economic security unless some degree of protection is given these groups now generally neglected.

While in the short space of a few months we have made a quite comprehensive survey of the entire problem of economic security for the individual, much further thought needs to be given to many aspects of this problem.

Study of the suggested problems not dealt with in this report and still other aspects of a comprehensive economic security program belong logically among the duties of the social insurance board, if one is established. So do problems of extending the coverage of unemployment compensation and old-age insurance, and the task of correlating the experience gained under these measures to make them better instruments for the accomplishment of the purposes for which they are designed.

CONCLUSION

The program for economic security we suggest follows no single pattern. It is broader than social insurance and does not attempt merely to copy European methods. In placing primary emphasis on employment, rather than unemployment compensation, we differ fundamentally from those who see social insurance as an all-sufficient program for economic security. We recommend wide application of the principles of social insurance, but not without deviation from European models. Where other measures seemed more appropriate to our background or present situation, we have not hesitated to recommend them in preference to the European practices. In doing so we have recommended the measures at this time which seemed best calculated under our American conditions to protect individuals in the years immediately ahead from hazards which plunge them into destitution and dependency. This, we believe, is in accord with the method of attaining the definite goal of the Government, social justice, which was outlined in the message of January 4, 1935. "We seek it through tested liberal traditions, through processes which retain all of the deep essentials of that republican form of government first given to a troubled world by the United States."

We realize that these measures we recommend will not give complete economic security. As outlined in the messages of June 8, 1934, and January 4, 1935, the safeguards to which this report relates represent but one of three major aspects of economic security for men, women, and children. Nor do we regard this report and our recommendations

as exhaustive of the particular aspect which this committee was directed to study--"the major hazards and vicissitudes of life." A complete program of economic security " because of many lost years, will take many future years to fulfill."

The initial steps to bring this program into operation should be taken now. This program will involve considerable cost, but this is small as compared with the enormous cost of insecurity. The measures we suggest should result in the long run in material reduction in the cost to society of destitution and dependency, and we believe, will immediately be helpful in allaying those fears which open the door to unsound proposals. The program will promote social and industrial stability and will operate to enlarge and make steady a widely diffused purchasing power upon which depends the high American standard of living and the internal market for our mass production, industry, and agriculture.

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APPENDIX 55

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Social Security

Social Security History

This is an archival or historical document and may not reflect current policies or procedures.

PRESIDENTIAL STATEMENT SIGNING THE SOCIAL SECURITY ACT - AUGUST 14, 1935

Today a hope of many years' standing is in large part fulfilled. The civilization of the past hundred years, with its startling industrial changes, has tended more and more to make life insecure. Young people have come to wonder what would be their lot when they came to old age. The man with a job has wondered how long the job would last.

This social security measure gives at least some protection to thirty millions of our citizens who will reap direct benefits through unemployment compensation, through old-age pensions and through increased services for the protection of children and the prevention of ill health.

We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.

This law, too, represents a cornerstone in a structure which is being built but is by no means complete. It is a structure intended to lessen the force of possible future depressions. It will act as a protection to future Administrations against the necessity of going deeply into debt to furnish relief to the needy. The law will flatten out the peaks and valleys of deflation and of inflation. It is, in short, a law that will take care of human needs and at the same time provide the United States an economic structure of vastly greater soundness.

I congratulate all of you ladies and gentlemen, all of you in the Congress, in the executive departments and all of you who come from private life, and I thank you for your splendid efforts in behalf of this sound, needed and patriotic legislation.

If the Senate and the House of Representatives in this long and arduous session had done nothing more than pass this Bill, the session would be

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History Home Page

regarded as historic for all time.

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APPENDIX 6 6

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Lawyers say thousands in Michigan mistakenly charged with unemployment fraud

Michael Gerstein, Associated Press

LANSING — A $47 million computer system that came online after the state's unemployment insurance agency laid off about 400 people in 2012 to cut costs has been mistakenly charging thousands of people with fraud, some lawyers say.

State lawmakers are holding a series of legislative hearings, with two scheduled this week, to see what can be done about what they say could be an inordinate number of false fraud charges from the agency.

State Rep. Ed McBroom, a Vulcan Republican who set up a panel of lawmakers to look into the issue, said he wants legislation on the House floor by the end of the month, after an April audit found that hundreds of thousands of phone calls to the agency went unanswered while much of its mail was sent to wrong addresses. It said the agency could do a better job of ensuring due process for those it's accusing of fraud.

An earlier February audit found a strikingly low number of appealed cases from 2013 to 2015 were actually upheld — 263 of 3,460, about 8 percent. About 45 percent of appealed cases were dismissed.

"So flip that around, a whopping 92 percent of people accused of fraud didn't do anything wrong," said Jennifer Lord, a Royal Oak attorney working on a lawsuit filed against the agency in the state court of claims. "This fraud program is actually a profit center."

Lord said she believes the agency mistakenly assessed much of the money it levied against people from 2013 to 2015, though officials with the agency said they could not readily confirm how much was actually collected.

But while Rep. McBroom said the issue "dominates our constituent services," he's not sure that means all of the cases not upheld as issued by the computer were necessarily inaccurate or wrongful fraud charges.

"It's possible from what I've seen," McBroom said. "I certainly hope it's not true."

In 2015, the **U.S. Department of Labor** ordered the agency to have real people review fraud determinations and also ordered the agency to review some of the adjudications made by the computer system, or risk losing $100 million a year in administrative funding. That's the cost of running the program.

But agency director Sharon Moffett-Massey said the system was working as it was designed.

"It was making a decision based on the best information, the same as staff," Moffett-Massey said. "I do not feel there was a problem."

Democratic U.S. Rep. Sander Levin sent a letter to Gov. Rick Snyder on April 25, urging the agency to review more than 60,000 computer-determined fraud adjudications, in addition to the portion of appealed cases the agency reviewed in fall 2015, the letter said.

The audit and some lawyers say that often those charged never receive notifications and so don't have a chance to appeal.

When the old system detected any discrepancies between information entered by an employer

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and an employee, it automatically determined the employee to have intentionally entered misinformation, the April audit said. Those individuals are then barred from receiving a free legal advocate through the state.

Lawyers for the Detroit-based **Sugar Law Center for Economic and Social Justice** argue that the state's unemployment insurance system has deprived "thousands of Michigan's unemployment insurance claimants ... their fundamental rights under the constitution and under the social security act," a 2015 court document said.

The center filed a suit in 2015 in the **U.S. District Court** in Detroit on behalf of the **United Auto Workers** union and seven people, alleging the agency was violating applicants' rights and filing unjustified fraud charges "without any factual basis," the 2015 court document said.

Tony Paris, a lead attorney with the center, said they're currently waiting to hear the court's determination on a state motion to dismiss the suit, after the court denied one such motion.

APPENDIX 7

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Detroit Free Press

MICHIGAN

Data glitch was apparent factor in false fraud charges against jobless claimants

Paul Egan Detroit Free Press

Published 12:01 a.m. ET Jul. 30, 2017

LANSING — Records obtained by the Free Press point to a major glitch in importing data into a $47-million computer system the Unemployment Insurance Agency used to detect claimant fraud, meaning the system often accused people without having access to all the information it needed to make a fraud determination.

The records, obtained under Michigan's Freedom of Information Act (FOIA), help explain how the Michigan Integrated Data Automated System (MiDAS), which went online in 2013, could have a 93% error rate during the close to two years it operated without active human oversight.

The records also show that agency officials should have known about the data problem more than one year before August 2015, when they stopped using the system without human intervention.

Read more:

State of Michigan drops charges against 186 accused of jobless fraud

Court exposes state's war on falsely accused workers

Time for Snyder, Schuette to make unemployment scandal right

State officials have refused to say how or why MiDAS falsely accused at least 20,000 Michigan residents of fraud. Many of those accused were charged tens of thousands of dollars, because of Michigan's highest-in-the-nation quadruple penalties, and subjected to aggressive collection techniques such as wage garnishes and seizure of income tax refunds. The agency continues to use MiDAS, but with human verification required for fraud determinations.

Agency officials still will neither confirm nor deny there was a problem importing and converting data into MiDAS from its 30-year-old mainframe computer for unemployment insurance claims.

But decisions issued by administrative law judges who heard appeals of agency fraud determinations, plus internal agency records obtained under FOIA, suggest that not only was some data not successfully imported and converted into MiDAS, but that some data was corrupted or lost in such a way that it could no longer be reproduced, even through the former system.

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Judges spot a problem

It's not clear exactly which agency records were affected and which were not.

But as early as the spring and early summer of 2014, claimants presented administrative law judges with records that disproved the fraud allegations. The records had been submitted to the agency and should have existed in MiDAS, but had not been considered when the fraud determinations were made, records of appeal decisions show.

For example, in a July 24, 2014, decision dismissing a fraud allegation, Administrative Law Judge Nancy Bondar wrote that "the fraud notice was issued in error due to the MiDAS system's inability to read fact-finding information."

Two consultant reports on MiDAS prepared by state contractor CSG Government Solutions, which mostly praise the system for efficiency improvements, also point to a problem converting data from the agency's former "legacy" system into MiDAS.

"Two staff members are assigned to work Earned Income (cases) converted from Legacy," CSG said in a May 2014 report obtained under FOIA.

"Converted Earned Income cases present challenges to staff" because "source documentation is often no longer available to support the issue that exists on the claim."

CSG also said in a September 2014 report that tasks related to legacy cases made up 33% of the agency workload, and the backlog was expected to continue.

"Legacy tasks are more complicated for various reasons, including working with converted data," the report said.

When MiDAS was operating without human backup between Oct. 1, 2013, and Aug. 7, 2015, robo-adjudicating cases that went back as far as 2007, it falsely accused about 20,000 Michigan residents of fraud, the agency has acknowledged. The agency is now completing a review of about 28,000 additional fraud findings that involved some human involvement and a lower — though still significant — error rate. Results of that review could be made public as early as this week.

Some of those falsely accused faced not just civil fraud proceedings but criminal charges.

The data problem was referenced in many decisions issued by administrative law judges who heard appeals from claimants who were denied benefits or accused of fraud around the time the new system came online, records show.

"The finding of fraud resulted from a glitch in the agency's new MiDAS system," Administrative Law Judge Winston Wheaton said in an April 29, 2014, decision, throwing out an agency fraud finding against Mason-area landscaping worker Robert Kester.

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At the hearing in front of Wheaton, an agency representative confirmed that Kester had accurately reported that he quit his job in August 2013, less than two months before MiDAS came online. Since quitting a job is typically a reason for the agency to deny benefits, which the agency did, MiDAS couldn't have determined that Kester committed fraud if it had access to the report the agency confirmed that Kester submitted.

"The agency representative concedes that claimant committed no fraud," Wheaton said.

How could such mistakes happen?

Wanda Stokes, director of the state Talent Investment Agency since July 2016 and the point person addressing MiDAS and other problems at the Unemployment Insurance Agency, has shed little light on that question. She has refused to say whether MiDAS was a faulty system or if the state was just using the system improperly.

Through her spokesman Dave Murray, Stokes wouldn't give a direct answer about whether there was a problem importing portions of the existing unemployment insurance database or other relevant records into MiDAS. Instead, Stokes issued an e-mailed statement through Murray that said the robo-adjudications had stopped and that reviewing those cases was a top priority of hers.

"That's a very technical question, and most of the UI leadership has been changed since the period in question," Murray told the Free Press when asked about problems importing data into MiDAS. "The leaders there now are trying to track down an answer for you. I know they are looking into it and hope to have an answer by the end of the day."

Murray never answered the question, despite repeated requests.

Some wrongfully helped, denied

The data problems show up not just in fraud cases, but in cases where claimants were denied benefits, but not accused of fraud.

Take the case of Angelica Haney, who, like many claimants, had a seasonal job that resulted in her applying for jobless benefits on a regular basis, during the part of the year when her working hours and income were reduced.

Haney qualified for some of her benefits because she had two dependents, which she listed in her claim for unemployment insurance benefits filed on June 21, 2013, Administrative Law Judge Carl Ratliff said in his Aug. 14, 2014, decision that overturned the agency's decision to deny Haney benefits.

The dependents had not been factored in when the agency made its determination. How the mistake happened was not clear, but Ratliff was told the agency's June 23, 2013, monetary determination for

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Haney could "not be located because it predates MiDAS," Ratliff wrote.

Similarly, Colleen Mamelka, then a supervisor in the Michigan Administrative Hearing System where the administrative law judges work, pulled a June 2013 appeal related to a denial of benefits away from a judge and returned the case to the agency, in an order issued May 28, 2015.

The agency's decision "was processed in the agency's prior computer system and, therefore, is unable to be re-created for purposes of scheduling a hearing," Mamelka wrote.

The glitch had disastrous effects for claimants, though it sometimes appeared to benefit them — at least in the short term.

Gregory Saltzman, who had received benefits on an unemployment insurance claim that expired in October 2013, the same month MiDAS went online, opened a new claim on Oct. 27, 2013, but failed to register to work — a mandatory step to become eligible to receive jobless benefits.

Despite that crucial failure, the agency continued to pay benefits to Saltzman through February 2014, records show.

"Somehow in the transition from the old claim to the new claim, the system failed to note the claimant had not registered for work with the new claim," Administrative Law Judge Marten Garn, in a June 19, 2014, decision, said he was told by agency claims examiner Asad Dabas.

Saltzman should have been denied the benefits he received until he registered for work, and the mistake by MiDAS came back to bite him hard.

The agency accused Saltzman of fraud and ordered him to repay the money he received, plus significant penalties.

Once again, missing records were cited when the judge overturned the ruling.

"Mr. Dabas said he found evidence in the agency records to indicate a redetermination of the fraud question was issued and appealed, but said he could not locate the redetermination itself," Garn wrote.

In throwing out the agency's finding of fraud, Garn wrote that "the agency's evidence would be laughable, were it not such a serious matter," since "there is no scenario under which a claimant somehow enhances the likelihood of receiving unemployment benefits by failing to register."

How did state miss this?

John Philo, executive director of the Sugar Law Center for Economic & Social Justice in Detroit, said the records obtained by the Free Press show the agency should have ordered that humans vet any fraud determinations more than a year sooner than it did.

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Given the large number of red flags, "it's hard to say that you don't know," Philo said Friday.

Jennifer Lord, a Royal Oak attorney who is appealing the Michigan Court of Appeals dismissal of her class action filed on behalf of claimants falsely accused of fraud, said "the drumbeat was loud in April of 2014," and "what should have happened is they should have turned off the spigot on MiDAS then," instead of falsely accusing thousands of more people of fraud over the next year and several months.

Not all the records that MIDAS could not read or find were generated prior to the system coming online in October 2013. Some were hard-copy documents that were mailed or faxed to the agency by claimants or others and had to be scanned to be added to the system.

"The scanning software is not fully integrated with MiDAS," agency consultant CSG said in the September 2014 report on the system.

"Because claimant faxed the form to the agency, it went into the agency's FileNet system," Administrative Law Judge Elizabeth Haugen said in a Jan. 6, 2015, decision that reversed a fraud finding against Nathan Gazza of Marquette.

"The agency's MiDAS system cannot read documents that are scanned into FileNet, so the information was never processed."

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APPENDIX 8 8

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TIME

States' Automated Systems Are Trapping Citizens in Bureaucratic Nightmares With Their Lives on the Line



Justin and Lindsay Perry in Traverse City, Michigan, on May 17, 2020. The couple was forced to file bankruptcy after being charged with unemployment fraud. Brittany Greeson for TIME

BY **ALEJANDRO DE LA GARZA**

MAY 28, 2020 2:24 PM EDT

Lindsay Perry was 30 weeks pregnant and on bedrest when her husband Justin was accused of unemployment fraud and fined $10,000 after losing his job as a chef in 2014. The couple, who disputed the charges, tried calling the state unemployment agency, sending messages online, and even repeatedly showing up in person, but nothing worked. "There was the panic of, 'oh my

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gosh, the government's coming after us, what did we do wrong?'" says Lindsay Perry, now 39.

It didn't take long for the couple's financial life to collapse. Their tax returns were seized for three years in a row, their van was repossessed, and in 2017, they filed for bankruptcy. Michigan reversed the charges in 2017 and reimbursed the couple $6,000, but the damage was already done. That money went to pay for bankruptcy lawyers, and three years later, Lindsay Perry says that, because of their bankruptcy, they can't get a mortgage, lease a car, or rent an apartment on their own for themselves and their three children. "I'm almost 40 years old and they want a co-signer," she says. "It just makes you feel like a lesser person."

Perry's husband was one of around 40,000 people across Michigan who were wrongly accused of unemployment insurance fraud between 2013 and 2015 as a result of a privately-built, error-prone software system operated by the state with minimal government oversight. The state has since been working to clean up the program's mess, in part by refunding those who were falsely accused. Yet for Michiganders like the Perry family, the nightmare of trying to rebuild their lives goes on. And as cash-strapped states and cities around the country turn to similar systems to save money and streamline operations, more Americans could get wrapped up in a similar bureaucratic nightmare.

Michigan's unemployment system has since been reined in, but years later, advocates are still working to get restitution for those the computer program falsely charged. "I view it as personal," says Tony Paris, lead attorney at Sugar Law Center, a Detroit-based non-profit that has fought about 500 fraud cases related to system, winning nine in 10. At the group's headquarters, housed on the second floor of a Unitarian church, his desk is piled with documents concerning dozens of cases. It's 8 p.m., and he's drinking black coffee. "It really changed Sugar Law," he says of the state's unemployment scandal. "It really changed my life."

The story of that debacle goes back decades. Even before the Great Recession, Michigan was in financial trouble. Unemployment was hovering over six percent in the years leading up to 2008, while incomes were stagnating compared to the rest of the country. When the recession struck, government revenues fell sharply, leading the state to cut more than $3 billion in spending

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between 2009 and 2011. The Unemployment Insurance Agency (UIA) was in particularly bad shape. By late 2010, it owed $3.8 billion to the federal government, and in 2011, Michigan's auditor general found that the agency may have failed to rectify tens of millions of dollars in overpayments and recover hundreds of millions in fraud penalties between 2007 and 2010.

In an effort to modernize the UIA, Michigan contracted with a group of private tech vendors to create and operate a $47 million system, known collectively as the Michigan Integrated Data Automated System, or MiDAS. Intent on improving efficiency, MiDAS' designers programmed it to determine unemployment eligibility, track case files and even intercept income tax refunds for those "automatically selected by the system," according to a 2013 Michigan Licensing and Regulatory Affairs Department memo.

If MiDAS' sole purpose was to generate new fraud cases, it worked beautifully. In 2014, with the help of the new system, the UIA opened an unprecedented 26,882 such cases, more than five times the typical number. Many of those accused had their appeals repeatedly denied, and some turned to legal assistance groups for help. Lawyers working on these cases soon discovered a disturbing trend: the state was frequently unable to provide evidence to support MiDAS' fraud accusations. Through administrative hearings, advocates soon came to believe that MiDAS was behind the swell of unfounded cases. Yet the state kept the system in place through 2015. Over the course of nearly two years, MiDAS sent accusations to tens of thousands of Michigan residents and seized millions of dollars in their wages and tax returns.

Michigan civil rights lawyers like Paris have since gone beyond fighting MiDAS cases one-by-one. Before speaking to TIME, Paris had just returned from a downtown Detroit courthouse, where he was arguing in *Cahoo v. SAS Analytics,* a federal lawsuit over MiDAS. The defendants include technology vendors Fast Enterprises and SAS Institute, management consultant CSG Government Solutions, and several Michigan officials, all of whom were involved building or operating MiDAS or one of its components, or were in UIA leadership. Among the plaintiffs' claims is that those contractors had been entrusted with government duties, and are therefore responsible for constitutional violations brought on by MiDAS' wrongful allegations.

Michigan's state government declined to comment on the suit, citing pending

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litigation. In 2017, the state legislature passed a law requiring the agency to make fraud determinations manually, while a federal court settlement that year required the state's unemployment agency to review MiDAS fraud determinations made between October 2013 and August 2015. To date, Michiganders affected by MiDAS have received more than $20 million in refunds, though some advocates say that's well below what the state actually owes its citizens.

CSG Government Solutions did not respond to multiple requests for comment. An SAS Institute spokesperson says there is "no basis" for the lawsuit against the company, and that its own software, implemented in 2015, was separate from MiDAS and only provided leads rather than carrying out the functions of the agency. (Paris alleges SAS software contributed to improper fraud findings "well into 2016.") James Harrison, a partner at Fast Enterprises, says its software was working the way the state intended, and that it's not an IT vendor's responsibility to interpret the law. "Had [the system] been wrong it would have been fixed right away," says Harrison. "I think that's pretty good evidence it was never wrong, because it was well known what was happening and it was still decided to keep doing it. It was only when it got to be a big enough issue in the papers that people came to us and said, 'I guess maybe you should turn it off now.'"

For those affected by MiDAS, battling for legal redress has been a years-long slog. A related case currently seeking class-action status, *Bauserman v. Unemployment Insurance Agency*, has been making its way through Michigan state courts since 2015. Following years of pre-trial legal wrangling, a state court of appeals permitted the case to proceed in December 2019. But state attorneys appealed to the Michigan Supreme Court in January. The clients "are frustrated and they're discouraged, and they can't fathom why this is taking so long," says Jennifer Lord, a civil rights and employment attorney working on *Bauserman*. "A lot of times these people do feel forgotten."

Automated systems like MiDAS are being deployed around the country, as states, cities and towns under budget pressure look to cut costs — a trend that's likely to continue as the coronavirus outbreak batters local economies. Among other imperatives, governments need to find ways to cut spending and benefits to balance the budget sheet, says Rashida Richardson, director of policy research at tech accountability non-profit AI Now. "Those different needs

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necessitate the use of these types of technologies, even if they're flawed in application," she says. Such software has been common for years; one might be hard pressed to find a state government that has not automated a significant amount of its bureaucracy. In just the last two years, FAST Enterprises, which worked on the MiDAS system, has completed new projects in South Carolina, New Mexico, Illinois and Tennessee. Other algorithmic systems have been deployed across a range of government programs, from matching homeless people with housing in Los Angeles, to disciplining teachers in Houston, to monitoring child welfare in Illinois. But while many such systems function as intended, a number are rife with problems, inviting public outcry and years-long lawsuits over issues like discrimination, civil liberties violations, and even endangering people's lives.

After Rhode Island deployed a $364 million automated system intended to streamline federal and state benefits programs in 2014, residents dependent on state aid reported their benefits went missing. The state was left with a backlog of 15,000 applicants, two federal class action lawsuits, and eventually a public apology from Deloitte, which built the system. (The state says the benefits system has been stable since late 2018, with incidents now at an all-time low and payments meeting industry timeliness standards.) In Arkansas, advocates filed a lawsuit in 2016 over an algorithmic tool that cut benefits for around 4,000 elderly or disabled people who receive in-home services through a Medicaid waiver program. The suit alleged that residents were not properly notified about the new system, and weren't able to contest its findings. Through the case, it was revealed that cerebral palsy conditions were incorrectly coded in the system, and the software employed an algorithm that didn't account for diabetes conditions. (The state says it has "made adjustments where appropriate, including changes related to cerebral palsy and diabetes," and subsequently began using a different method to determine care hours in 2019.) Idaho's branch of the American Civil Liberties Union filed suit in 2012 after the state instituted a new algorithm to determine Medicaid care budgets for developmentally disabled people, which subsequently cut funding for thousands of recipients. Legal proceedings showed the state's formula relied on unverified information, and advocates say that when humans reviewed the algorithmically-generated budgets, they often found the tool had set amounts too low. While a 2017 settlement mandated the state implement a new system this year, Idaho in April asked the court for an extension until 2024. In a statement provided to TIME, Matt Wimmer, division of medicaid

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administrator at the Idaho Department of Health and Welfare, said that the program is working collaboratively with adults with developmental disabilities and their families to develop a new resource allocation model, and is pursuing an outreach effort in the meantime. "Those efforts are sincere and ongoing but require intensive effort and time to build a program that will meet the needs of our beneficiaries with disabilities in the best way possible," Wimmer wrote.

The Idaho case in particular shows that, even when bureaucratic software is known to be malfunctioning, it can be nearly impossible for those affected to fight its decisions. In part, that's because these systems are often a "black box" protected by trade secrecy laws, meaning the public isn't informed about how they work in the first place. "Not only was the automated decision-making tool a problem, but then the department was refusing to tell people how it came up with their [Medicaid] budgets," says attorney Molly Kafka, who worked on the Idaho case. "How could you challenge something if you don't know how it's being decided?"

Yet Americans live and die by the output of such systems. Christie Mathwig, a 61-year-old plaintiff on the ongoing Idaho case who suffers from muscular dystrophy and other issues, had her care budget nearly halved by the algorithm before her determination was reversed by a statewide injunction. Mathwig, who needs help in all aspects of caring for herself — including using the bathroom or rolling over in bed — says that if the software had reduced her payments, she would be "absolutely dead by now."

Some technology advocates say that, when implemented responsibly, algorithmic tools hold tremendous potential to help governments do more for their citizens. "You want to use the value that technology brings to the table to take the burden off people," says Jennifer Pahlka, founder and former executive director of Code for America, which helps policymakers better understand civic technology. And governments around the world are working to find ways to hold their algorithms more accountable for their decisions. In 2019, Canada required that new automated systems that make determinations about people be subject to an "algorithmic impact assessment." The same year, a New York City task force recommended the creation of formal channels to report on algorithmic systems. And in January, the University of Pittsburgh convened a task force to examine government algorithms in Allegheny County for potential bias.

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But problems still plague bureaucratic software. For one, there's the "move fast and break things" mentality of software design, which may work well when you're building a social media network, but can lead to disaster when designing systems entrusted with state powers. "We're seeing software that throws people in jail and takes all their money away, so maybe it should have a development culture that's more of a fit with the consequences," says Christian Sandvig, a professor of digital media at the University of Michigan. Governments should also do more to vet software before issuing a contract, says Richardson. "We only find out about the consequences or even potential problems of these technologies after they're already in use," she says. Some go so far as to argue that automation eats away at a government's legitimacy. "Throwing away expertise and nimbleness ... in favor of software and automation, at some point it begins to undermine the very justification of the administrative state," says Ryan Calo, a professor at the University of Washington Law School.

When problems with bureaucratic software arise, as they did in Michigan, officials have tended to blame the unknowable nature of the algorithms themselves, rather than take responsibility for their output. That creates what some legal scholars call an "accountability gap," in which neither the designer nor the state takes responsibility for an algorithm's decisions. "If everything becomes computerized in these ways without thinking through accountability and transparency, what you end up with is a society where nothing is explainable," says Sandvig.

That appears to be happening in Michigan. Even those whose lives were derailed by the system say they found it difficult to connect elected officials with the system they ostensibly were meant to oversee. "As sad as it sounds, I didn't put much of the blame of what happened on [the governor] or the administration," says Brian Russell, who declared bankruptcy after MiDAS wrongly accused him of fraud in 2015. "I saw this more as a machine issue."

People like Russell and the thousands of other Michiganders who say they were wrongly accused by MiDAS do not know when or even if they'll receive restitution for the toll the claims have taken on their lives. Two lawsuits involving MiDAS are ongoing. Barring a settlement, results are still expected to be months or years away.

For the Perry family, there's little faith that a system that let them down once

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will ever make up for what they went through. “Yes, a computer may have finally made the decision, but people should have been paying attention to what the computer was doing,” says Justin. “There were just so many people that could have helped that didn’t even bother to raise a finger.”

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APPENDIX 9 9

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Detroit Free Press

MICHIGAN

State of Michigan's mistake led to man filing bankruptcy

Paul Egan Detroit Free Press

Published 6:01 a.m. ET Dec. 22, 2019 | **Updated 4:55 p.m. ET Jan. 9, 2020**

LANSING — Brian Russell never committed unemployment insurance fraud, or even attempted to do so.

And he had no idea an automated state of Michigan system had accused him of doing anything wrong until 2016, when officials seized his nearly $11,000 tax refund check.

The state finally cleared Russell in 2018, but the false fraud debacle — which has hurt tens of thousands of innocent Michigan residents — undermined his ability to provide for his two kids and led to a bankruptcy filling.

"It's devastating," Russell, a 43-year-old maintenance electrician from Zeeland, told the Free Press. "You would think if they were going to put something that huge in place, they would have someone — or even a team of people — overlooking it and making sure there were no problems."

Experts say the MIDAS (Michigan Integrated Data Automated System) false fraud fiasco, while unique to Michigan in terms of the details, is only one of the most glaring national examples of how the use of artificial intelligence by governments is harming citizens. Those most likely to be harmed by such systems, they say, are the economically disadvantaged.

"We're seeing more and more of these kinds of atrocities," said Rashida Richardson, director of policy research at the AI Now Institute, a nonprofit connected with New York University that researches the social implications of artificial intelligence.

Other examples of "intelligent" government computer systems running amok, in Michigan and elsewhere, include:

> In another Michigan case, the Department of Health and Human Services used an automated system to disqualify those with outstanding felony warrants from receiving state food assistance. Between the end of 2012 and the start of 2015, the system produced false matches that improperly disqualified more than 19,000 residents from food assistance. A 2013 federal class-action lawsuit led to an out-of-court settlement and reinstatement of those improperly disqualified.

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In Idaho, introduction of an automated system to determine the dollar value of disability services available to Medicaid recipients resulted in large cuts for many recipients. A court later found that the system was unlawfully arbitrary, unfair and lacked due process. There have been similar cases related to disability benefits in Arkansas and Oregon.

In Houston, where a system of algorithms was used to evaluate the performance of teachers, teachers were able to overturn the system on due process grounds. They successfully argued that because the vendor considered the evaluation system a trade secret, they were denied the right to use the data to understand or improve their performance.

In the District of Columbia, an automated system used to assess the risk for violence of youth in the juvenile justice system was found to be racially discriminatory as it was used in connection with one young defendant deemed "high risk" and in need of detention. The system is still in use.

Other concerns relate to the use of facial recognition technology, which is extensively used by police in Detroit, and "predictive policing," which the Michigan State Police has shown interest in.

The American Civil Liberties Union (ACLU) and other groups are pointing to disasters like MIDAS to push for laws that limit, regulate and increase transparency in the ways governments collect and use data for computerized decision-making.

More: Michigan residents falsely accused of jobless fraud can sue, Supreme Court says

More: State names jobless advocate to lead Unemployment Insurance Agency

Richardson said governments can be expected to continue to expand the range of applications as technology advances and the marketing of systems by software vendors expands.

The "creepiest example" of a new system Richardson is aware of is soon to be implemented in Allegheny County, Pennsylvania, where officials have been using a "family screening tool" and predictive analytics to try to head off child abuse. Starting in January, the county is planning to assign each child and family a "risk score" at birth, according to a county fact sheet and news media reports.

Jim Hendler, a computer science professor and director of the Institute for Data Exploration and Applications at Rensselaer Polytechnic Institute in Troy, New York, said many concerns about government use of artificial intelligence are well-founded and others may be overblown.

One of the major shortfalls of the MIDAS system in Michigan was insufficient testing before it was put into use, Hendler said.

When he advises governments on the appropriate uses of such systems, Hendler tells them to "keep humans in the loop to the extent possible until trust is built," he said.

Trust is important, he said.

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After the Flint water crisis, scientists developed an artificial intelligence system to analyze a range of data to try to determine which homes were most likely serviced underground by lead pipes, in need of priority replacement, he said. The system had a high level of accuracy, but it was abandoned because residents had not bought into the system and were suspicious and concerned about why some homes were having their water lines replaced more quickly than others, he said. Moving away from the automated system meant that replacement of lead lines took longer than it otherwise would have, he said.

Jennifer Lord, the Royal Oak attorney representing plaintiffs in a class-action lawsuit over the MIDAS system, recently attended an international workshop in Berlin about the uses and abuses of artificial intelligence systems.

"It's really hard to wrap your head around how big this is, how fast it's moving, and how totally unregulated it is," Lord said.

"Government is outsourcing a governmental function to private entities that have no accountability and no transparency."

When lawyers or others try to find out how a system such as MIDAS could have produced so many errors, the software developers often seek to put a privacy shield over how the system is designed, citing confidential intellectual property rights, she said.

"I don't think it's too much to ask" to have transparency and public input in the development of these systems, she said.

"If we're asking a private company to carry out a government function, they should be transparent."

For Russell, who was assessed penalties multiple times higher than the alleged unemployment insurance fraud that never happened, life is finally starting to return to something near normal. Though he got back most of the money that was taken from him, with the help of the Workers' Rights Clinic at U-M Law School, far more damage was done than he ever expects to be able to recoup.

The state sent automated notices of its fraud determination to Russell's online unemployment insurance account, which he had no reason to check, because he had not been collecting unemployment insurance for years when the alleged fraud was detected.

"It ruined me," he said. And coming out of the blue, "it was like, I would almost want to say, being stabbed in the back."

Contact Paul Egan: 517-372-8660 or pegan@freepress.com. Follow him on Twitter @paulegan4. Read more on Michigan politics and sign up for our elections newsletter.

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APPENDIX 100

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Office of the Auditor General
Performance Audit Report

Claimant Services
Unemployment Insurance Agency, Talent Investment Agency
Department of Talent and Economic Development

April 2016

641-0318-14

State of Michigan Auditor General
Doug A. Ringler, CPA, CIA

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The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

Article IV, Section 53 of the Michigan Constitution

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OAG
Office of the Auditor General

Report Summary

Performance Audit

Claimant Services

Unemployment Insurance Agency, Talent Investment Agency, Department of Talent and Economic Development

Report Number:
641-0318-14

Released:
April 2016

The Unemployment Insurance Agency (UIA) helps jobless workers and their families by providing up to 20 weeks of regular unemployment insurance (UI) benefits while they seek new employment. UIA reported that it received 607,652 new claims and paid UI benefits totaling approximately $1.1 billion to 370,980 unduplicated claimants in fiscal year 2014. UIA's fiscal year 2014 administrative expenditures totaled approximately $155.6 million.

Audit Objective	Conclusion
Objective #1: To assess the clarity and comprehensiveness of UIA's communications with UI claimants.	Moderately clear and comprehensive

Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA needs to improve its efforts to obtain and/or consider supporting information and provide claimants with the facts and rationale when it determines that claimants provided false or misleading information. Adjudicating these issues may result in reimbursement, penalties, and criminal prosecution. Also, these improvements will help claimants better understand the allegations against them to make informed decisions on their next course of action (Finding #1).	X		Agrees
UIA needs to continue to enhance existing and explore new social media methods and processes for communicating with current and prospective UI claimants. Accessible and comprehensive communications help ensure that claimants timely understand the various requirements for receiving UI benefits (Finding #2).		X	Agrees
UIA did not effectively and efficiently process claimant and employer mail that was returned undeliverable and without a forwarding address. Doing so resulted in increased printing, mailing, and workload costs of its mailroom personnel, claims examiners, and others. Also, claimants and employers did not receive important communications from UIA (Finding #3).		X	Agrees
UIA did not ensure that employers posted notices informing workers that they were covered for UI benefits. Also, more accurate instructions could have reduced the number of untimely claims, including the 45,700 ineligibility determinations issued between October 1, 2013 and February 26, 2015, for failing to apply in a timely manner (Finding #4).		X	Agrees

Findings Related to This Audit Objective (*Continued*)	Material Condition	Reportable Condition	Agency Preliminary Response
UIA should seek regular feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and address issues requiring management's attention (Finding #5).		X	Agrees

Audit Objective	Conclusion
Objective #2: To assess UIA's efforts to ensure compliance with the U.S. Department of Labor's quality and timeliness standards related to UI claims processing.	Moderately effective

Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA did not consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing. In addition, UIA needs to improve the quality of its separation-related nonmonetary determinations. These conditions resulted in delayed benefit payments and improper benefit payments and claims denials, which, if left uncorrected, could result in the loss of federal administrative grant funding (Finding #6).		X	Agrees

Audit Objective	Conclusion
Objective #3: To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.	Moderately effective

Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA did not periodically evaluate whether its Worker Profiling and Reemployment Services (WPRS) system effectively reduced program participants' length of unemployment and the amount of UI benefits paid. Also, UIA did not periodically review and update its profiling model to accurately identify the claimants who were most likely to exhaust their regular UI benefits before returning to work. Annual savings to Michigan with an effective WPRS system could total over $11.7 million (Finding #7).		X	Agrees
UIA did not refer some claimants who met UIA's mandatory reemployment service participation criteria to the Michigan Workforce Development Agency for reemployment services. Also, UIA did not take sufficient action to reduce the number of claimants that it excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment. Some claimants may not have returned to work as soon as otherwise possible, resulting in lost wages to the claimants and increased costs to the UI program (Finding #8).		X	Partially agrees

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: www.audgen.michigan.gov

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201 N. Washington Square, Sixth Floor
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Auditor General

Laura J. Hirst, CPA
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Auditor General

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April 21, 2016

Ms. Sharon A. Moffett-Massey, Director
Unemployment Insurance Agency
Cadillac Place
Detroit, Michigan
and
Mr. Steven Arwood, Director
Department of Talent and Economic Development
300 North Washington Square
Lansing, Michigan

Dear Ms. Moffett-Massey and Mr. Arwood:

I am pleased to provide this performance audit report on Claimant Services, Unemployment Insurance Agency, Talent Investment Agency, Department of Talent and Economic Development.

We organize our findings and observations by audit objective. Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days of the date above to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

Doug Ringler

Doug Ringler
Auditor General

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TABLE OF CONTENTS

CLAIMANT SERVICES

	Page
Report Summary	1
Report Letter	3
Audit Objectives, Conclusions, Findings, and Observations	
Communications With UI Claimants	8
Findings:	
1. Improvement needed for adjudicating issues with potentially false or misleading information.	10
2. Continued enhancements needed for communicating with current and prospective UI claimants.	13
3. Improvements needed for processing undeliverable mail.	16
4. Improvements needed to ensure that employers provide their workers with required UI information.	19
5. Regular feedback from claimants needed to evaluate their satisfaction.	21
Compliance With USDOL Standards	23
Findings:	
6. Improvement needed to meet federal performance standards.	24
Profiling and Reemployment Services	27
Findings:	
7. Evaluation of the WPRS system and review of the profiling model needed.	28
8. Improvement needed to ensure that claimants are referred to and participate in reemployment services.	30
Supplemental Information	
Survey Description	32
Summary of Survey Responses - Customer Service	33
Agency Description	40
Audit Scope, Methodology, and Other Information	41
Glossary of Abbreviations and Terms	45

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

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COMMUNICATIONS WITH UI CLAIMANTS

BACKGROUND

The Unemployment Insurance Agency (UIA) has four remote interactive claim centers. One center takes unemployment insurance (UI) claims and answers claimant questions over the telephone. The other three centers process incoming correspondence, process and adjudicate* claims, and complete other claims-related tasks. Also, UIA has 15 problem resolution offices located throughout the State that provide claimants with access to telephones and computers for filing their UI claims and that offer personal assistance to claimants on UI-related matters. In addition, UIA has a designated team that answers claimant questions sent to UIA electronically.

In October 2013, UIA implemented the benefit section of its new computer system, Michigan Integrated Data Automated System (MiDAS). MiDAS provides for more efficient processing of claims than UIA's predecessor system. UIA simultaneously upgraded its Michigan Web Account Manager (MiWAM), which allows claimants to file UI benefit claims, monitor the status of claims, file appeals, and respond to fact finding requests through the Internet.

AUDIT OBJECTIVE

To assess the clarity and comprehensiveness of UIA's communications with UI claimants.

CONCLUSION

Moderately clear and comprehensive.

FACTORS IMPACTING CONCLUSION

- UIA effectively used many of the communication strategies for claimants recommended in the U.S. Department of Labor's (USDOL's) UI Claimant and Employer Message Toolkit.
- UIA provided claimants with multiple avenues for filing UI claims, completing their biweekly certifications, and communicating with UIA.
- Instructions provided to claimants when applying and certifying for UI benefits were generally clear and comprehensive.
- Most UIA form letters sent to claimants were clear and comprehensive.
- Material condition* related to obtaining the necessary information for accurately adjudicating select claims and providing claimants with the reasons supporting UIA's (re)determinations.

** See glossary at end of report for definition.*

- Reportable condition* related to enhancing methods and processes for communicating with claimants.
- Reportable condition related to ineffective and inefficient processing of undeliverable claimant and employer mail.
- Reportable condition related to ensuring that employers posted notices and provided workers with required information regarding unemployment benefits.
- Reportable condition related to not obtaining service satisfaction information from claimants.

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** See glossary at end of report for definition.*

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FINDING #1

UIA needs improvement in making and communicating (re)determinations of intentional misrepresentation.

UIA needs to improve its efforts to obtain and/or consider supporting information and provide claimants with the facts and rationale for claims identified as including potentially false or misleading information (intentional misrepresentation*).

Accurately adjudicating issues of intentional misrepresentation is crucial because of the statutory benefit payback provisions and significant penalties, along with the potential for criminal prosecution. Also, claimants need to know how UIA arrived at its conclusions to allow claimants to make informed decisions on whether to protest or appeal the (re)determinations.

Between October 1, 2013 and March 31, 2015, UIA issued 60,324 (re)determinations finding intentional misrepresentation on 47,350 claims. We reviewed 60 of these (re)determinations and noted:

UIA could have improved efforts to contact 22 claimants who did not respond to UIA's original requests for information related to 46 (re)determinations finding intentional misrepresentation.

a. UIA could have improved its efforts to contact 22 claimants who did not respond to UIA's original requests for information related to 46 (76.7%) (re)determinations. Also, UIA did not inform claimants that, absent new information provided by another source, failure to respond to the requests for information would result in a finding of intentional misrepresentation. Instead, the requests stated that failure to respond would result in a (re)determination based on available information. UIA assessed the 22 claimants statutorily required penalties totaling $184,795.

   The United States Postal Service (USPS) returned 2 (9.1%) of the 22 requests as undeliverable. UIA informed us that it did not resend the returned requests to claimants because the claimants' deadlines to respond to the requests, which would not change with remailing, would have already passed. Also, UIA did not open 5 (10.9%), 13 (28.3%), and 3 (6.5%) of the 46 misrepresentation issues for 6 months to 1 year, 1 to 2 years, and more than 2 years, respectively, after the last UI benefit payments for the related claims. Because of these significant time lags, some of the requests for information related to the intentional misrepresentations that UIA sent electronically may also have gone undeliverable and contributed to the high nonresponse rate.

   Although UIA's attempts to obtain claimant information met State and ET Handbook 301, 5th Edition, requirements, additional attempts to contact these claimants would have better ensured that the claimants were provided adequate due process prior to finding intentional misrepresentation.

* *See glossary at end of report for definition.*

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b. UIA did not obtain and/or consider sufficient information to support some adjudications made for claimants who responded to UIA's requests for information related to issues of intentional misrepresentation.

   UIA asked claimants only two questions on the requests for information:

   (1) Did the claimants intentionally provide false information to obtain benefits that they were not entitled to receive? (A "yes" or "no" answer was required.)

   (2) Why did the claimants think they were entitled to benefits?

   UIA determined intentional misrepresentation existed when claimants either answered "yes" to the first question, where a "yes" appears to be an admission, or answered "no" to the first question but checked the box for 1 of 3 of the 7 non-"other" responses to the second question. Although some of these responses appeared to provide sufficient proof of intentional misrepresentation, others did not. For example, responding "no" to the first question and that one needs the money in response to UIA's second question may not, in itself, adequately support an intentional misrepresentation (re)determination.

   The Handbook states that adjudicators should closely examine all of the facts related to (re)determinations of intentional misrepresentation. Examples of relevant facts to consider in making the (re)determinations include claimants' education levels, language barriers, and prior claims experiences.

c. UIA did not include the reasons for, or facts that led to, the written (re)determinations of intentional misrepresentation, when UIA contacted the claimant, as required by Title 20, Part 602, Appendix A of the *Code of Federal Regulations* (*CFR*) and Section 421.32(a) of the *Michigan Compiled Laws*. Instead, the (re)determinations only stated that the claimants' actions indicated that the claimants intentionally misled and/or concealed information to obtain benefits that the claimants were not entitled to receive.

RECOMMENDATION

We recommend that UIA improve its efforts to obtain supporting information and provide claimants with the facts and rationale for (re)determinations of intentional misrepresentation.

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AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees that (re)determinations finding intentional misrepresentation should include the facts, supporting information, and the reason(s) on which the (re)determination is based. In 2015, the UIA began a review of its intentional misrepresentation (re)determinations processes. As a result, intentional misrepresentation matters are investigated, reviewed, and determined by staff to ensure the inclusion of relevant facts, reason(s), and conclusions within these (re)determinations. The UIA continuously reviews and implements improvements in its system in order to better serve customers.

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FINDING #2

Enhanced communications with claimants are needed.

UIA needs to continue to enhance existing and explore new social media* methods and processes for communicating with current and prospective UI claimants. Suggested enhancements include:

a. Continue to improve claimants' ability to reach UIA's call center.

Since 2011, UIA has made significant upgrades to its call center telephone system that provide for greater oversight and management of call center staff, the ability to offer a limited number of claimants the option of receiving a call back from UIA rather than waiting on hold, and other benefits. Although these enhancements reduced total claimant hold times and call lengths, many calls continued to go unanswered. For example, UIA did not answer 234,901 (89.1%) of 263,726 calls made to its call center during business weeks ended August 22, 2014 and September 22, 2014. Also, callers abandoned 8,333 (28.9%) of the 28,825 calls while waiting on hold for a UIA representative. Because the number of calls greatly exceeded the number of claimants during these weeks, it is likely that some individual claimants made multiple call attempts.

UIA did not answer 234,901 (89.1%) of 263,726 calls made to its call center.

Claimants' inability to reach UIA's call center was a significant frustration echoed by many claimants who responded to our claimant satisfaction survey (presented as supplemental information in this report).

b. Explore the feasibility and usefulness of using social media (e.g., Facebook, Twitter, and LinkedIn) to communicate important UI-related information to the public.

USDOL's UI Claimant and Employer Message Toolkit promotes the use of social media as a best practice for efficiently disseminating content and maximizing impact with broad audiences. UIA could utilize social media to educate claimants about available UI benefit programs, significant program requirements, common errors made by claimants when applying and certifying for UI benefits, and other issues.

UIA could also use social media to help address some of the findings in this report. For example, UIA could use it to monitor and improve claimant satisfaction (Finding #5); promote the use of its electronic communications, which would reduce the burden on its more expensive call centers (part a. of this finding); and

* *See glossary at end of report for definition.*

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better inform the public of the timeliness requirements for applying for UI benefits (Finding #4).

c. Improve the selection of and access to claimant webcasts (videos).

   UIA's Web site provides links to a variety of webcasts on topics directly impacting UIA claimants. On various occasions from March through May 2015, we attempted to view many of these webcasts. However, none of the webcasts would play. Also, UIA did not have any webcasts related to MiWAM, its automated claims processing system, which went live approximately 19 months earlier.

   USDOL's UI Claimant and Employer Message Toolkit promotes claimant webcasts for communicating important UI-related information to claimants because they are easier to digest than straight text documents.

d. Improve its requests for information by specifying the time periods associated with the employment-related questions included in the requests for information sent to claimants.

   Michigan Administrative Code R 421.121(2) requires employers to report their quarterly wages to UIA within 25 days of the end of their respective fiscal year quarters. Four months after the end of each calendar quarter, UIA matches the employer-reported wages with the wages reported by UI claimants during their biweekly benefit certifications. Claimants with wage differences exceeding established thresholds are identified for further review. UIA sends these claimants a request for information regarding their current employment status.

   Because significant time often elapses before UIA sends these information requests, it is often not possible for UIA to know if the claimants' reported employment-related information is relevant to its review. Identifying employment status during the time period of the potential wage underreporting can help UIA ensure that the employment-related information is relevant to its review.

RECOMMENDATION

We recommend that UIA continue to enhance existing and explore the feasibility of adding social media methods and processes for communicating with current and prospective UI claimants.

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AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees that continued enhancement to existing social media methods and communications regarding prospective UI claimants is needed.

With respect to the numbers used by the Office of the Auditor General (OAG) regarding the call center, these are Automated Number Identification (ANI) results, which identify call attempts and not true number of unique callers. For example, for the weeks ended August 22, 2014 and September 20, 2014, there were 58,212 "total unique calls." Of these "total unique calls," the UIA did not answer 28,131 (nearly 50%) of the 58,212.

During the same period for the business weeks ended August 21, 2015 and September 19, 2015, the total unique calls were 33,688. Of these "total unique calls," UIA did not answer 7,160 (21%) of the 33,688 "total unique calls." This is an improvement of 29% over the past year. In the past year, UIA has decreased the number of abandoned calls by 15%.

The UIA call center is not the sole source for customers to reach UIA. The employers/claimants can e-mail the UIA through their MiWAM accounts or claimants can visit their local problem resolution offices.

Social media is an important tool that the UIA utilizes to increase its reach to customers and communicate important information regarding unemployment insurance. The UIA, through the Talent Investment Agency (TIA) social media sites, communicates important UI-related information to the public such as available UI benefit programs, requirements, events, best practices, and other news of interest or assistance to claimants. The TIA Twitter and Facebook pages are also used to direct UIA customers to the appropriate resources on the UIA Web site as well as monitor and answer customer inquiries.

The UIA is updating all webcasts available on the public UIA Web site. New videos will appear throughout the remainder of 2016.

To further enhance the UIA reach to customers, an up-to-date e-mail listserv for UIA customers with a MiWAM account has been created in order to forward updates and messages regarding unemployment insurance.

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FINDING #3

Improvements are needed in returned mail processes.

UIA did not effectively and efficiently process claimant and employer mail that was returned undeliverable and without a forwarding address. Doing so resulted in increased printing, mailing, and workload costs of its four mailroom personnel, claims examiners, and others. Also, claimants did not receive important information related to their eligibility for, amount of, and duration of UI benefits, and employers did not receive information directly impacting their unemployment tax liabilities.

UIA estimated that the USPS returned 451,000 undeliverable mail items to UIA in 2014 while UIA expended approximately $3.8 million for postage.

UIA Manual Section 7935 requires UIA mailroom personnel to scan returned mail containing any of nine benefit-related forms into its electronic document repository (FileNet) when the mail does not contain a forwarding address. UIA claims examiners must call claimant addressees only to obtain their current addresses. Claimants are held ineligible for benefits when they cannot be reached or do not return messages left by UIA claims examiners within 48 hours. UIA does not inactivate invalid claimant or employer addresses to prevent sending additional mailings to them. Returned mail without a forwarding address or that does not require scanning is shredded without additional review.

Of 50 randomly selected returned mail items (46 employer addressees and 4 claimant addressees) discarded for shredding on April 3, 2015, UIA mailroom personnel inappropriately discarded without required processing 14 (28.0%) mail items for 13 unique addressees. Mailroom personnel did not appropriately process 2 of the 14 mail items because the specific forms included therein (and one other form) were mistakenly excluded from the preprinted list of forms to be pulled for additional processing. Additional analysis of the 13 unique addressees and 2 judgmentally selected employers with returned mail not requiring scanning disclosed:

a. Seven addressees were active employers that did not receive either UIA benefit-related mail or both tax and benefit-related mail. There was no indication that UIA tried to obtain a valid mailing address for 6 (85.7%) of the 7 employers. However, with minimal effort, we identified current mailing addresses for 4 (57.1%) of the employers whose addresses had changed up to seven years earlier. Two (28.6%) of these employers had accumulated delinquent UI taxes, interest, and penalties totaling over $79,000. UIA sent one of these employers 129 undeliverable mail items containing tax notices, tax liens, benefit determinations, and other issues and significant amounts of undeliverable mail to the other employers.

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b. Three addressees were for employers that legally dissolved and/or discontinued their operations from 1 to 5 years earlier. Another employer addressee was no longer doing business in Michigan but had not filed the necessary paperwork to officially dissolve the business. UIA continued to send correspondence to the defunct employers at their last known addresses. For example, UIA sent 27 pieces of benefit-related mail to one of the employers after UIA officially closed the employer's tax account in September 2014.

c. Two addressees were UIA claimants with open actions that will result in UIA sending additional undeliverable mail to the claimants. One of the claimants died approximately two years ago. From October 21, 2014 through May 4, 2015, UIA sent the estate of the deceased claimant 114 monthly statements to collect a $1,184 benefit overpayment resulting from an issue that UIA opened and adjudicated against the claimant after the claimant's death for failing to respond to UIA's fact finding questionnaire.

UIA was not able to provide any explanation as to why it continued to send mail to undeliverable addresses.

RECOMMENDATIONS

We recommend that UIA attempt to identify the correct mailing addresses for all claimants and employers when mail is returned undeliverable and without a forwarding address and evaluate the need for additional mailings pending this identification.

We also recommend that UIA process undeliverable mail in accordance with its written policy.

AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees that "returned mail" remains a challenge for the UIA. For this audit, the OAG estimated that the USPS returned 451,000 pieces of mail during calendar year 2014. When compared against the volume of mail received by the UIA during calendar year 2014, less than 8% of the mail had been returned.

The UIA validates addresses against USPS records. UIA will reinforce existing procedures that require staff to update and/or verify addresses when a piece of returned mail includes a "forwarding address" as supplied by the USPS.

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Further, UIA intends to develop and institute a quality assurance lead staff member charged with, among other things:

> *Identifying (a) qualitative and quantitative issues associated with returned mail; (b) commonalities among returned mail issue(s); and (c) "priority" forms where the return of which may require further action; (d) low priority forms where the return of which may be destroyed; (e) best practices used in both the private and public sectors; and (f) exploration of alternate strategies and approaches to "find" proper mailing addresses when items are returned as undeliverable.*

Finally, the UIA will continue to review, revise, and reinforce its returned mail procedures.

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FINDING #4

UIA did not ensure that employers posted required notices or provided workers with required UI information.

UIA did not ensure that employers posted notices informing workers that they were covered for UI benefits and provided them with accurate instructions on what to do and where to go to file a claim and register for work to receive UI benefits.

From October 1, 2013 through February 26, 2015, UIA issued approximately 45,700 determinations holding claimants ineligible for UI benefits for failing to apply in a timely manner. UIA did not consider claimants' failure to know UIA's filing deadline to be a good cause for late filing. We could not determine how many of the late-filing claimants were unaware of the filing deadline. With improved information, UIA could help minimize the number of ineligible claimants because of untimely applications. Also, it would ease UIA's related administrative burden while simultaneously getting UI benefits to newly unemployed individuals more quickly.

Federal regulation 20 *CFR* 602, Appendix A, requires employers to give their employees information and instructions concerning their potential rights to benefits and how to file a benefit claim. Accordingly, UIA provided employers with posters to display and required employers to provide a form UIA 1711 or an equivalent written notice telling employees when they must file (first week of unemployment), how and where to file, and that they must register for work for UI benefits. The Appendix states that if employers post the required information, UIA must ensure that it is done conspicuously and at all times. UIA informed us that it rarely sees claimants with form UIA 1711.

Form UIA 1711, last revised in June 2012, stated that claimants could file their benefit claims online from 7:00 a.m. to 7:00 p.m. Monday through Saturday. However, since October 1, 2013, claimants have been able to file their benefit claims online 24 hours a day Sunday through Saturday. UIA informed us that other priorities have precluded it from updating form UIA 1711.

RECOMMENDATIONS

We recommend that UIA ensure that employers post notices informing workers that they are covered for UI benefits.

We also recommend that UIA ensure that employers provide workers with accurate instructions on how to file a claim and register for work to receive UI benefits.

AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees that employers should post all required notices. The Employer Handbook (available online free of charge) includes both a link to the required notice and a copy of the actual notice, as well as in Form UIA 1252 - Employer

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Online Filing Kit. *With more than 200,000 employers located throughout the State of Michigan, it is simply not possible for the UIA to conduct 200,000 on-site visits for purposes of "ensur[ing] that employers post [the required] notices . . . ." However, the UIA's Field Audit Division has updated its field audit handbook, which requires staff to verify compliance with R. 105(1) as a part of the UIA's random audit processes; thus, a portion of the state's employers will be reviewed for posting compliance. Additionally, the UIA has revised Form UIA 1711* - Unemployment Compensation Notice to Employees *and updated the information.*

Further, the UIA holds employer and unemployed worker seminars throughout the year and will provide copies of the notice in the literature.

Finally, the UIA participates in several programs intended to facilitate the unemployment process by bringing the employer, affected workers, and UIA staff together at the same time and place. These programs are known as Rapid Response and Worker Orientations.

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FINDING #5

UIA needs to obtain and utilize claimant satisfaction data.

UIA should seek regular feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and address issues requiring management's attention.

UIA's mission* is to provide the highest quality UI services to ensure the economic growth of Michigan's workers and employers. Consistent with its mission, UIA identified customer centricity as one of its core values to guide the perspective and actions of its employees. A widely used measure of service quality, which also aligns with UIA's customer centric mission and values, is customer satisfaction.

In its 2014 Putting Citizens First report that surveyed approximately 17,000 citizens across 15 states (including Michigan) and interviewed government leaders, the McKinsey Center for Government identified regular customer satisfaction assessment as a critical tool for focusing employees on the importance of fulfilling customer expectations and providing management with data driven insights into the parts of their operations that are working well and those requiring improvement.

UIA last completed a narrow-scoped claimant satisfaction survey in 2010. Also, UIA obtained claimant feedback via a brief seven-question comment card available in its problem resolution offices. However, UIA informed us that it did not compile and analyze the information contained on the comment cards. The majority of UIA/claimant interactions occur online or on the telephone, which presents UIA with a relatively inexpensive way to obtain claimant feedback while it is still fresh in the minds of the claimants. For example, UIA could survey claimants in MiWAM immediately after they complete their UI benefit application or first biweekly certification or at any other point when the claimants interact with MiWAM. Similar opportunities exist for claimants who complete their UI claims-related activities over the telephone.

We conducted a mail and online survey of 500 claimants (see supplemental information). Our survey identified significant dissatisfaction with the protest and appeals processes. If UIA conducted similar surveys and identified the root cause of the claimants' dissatisfaction, UIA could take timely action to correct deficiencies in the systems, processes, and/or personnel and improve the overall quality of its services.

RECOMMENDATION

We recommend that UIA regularly seek feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and subsequently address issues requiring management's attention and action.

** See glossary at end of report for definition.*

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AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees that there is a need to gauge its customer satisfaction regarding the services it provides. The UIA also acknowledges there are opportunities to improve customer service by utilizing tools such as online surveys and surveying customers following unemployment worker and employer seminars.

UIA has been making strides in obtaining feedback from its customers by providing customers with comment cards after obtaining service at one of its problem resolution offices.

In June 2015, the UIA began an effort to gauge customer satisfaction by launching an ongoing Feedback Survey on its public Web site. Staff review and analyze customer feedback quarterly to determine problem areas and gauge customer satisfaction and understanding of the UI system. Claimant concerns are forwarded to the appropriate unit to timely address and resolve.

The online survey measures satisfaction with customer service and elicits suggestions for improvement. The survey is periodically revised to provide additional opportunities for customer feedback. Customers are encouraged to take the online survey by staff, through flyers in the problem resolution offices, social media, and messages included with several UIA communications.

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COMPLIANCE WITH USDOL STANDARDS

BACKGROUND

UI Performs is USDOL's performance management system for the overall UI program. UI Performs aims to ensure increasingly effective, consistent, and efficient service to workers and employers. The core measures within UI Performs monitor key activities that have uniform national acceptable levels of performance.

AUDIT OBJECTIVE

To assess UIA's efforts to ensure compliance with USDOL's quality and timeliness standards related to UI claims processing.

CONCLUSION

Moderately effective.

FACTORS IMPACTING CONCLUSION

- UIA has made and continues to make significant changes to its business processes, which resulted in meaningful improvements in its performance relative to federal performance standards.
- UIA has aggressively worked to reduce its backlogs, which has negatively impacted its ability to meet federal performance standards.
- Reportable condition related to not meeting or not consistently meeting federal performance standards.

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FINDING #6

UIA did not meet various federal claims processing performance standards.

UIA did not consistently meet federal performance standards related to initial benefit payments, nonmonetary determination* processing, and appeals processing. In addition, UIA needs to improve the quality of its separation-related nonmonetary determinations. These conditions resulted in delayed benefit payments and improper benefit payments and claims denials, which, if left uncorrected, could result in the loss of federal administrative grant funding.

In August 2011, the USDOL's Employment and Training Administration (ETA) designated UIA as "marginally at risk" for consistently failing to meet ETA's UI Performs core measures related to first payment timeliness and lower authority appeals processing timeliness. In 2014, after UIA failed to sufficiently improve its performance, ETA designated UIA as "at risk" and began intensive efforts to assist UIA with improving its performance. As of June 30, 2015, UIA was still designated as at risk. We noted:

a. UIA did not consistently meet the UI Performs core measure that required UIA to make at least 87% of all initial benefit payments within 21 days of the week ending date of the first compensable week of a claimant's benefit year*. UIA's monthly performance was below standard for 14 (66.7%) months during the 21-month period ended June 30, 2015. UIA's performance ranged from a low of 67.4% in February 2014 to a high of 91.0% in December 2014.

b. UIA did not meet the UI Performs core measure that required the completion of at least 80% of nonmonetary determinations (both separation and non-separation issues) within 21 days of their issue detection dates. For the quarter ended September 30, 2011, UIA completed only 53.0% and 38.6% of its separation and non-separation determinations, respectively, within 21 days. For the quarter ended March 31, 2015, UIA had increased its timely completion of separation and non-separation determinations to 72.2% and 74.4%, respectively.

c. Michigan did not meet the UI Performs core measure that required the average age of pending lower authority appeals to be 30 days or less. Since being designated marginally at risk, the average age of pending lower authority appeals has steadily increased from 34 days for the quarter ended September 30, 2011 to 94 days for the quarter ended June 30, 2015. For the quarter ended June 30, 2015, Michigan was the second lowest performing state relative to this core measure.

** See glossary at end of report for definition.*

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d. UIA did not earn consistently high scores for the quality of its separation-related nonmonetary determinations. Nonmonetary determinations are critical for determining claimants' past, present, or future eligibility for UI benefits and impact the rights of both claimants and employers. Therefore, it is imperative that UIA make these determinations only after obtaining, or attempting to obtain, all the facts relevant to the issue at hand.

As shown in the chart below, during the five most recently completed quarters, UIA met the UI Performs core measure for both separation and non-separation issues, which required a quality score of 95 or higher on at least 75% of the nonmonetary determinations sampled and reviewed. However, the quality of its separation-related determinations significantly lagged that of its non-separation related determinations, was inconsistent from quarter to quarter, and was only 1.0% above the minimum acceptable performance level during the most recently completed quarter:

Percentage of Determinations Scoring 95 Points or Higher

	For the Quarter Ended				
Nonmonetary Determination Type	June 30, 2014	September 30, 2014	December 31, 2014	March 31, 2015	June 30, 2015
Separations	85.4%	79.6%	91.7%	79.6%	76.0%
Non-separations	93.8%	91.7%	90.7%	85.7%	89.4%

The predominant reason that individual separation-related nonmonetary determinations did not achieve acceptable quality scores was because of insufficient fact finding. For example, UIA made determinations without sending out fact finding questionnaires, waiting for fact finding questionnaires to be returned by claimants or employers, or obtaining rebuttal statements from claimants or employers, when necessary.

UIA informed us that high workloads experienced during the economic downturn of 2008 and 2009 resulted in significant quantities of backlogged work items which continue to negatively impact its claims processing performance today. Also, UIA stated that its efforts to process the backlogged work items were hampered by significant staffing reductions caused by decreased federal administrative funding after the Great Recession.

After being designated as marginally at risk, UIA implemented, and continues to refine, a new benefits system that automatically completes many different work items that were previously completed manually. Also, UIA reengineered, and

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continues to review, evaluate, and reengineer, many of its business processes to make them more effective and efficient. In addition, UIA staff have worked and continue to work significant amounts of overtime to process the large quantity of backlogged work items. Further, UIA provided fact finding training to applicable UIA staff, developed a fact finding desk guide, and increased its monitoring of nonmonetary determination quality. However, continued work is necessary for UIA to consistently meet federal performance standards.

RECOMMENDATIONS

We recommend that UIA continue to take actions to consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing.

We also recommend that UIA continue to improve the quality of its separation-related nonmonetary determinations.

AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

The UIA agrees and will continue to take actions to consistently meet the federal performance standards. The UIA is currently meeting the standards for all core measures the UIA controls. For example, in the ETA Region 5 Quarterly Performance Report for the period January 1, 2015 through December 31, 2015, the UIA scored 87.6% for All First Payment Promptness *and 80.6% for* Nonmonetary Separation - Quality*, surpassing the acceptable level of performance.*

For the finding specific to lower authority appeals, this process and allocation of resources for same is not administered by the UIA. However, the UIA will continue to work with its partners to improve timeliness.

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PROFILING AND REEMPLOYMENT SERVICES

BACKGROUND

As a condition of receiving federal UI grant funding, the federal Social Security Act, as amended by Public Law 103-152, requires all states to establish and maintain a system for profiling* new claimants for regular UI benefits and referring claimants for reemployment services* (Worker Profiling and Reemployment Services [WPRS] system). Profiling identifies claimants who are most likely to exhaust their UI benefits and need reemployment services to transition to new employment. Reemployment services include job search workshops, job clubs, counseling and testing, referrals to employers, and other similar services. The Social Security Act makes completion of reemployment services mandatory for identified claimants to maintain their eligibility for UI benefits.

AUDIT OBJECTIVE

To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.

CONCLUSION

Moderately effective.

FACTORS IMPACTING CONCLUSION

- UIA routinely profiled claimants for regular UI benefits and, excluding a small number of claimants for whom it lacked a county of residence, appropriately referred applicable claimants for reemployment services.
- Reportable condition related to lack of periodically evaluating the WPRS system and updating of its profiling model.
- Reportable condition related to the non-referral of some mandatorily required claimants to reemployment services and insufficient action to ensure that referred claimants attended reemployment services.

** See glossary at end of report for definition.*

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FINDING #7

Evaluation of the WPRS system and review of the profiling model is needed.

UIA did not periodically evaluate whether its WPRS system effectively reduced program participants' length of unemployment and the amount of UI benefits paid. Also, UIA did not periodically review and update its profiling model to accurately identify the claimants who were most likely to exhaust their regular UI benefits before returning to work.

Federal and state studies have shown that states' WPRS systems varied significantly in their design and effectiveness and recommended that all states periodically evaluate the effectiveness of their programs. The studies also recommended that states periodically update their profiling models to reflect changes in their states' economy, such as the decline of industries or occupations and the availability of new administrative data. Although the studies identified that some states' WPRS systems had little or no impact on reducing the length of time that participants were unemployed, the most effective system evaluated reduced the duration of participants' unemployment by an average of 2.2 weeks compared with nonparticipating claimants with similar risk profiles. With approximately 18,600 profiled UIA claimants receiving reemployment services and an average weekly UI benefit payment totaling $285 in 2014, annual savings to Michigan with an equally effective WPRS system would total over $11.7 million. Also, significant financial benefits would accrue to the system participants through increased work-related wages.

UIA's profiling model not reviewed and updated since 2003.

UIA's profiling model, in use since 2003, calculates a claimant's probability for benefit exhaustion using a set of weighted variables, including a claimant's educational background, base period wages, prior unemployment experience, occupation at separating employer, and industry. Since its implementation, 19 (20.0%) of 95 industries in Michigan have experienced job increases or job reductions exceeding 25.0%.

In addition, with the implementation of MiDAS in October 2013, UIA now captures more comprehensive occupational and industry data than used in its profiling model. By adjusting its profiling model to account for these changes, UIA could improve the effectiveness of its profiling model and the overall effectiveness of the WPRS system.

UIA informed us that other priorities have precluded it from evaluating the effectiveness of its related profiling model.

RECOMMENDATIONS

We recommend that UIA periodically evaluate the effectiveness of its WPRS system.

We also recommend that UIA periodically review and update its profiling model.

RECEIVED by MSC 12/9/2020 3:51:27 PM

AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

As to the first recommendation, the UIA agrees to continue to use federally required reports to measure the efficiency of the WPRS program and the successor program, Reemployment Services and Eligibility Assessment (RESEA). ETA reports (ETA 9048 Profiling and Reemployment Services and ETA 9049 Profiling and Reemployment Services Outcomes) are created by the UIA and submitted to USDOL and are used by all stakeholders to measure program effectiveness.

Prior to the OAG's finding, the UIA and the Michigan Workforce Development Agency (MWDA) formed a team to monitor the progress of RESEA. The RESEA team was established for the purpose of increasing services to the customer, ensuring that all USDOL requirements are being met, and ensuring that unemployed workers are scheduled for and attend their RESEA appointments. UIA provides assistance to MWDA to ensure that reports are generated timely and guidelines are being met and provides feedback as to what is currently successful and what can be improved.

As to the second recommendation, the UIA agrees with the OAG recommendation. The UIA will seek to update its profiling model in 2016 and ensure that a periodic review is completed.

RECEIVED by MSC 12/9/2020 3:51:27 PM

FINDING #8

Claimants were not consistently referred for reemployment services.

Action is needed to reduce claimants excused from reemployment services.

UIA did not consistently refer claimants who met UIA's mandatory reemployment service participation criteria to MWDA for reemployment services. Also, UIA did not take sufficient action to reduce the number of claimants that it excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment. As a result of these conditions, some claimants may not have returned to work as soon as otherwise possible, resulting in lost wages to the claimants and increased costs to the UI program.

UIA Manual Section 6345WR(6) requires that, each week, UIA identify new claimants who are not job attached, received their first UI benefit payment within five weeks of their respective benefit year begin date, and met UIA's criteria for mandatory reemployment services. UIA is then responsible for referring identified claimants to MWDA for scheduling reemployment services, mailing notification of the scheduled appointments, and adjudicating nonattendance issues. We reviewed the application of these processes and noted:

a. For claimants who did not identify their county of residence when applying for benefits, UIA inappropriately excluded the referral for reemployment services. For the 15-month period ended December 31, 2014, we identified 1,638 claimants whom UIA designated as meeting its initial criteria for mandatory reemployment services but whom UIA did not refer for services. We randomly selected and reviewed the case files of 10 claimants from each of the last 3 quarters of 2014 and noted that UIA did not refer 11 (36.7%) of the claimants to reemployment services because UIA did not have the claimants' county of residence recorded in MiDAS. Appropriate reasons existed for UIA to not refer the other 19 claimants.

   The county information in MiDAS is used to identify the Michigan Works! Service Center located closest to each claimant's residence.

b. UIA automatically excused a significant number of claimants from mandatory participation in reemployment services and determined that the claimants were "not ineligible" for UI benefits when the claimants missed their scheduled appointment and informed UIA that they did so because they did not receive the appointment notification.

   Section 28(1)(e) of the Michigan Employment Security Act requires that claimants participate in reemployment services as a condition of UI benefit eligibility. For the 15-month period ended December 31, 2014, UIA

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excused 1,819 claimants from mandatory participation in reemployment services because the claimants stated that they did not receive the appointment notifications. Although these claimants represented 7.2% of all the claimants scheduled for reemployment services during the period, UIA did not take action to determine why so many claimants did not receive the notifications or take other measures to better ensure that claimants receive the notifications.

For example, UIA could begin sending appointment notifications electronically to those claimants who designate electronic communication as their preferred method of communication with UIA. At the time of our audit, all notifications were mailed via the USPS. This change would have the added benefit of reducing UIA's printing and mailing costs. UIA could also begin to retain and review the appointment notifications that the USPS returns as undeliverable.

RECOMMENDATIONS

We recommend that UIA consistently refer claimants meeting UIA's mandatory reemployment service participation criteria to MWDA for reemployment services.

We also recommend that UIA take action to reduce the number of claimants excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment.

AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

As to the first recommendation, UIA agrees with the recommendation and has created and implemented a method to ensure that county selections occur for all eligible claimants, through both systematic change and staff review. The current process allows for the claimants to choose their appointment times after they have been notified to participate in re-employment services. In addition, UIA began notifying claimants by sending appointment notifications electronically to claimants who designated electronic communication as their preferred method of communication with UIA.

As to the second recommendation, the UIA disagrees with the basis for the recommendation. The UIA investigates inquiries as required by the Michigan Employment Security Act. The UIA does fact finding on the issue and issues a (re)determination with regard to the claimant not attending the appointment for reemployment services or an assertion that the notice was not received. The UIA believes it has proceeded to ensure that those claims were properly reviewed and action, if necessary, was taken.

RECEIVED by MSC 12/9/2020 3:51:27 PM

SUPPLEMENTAL INFORMATION

SURVEY DESCRIPTION

With the assistance of UIA, we identified all claimants who applied for UI benefits during the period October 1, 2013 through November 30, 2014. The survey focused on UIA's claims processing timeliness, customer service, and the clarity and comprehensiveness of UIA's communications.

We e-mailed an online survey to 400 randomly selected claimants. Also, we mailed a survey to 100 randomly selected claimants who had not provided UIA with an e-mail address. We received a total of 106 responses, a response rate of 21.2%.

Following is a summary of the survey results that includes the number and percentage of responses received for each item. The total number of responses for each item may not agree with the total number of responses reported because respondents were instructed to answer only the questions that were applicable to them and one respondent gave multiple answers to one question.

RECEIVED by MSC 12/9/2020 3:51:27 PM

UNEMPLOYMENT INSURANCE AGENCY
Talent Investment Agency
Department of Talent and Economic Development

Summary of Survey Responses - Customer Service

Number of e-mailed responses: 86
Number of mail responses: 20

1. How did you file your most recent unemployment insurance (UI) claim?

Answer Options	Response Percent	Response Count
In person at an Unemployment Insurance Agency (UIA) office	15%	16
By telephone	15%	16
Over the Internet	70%	73
By mail	0%	0
answered question		105
skipped question		1

2. Approximately how long did it take to receive assistance with filing your UI claim?

Answer Options	Response Percent	Response Count
I did not require assistance.	11%	2
I received services immediately.	17%	3
Less than 1 hour	28%	5
Between 1 and 2 hours	28%	5
Between 2 and 3 hours	0%	0
More than 3 hours	17%	3
answered question		18
skipped question		88

3. How many call attempts did it take to reach UIA's automated claims filing system?

Answer Options	Response Percent	Response Count
One or two attempts	30%	6
Three or four attempts	20%	4
Five or six attempts	20%	4
Seven or more attempts	30%	6
answered question		20
skipped question		86

4. If you were transferred for personal assistance with filing your UI claim, how long did it take to speak with a UIA employee?

Answer Options	Response Percent	Response Count
I spoke with a UIA employee immediately.	0%	0
Thirty minutes or less	30%	6
From 31 to 60 minutes	15%	3
More than 60 minutes	40%	8
I called back later.	5%	1
UIA took my telephone number and called me back.	10%	2
answered question		20
skipped question		86

RECEIVED by MSC 12/9/2020 3:51:27 PM

5. Did UIA call you back within the time frame that UIA stated on the telephone?

Answer Options	Response Percent	Response Count
Yes	70%	7
No	30%	3
answered question		10
skipped question		96

6. Please rate your satisfaction with the clarity of the questions asked by UIA as part of the claims filing process.

Answer Options	Response Percent	Response Count
Very satisfied	16%	16
Satisfied	48%	49
Neither satisfied nor dissatisfied	20%	20
Not satisfied	8%	8
Very dissatisfied	9%	9
answered question		102
skipped question		4

7. Please rate your satisfaction with the timeliness with which UIA processed your claim for UI benefits.

Answer Options	Response Percent	Response Count
Very satisfied	22%	22
Satisfied	33%	34
Neither satisfied nor dissatisfied	21%	21
Not satisfied	12%	12
Very dissatisfied	13%	13
answered question		102
skipped question		4

8. For your most recent UI claim, were you eligible for UI benefits?

Answer Options	Response Percent	Response Count
Yes	84%	84
No	16%	17
answered question		101
skipped question		5

9. For your most recent UI claim, have you received any UI benefit payments yet?

Answer Options	Response Percent	Response Count
Yes	80%	67
No	20%	17
answered question		84
skipped question		22

RECEIVED by MSC 12/9/2020 3:51:27 PM

10. How did you complete the biweekly certification(s) for your most recent UI claim?

Answer Options	Response Percent	Response Count
Over the Internet	64%	46
Via the telephone using UIA's Michigan Automated Response Voice	29%	21
Via the telephone with the assistance of a UIA employee	4%	2
In person at a UIA office	1%	1
Through the mail	1%	1
answered question		71
skipped question		37

11. Please rate your satisfaction with the clarity of the questions asked by UIA as part of the biweekly certification process.

Answer Options	Response Percent	Response Count
Very satisfied	23%	16
Satisfied	50%	35
Neither satisfied nor dissatisfied	17%	12
Not satisfied	9%	6
Very dissatisfied	1%	1
answered question		70
skipped question		36

12. Please rate your satisfaction with the timeliness with which UIA processed your biweekly certifications.

Answer Options	Response Percent	Response Count
Very satisfied	39%	27
Satisfied	44%	31
Neither satisfied nor dissatisfied	10%	7
Not satisfied	1%	1
Very dissatisfied	6%	4
answered question		70
skipped question		36

13. Please rate your satisfaction with the timeliness with which UIA issued a decision related to protests associated with your claim.

Answer Options	Response Percent	Response Count
Very satisfied	12%	12
Satisfied	18%	19
Neither satisfied nor dissatisfied	17%	18
Not satisfied	11%	11
Very dissatisfied	15%	15
Not applicable	27%	28
answered question		103
skipped question		3

RECEIVED by MSC 12/9/2020 3:51:27 PM

14. Please rate your level of agreement with the following statement: UIA considered all relevant information when it issued its decision related to the protest of my claim.

Answer Options	Response Percent	Response Count
Strongly agree	16%	11
Agree	20%	14
Neither agree nor disagree	37%	26
Disagree	11%	8
Strongly disagree	16%	11
	answered question	70
	skipped question	36

15. Was the protest resolved in your favor?

Answer Options	Response Percent	Response Count
Yes	66%	44
No	34%	23
	answered question	67
	skipped question	39

16. Please rate your satisfaction with the timeliness with which appeals associated with your claim were heard and a decision rendered.

Answer Options	Response Percent	Response Count
Very satisfied	6%	4
Satisfied	17%	12
Neither satisfied nor dissatisfied	26%	18
Not satisfied	4%	3
Very dissatisfied	20%	14
Not applicable	26%	18
	answered question	69
	skipped question	37

17. Please rate your level of agreement with the following statement: I was provided with information that clearly defined my responsibilities regarding the appeal of my claim.

Answer Options	Response Percent	Response Count
Strongly agree	8%	4
Agree	46%	23
Neither agree nor disagree	20%	10
Disagree	16%	8
Strongly disagree	10%	5
	answered question	50
	skipped question	56

18. Was the appeal resolved in your favor?

Answer Options	Response Percent	Response Count
Yes	58%	28
No	42%	20
	answered question	48
	skipped question	58

RECEIVED by MSC 12/9/2020 3:51:27 PM

19. Please rate your satisfaction with the clarity of the information available to you related to UIA's claims filing and biweekly certification requirements.

Answer Options	Response Percent	Response Count
Very satisfied	16%	16
Satisfied	46%	45
Neither satisfied nor dissatisfied	24%	24
Not satisfied	6%	6
Very dissatisfied	7%	7
answered question		98
skipped question		8

20. Please rate your satisfaction with the comprehensiveness of the information available to you regarding UIA's claims filing and biweekly certification requirements.

Answer Options	Response Percent	Response Count
Very satisfied	16%	16
Satisfied	39%	38
Neither satisfied nor dissatisfied	32%	31
Not satisfied	7%	7
Very dissatisfied	6%	6
answered question		98
skipped question		8

21. Please rate your satisfaction with the ease with which you were able to complete your UI claim-related responsibilities.

Answer Options	Response Percent	Response Count
Very satisfied	16%	16
Satisfied	50%	49
Neither satisfied nor dissatisfied	20%	20
Not satisfied	8%	8
Very dissatisfied	5%	5
answered question		98
skipped question		8

22. Please rate your satisfaction with the information provided to you regarding your rights and responsibilities as a UI claimant.

Answer Options	Response Percent	Response Count
Very satisfied	18%	17
Satisfied	49%	48
Neither satisfied nor dissatisfied	25%	24
Not satisfied	6%	6
Very dissatisfied	2%	2
answered question		97
skipped question		9

RECEIVED by MSC 12/9/2020 3:51:27 PM

23. Please rate your satisfaction with the timeliness of UIA's responses to your claim-related questions and concerns.

Answer Options	Response Percent	Response Count
Very satisfied	12%	12
Satisfied	38%	37
Neither satisfied nor dissatisfied	16%	16
Not satisfied	7%	7
Very dissatisfied	11%	11
Not applicable	14%	14
answered question		97
skipped question		9

24. Please provide your opinion of UIA employees' knowledge of the UI-related information applicable to your claim.

Answer Options	Response Percent	Response Count
Very knowledgeable	23%	22
Knowledgeable	38%	36
Unknowledgeable	8%	8
Very unknowledgeable	5%	5
No basis for opinion	26%	25
answered question		96
skipped question		10

25. Were you selected to participate in the Profiling and Reemployment Services Program at Michigan Works!?

Answer Options	Response Percent	Response Count
Yes, and I participated in the program.	16%	16
Yes, but I did not participate in the program.	6%	6
No	77%	75
answered question		97
skipped question		9

26. Did you receive reemployment services that were specific to your individual needs?

Answer Options	Response Percent	Response Count
Yes	70%	14
No	30%	6
answered question		20
skipped question		86

27. Please rate your level of agreement with the following statement: The reemployment services that I received from Michigan Works! provided me with valuable skills that allowed me to return to work sooner than I otherwise would have.

Answer Options	Response Percent	Response Count
Strongly agree	6%	1
Agree	6%	1
Neither agree nor disagree	59%	10
Disagree	12%	2
Strongly disagree	18%	3
	answered question	17
	skipped question	89

RECEIVED by MSC 12/9/2020 3:51:27 PM

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AGENCY DESCRIPTION

The federal Social Security Act of 1935 created the UI program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. In response to this Act, UIA was originally created as the Michigan Employment Security Commission by the Michigan Employment Security Act of 1936, being Sections 421.1 - 421.75 of the *Michigan Compiled Laws*. Under Executive Order No. 2014-12, UIA was transferred from the Department of Licensing and Regulatory Affairs to the Talent Investment Agency, Department of Talent and Economic Development.

UIA helps jobless workers and their families by providing up to 20 weeks of regular UI benefits while they seek new employment.

For fiscal year 2014, UIA reported that it received 607,652 new claims and paid UI benefits totaling approximately $1.1 billion to 370,980 unduplicated claimants. As of April 11, 2015, UIA had 640 permanent full-time employees and 95 limited-term employees. UIA's fiscal year 2014 administrative expenditures totaled approximately $155.6 million.

RECEIVED by MSC 12/9/2020 3:51:27 PM

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine the program and other records of UIA related to claimant services. We conducted this performance audit* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2012 through September 30, 2015.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of UIA's claimant services to establish our audit objectives and methodology. Our preliminary survey included:

- Interviews with various members of UIA management and staff.
- Review of applicable State and federal laws, appropriations acts, rules, regulations, policies, procedures, and manuals.
- Examination of reports from various internal and external audits and reviews of UIA and similar organizations.
- Analysis of management reports.
- Research to identify industry standards, best practices, and headline events.
- Analysis of UIA's internal control* related to eligibility determinations and UI benefit claims processing.
- Review of selected performance and quality data and statistics.

OBJECTIVE #1

To assess the clarity and comprehensiveness of UIA's communications with UI claimants.

** See glossary at end of report for definition.*

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To accomplish our first objective, we:

- Reviewed UIA's use of various best practices for communication included within USDOL's UI Claimant and Employer Message Toolkit.
- Identified best communication practices used by other states, i.e., Idaho, Kansas, Maine, Oregon, and Texas.
- Reviewed and analyzed UIA efforts to communicate with claimants and potential claimants on UIA's Web sites, publications, and selected forms.
- Analyzed client comment cards collected at UIA's problem resolution offices and UIA's use of claimant satisfaction surveys.
- Evaluated the clarity and comprehensiveness of the instructions given to claimants in the UI benefit application and certification processes.
- Reviewed the effectiveness of UIA's call center at answering and responding to claimant telephone calls.
- Evaluated the clarity and comprehensiveness of UIA's overall communications for 50 randomly selected claimants who applied for UI benefits between October 1, 2013 and November 30, 2014.
- Evaluated the clarity and comprehensiveness of UIA's intentional misrepresentation-related communications for 30 randomly selected claims with an intentional misrepresentation (re)determination issued from October 1, 2013 through March 31, 2015. The 30 claims contained a total of 60 intentional misrepresentation cases.
- Evaluated the clarity and comprehensiveness of UIA's communications related to 25 randomly selected appeals.
- Analyzed UIA's returned mail processing procedures.
- Sent a claimant satisfaction survey to 500 randomly selected claimants.
- Assessed whether UIA ensured that employers complied with claimant notification requirements.

OBJECTIVE #2

To assess UIA's efforts to ensure compliance with USDOL's quality and timeliness standards related to UI claims processing.

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To accomplish our second objective, we:

- Analyzed the reports of UIA's consultants and reviewed UIA's implementation of the recommended process improvements included therein.
- Reviewed UIA's processes for monitoring the quality and timeliness of its claims processing functions and its processes for following up identified deficiencies.
- Evaluated the quality and timeliness of UIA's processing of 50 randomly selected claims, 30 randomly selected claims with intentional misrepresentation, and 30 randomly selected claims with appeals.
- Reviewed UIA's progress at reducing its backlogged work items.
- Analyzed UIA's performance over time relative to UI Performs performance standards.
- Evaluated the sufficiency of training provided to claims examiners.

OBJECTIVE #3

To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.

To accomplish our third objective, we:

- Reviewed the history of how and when UIA established its profiling methodology.
- Interviewed UIA, MWDA, and USDOL's ETA employees to obtain an understanding of UIA's and MWDA's applicable processes and controls.
- Reviewed memorandums of understanding between UIA and MWDA.
- Reviewed policies, procedures, and other authoritative guidance.
- Identified claimants with an increased risk of exhausting their UI benefits before finding a job for the five quarters ended December 31, 2014 and determined if UIA referred the claimants to MWDA for reemployment services.
- Reviewed a random selection of 30 claimants not referred to reemployment services to determine if there was a valid reason for nonreferral.

- Determined if UIA appropriately sanctioned claimants who were referred to, but did not attend, reemployment services.

CONCLUSIONS

We base our conclusions on our audit efforts and the resulting material conditions and reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

AGENCY RESPONSES

Our audit report contains 8 findings and 13 corresponding recommendations. UIA's preliminary response indicates that it agrees with 12 recommendations and disagrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

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GLOSSARY OF ABBREVIATIONS AND TERMS

adjudicate	A process by which UIA reviews evidence to come to a decision that determines rights and obligations of the parties involved.
benefit year	The period of 52 consecutive calendar weeks beginning with the first week the claim was filed.
ETA	Employment and Training Administration.
intentional misrepresentation	An occasion when a person makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
MiDAS	Michigan Integrated Data Automated System.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
MiWAM	Michigan Web Account Manager.
MWDA	Michigan Workforce Development Agency.

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nonmonetary determination	A decision made by an initial authority based on facts related to an issue detected that has the potential to affect a claimant's past, present, or future benefit rights and for which a determination of eligibility was made. Nonmonetary eligibility determination criteria include having a qualifying job separation reason, being able and available to work, seeking work, and registering for work with the State's workforce agency.
OAG	Office of the Auditor General.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
profiling	A system to identify and rank or score UI claimants by their potential for exhausting their benefits for referral to appropriate reemployment services.
reemployment services	Services including job search assistance and job placement services, such as counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs, and referrals to employers, and other similar services.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
RESEA	Reemployment Services and Eligibility Assessment.
social media	Forms of electronic communication, using Web sites and applications, through which users create and share content.
TIA	Talent Investment Agency.
UI	unemployment insurance.

UIA	Unemployment Insurance Agency.
USDOL	U.S. Department of Labor.
USPS	United States Postal Service.
WPRS	Worker Profiling and Reemployment Services.

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APPENDIX 11

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Michigan unemployment agency made 20,000 false fraud accusations – report

Ryan Felton

A Michigan government agency wrongly accused individuals in at least 20,000 cases of fraudulently seeking unemployment payments, according to a review by the state.

The review released this week found that an automated system had erroneously accused claimants in 93% of cases – a rate that stunned even lawyers suing the state over the computer system and faulty fraud claims.

"It's literally balancing the books on the backs of Michigan's poorest and jobless," attorney David Blanchard, who is pursuing a class action in federal court on behalf of several claimants, told the Guardian on Friday.

The Michigan unemployment insurance agency (UIA) reviewed 22,427 cases in which an automated computer system determined a claimant had committed insurance fraud, after federal officials, including the Michigan congressman Sander Levin, raised concerns with the system.

The review found that the overwhelming majority of claims over a two-year period between October 2013 and August 2015 were in error.

In 2015, the state revised its policy and required fraud determinations to be reviewed and issued by employees. But the new data is the first indication of just how widespread the improper accusations were during that period.

The people accused lost access to unemployment payments, and reported facing fines as high as $100,000. Those who appealed against the fines fought the claims in lengthy administrative hearings. And some had their federal and state taxes garnished.

Kevin Grifka, an electrician who lives in metro Detroit, had his entire federal income tax garnished by the UIA, after it accused him of fraudulently collecting $12,000 in unemployment benefits.

The notice came just weeks before Christmas in 2014.

"To be honest with you, it was really hard to see your wife in tears around Christmas time, when all of this went on for me," Grifka said.

The computer system claimed that he had failed to accurately represent his income over a 13-week period. But the system was wrong: Grifka, 39, had not committed insurance fraud.

In a statement issued on Friday, Levin called on state officials to review the remaining fraud cases that were generated by the system before the policy revision.

"While I'm pleased that a small subset of the cases has been reviewed, the state has a responsibility to look at the additional 30,000 fraud determinations made during this same time period," he said.

Figures released by the state show 2,571 individuals have been repaid a total of $5.4m. It's unclear if multiple cases were filed against the same claimants.

The findings come as Michigan's Republican-led legislature passed a bill this week to use $10m from the unemployment agency's contingent fund – which is composed mostly of fines

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generated by fraud claims – to balance the state's budget. Since 2011, the balance of the contingent fund has jumped from $3.1m to $155m, according to a report from a Michigan house agency.

The system, known as the Michigan Integrated Data Automated System (Midas), caused an immediate spike in claims of fraud when it was implemented in October 2013 under the state's Republican governor, Rick Snyder, at a cost of $47m.

In the run-up to a scathing report on the system issued last year by Michigan's auditor general, the UIA began requiring employees to review the fraud determinations before they were issued.

The fraud accusations can carry an emotional burden for claimants.

"These accusations [have] a pretty big burden on people," Grifka said. While he said the new findings were validating and his own case had been resolved, he called for state accountability.

"There's no recourse from the state on what they're doing to people's lives. That's my biggest problem with all of this."

Steve Gray, director of the University of Michigan law school's unemployment insurance clinic, told the Guardian earlier this year that he routinely came across claimants facing a significant emotional toll. As a result, he said, the clinic added the number for a suicide hotline to a referral resource page on the program's website.

"We had just a number of clients who were so desperate, saying that they were going to lose their house ... they've never been unemployed before, they didn't know," said Gray, who filed a complaint with the US labor department in 2015 about the Midas system.

The fines can be enormous. Residents interviewed by local news outlets have highlighted fraud penalties from the UIA upwards of $100,000. Bankruptcy petitions filed as a result of unemployment insurance fraud also increased during the timeframe when Midas was in use.

One bankruptcy attorney told the Detroit Metro Times he had as many as 30 cases in 2015 tied to debt from the UIA; before the automated system was implemented, he said he would typically have at most one per year with such claims. The newspaper also found claimants who were charged with fraud despite never having received a single dollar in unemployment insurance benefits.

A pair of lawsuits were filed in 2015 against the UIA over Midas. According to a pending federal case, in which the state revealed it had discontinued using Midas for fraud determinations, the system "resulted in countless unemployment insurance claimants being accused of fraud even though they did nothing wrong".

Blanchard told the Guardian in February that many unemployment applicants may not have realized they were even eligible to appeal against the fraud charge, due to the setup of Midas. Attorneys representing claimants have said that many refuse to ever apply for unemployment benefits again.

A spokesman for the unemployment insurance agency, Dave Murray, said it appreciated Levin's work on the issue and said it was continuing "to study fraud determinations".

The agency had already made changes to the fraud determination process, he said, and "we appreciate that the state legislature this week approved a bill that codifies the reforms we've set in place".

Levin, who represents part of metropolitan Detroit, said in his statement that Michigan officials had to fully account for the money that has flowed into the unemployment agency's contingent fund.

"While I am pleased that $5m has been repaid, it strikes me as small compared to the amount of money that was collected at the time," he said. "Only a full audit will ensure the public that the problem has been fully rectified."

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APPENDIX 122

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAURICE & JANE SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), *et al*

Plaintiffs,

v.

STEVE ARWOOD and SHARON MOFFETT-MASSEY, in their official capacities

Defendants.

Case No. 2:15-cv-11449

Hon. Robert H. Cleland

STIPULATED ORDER OF DISMISSAL

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STIPULATED ORDER OF DISMISSAL

By consent and stipulation of the parties it is HEREBY ORDERED that:

1. This matter is dismissed on the terms of the attached Settlement Agreement; and,
2. Collection activity stayed under the stipulated Preliminary Injunction Order will continue: all collection activity against claimants who have been subject to fraud (re)determinations (and associated underlying eligibility or disqualification (re)determinations) issued by the Agency beginning October 1, 2013, to August 7, 2015, is stayed, unless and until individually reviewed by agency staff and affirmed with new notice to claimant; and,
3. The Court shall retain jurisdiction of this matter pursuant to the terms of the Settlement Agreement and for the purpose of enforcing the terms of this Order and the Settlement Agreement; and,
4. Plaintiffs shall be entitled to reimbursement of reasonable fees and costs incurred in the prosecution of this matter as agreed by the parties.

IT IS SO ORDERED

Dated: February 2, 2017

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

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STIPULATION

The parties, by and through their respective attorneys, stipulate to the entry of this order.

Respectfully submitted,

/s/ David M. Blanchard
David M. Blanchard (P67190)
Daniel C. Tai (P76798)
BLANCHARD & WALKER, PLLC
Attorneys for Plaintiffs
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Date: January 31, 2017

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Kimberly K. Pendrick (P60348)
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Date: January 31, 2017

/s/ Edward A. Macey
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Attorneys for UAW only
8000 East Jefferson Avenue
Detroit, MI 48214

Date: January 31, 2017

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Settlement Agreement

THIS SETTLEMENT AGREEMENT (hereinafter referred to as "Agreement"), is made and entered into this 31 day of January, 2017, by and between International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); and Maurice & Jane Sugar Law Center for Economic & Social Justice, and individual claimants Jennifer Zynda; Amanda Balma; Kevin Grifka; Jordan Miller; Brian Saylor; Nancy Wessinger; and Michelle Witt (hereinafter referred to as "Plaintiffs") and the Talent Investment Agency/Unemployment Insurance Agency, Steve Arwood and Sharon Moffett-Massey (hereinafter referred to as "Defendants").

WHEREAS, Plaintiffs filed a civil action in this Court on April 21, 2015, originally titled Zynda *et al.* v. Zimmer *et al.*, 15- CV-11449 (*the "Litigation" or "Action"*).

WHEREAS, the Agency has undertaken a review of all remaining Unemployment Insurance Agency ("UIA") fraud determinations and redeterminations (collectively referred to herein as "(re)determinations") and associated eligibility (re)determinations issued from October 1, 2013, to August 7, 2015 that have not yet had a hearing before the Michigan Administrative Hearing System, which will include issuance of (re)determinations on reversals and notices of appeal rights on affirmations; and

WHEREAS, the Agency has committed to make all reasonable efforts to complete the review within six months of the execution of this Agreement; and

WHEREAS, this Agreement sets forth the full and final terms by which Plaintiffs and Defendants settle and resolve all claims that have been raised in the Litigation.

IT IS HEREBY AGREED that:

1. The Litigation will be dismissed based upon entry of an Order of Dismissal incorporating the terms of this Settlement Agreement and on the mutual agreement of the parties and the obligations and affirmations contained herein;

2. Defendants admit no wrongdoing or that any of the Talent Investment Agency/Unemployment Insurance Agency's (Agency) policies or procedures violate any Federal or State Constitutional provisions or laws.

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3. The Defendants hereby specifically affirm Agency compliance with the following policies and practices regarding identification of overpayments and/or imposition of penalties or, to the extent necessary, to adopt or revise policies. The Agency shall bring its policies and practices in compliance within 90 days of this Settlement Agreement.

Section I.

REVISED OR AFFIRMED UIA POLICIES AND PRACTICES

4. The Agency will conduct an investigation consistent with prevailing U.S. Department of Labor requirements, including ETA Handbooks and Unemployment Insurance Program Letters as interpreted by the U.S. Department of Labor, before issuing a (re)determination that an overpayment has been made or intentional misrepresentation has occurred. In so doing, the Agency will take reasonable actions to ensure that investigators gather all relevant information, which may include supporting documents and statements from either the individual to whom the payment was made or others. In addition, claimants will be given an opportunity to be heard, timely notice of the interview or fact-finding questionnaire, and an opportunity to present evidence.

5. When there is a factual conflict between the information received from an individual claimant and other information received by the Agency regarding overpayment or potential misrepresentation, Agency staff will make reasonable attempts (as defined by the U.S. Department of Labor) to contact the individual, inform him or her of the conflict, and allow an opportunity for rebuttal. The Agency will establish policies and procedures to determine that the conflicting information appears valid and relevant to its (re)determination prior to contacting the individual and requesting additional information. For purposes of paragraphs 1 or 2 of this section, the following practices shall satisfy the terms of the agreement:

   a. The Agency's procedures require attempts to obtain information from the claimant, the employer, or third-parties regarding overpayment and misrepresentation issues;
   b. The Agency will issue (re)determinations of intentional misrepresentation based upon staff review of all evidence obtained during the investigation;
   c. The Agency will not make fraud (re)determinations solely based upon a lack of response by the claimant;

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d. A manager will review all intentional misrepresentation (re)determinations to verify that they contain sufficient facts in support of the finding;
e. The Agency will establish policies and procedures to determine whether conflicting information appears valid and relevant to its (re)determination prior to contacting the claimant and requesting additional information; and,
f. Claimants that fail to respond to fact-finding will receive a 48-hour call before a fraud (re)determination is issued.

6. All (re)determinations of misrepresentation or fraud will be issued only after the input and review by Agency staff, and after the claimant is informed of the conflicting information and provided an opportunity to respond.

a. When reviewing a data conflict concerning reason(s) for separation, both the claimant and employer will receive fraud fact-finding questionnaires for fraud assessment purposes. Equal deference will be given to statements by the employer and the claimant absent further investigation by the Agency. This will apply to any new claims 90 days after the effective date, which will be the date the Order of Dismissal and this Agreement are filed and entered by the Court.
b. Claimants who fail to respond to fact-finding will receive a 48-hour call before a fraud (re)determination is issued.
c. The Agency will not make fraud (re)determinations solely based on a lack of response by the claimant.
d. All timely information submitted by a claimant will be considered prior to a (re)determination being issued.

7. When an employer reports wages earned for an employee within a benefit quarter, the Agency will not assume that wages are compensation attributable to any specific benefit weeks throughout the quarter unless the employer or claimant designates the weeks for which it is attributing pay. If the employer so designates, the designation shall be subject to review by the Agency, and the claimant will be notified by phone call of the weeks designated and provided an opportunity to respond.

8. Communications will be in plain language and using methods that ensure the communication is most likely to be successful for all populations, including individuals with limited English proficiency.

9. Regardless of claimant's election to receive electronic notices or "go green,"

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after the end of the claimant's benefit year, claimants accused of receiving overpayments or of intentional misrepresentation shall receive written notice by mail of the (re)determination at the last known address. Written notice will include: a) a summary statement of the material facts on which the (re)determination is based; b) the reason for allowing or denying benefits; and c) the penalties that will be collected or consequences associated with the (re)determination if it is not appealed and it becomes final.

10. Written notice will also provide a statement of appeal rights that includes the claimant's right to appeal, protest, or to request a redetermination; the period in which the appeal, protest, or request for redetermination must be filed; the manner in which it must be filed; and where the claimant can obtain additional information and assistance about filing an appeal, protest, or request for redetermination.

11. All fraud (re)determinations and notices of restitution due will be reasonably designed to allow the claimant to understand the reasons for the (re)determination, potential penalties or other consequences of a fraud (re)determination, as well as his or her rights with respect to an appeal. The claimant shall be provided information about the appeal process including the right to have representation; to present testimony and other evidence relative to the appeal; to subpoena witnesses and records; and to be apprised of the penalties to be assessed if it is not appealed and a (re)determination becomes final, and of the consequences of failing to attend an appeal if one is requested. For purposes of this paragraph, inclusion of the following in fraud (re)determinations and notices of restitution due shall satisfy the terms of the agreement:

    a. A summary statement of the reason for denying benefits, including the facts on which the (re)determination is based (for (re)determinations only, but not notices of restitution due);
    b. The claimant's right to protest or appeal a (re)determination;
    c. The period and manner in which the appeal, protest, or request for redetermination must be filed, and information regarding where the claimant can obtain additional information and assistance regarding filing an appeal, protest, or request for redetermination;
    d. The potential penalties or other consequences of a fraud (re)determination;
    e. The claimant's ability to hire an attorney to represent them at any stage of the administrative process;

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f. The claimant's ability to use the advocacy program;
g. That the claimant can have a hearing to present testimony and other evidence and to subpoena witnesses and records; and
h. That failure to attend an administrative hearing may result in dismissal.

Relative to any (re)determinations issued after implementation of any change of policy or procedure pursuant to this Agreement, the Agency will not initiate or continue overpayment recovery or imposition of penalties, whether by garnishment, bill collection, offset against current eligibility, or other means unless and until the above policies and procedures have been adhered to.

12. The Agency will refer those who are denied advocacy through the Advocacy Program due to fraud to the State Bar referral service Legal Aid Section, which maintains an "unemployment" subsection.

13. The Agency shall not initiate or continue recovery of an overpayment or penalty until a (re)determination of the overpayment becomes final after the claimant has had notice and reasonable opportunity to challenge the (re)determination and/or exhaust all appeals.

14. During the pendency of a decision on any overpayment or misrepresentation (re)determination, the Agency will continue to make timely UC payments when due and shall not make any attempts to collect restitution while an appeal is pending, and shall not begin collection of restitution or penalties until or after 35 days from the date of a (re)determination.

15. Good cause for a late protest will continue to include the situation wherein a claimant fails to receive a reasonable and timely notice, order, or decision, as set forth in Mich. Admin. Rule § 421.270. The Agency will make good cause determinations on a case-by-case basis based upon the information submitted.

16. In cases where jurisdiction is returned to the Agency for reconsideration and redetermination under Mich. Admin. Rule § 421.270 the Agency will suspend collection activity of overpayment and/or penalties on that case(s), whether by garnishment, bill collection, offset against current eligibility, or otherwise, until a (re)determination on the case(s) has become final.

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Section II.

CURRENT CLAIMANTS, GARNISHEES, AND OTHERS FOR WHOM THE STATE RETAINS REMUNERATION BASED ON CHALLENGED PRACTICES

17. Review of Agency (re)determinations issued from October 1, 2013 to August 7, 2015, will be followed by new original (re)determinations by mail which shall be subject to the policies, procedures or practices outlined above, or "notices of appeal rights" which shall include explanation of the basis for upholding the original (re)determination and a copy of the original (re)determination. Relative to this review, funds garnished or otherwise collected shall be promptly returned within 30 days of a new (re)determination.[1]

18. For all claimants with open garnishment or other collection activity, all bills and garnishment notices shall provide a statement advising claimants that they may have: (1) a right to request reopening if they did not receive notice of the (re)determination within the original appeal deadline, and (2) the right to an individual hearing on the underlying issue(s).

19. If the Agency rejects a request to reopen for good cause on the basis that the original (re)determination is more than a year old (MCL 421.32a(2) -- i.e. the "one-year letter" – currently UIA form 1077) it shall also include in the second paragraph of the main text of the "one year letter" information advising that, although the UIA is limited by a one year deadline: "However, if you file a protest or appeal of this denial, an Administrative Law Judge may reconsider the disputed issue after a year in some circumstances, and may grant your request if you did not receive notice of the original (re)determination or you establish good cause for late filing."

[1] The parties understand that, in certain extenuating circumstances, it may be impossible to meet this deadline. Examples of extenuating circumstances include those cases where involvement of third parties -- such as employer garnishments or taxing authorities regarding interception -- limits or delays access to the funds, or cases in which return addresses must be verified or claimants located. In those cases the Agency shall endeavor to return collected funds as soon as practicable.

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Section III.

GENERAL SETTLEMENT TERMS

20. Reporting. (1) For a period extending 24 months from the entry of this Settlement Agreement (the "reporting period"), the Agency will provide to Plaintiffs' counsel a quarterly report, one month following the calendar quarter end, of the number of new fraud and nonfraud overpayment cases established based on new misrepresentation (re)determinations. (2) Quarterly, until completion of the review of cases subject to *Section II* of this Agreement, the Agency will provide information regarding the number of cases reviewed, the number of affirmations and reversals of fraud, the percentage of cases where refunds were issued on fraud penalties previously paid and the amounts thereof.

21. Jurisdiction: The Federal District Court for the Eastern District of Michigan shall retain jurisdiction over this action. The Parties consent to continued jurisdiction of this Court over interpretation of the terms, enforcement, and compliance with this Settlement Agreement.

22. Implementation: Within 90 days of the execution of this Agreement, the Defendant shall issue written directives to all applicable personnel within the Michigan Unemployment Insurance Agency clarifying its recovery procedures for overpayments of unemployment insurance benefits as provided in this Agreement. As soon thereafter as is practicable, but in no event more than 90 days of the execution of this Agreement, the Defendant shall issue revised manual sections for its policy and procedures manual(s) consistent with the terms of this Settlement Agreement. The Defendants will provide Plaintiffs' counsel with a courtesy copy of the written directives issued pursuant to this Settlement Agreement at the time they are issued and an advance copy of the revised manual sections provided for under this paragraph no less than 15 days prior to their publication/distribution.

23. Notice and opportunity to cure/Liaison. If Plaintiffs believe any Agency policy, practices, or actions are not in compliance with this Settlement Agreement, Plaintiffs shall give the Agency written notice of such alleged breach providing the opportunity to cure such breach for a period of thirty (30) business days after delivery of the notice. Within 10 days of notice, Defendants shall provide a response (written, by phone, or in person) of the actions proposed in response, if any. Any notice of breach shall be made to the following:

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Talent Investment Agency/Unemployment Ins. Agency
Attn: UIA Deputy Director
Cadillac Place
3024 West Grand Blvd., Ste. 12-350
Detroit, Michigan 48202

The Agency will provide notice and copies of revised UIA forms[2] at least 60 days (or as soon as practicable) prior to the proposed implementation. Any objection to the content of proposed UIA form revisions for compliance with this agreement must be raised within 30 days (or as soon as practicable) after receipt. Suggested and accepted changes will be made on a prospective basis.

A Liaison for issues related to implementation of this Settlement Agreement and compliance shall be appointed within the Agency. The Agency may designate substitutions of the liaison by notice pursuant to the terms of this Agreement. The liaison is the UIA Deputy Director, and his or her designee, at a phone number and email to be provided by Defendants.

24. Settlement Incorporated. Parties Agree to the Entry of this Settlement Agreement to be incorporated by reference in a Dismissal Order of the Litigation as final Resolution of the Litigation. If the Court rejects this Agreement in any material part, either party shall have the right to void this entire Agreement.

25. Release. Except for the rights and obligations contained in this Agreement, Plaintiffs, including their officers, directors, managers, employees, agents, insurers, parent corporations, subsidiaries, affiliates (but not local chapters which the UAW has no authority to bind), predecessors, successors, assigns, hereby fully and forever release and discharge Defendants and its employees, attorneys, agents, representatives, insurers, predecessors, successors, and assign, from any and all manner of action and causes of action set forth in the pending litigation.

[2] UIA forms requiring notice pursuant to this provision are limited to claimant (re)determinations, restitution notices, questionnaires related to claimant benefits and/or fraud, monthly invoices to claimants, and the one-year letter.

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26. Notice. If notice is required, it shall be made to the following:

To UIA:

Talent Investment Agency/Unemployment Ins. Agency
Attn: UIA Deputy Director
Cadillac Place
3024 West Grand Blvd., Ste. 12-350
Detroit, Michigan 48202

To Plaintiffs:

David Blanchard
Blanchard & Walker PLLC
221 N. Main St., Suite 300
Ann Arbor, MI 48105

The Parties may revise its notice persons at any time by written notice to each other.

27. Severability. If any term or other provision of the Settlement Agreement and Dismissal Order is challenged by a Third Party, ("Third Party" is specifically defined to exclude the Parties herein, and any of their officers, directors, managers, members, employees, agents, insurers, parent corporations, subsidiaries, affiliates, predecessors, successors, and assigns), and ultimately held by a court of competent jurisdiction or the U.S. Department of Labor to be invalid, illegal, or incapable of being enforced, (a) either Party shall have the right to terminate the Agreement and recommence suit, notwithstanding any dismissal or initiate one or more new causes of action; or (b) upon written consent of all Parties, the full force and effect of all other terms and provisions of this Agreement shall be enforced, and there shall be substituted for the term or provision at issue a valid, legal, and enforceable provision that effects the original intent of the Parties as closely as possible. If either Party elects to recommence suit under this provision, (i) the Parties agree that any statutes of limitations are tolled from the filing date of the litigation to the date 90 days after any court finding that the provision of the Settlement Agreement and Dismissal Order is invalid, illegal, or incapable of being enforced, and (ii) neither Party will be prevented from pursuing any rights, claims or arguments.

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28. Construction. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any statute, law, ordinance, regulation, or U.S. Department of Labor direction, guidance, or UIPL, contrary to which the parties have no legal right to contract, then the latter shall prevail; but in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements and subject to the procedures of the preceding paragraph.

29. Each of the Parties to this Agreement, acknowledge and represent that:
    a. Such Party has read this Agreement;
    b. Such Party clearly understands this Agreement and each of its terms;
    c. Such Party fully and unconditionally consents to the terms of this Agreement;
    d. Such Party has had the benefit and advice of legal and other counsel of such party's own selection;
    e. Such Party has executed this Agreement fully, with knowledge, and without duress;
    f. Such Party is not relying on any other representations, either written or oral, express or implied, made by any other person or entity; and
    g. The consideration received by such Party has been actual and adequate.

30. Authority. The parties and the individuals signing this Agreement represent and warrant that the individuals signing this Agreement are duly authorized and empowered to act on behalf of and to sign for the Party for whom they have signed respectively, and this Agreement has been duly and validly executed by them, and that this Agreement constitutes valid and binding obligations of the Parties.

31. This Agreement does not prevent the Agency from making any necessary revisions to its policies and procedures required to ensure compliance with state and federal unemployment requirements, including U.S. Department of Labor direction, guidance or UIPL. In the event that changes in law require modification of this Settlement Agreement, the parties agree to provide notice at least 30 days in advance of the implementation of any new policy or practice required that would violate the terms of the Stipulated Agreement and shall, subject to the procedure for notice and cure, stipulate to

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modification of the Settlement Agreement to the degree necessary to bring it into compliance.

32. This Agreement contains the entire Agreement between the parties. Any modification of this Agreement must be made in writing and signed by the parties.

33. This Agreement may be executed in counterparts by any of the signatories hereto, including by facsimile transmission, and as executed shall constitute one agreement. Facsimile or electronic copies of signatures shall be treated as originals for all purposes.

/s/ David M. Blanchard
David M. Blanchard (P67190)
BLANCHARD & WALKER, PLLC
On behalf of all Plaintiffs

Date: January 31, 2017

/s/ Edward A. Macey
Edward A. Macey (P72939)
Associate General Counsel
International Union, UAW
On behalf of Plaintiff UAW

Date: January 31, 2017

/s/ Anthony D. Paris
Anthony D. Paris (P71525)
Lead Attorney
Sugar Law Center
On behalf of Plaintiff SLC

Date: January 31, 2017

/s/ Wanda Stokes
Wanda Stokes
Director
Talent Investment Agency
On behalf of:
Talent Investment Agency (TIA); Unemployment Insurance Agency (UIA); and the Officers sued in their official capacity.

Date: January 31, 2017

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APPENDIX 13

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Bauserman v. Unemployment Ins. Agency

Court of Appeals of Michigan

July 18, 2017, Decided

No. 333181

Reporter
2017 Mich. App. LEXIS 1154 *

GRANT BAUSERMAN, KARL WILLIAMS and TEDDY BROE, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs-Appellees, v UNEMPLOYMENT INSURANCE AGENCY, Defendant-Appellant.

Prior History: **[*1]** Court of Claims. LC No. 15-000202-MM.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Judges: Before: GADOLA, P.J., and METER and FORT HOOD, JJ.

Subsequent History: Motion granted by *Bauserman v. Unemployment Ins. Agency, 901 N.W.2d 901, 2017 Mich. LEXIS 2094 (Mich., Oct. 20, 2017)*

Later proceeding at *Bauserman v. Unemployment Ins. Agency, 501 Mich. 1047, 909 N.W.2d 268, 2018 Mich. LEXIS 655 (Apr. 6, 2018)*

Motion granted by *Bauserman v. Unemployment Ins. Agency, 910 N.W.2d 298, 2018 Mich. LEXIS 848 (Mich., May 2, 2018)*

Motion granted by *Bauserman v. Unemployment Ins. Agency, 912 N.W.2d 553, 2018 Mich. LEXIS 1138 (Mich., June 20, 2018)*

Motion denied by *Bauserman v. Unemployment Ins. Agency, 917 N.W.2d 81, 2018 Mich. LEXIS 1802 (Mich., Sept. 14, 2018)*

Affirmed in part and reversed in part by, Remanded by *Bauserman v. Unemployment Ins. Agency, 503 Mich. 169, 931 N.W.2d 539, 2019 Mich. LEXIS 609 (Apr. 5, 2019)*

Motion granted by *Bauserman v. Unemployment Ins. Agency, 2020 Mich. LEXIS 426 (Mich., Mar. 6, 2020)*

Opinion

PER CURIAM.

In this class action lawsuit, defendant Unemployment Insurance Agency (UIA) appeals as of right the trial court's order denying its motion for summary disposition. Plaintiffs Grant Bauserman (Bauserman), Karl Williams (Williams) and Teddy Broe (Broe) in this case are individuals who have filed a class action alleging that defendant violated their rights to due process when investigating whether plaintiffs committed fraud in receiving unemployment benefits. We reverse.

I. FACTS AND PROCEDURAL HISTORY

This appeal arises from a class action lawsuit initiated by the plaintiffs against defendant arising from their claims for unemployment benefits with defendant. On September 9, 2015, Bauserman filed a class action complaint against defendant in the Court of Claims alleging that defendant "utilizes an automated decision-making system to detect and adjudicate suspected instances of employment benefit fraud." Bauserman further alleged that defendant's "automated decision-making system[,] known as the Michigan Integrated Data Automated System ("MiDAS") deprives UIA claimants of due process and fair **[*2]** and just

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treatment because it determines guilt without providing notice, without proving guilt and without affording claimants an opportunity to be heard before penalties are imposed." The complaint alleged, with regard to Bauserman, that after a determination that Bauserman had engaged in fraudulent conduct with regard to his unemployment benefits, "[defendant] seized [Bauserman's] property without notice of the specific grounds for the allegations against him, without providing 60 days in which to present evidence, without providing him an opportunity to present evidence, . . . and without the notice and other due process required by federal law and the Michigan constitution."

Bauserman received unemployment benefits from October 2013 until March 29, 2014. Defendant's determination that Bauserman had engaged in fraud apparently arose after Bauserman received a payment from his former employer that was a "deferred payment of his pro-rated 2013 bonus," earned during his employment with his former employer in the 2013 calendar year. This followed defendant sending Bauserman and his former employer questionnaires to investigate the matter. While Bauserman and his former employer did eventually **[*3]** respond to defendant's inquiries, the nature of the payment from Bauserman's former employer was still unclear to defendant. According to the complaint, defendant then determined that it had overpaid unemployment benefits to Bauserman, and assessed penalties and interest. Bauserman was issued both an "Ineligibility Determination" as well as a "Fraud Redetermination[.]" Bauserman was also informed that penalties would include "interception of [his] state income tax refund, interception of his federal tax refund, garnishment of his wages, and legal collection activity through a court of law." Bauserman alleged that defendant seized the proceeds of his federal income tax refund and his state income tax refund. The parties do not dispute that defendant ultimately reconsidered its earlier determinations that Bauserman was ineligible for unemployment benefits and had engaged in fraud after receiving notice from Bauserman that the payment at issue from his former employer was a bonus he received while still employed by his former employer. Bauserman was ultimately not liable to pay back any unemployment benefits or have any penalties or interest assessed. Any monies seized from Bauserman **[*4]** were returned by defendant.

Plaintiffs filed their first amended complaint on October 19, 2015 naming Williams and Broe as plaintiffs in addition to Bauserman. Where the facts with respect to Williams and Broe are not disputed, we will refer to the portion of the trial court's written ruling addressing the facts pertinent to Williams and Broe.

> Plaintiff Teddy Broe's factual scenario is similar to that alleged by Bauserman. According to the amended complaint, between February 15, 2013 and April 15, 2013, Broe worked for Fifth Third Bank under a seasonal tax trust internship to assist with filings for the 2012 tax year. When the internship concluded, plaintiff applied for UIA benefits and represented that employment terminated due to "seasonal discharge." UIA approved Broe's claim for unemployment benefits and plaintiff received approximately $2,200.00 in UIA benefits before he obtained new employment in November 2013. However, UIA continued to send requests for information and other communications regarding ineligibility or disqualification to Broe's [online account with defendant]. Indeed, in the summer of 2014, UIA sent to Broe's [online account] [a] notice of determination indicating **[*5]** that Broe had committed fraud and would be liable for restitution, interest and penalties. However, Broe did not receive any of these notices because they were sent only to his [online account], an online account he no longer accessed because he was re-employed and not claiming any UIA benefits. In 2015, Broe received a notice from UIA that he owned [sic] a debt of approximately $8,800.00 representing overpayment, interest and penalties for fraud. Broe filed a protest with the UIA, however his protests were denied as untimely. Then, in May 2015, UIA intercepted Broe's state and federal income tax refunds. Finally, . . . UIA issued a redetermination on November 4, 2015, wherein UIA determined that Broe did not owe restitution or penalties.

Plaintiff Williams's factual allegations demonstrate yet a different scenario. Williams began his employment with Wingfoot Commercial Tire System in May 2011. At the time he began this employment, Williams was receiving UIA benefits based on his unemployment from a previous employer. After the Wingfoot employment began, Williams continued to contact UIA's automated MARVIN system. When doing so, he reported that he was receiving some earnings from Wingfoot. **[*6]** UIA, however, did not adjust Williams' benefits to reflect an offset for his Wingfoot wages; additionally Williams believed that he was still entitled to UIA benefits because his

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> Wingfoot wages were, at that time, less than 11/2 times his weekly UIA benefit rate. On June 22, 2012, the UIA issued a redetermination holding Williams ineligible for benefits. Also on that date, the UIA ordered Williams to pay restitution in the amount of $9,875.00 and penalties of $39,500.00. Also on June 22, 2012, in a second determination of penalty correspondence, UIA found Williams liable for "unpaid Fraud Weeks" and assessed an additional $11,584.00 penalty.
>
> Plaintiff Williams filed a late protest of these determinations. Then, on July 1, 2014, an administrative law judge concluded that Williams could not establish good cause for failing to timely protest the June 22, 2012 determinations. On October 29, 2013, Williams received a garnishment notice from UIA for the amount of $64,069.00. Then, on February 19, 2015, Williams received notice that his Federal income tax refund would be intercepted and seized by the UIA. The agency is currently reviewing the account to verify the accuracy of the restitution, **[*7]** penalties and interest . . . .[1]

II. STANDARD OF REVIEW

On appeal, defendant argues that the trial court erred in denying its motion for summary disposition where plaintiffs' claims were not filed in compliance with the governing provision of the Court of Claims Act, MCL 600.6401 et seq. We agree.

A trial court's decision on a motion for summary disposition is reviewed de novo. Nuculovic v Hill, 287 Mich App 58, 61; 783 NW2d 124 (2010). As relevant to this appeal, defendant moved for summary disposition of plaintiffs' claims pursuant to MCR 2.116(C)(7) which provides that "dismissal of the action . . . is appropriate because of . . . immunity granted by law, [or the statute of limitations.]" Defendant also moved for dismissal of plaintiffs' claims pursuant to MCR 2.116(C)(8), which provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." The trial court did not specify under which subrule of MCR 2.116 it was denying summary disposition, however it is apparent from its ruling that it considered documentary evidence outside of the pleadings. "A motion for summary disposition under subrule (C)(8) tests the legal sufficiency of the pleadings alone." Nuculovic, 287 Mich App at 61 (citations omitted). Accordingly, the trial court's decision should be reviewed in accordance with **[*8]** MCR 2.116(C)(7). As this Court recently recognized in Goodhue v Dep't of Transp, 319 Mich. App. 526, 529, 904 N.W.2d 203 (2017) :

> Summary disposition is appropriate under MCR 2.116(C)(7) if a claim is barred because of, among other things, "immunity granted by law." When reviewing a motion for summary disposition under this subrule, a court accepts "all well-pleaded factual allegations as true and construe[s] them in favor of the plaintiff, unless other evidence contradicts them." Dextrom v Wexford Co, 287 Mich App 406, 428; 789 NW2d 211 (2010). Further,
>
> [i]f any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue for the court. [Id. at 429 (citations omitted).]

Summary disposition is also properly granted pursuant to MCR 2.116(C)(7) where a claim is barred by the applicable statute of limitations. Henry v Dow Chemical Co, 319 Mich. App. 704, 715, 905 N.W.2d 422 (2017).

This appeal also requires us to undertake a de novo review of the statutory language of MCL 600.6431(3). Lewis v Farmers Ins Exch, 315 Mich App 202, 209; 888 NW2d 916 (2016). In McCahan v Brennan, 492 Mich 730, 736; 822 NW2d 747 (2012), the Michigan Supreme Court set forth the inquiry this Court must undertake when construing statutory language.

> [This Court's] primary objective when interpreting a statute **[*9]** is to discern the Legislature's intent. This task begins by examining the language of the statute itself. The words of a statute provide the most reliable evidence of its intent[.] When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted. [Footnotes and quotation marks omitted.]

III. ANALYSIS

The relevant statute, MCL 600.6431, which is part of the Court of Claims Act, provides as follows:

> (1) No claim may be maintained against the state

[1] In its brief on appeal, defendant states that defendant is still collecting its debt from Williams.

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> unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.
>
> (2) Such claim or notice shall designate any department, commission, board, institution, arm or agency of the state involved **[*10]** in connection with such claim, and a copy of such claim or notice shall be furnished to the clerk at the time of the filing of the original for transmittal to the attorney general and to each of the departments, commissions, boards, institutions, arms or agencies designated.
>
> (3) *In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action*. [Emphasis added.]

In *Fairley v Dep't of Corrections, 497 Mich 290, 292; 871 NW2d 129 (2015)*, the Michigan Supreme Court recognized that "[t]he purpose of *MCL 600.6431* is to establish those conditions precedent to pursuing a claim against the state." In *Fairley*, the Michigan Supreme Court considered whether the plaintiffs' failure to strictly comply with the notice verification provisions of *MCL 600.6431(1)* provided the defendant state agencies with a complete defense to the plaintiffs' claims. *Fairley, 497 Mich at 292, 293*. In undertaking its analysis, the *Fairley* Court noted that the defendant state agencies, the Department of Corrections and the Michigan State Police, as "governmental agencies, are broadly shielded from tort liability." *Id. at 297*.

> [W]hile *MCL 600.6431* does not confer governmental immunity, **[*11]** it establishes conditions precedent for avoiding the governmental immunity conferred by the [government tort liability act (GTLA), *MCL 691.1401 et seq.*,] which expressly incorporates *MCL 600.6431*. As a result, [a] plaintiff[ ] must adhere to the conditions precedent in *MCL 600.6431(1)* to successfully expose the defendant state agencies to liability. [*Fairley, 497 Mich at 297-298* (footnote omitted).]

Where the plaintiffs' notices of intent did not meet the requirements of *MCL 600.4831(1)*, the *Fairley* Court ultimately concluded that the plaintiffs "failed to defeat the protection of governmental immunity to which [the defendant state agencies] are entitled." *Fairley, 497 Mich at 301* (footnote omitted).

In the present appeal, the parties concede that plaintiffs' cause of action is one for "property damage or personal injuries," *MCL 600.6431(3)*, and that the determinative question for us to decide is what event gave rise to their cause of action. Put another way, we are asked to determine whether the six months within which plaintiffs were required to file a notice of intention to file a claim, or the claim itself, began to run (1) when defendant issued notices informing plaintiffs that they were disqualified from receiving unemployment benefits, or (2) when defendant actually seized plaintiffs' property.

In *McCahan, 492 Mich at 730*, the **[*12]** Michigan Supreme Court recognized that it is "the sole province of the Legislature to determine whether and on what terms the state may be sued[.]" Notably, the *McCahan* Court observed that "the judiciary has no authority to restrict or amend those terms." *Id.* The *McCahan* Court, confronted with the issue of how *subsections (1)* and *(3)* of *MCL 600.6431* are to be construed, also urged "a contextual understanding" of the statute. *McCahan, 492 Mich at 738*. In *McCahan*, the plaintiff asserted that her claim for personal injuries was not "subject to the dictates or bar-to-claims language of *MCL 600.6431(1)*." *McCahan, 492 Mich at 738*. The plaintiff further argued that where her claim was governed by *MCL 600.6431(3)*, and the Legislature did not include language in that subsection barring her claim if there was any deficiency with regard to notice, her claims against the state were not prohibited as a result. *McCahan, 492 Mich at 739*. In *McCahan*, the plaintiff was injured by a vehicle driven by a student that was owned by the University of Michigan, and she did not file a notice of intention to file a claim or her claim within six months of the subject accident. *Id. at 733-734*. Rejecting the plaintiff's argument that "only *subsection (3)* [of *MCL 600.6431*] governs her claim and acts as an independent provision that excludes application **[*13]** of *subsection (1)*[,]" the *McCahan* Court ruled, in pertinent part, as follows:

> When undertaking statutory interpretation, the provisions of a statute should be read reasonably

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> and in context. *Doing so here leads to the conclusion that MCL 600.6431 is a cohesive statutory provision in which all three subsections are connected and must be read together*. Subsection (1) sets forth the general notice required for a party to bring a lawsuit against the state, while subsection (3) sets forth a special timing requirement applicable to a particular subset of those cases—those involving property damage or personal injury. Subsection (3) merely reduces the otherwise applicable one-year deadline to six months. In this regard, subsection (3) is best understood as a subset of the general rules articulated in subsection (1), and those general rules and requirements articulated in subsection (1)-including the bar-to-claims language-continue to apply to all claims brought against the state unless modified by the later-stated specific rules. [McCahan, 492 Mich at 739 (emphasis added; footnote omitted).]

The *McCahan* Court went on to observe that "a reasonable person reading the statute would understand that subsections (1) and (3) are related **[*14]** and interdependent." Id. at 741.

> Most important, the *context* of the entire statutory provision indicates that the six-month filing requirement for personal injury or property damage cases is a *modification* of the generally applicable one-year filing requirement. There is no indication from the language used that the provisions of subsection (1) do not apply to subsection (3), and the Legislature need not be overly repetitive in reasserting the requirements for notice in each subsection when the only substantive change effectuated in subsection (3) is a reduction in the timing requirement for specifically designated cases.
> * * *
>
> Moreover, the various subsections of MCL 600.6431 refer to each other. For example, subsection (3) employs the phrase "notice of intention to file a claim," which is the same phrase that is used and defined in detail in subsection (1). Similarly, subsection (2) directly refers to subsection (1) by noting that "[s]uch claim or notice" as described in subsection (1) must designate the responsible governmental agency; this language clearly indicates that subsection (2) is an elaboration of the requirements stated in subsection (1). *Reading this statute as a whole, it is reasonably clear that* ***[*15]*** *these subsections are not independent entities that happen to be grouped together in the same statutory provision. Instead, they are related and interdependent, and thus cannot be read in isolation*. [McCahan, 492 Mich at 741-742 (emphasis added).]

The *McCahan* Court further clarified that MCL 600.6431 is to be "understood as a cohesive whole. Subsection (1) sets forth the general rule, for which subsection (2) sets forth additional requirements and which subsection (3) modifies for particular classes of cases that would otherwise fall under the provisions of subsection (1)." McCahan, 492 Mich at 742. Therefore, rejecting the plaintiff's argument that she was not subject to the consequence of having her claim against the state barred in its entirety as set forth in subsection (1) of MCL 600.6431 where she did not comply with the dictates of subsection (3) of MCL 600.6431, the *McCahan* Court concluded, in pertinent part, as follows:

> *Accordingly, subsection (3) incorporates the consequence for noncompliance with its provisions expressly stated in subsection (1) and does not otherwise displace the specific requirements of subsection (1) other than the timing requirement for personal injury or property damage cases*. Therefore, the failure to file a compliant claim or notice of **[*16]** intent to file a claim against the state within the relevant time periods designated in either subsection (1) or (3) will trigger the statute's prohibition that "[n]o claim may be maintained against the state . . . ." [Id. at 742 (emphasis in original).]

Accordingly, on the basis of the Court's directive in McCahan that MCL 600.6431 is to be read as a "cohesive whole[,]" it is reasonable to interpret the language in subsection (3), that a party must file "a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action[ ]" consistent with the language in subsection (1) requiring a claimant to file a claim, or written notice of intention to file a claim, "within 1 year after such claim *has accrued*." MCL 600.6431(1), (3). MCL 600.5827, also part of the Revised Judicature Act (RJA), MCL 600.101 et seq., provides in pertinent part, as follows with respect to the accrual of a cause of action:

> Except as otherwise provided, the period of limitations runs from the time *the claim accrues*. The claim accrues at the time provided in [MCL

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> 600.5829 to MCL 600.5838], *and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage* ***[*17]*** *results*. [Emphasis added; footnote omitted.][2]

Thus, it reasonably follows that plaintiffs' cause of action accrued when the wrong on which they base their claims was done. MCL 600.6431(3); MCL 600.5827.

The thrust of plaintiffs' claims in their 39-page first amended complaint are encapsulated in Count I of the first amended complaint, which alleges a violation of Const 1963, art I, § 17, which provides, in pertinent part, as follows:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. . .
>
> Count I of the first amended complaint provides, in pertinent part, as follows:
>
> 160. One essential requirement of due process is that claimants should be afforded the opportunity to be heard at a meaningful time and in a meaningful manner before being deprived of life, liberty or property.
>
> * * *
>
> 162. Plaintiffs and the proposed Class Members have a property interest in unemployment benefits, tax refunds and wages that are garnished by the State without due process and fair and just treatment.
>
> 163. The State of Michigan's due process obligations to Plaintiffs and the Class Members include the obligation to follow the minimum due process standards required **[*18]** under federal law with respect to the collection of unemployment debts, including overpayment and penalties.
>
> 164. The State of Michigan's Unemployment Insurance Agency has violated and is continually violating the rights of Plaintiff[s] and the Class Members by improperly intercepting tax refunds, garnishing wages and forcing repayments from claimants:
>
> a. without providing the required notice of the bases asserted for disqualification.
>
> b. without providing at least 60 days for claimants to present evidence;
>
> c. without consideration of the factual basis or proof for or against the finding of culpable conduct;
>
> d. without a hearing;
>
> e. without providing claimants an opportunity to be heard at a meaningful time and in a meaningful manner; and
>
> f. By utilizing an automated decision-making system for the detection and determination of fraud cases, whereby the computer code in the automated decision-making process contains the rules that are used to determine a claimant's guilt, and those rules change the substantive standard for guilt or are otherwise inconsistent with the requirements of due process.
>
> g. By routinely and on a wholesale basis over-assessing penalties, charging interest on penalties and utilizing **[*19]** authorized collection methods to improperly collect penalties, the defendant has established a government policy which constitutes a violation of the due process and fair treatment provisions of the Michigan Constitution of 1963.

A review of the first amended complaint therefore demonstrates that plaintiffs are claiming that the wrong on which their claims are based took place when defendant intercepted federal and state tax refunds, garnished their wages and forced repayment of unemployment benefits. However, to the extent that plaintiffs are alleging a violation of Const 1963, art I, § 17, "[a] fundamental requirement of due process in [proceedings where the government seeks to take property from its owner] is '"notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and [to] afford them an opportunity to present their objections."' Sidun v Wayne Co Treasurer, 481 Mich 503, 509; 751 NW2d 453 (2008), quoting Mullane v Central Hoover Bank & Trust Co, 339 U.S. 306, 314; 70 S Ct 652; 94 L Ed 865 (1950).[3] Additionally, the United States Supreme Court has recognized that '"[t]he fundamental requisite of due process of law is the opportunity to be heard."' Mullane, 339 U.S. at 315, quoting Grannis v Ordean, 234 U.S. 385, 394; 34 S Ct 779; 58 L Ed 1363 (1914). Accordingly, we disagree with plaintiffs'

---

[2] MCL 600.6452(2) provides that, "[e]xcept as modified by this section, the provisions of RJA chapter 58, relative to the limitation of actions, shall also be applicable to the limitation prescribed in this section."

[3] US Const, Am V, which is applicable to Michigan by way of the Fourteenth Amendment, also provides, "nor shall any person . . . be deprived of life, liberty or property, without due process of law." Sidun, 481 Mich at 509.

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argument that the events giving rise to their causes of action took place only when they encountered **[*20]** an "economic deprivation" arising from defendant's interception of their federal and state tax returns and garnishment of their wages. Instead, in a constitutional claim alleging a deprivation of due process, "the [alleged] wrong upon which [plaintiffs' claims are] based was done[,]" MCL 600.5827, when defendant issued notices informing plaintiffs of its determination that plaintiffs had engaged in fraudulent conduct, and they were not given the requisite notice and opportunity to be heard. Mullane, 339 U.S. at 315; Sidun, 481 Mich at 509. The subsequent forfeiture of their monetary assets implicates the "damage result[ing]" from the wrongful conduct plaintiffs allege that they endured, MCL 600.5827, but in our view, cannot be said to meet the requirement of being "the event giving rise to the cause of action[,]" as set forth in MCL 600.6431(3), where MCL 600.6431(1) clearly specifies that the notice provisions of the statute apply "after such claim has accrued[.]" Therefore, to the extent that the trial court misconstrued the nature of plaintiffs' due process claims, its conclusion that "plaintiffs could [only] fully allege the elements of their constitutional claim[ ]" once defendant determined that "plaintiffs had not committed fraud and were . . . eligible for benefits[ ]" was incorrect, **[*21]** and warrants reversal. Instead, put simply, plaintiffs' causes of action accrued, as contemplated by MCL 600.6431(3), on the date that defendant notified them of their alleged fraudulent conduct, and the impact it would have on their unemployment benefits.

We note that this conclusion accords with the Michigan Supreme Court's recent decision in Frank v Linkner, 500 Mich. 133, 894 NW2d 574 (2017). In *Frank*, the Michigan Supreme Court, quoting Moll v Abbott Laboratories, 444 Mich 1, 12; 506 NW2d 816 (1993), observed that "the date of the wrong referred to in MCL 600.5827 is 'the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.'" Frank, 500 Mich. at 147. The *Frank* Court also stated that the "relevant 'harms'" to be considered "are the actionable harms alleged in a plaintiff's cause of action." *Id.* The *Frank* Court also rejected the plaintiffs' contention that "their claims did not accrue until they first incurred a calculable financial injury . . . ." 500 Mich. at 148. In its analysis, the *Frank* Court considered a case relied on by the trial court in this case, Connelly v Paul Ruddy's Equip Repair & Serv Co, 388 Mich 146, 151; 200 NW2d 70 (1972), where in the context of a personal injury case resulting from an industrial accident, the Michigan Supreme Court held that "[i]n the case of an action for damages arising out of tortious injury to a person, the cause **[*22]** of action accrues when all of the elements of the cause of action have occurred and can be alleged in a proper complaint[.]" Frank, 500 Mich. at 149, quoting Connelly, 388 Mich at 150-151. Like the plaintiffs in this case, the plaintiffs in *Frank* argued that their causes of action did not accrue until monetary damages occurred. Frank, 500 Mich.at 150. The *Frank* Court held that the plaintiffs' argument "conflates monetary damages with 'harm[,]'" and further ruled, in pertinent part, as follows:

> [w]hile the actionable harm in a claim for tortious injury to a person typically consists of some personal injury inflicted by another that is remedied by monetary damages, . . . the actionable harm for a member oppression claim under MCL 450.4515 consists of actions taken by the managers that "substantially interfere with the interests of the member as a member," and monetary damages constitute just one of many potential remedies for that harm. . . . Accordingly, unlike an action for tortious injury to a person, an action for LLC member oppression does not necessarily accrue when a plaintiff incurs a calculable financial injury. Instead, it accrues when a plaintiff incurs the actionable harm under MCL 450.4515, i.e., when defendants' actions allegedly interfered with the interests of a plaintiff **[*23]** as a member, making the plaintiff eligible to receive some form of relief under MCL 450.4515(1). [Frank, 500 Mich.at 151.]

Accordingly, while Frank involved a shareholder oppression action governed by MCL 450.4515, the reasoning the Michigan Supreme Court employed is instructive here. Specifically, the "actionable harm" in a due process challenge consists of the actions allegedly taken by defendant that deprived plaintiffs of their right to notice and an opportunity to be heard, and occurred on the date defendant issued notices informing plaintiffs of their alleged fraudulent conduct. Like the plaintiffs in Frank, plaintiffs in this case erroneously focus on the potential consequence of a due process violation, the taking of their property, rather than the hallmark of a due process claim, the right to notice and an opportunity to be heard. Thus, in our view, where the trial court did not properly consider when plaintiffs were harmed, instead placing its focus on its conclusion that whether plaintiffs were in fact found to have engaged in fraud "was an inherent element" of the theory of their claims, reversal of its decision is warranted.

The parties do not dispute that Bauserman's notices of redetermination regarding his unemployment **[*24]**

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benefits were dated December 3, 2014. Likewise, Broe's notices of determination advising him of his disqualification for unemployment benefits are dated July 15, 2014. Finally, Williams's notice of determination/redetermination is dated June 22, 2012. Accordingly, where plaintiffs did not institute their action until September 9, 2015, their claims were not filed in compliance with *MCL 600.6431(3)*, "within 6 months following the happening of the event giving rise to the cause of action."[4]

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction. Defendant, as the prevailing party, may tax costs pursuant to *MCR 7.219*.

/s/ Michael F. Gadola

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood

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[4] Where we have concluded that plaintiffs' claims were not filed in compliance with *MCL 600.6431(3)*, we decline to address defendant's remaining issue on appeal concerning whether plaintiffs' claims are barred on the basis of governmental immunity where plaintiffs alleged a "constitutional tort" against defendant.

APPENDIX 14

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Neutral
As of: December 7, 2020 12:50 AM Z

Bauserman v. Unemployment Ins. Agency

Supreme Court of Michigan

April 5, 2019, Filed

No. 156389

Reporter
503 Mich. 169 *; 931 N.W.2d 539 **; 2019 Mich. LEXIS 609 ***; Unemployment Ins. Rep. (CCH) P10,299; 2019 WL 1513210

GRANT BAUSERMAN, KARL WILLIAMS, and TEDDY BROE, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs-Appellants, v UNEMPLOYMENT INSURANCE AGENCY, Defendant-Appellee.

Subsequent History: On remand at, Decision reached on appeal by *Bauserman v. Unemployment Ins. Agency, 2019 Mich. App. LEXIS 7683 (Mich. Ct. App., Dec. 5, 2019)*

Prior History: *Bauserman v. Unemployment Ins. Agency, 2017 Mich. App. LEXIS 1154 (Mich. Ct. App., July 18, 2017)*

Core Terms

notice, deprivation, cause of action, due process, due-process, deprivation of property, plaintiffs', give rise, redetermination, accrued, seized, unemployment compensation, garnished, wages, damages, tax refund, happening, notice of intent, monetary relief, eligible, refund, Appeals, requirement of notice, federal income tax, personal injury, calculable, triggered, incurs, words, due process of law

Case Summary

Overview

HOLDINGS: [1]-There was no meaningful distinction between the happening of the event giving rise to a cause of action seeking monetary relief under *MCL 600.6431(3)* and when such a claim accrued under *MCL 600.5827*; [2]-The Court of Appeals erred by holding that the unemployment compensation benefits recipients' due-process claims seeking monetary relief accrued when the recipients were deprived of process; [3]-These claims accrued only when they were deprived of property, as they incurred no harm before that deprivation, and the six-month period from *MCL 600.6431(3)* was triggered when the recipients were deprived of property; [4]-Two of the recipients timely filed their claims within six months while one recipient did not.

Outcome
Judgment affirmed in part and reversed in part.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > State & Territorial Governments > Claims By & Against

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

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Governments > Courts > Courts of Claims

HN1[] Standards of Review, De Novo Review

MCL 600.6431 establishes conditions precedent for avoiding governmental immunity. In other words, if a plaintiff fails to comply with MCL 600.6431, his or her claims against a governmental agency are barred by governmental immunity. The Michigan Supreme Court reviews de novo a lower court's decision to grant summary disposition under MCR 2.116(C)(7) on the basis of governmental immunity. When a motion is filed under this subrule, the court must consider not only the pleadings, but also any affidavits, depositions, admissions or documentary evidence that is filed or submitted by the parties. Further, whether MCL 600.6431 requires dismissal of a plaintiff's claim for failure to provide the designated notice raises questions of statutory interpretation, which the supreme court reviews de novo.

Governments > State & Territorial
Governments > Claims By & Against

Governments > Courts > Courts of Claims

HN2[] State & Territorial Governments, Claims By & Against

MCL 600.6431 establishes when and how a claim against a government agency may be initiated: (1) No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.(3) In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action.

Governments > State & Territorial
Governments > Claims By & Against

Governments > Courts > Courts of Claims

HN3[] State & Territorial Governments, Claims By & Against

MCL 600.6431(1) sets forth the general notice required for a party to bring a lawsuit against the state, while subsection (3) sets forth a special timing requirement applicable to a particular subset of those cases—those involving property damage or personal injury. Subsection (3) merely reduces the otherwise applicable one-year deadline to six months. In this regard, subsection (3) is best understood as a subset of the general rules articulated in subsection (1), and those general rules and requirements articulated in subsection (1)—including the bar-to-claims language—continue to apply to all claims brought against the state unless modified by the later-stated specific rules.

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

Governments > State & Territorial
Governments > Claims By & Against

HN4[] Complaints, Requirements for Complaint

A "cause of action" is defined as a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; CLAIM. "Rise" is defined, in part, as origin, source or beginning, and "give rise to" is defined as to originate; produce; cause. Put together, an event has given rise to the cause of action when that event originates a basis for suing and entitles one person to obtain a remedy in court. In other words, an event gives rise to a cause of action when it triggers a person's ability to obtain a remedy in court.

Governments > State & Territorial
Governments > Claims By & Against

Governments > Courts > Courts of Claims

HN5[] State & Territorial Governments, Claims By & Against

With regard to claims seeking monetary relief, the Michigan Supreme Court can identify no meaningful

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distinction between the happening of the event giving rise to the cause of action in MCL 600.6431(3) and when a claim accrues. MCL 600.5827 provides that a claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results. The date of the "wrong" referred to in MCL 600.5827 is the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty. The relevant harms for that purpose are the actionable harms alleged in a plaintiff's cause of action.

Governments > State & Territorial
Governments > Claims By & Against

Governments > Courts > Courts of Claims

HN6[] State & Territorial Governments, Claims By & Against

The "actionable harm" discussed in Frank is the event giving rise to a cause of action seeking monetary relief under MCL 600.6431(3). The harm that enables a plaintiff to bring an action for monetary relief (i.e., the "actionable harm") necessarily "originates" such a cause of action, and is, thus, the event giving rise to the cause of action. As a result, we find that there is no meaningful distinction between the happening of the event giving rise to a cause of action seeking monetary relief under MCL 600.6431(3) and when such a claim accrues under MCL 600.5827.

Constitutional Law > Substantive Due Process > Scope

HN7[] Constitutional Law, Substantive Due Process

The Michigan Constitution provides: No person shall be deprived of life, liberty or property, without due process of law, Const. 1963, art 1, § 17. The Due Process Clause precludes the state from (1) depriving one of life, liberty, or property (2) without due process of law. Clearly, the clause is violated only if there has been a deprivation of life, liberty, or property. If there is no such deprivation, no process is "due" and thus no harm has occurred. In other words, a plaintiff incurs no harm under the Due Process Clause until and unless he or she incurs a deprivation of property. Thus, the "actionable harm" in a pre-deprivation due-process claim occurs when a plaintiff has been deprived of property, and therefore such a claim "accrues" when a plaintiff has first incurred the deprivation of property.

Constitutional Law > Substantive Due Process > Scope

HN8[] Constitutional Law, Substantive Due Process

While a plaintiff can recover damages under the Due Process Clause based solely on the deprivation of due process, no "harm" entitling one to such damages occurs without-- or before-- a deprivation of property.

Constitutional Law > Substantive Due Process > Scope

HN9[] Constitutional Law, Substantive Due Process

Unlike a claim for LLC member oppression under MCL 450.4515--in which the harm itself can occur before incurring a calculable financial injury--no harm for a violation of due process can occur without or before a deprivation of property. Indeed, absent such a deprivation, it would often be impossible to determine whether sufficient process had been provided to a person, as the state could provide additional process before the actual deprivation or elect not to deprive that person of property at all, in which case no harm would occur. Thus, while the "actionable harm" in Frank occurred independently from the calculable financial injury, the "actionable harm" in a due-process claim is specifically triggered by a deprivation of property.

Judges: [*1]** Chief Justice: Bridget M. McCormack. Chief Justice Pro Tem: David F. Viviano. Justices: Stephen J. Markman, Brian K. Zahra, Richard H. Bernstein, Elizabeth T. Clement, Megan K. Cavanagh. MCCORMACK, C.J. (concurring).

Opinion by: MARKMAN

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Opinion

[540] [*173]** BEFORE THE ENTIRE BENCH (except CAVANAGH, J.)

MARKMAN, J.

This case involves a narrow, but practically consequential, issue: whether plaintiffs gave timely notice of their due-process **[**541]** claims to defendant, the Michigan Unemployment Insurance Agency (the Agency), and therefore are entitled to consideration of the merits of those claims. More specifically, the issue concerns whether plaintiffs filed notices of intention to file their claims or the claims themselves "within 6 months following the happening of the event giving rise to the cause of action." MCL 600.6431(3). We hold that the "happening of the event giving rise to the cause of action" for a claim seeking monetary relief is when the claim accrues, and a procedural-due-process claim seeking monetary relief accrues when the deprivation of life, liberty, or property has occurred. In the instant case, plaintiffs were deprived of their property when their tax refunds were seized or their wages garnished. As a result, plaintiffs **[***2]** Bauserman and Broe timely filed their claims within six months following the deprivation of their property, while plaintiff Williams did not. Accordingly, we affirm in part and reverse in part the judgment of the Court of Appeals and remand to that court for further proceedings consistent with this opinion.

I. FACTS AND HISTORY

Plaintiffs are former recipients of unemployment compensation benefits who allege that the Agency unlawfully seized their property without affording due process of law. Plaintiff Bauserman received unemployment compensation from October 2013 through March 2014. In October 2014, the Agency sent Bauserman and his former employer, Eaton Aeroquip (Eaton), **[*174]** a questionnaire regarding suspected unreported earnings that Bauserman received while he was receiving unemployment compensation. Both Bauserman and Eaton responded that Bauserman had not worked for Eaton at the time. On December 3, 2014, the Agency sent Bauserman two notices of redetermination, one claiming that he had received unemployment compensation for which he was ineligible and the other claiming that he had intentionally misled the Agency or concealed information from it to obtain compensation for which **[***3]** he was not eligible. As a result, the Agency informed Bauserman that he owed $19,910 in overpayments, penalties, and interest. The next day, Bauserman submitted an online appeal through the Agency's website regarding its assertion that he had committed fraud, but did not submit a separate appeal regarding the Agency's determination that he had received compensation for which he was not eligible.

From January 2015 through June 2015, the Agency sent Bauserman multiple notices stating the amount he owed to the Agency, informing him of missed payments on his debt, and raising the possibility that his wages would be garnished or his tax refunds seized. One of these communications consisted of a "notice of intent to reduce/withhold federal income tax refund," which warned Bauserman that "if you do not pay the amount shown or take other action described below within 60 days of the mail date on this form, the [Agency] will submit this benefit overpayment balance (restitution) to . . . the United States Department of Treasury . . . [which] will reduce or withhold any federal income tax refund you may be due and will instead forward that amount to the [Agency]." Around this same time, Bauserman **[***4]** sent multiple letters to the Agency attempting to explain the situation, two of which included an attached letter from Eaton explaining **[*175]** that Bauserman received one payment in 2014 for work performed in 2013 but was not employed by Eaton during the time he was receiving unemployment compensation. Finally, on June 16, 2015, the Agency intercepted Bauserman's **[**542]** state and federal income tax refunds.

On September 9, 2015, Bauserman filed a putative class action against the Agency in the Court of Claims, alleging that the Agency had deprived him of his property without providing due process of law. More specifically, he alleged that "Michigan's unemployment fraud detection, collection, and seizure practices fail to comply with minimum due process requirements." On September 30, 2015, the Agency issued two new notices of redetermination, rendering its December 3, 2014 redeterminations "null and void," and the Agency has since returned all monies seized from Bauserman.

On October 19, 2015, Bauserman filed an amended complaint, which added Teddy Broe and Karl Williams as named plaintiffs to the class action. Broe had received unemployment compensation from April 2013 to August 2013, and he had **[***5]** initially been determined eligible on the basis that he had been laid off by his employer, Fifth Third Bank (Fifth Third).

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However, Fifth Third challenged that determination, alleging that Broe voluntarily terminated his employment to attend school. The Agency then sent requests for information to Broe regarding his eligibility for compensation, and on July 15, 2014, it sent two notices of redetermination to Broe, the first claiming that he had received compensation for which he was ineligible because his termination of employment at Fifth Third "was voluntary and not attributable to the employer," and the second claiming that he had intentionally misled the agency or concealed information from it to **[*176]** obtain compensation that he was not eligible to receive. As a result, the Agency informed Broe that he owed $8,302 in overpayments, penalties, and interest.

From August 2014 through April 2015, the Agency sent Broe multiple notices stating the amount owed to the Agency, informing him of missed payments on the debt and raising the possibility that his wages would be garnished or his tax refunds seized. Specifically, on September 2, 2014, the Agency sent Broe a "notice of intent to reduce/withhold **[***6]** federal income tax refund" that was materially identical to the notice provided to Bauserman. In April 2015, Broe sent the Agency a letter appealing its redeterminations and claiming that he had not received the Agency's previous communications because they had been sent to him through his online account with the Agency, which he no longer accessed because he was reemployed and no longer seeking unemployment compensation. The Agency denied the appeal as untimely and, in May 2015, intercepted Broe's state and federal tax refunds. On November 4, 2015, the Agency issued two notices of redetermination, reversing its July 15, 2014 redeterminations that Broe was ineligible for compensation and had committed fraud. The Agency has since returned all monies seized from Broe.

Williams started working at Wingfoot Commercial Tire System in May 2011. When his employment with Wingfoot began, Williams was receiving unemployment compensation from a previous employer. Williams alleges that he advised the Agency that he was now receiving wages from Wingfoot, yet his unemployment compensation had not been altered; Williams believed that he was still entitled to unemployment compensation because his wages **[***7]** from Wingfoot were less than 11/2 times his weekly compensation. See *MCL 421.48(1)*. **[*177]** The Agency sent Williams a request to provide information regarding his employment with Wingfoot. On June 22, 2012, the Agency issued redeterminations that (1) terminated Williams's receipt of future unemployment compensation, (2) asserted that he had already received compensation **[**543]** for which he was ineligible due to his employment with Wingfoot, and (3) alleged that he had intentionally misled the Agency or concealed information from it to obtain compensation for which he was not eligible.

On October 29, 2013, the Agency sent Williams a "notice of garnishment" stating that, if the amount owed was not provided to the Agency within 30 days, his "employer [would] be required to deduct and send to [the Agency] up to 25% of [his] disposable earnings each pay period until the debt is paid in full." Williams's wages were first garnished, at the latest, on May 16, 2014,[1] and on May 27, 2014, the Agency sent Williams a "notice of intent to reduce/withhold federal income tax refund" that was materially identical to the notices provided to Bauserman and Broe. Williams sent a letter appealing the Agency's redeterminations on May **[***8]** 22, 2014. The Agency denied Williams's appeal as untimely, as did an administrative law judge. Finally, on February 19, 2015, the Agency seized Williams's federal income tax refund and continues to collect his debt by this means.

Plaintiffs' amended complaint alleges that the Agency violated the class members' due-process rights by (1) depriving them of property without providing adequate notice and an opportunity to be heard and (2) **[*178]** engaging in unlawful collection practices by, among other things: (a) imposing a higher level of interest than permitted, (b) collecting interest on penalties, and (c) employing wage garnishments. The Agency moved for summary disposition on a number of grounds, including that plaintiffs failed to comply with the notice provision of *MCL 600.6431(3)* because they had not filed the complaint within six months following the "happening of the event giving rise to the cause of action." The Court of Claims denied the Agency's motion, concluding that plaintiffs' claims accrued when they received the Agency's redetermination notices that rendered its previous fraud findings null and void and that plaintiffs' claims had been filed within six months of that event.[2]

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[1] It is not clear from the record whether Williams's wages had been garnished at any time before May 16, 2014. However, even if his wages were garnished before this time, this would not affect the determination that Williams's claim was not timely filed.

[2] The Court of Claims also held that the return of the funds seized from Bauserman and Broe did not render their claims moot and that plaintiffs were exempt from the requirement that they exhaust their administrative remedies because they raised a facial constitutional challenge to defendant's policies

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The Court of Appeals **[***9]** reversed, concluding that plaintiffs' claims accrued when they received the *original* redetermination notices alleging fraudulent conduct and explaining the effect that would have on their unemployment compensation. *Bauserman v Unemployment Ins Agency, unpublished per curiam opinion of the Court of Appeals, issued July 18, 2017 (Docket No. 333181), 2017 Mich. App. LEXIS 1154, *21*.[3] The Court of Appeals reasoned that the hallmark of a due-process claim is inadequate process and therefore that was the "actionable harm" for the purposes of accrual; the subsequent seizing of plaintiffs' **[*179]** property merely reflected the damage resulting from that deprivation and did not establish the date of accrual. *2017 Mich. App. LEXIS 1154, at*22*. Plaintiffs thereafter filed an application **[**544]** for leave to appeal in this Court, and we scheduled oral argument on the application, instructing the parties to address

> whether "the happening of the event giving rise to [appellants'] cause of action" for the deprivation of property without due process occurred when the appellee issued its allegedly wrongful notice of redetermination, or when the appellee actually seized the appellants' property. *MCL 600.6431(3)*; *MCL 600.5827*; cf. *Frank v Linkner, 500 Mich 133, 149-153; 894 N.W.2d 574 (2017)*. [*Bauserman v Unemployment Ins Agency, 501 Mich 1047; 909 N.W.2d 268 (2018)*.]

II. STANDARD OF REVIEW

HN1[↑] *MCL 600.6431* "establishes conditions precedent for avoiding" **[***10]** governmental immunity. *Fairley v Dep't of Corrections, 497 Mich 290, 297; 871 N.W.2d 129 (2015)*. In other words, if a plaintiff fails to comply with *MCL 600.6431*, his or her claims against a governmental agency are barred by governmental immunity. *Id.* This Court reviews de novo a lower court's decision to grant summary disposition under *MCR 2.116(C)(7)* on the basis of governmental immunity. *Yono v DOT, 499 Mich. 636, 645; 885 N.W.2d 445 (2016)*. "When a motion is filed under this subrule, the court must consider not only the pleadings, but also any affidavits, depositions, admissions or documentary evidence that is filed or submitted by the parties." *Kerbersky v Northern Mich. Univ., 458 Mich. 525, 529; 582 N.W.2d 828 (1996)*, citing *MCR 2.116(G)(5)*. "Further, whether *MCL 600.6431* requires dismissal of a plaintiff's claim for failure to provide the designated notice raises questions of statutory interpretation, which we . . . review de novo." *McCahan v Brennan, 492 Mich. 730, 735-736; 822 N.W.2d 747 (2012)* (citation omitted).

[*180] III. ANALYSIS

A. *MCL 600.6431*

HN2[↑] *MCL 600.6431* establishes when and how a claim against a government agency may be initiated:

> (1) No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place **[***11]** where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.
> * * *
>
> (3) In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself *within 6 months following the happening of the event giving rise to the cause of action*. [Emphasis added.]

In *McCahan, 492 Mich at 739*, we explained:

> ***HN3***[↑] *Subsection (1)* sets forth the general notice required for a party to bring a lawsuit against the state, while *subsection (3)* sets forth a special timing requirement applicable to a particular subset of those cases—those involving property damage or personal injury. *Subsection (3)* merely reduces the otherwise applicable one-year deadline to six months. In this regard, *subsection (3)* is best understood as a subset of the **[**545]** general rules articulated in *subsection (1)*, and those

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and procedures. Because the Agency has not challenged these holdings in either the Court of Appeals or this Court, we decline to address them.

[3] In the Court of Appeals, the Agency also argued that even if plaintiffs' claims were timely filed, they did not raise viable constitutional tort claims and therefore the claims were barred by governmental immunity on that basis. Because the Court of Appeals found the timeliness issue dispositive, it declined to address this alternative argument.

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general rules and requirements articulated in subsection (1)—including the bar-to-claims language—continue to apply to *all* claims brought against the state unless modified by the later-stated specific rules.

[*181] The parties agree that plaintiffs' causes of action **[***12]** here are for "property damage or personal injuries,"[4] and therefore plaintiffs' claims are barred unless they filed their complaint or notice of intent to sue "within 6 months following the happening of the event giving rise to the cause of action." MCL 600.6431(3); see also McCahan, 492 Mich at 745.[5]

The question presented concerns how to determine the "event giving rise to the cause of action" for the purpose of triggering the six-month notice period in MCL 600.6431(3). HN4[↑] A "cause of action" is defined as "[a] **[*182]** group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; CLAIM." *Black's Law Dictionary* (10th ed).[6] "Rise" is defined, in relevant part, as "origin, source or beginning," and "give rise to" is defined as "to originate; produce; cause[.]" *Random House Dictionary of the English Language* (1969); see also People v McKinley, 496 Mich 410, 419; 852 N.W.2d 770 (2014) (defining "gives rise to" as "to produce or cause"); *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining "rise" as "BEGINNING, ORIGIN"). Put together, an event has "giv[en] rise to the cause of action" when that event "origin[ates]" a "basis for **[***13]** suing" and "entitle[s] one person to obtain a remedy in court." In other words, an "event giv[es] rise to a cause of action" when it **[**546]** triggers a person's ability to obtain a remedy in court.[7]

[*183] HN5[↑] With regard to claims seeking monetary relief, we can identify no meaningful distinction between "the happening of the event giving rise to the cause of action" in MCL 600.6431(3) and

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[4] Because the issue is uncontested, we presume, without deciding, that a claim alleging a violation of due process constitutes an "action[] for property damage" that is properly analyzed under MCL 600.6431(3). Compare Sanderson v Unemployment Ins. Agency, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2018 (Docket No. 338983), 2018 Mich. App. LEXIS 3073, *4 (holding that a due-process claim based on the deprivation of property constitutes an "action[] for property damage" because "it involves a harm to a person's lawful, unrestricted use of property"), with 2018 Mich. App. LEXIS 3073, at *4 (SHAPIRO, J., concurring) (arguing that such a claim does not constitute an "action[] for property damage" because "plaintiffs do not seek to recover for *damage* to property, they simply seek the return of the property").

[5] While *McCahan* involved a nonconstitutional claim against the state, the Court of Appeals has held that *McCahan* applies equally to constitutional claims. Rusha v Dep't of Corrections, 307 Mich. App. 300, 307-314; 859 N.W.2d 735 (2014). However, *Rusha* recognized an exception to "strict enforcement" of a notice period where one raises a constitutional claim and enforcement of that notice period would "effectively divest plaintiffs of the access to the courts intended by the grant of the substantive right." Id. at 311 (quotation marks and citation omitted). Recently, the Court of Appeals applied this "exception" on the basis of the allegedly "harsh and unreasonable consequences" that would result from enforcement of the notice period in that particular case. Mays v Snyder, 323 Mich. App. 1, 30-35; 916 N.W.2d 227 (2018), application for lv to appeal pending. Plaintiffs do not argue that *McCahan* is inapplicable to their claims, nor do they argue that it would be "harsh and unreasonable" to apply the notice period to them in this case. Accordingly, for the purposes of this case, failure to comply with MCL 600.6431(3) would bar plaintiffs' claims against the Agency, and we do not express any opinion regarding whether *Rusha* and *Mays* were decided correctly.

[6] "Claim" is relevantly defined as "[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional" and "a demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for." *Black's Law Dictionary* (10th ed).

[7] The Agency argues that the phrase "giving rise to the cause of action" suggests that the cause of action has not yet fully arisen. We respectfully disagree. Rather, a plaintiff's "cause of action," i.e., a factual situation that entitles one to obtain a remedy in court, does not "begin or originate" until that cause of action actually arises. The Agency appears to argue that the "event giving rise to the cause of action" may occur before the cause of action has fully arisen because an action can set into motion a series of events that eventually provide a plaintiff a cause of action. On this reasoning, any event that eventually leads to a cause of action might "giv[e] rise to the cause of action." To take this case as an example, plaintiffs' initial receipt of unemployment compensation may be argued to have set into motion the series of events that eventually led to their due-process claims. However, such receipt of compensation could hardly be said to have "originated" plaintiffs' causes of action because they could not have obtained a remedy at that juncture. Accordingly, we disagree with the Agency that the event "giving rise to the cause of action" may occur before a plaintiff can obtain a legal remedy in court.

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when a claim accrues. MCL 600.5827 provides that a "claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results."[8] We have explained that the date of the "wrong" referred to in MCL 600.5827 is "'the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty.'" Frank v Linkner, 500 Mich 133, 147; 894 N.W.2d 574 (2017) (citation omitted). "The relevant 'harms' for that purpose are the actionable harms alleged in a plaintiff's cause of action." Id. at 150.

We believe that HN6[↑] the "actionable harm" we discussed in Frank is the "event giving rise to [a] cause of action" seeking monetary relief under MCL 600.6431(3). The harm that enables a plaintiff to bring an action for monetary relief (i.e., the "actionable harm") necessarily "originates" such a cause of action, and is, thus, "the event giving rise to the **[***14]** cause of action."[9] **[**547]** As a **[*184]** result, we find that there is no meaningful distinction between "the happening of the event giving rise to [a] cause of action" seeking monetary relief under MCL 600.6431(3) and when such a claim accrues under MCL 600.5827.[10]

B. ACCRUAL OF DUE-PROCESS CLAIM

As in *Frank*, in this case we are called upon to "determine the date on which plaintiffs first incurred **[*185]** the harm they assert" by looking to the "actionable harms" alleged in plaintiffs' complaint. Frank, 500 Mich at 150. Plaintiffs allege that the Agency violated their due-process rights under the Michigan Constitution when it (1) seized their property without

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[8] Because the issue is uncontested, we presume, without deciding, that the definition of "accrual" in MCL 600.5827 applies equivalently to MCL 600.6431. But even if we were to apply the common-law definition of "accrual" in this context, this would not alter our conclusion that the "happening of the event giving rise to [plaintiffs'] cause[s] of action" for monetary relief occurred when they were deprived of property. Under the common law, a claim generally accrues "when all of the elements of the cause of action have occurred and can be alleged in a proper complaint." Connelly v Paul Ruddy's Equip Repair & Serv Co, 388 Mich 146, 150; 200 N.W.2d 70 (1972). Accord Gebhardt v O'Rourke, 444 Mich 535, 542; 510 N.W.2d 900 (1994); Parish v B F Goodrich Co, 395 Mich 271, 284; 235 N.W.2d 570 (1975). Here, plaintiffs could assert their due-process claims only when the alleged deprivations had occurred. Thus, it is immaterial for purposes of the instant case whether we apply the definition of "accrual" in § 5827 or from the common law.

[9] There might be some circumstances in which an event would "give rise to the cause of action" *before* a plaintiff incurs harm. In particular, a plaintiff can sometimes obtain prospective relief, such as declaratory relief under MCR 2.605 or injunctive relief under MCR 3.310, even if no actual harm has yet occurred. Shavers v Attorney General, 402 Mich 554, 589; 267 N.W.2d 72 (1978) ("[A] court is not precluded from reaching issues [in a declaratory judgment action] before actual injuries or losses have occurred."); Taxpayers Allied for Constitutional Taxation v Wayne Co, 450 Mich 119, 127; 537 N.W.2d 596 (1995) ("Because a suit for injunctive relief may seek to prevent a future wrong, the cause of action necessarily arises before the wrong occurs."). However, plaintiffs have waived their claims for injunctive and equitable relief, see Appellants' Supplemental Brief at 6 ("The appellants' cause of action is an action for damages based on the deprivation of property without due process."), and none of the parties argues that some event could "give rise" to a claim for prospective relief prior to an event that "gives rise" to monetary relief. Therefore, we need not decide in this case what effect, if any, the availability of a prospective remedy has upon the determination of the "happening of the event giving rise to the cause of action" under MCL 600.6431(3).

[10] In so holding, we recognize that the Legislature used the term "accrue" in Subsection (1), MCL 600.6431(1) ("No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued . . . ."), but not in Subsection (3), which instead contains the phrase "the happening of the event giving rise to the cause of action," MCL 600.6431(3). Ordinarily, we assign significance to the Legislature's choice of different words. See, e.g., South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality, 502 Mich 349, 369; 917 N.W.2d 603 (2018). Thus, this difference in language suggests that the phrase "happening of the event giving rise to the cause of action" may have a different meaning than "accrue" under Subsection (1). However, the maxim that a difference in language signifies a difference in meaning is a *general* rule; it may not apply in every situation. See 2A Singer & Singer, Sutherland Statutory Construction (7th ed), § 46:6, p 261 ("Different words used in the same, or a similar, statute are assigned different meanings *whenever possible*.") (emphasis added); Black, *Handbook on the Construction and Interpretation of the Laws* (St. Paul: West Publishing Co, 1911), p 145 ("Conversely, where different language is used in the same connection, in different parts of the statute, *it is presumed* that the legislature intended it to have a different meaning and effect.") (emphasis added). Because the parties agree that plaintiffs' claims are governed by MCL 600.6431(3) rather than MCL 600.6431(1), we need not resolve in this case how to define the term "accrual" in the context of MCL 600.6431(1) or how that definition relates to "the happening of the event giving rise to the cause of action" under MCL 600.6431(3).

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reasonable notice and an opportunity to be heard and (2) engaged in unlawful collection practices. Thus, the question is at what point plaintiffs first incurred or suffered the "actionable harm" for a claim alleging a violation of predeprivation due process.[11]

HN7[↑] The Michigan Constitution provides:

> No person shall . . . be deprived of life, liberty or property, without due process of law. [Const 1963, art 1, § 17.][12]

[548]** **[*186]** The Due Process Clause precludes the state from (1) depriving one of life, liberty, or property (2) without due process of law. Clearly, **[***15]** the clause is violated only if there has been a deprivation of life, liberty, or property. Bonner v City of Brighton, 495 Mich 209, 225-226; 848 N.W.2d 380 (2014). If there is no such deprivation, no process is "due" and thus no harm has occurred. Williams v Hofley Mfg Co, 430 Mich 603, 610; 431 Mich. 1202; 424 N.W.2d 278 (1988) ("It is well established . . . that the requirements of procedural due process are triggered only by the implication of protected property or liberty interests. . . . It is only when a protected interest has been found that we may proceed to determine what process is due."); see also Fuentes v Shevin, 407 U.S. 67, 84; 92 S. Ct. 1983; 32 L. Ed. 2d 556 (1972) ("The right to a prior hearing, of course, attaches only to the deprivation of an interest encompassed within the Fourteenth Amendment's protection."). In other words, a plaintiff incurs no harm under the Due Process Clause until and unless he or she incurs a deprivation of property. Thus, the "actionable harm" in a pre-deprivation due-process claim occurs when a plaintiff has been deprived of property, and therefore such a claim "accrues" when a plaintiff has first incurred the deprivation of property.

The Agency argues that, under Carey v Piphus, 435 U.S. 247, 266; 98 S. Ct. 1042; 55 L. Ed. 2d 252 (1978), the **[*187]** lack of process itself constitutes the "actionable harm" and that the deprivation of property is merely a financial consequence or manifestation of that harm. The Agency further notes that the United States Supreme Court **[***16]** held in *Carey* that one can recover nominal damages for the deprivation of due process even if he or she "did not suffer any other actual injury," *id.*, and reasons from this that it is the deprivation of process that constitutes the "actionable harm" for a due-process claim, not the deprivation of property.

However, we believe that the Agency misconstrues *Carey*. The issue in *Carey* was whether students who were suspended from school without due process could recover damages under 42 USC 1983.[13] Id. at 248. The United States Supreme Court previously had held that students possess property and liberty interests in continued education, see Goss v Lopez, 419 U.S. 565, 576; 95 S. Ct. 729; 42 L. Ed. 2d 725 (1975), and that there was no dispute that the *Carey* plaintiffs had been deprived of that "property" without due process. The question then was whether, if the plaintiffs' suspensions were justified despite the lack of due process, they could recover damages. Carey, 435 U.S. at 266. In other words, could the **[**549]** *Carey* plaintiffs recover damages if they still would have been suspended had they received due process? The Court held:

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[11] The United States Supreme Court has recognized that "[i]n some circumstances . . . a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process." Zinermon v Burch, 494 U.S. 113, 128; 110 S. Ct. 975; 108 L. Ed. 2d 100 (1990). However, plaintiffs aver in their complaint that "[p]ost-deprivation remedies are insufficient to protect claimants' rights to due process because even a temporary deprivation of wages, unemployment benefits, [or] tax refunds creates a substantial burden on claimants who rely upon such income to live and support themselves and their families." Accordingly, plaintiffs allege that postdeprivation process is necessarily insufficient in this case and thus allege further a violation of due process in the procedures employed by the Agency *before* any deprivation occurred.

[12] Similarly, the United States Constitution provides, "nor shall any state deprive any person of life, liberty, or property, without due process of law[.]" US Const, Am XIV. Plaintiffs solely allege that the Agency violated Michigan's Due Process Clause. Accordingly, this Court is not bound by federal precedent interpreting the Due Process Clause of the United States Constitution. See People v Bullock, 440 Mich 15, 27; 485 N.W.2d 866 (1992) ("This Court alone is the ultimate authority with regard to meaning and application of Michigan law.") However, because of the textual similarities between the state and federal Due Process Clauses, we may nonetheless find persuasive United States Supreme Court cases interpreting the federal Due Process Clause in this context. See People v Sierb, 456 Mich 519, 523-524; 581 N.W.2d 219 & n 10 (1998).

[13] 42 USC 1983 provides a cause of action "to redress deprivations of civil rights by persons acting 'under color of any [state] statute, ordinance, regulation, custom, or usage.'" Hafer v Melo, 502 U.S. 21, 27; 112 S. Ct. 358; 116 L. Ed. 2d 301 (1991), quoting 42 USC 1983 (alteration in original).

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> Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance **[***17]** to organized society that procedural due process be observed, we believe that the denial of procedural due process should be actionable for nominal damages without **[*188]** proof of actual injury. We therefore hold that if, upon remand, the District Court determines that respondents' suspensions were justified, respondents nevertheless will be entitled to recover nominal damages not to exceed one dollar from petitioners. [*Id. at 266-267* (citation omitted).]

Thus, the Court concluded that even if the plaintiffs would have been suspended had they received due process, they could recover nominal damages based on the denial of due process. However, this does not mean that a person can incur "harm" under the *Due Process Clause* absent a deprivation of property. ***HN8***[↑] While a plaintiff can recover damages under the *Due Process Clause* based solely on the deprivation of due process, no "harm" entitling one to such damages occurs without-- or before-- a deprivation of property. See *Bd of Regents of State Colleges v Roth, 408 U.S. 564, 576; 92 S. Ct. 2701; 33 L. Ed. 2d 548 (1972)* ("The *Fourteenth Amendment's* procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits.").

The Agency also argues that this Court's recent decision in *Frank v Linkner* supports its argument that plaintiffs' claims accrued **[***18]** upon the denial of process, rather than upon the deprivation of property. In *Frank*, former employees of defendant ePrize brought an action for member oppression within a limited liability company (LLC) under *MCL 450.4515*, which provides a cause of action for members of an LLC in which the "acts of the managers or members in control of the [LLC] are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the [LLC] or the member." "'[W]illfully unfair and oppressive conduct' means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member." *MCL 450.4515(2)*. **[*189]** This Court concluded that the plaintiffs' claim accrued before they incurred any calculable financial injury, reasoning:

> [T]he actionable harm for a member-oppression claim under *MCL 450.4515* consists of actions taken by the managers that "substantially interfere with the interests of the member as a member," and monetary damages constitute just one of many potential remedies for that harm . . . . Accordingly . . . an action for LLC member oppression does not necessarily accrue when a plaintiff incurs a calculable financial injury. Instead, it accrues when **[***19]** a plaintiff incurs the actionable harm under *MCL 450.4515*, i.e., when defendants' actions allegedly interfered with the interests of a plaintiff as a member, making the plaintiff eligible to receive some form of relief under *MCL 450.4515(1)*. [*Frank, 500 Mich at 152-153*.]

In other words, a calculable financial injury was one potential consequence of the "actionable harm" in an LLC member-oppression claim, but was not in and of itself the "actionable harm." Rather, *that* harm occurred when "defendants' actions allegedly interfered with the interests of a plaintiff as a member, making the plaintiff eligible to receive some form of relief under *MCL 450.4515(1)*." *Id.*

The Agency analogizes this case to *Frank*, arguing that the deprivation of **[**550]** property is comparable to the calculable financial injury in *Frank*, i.e., that the deprivation of property is merely the result of the deprivation of process, which constitutes the "actionable harm" for a claim alleging a violation of due process. However, ***HN9***[↑] unlike a claim for LLC member oppression under *MCL 450.4515*--in which the harm itself can occur before incurring a calculable financial injury--no harm for a violation of due process can occur without or before a deprivation of property. *Bonner, 495 Mich at 225-226*; *Williams, 430 Mich at **[*190]** 610*. Indeed, absent such a deprivation, it would **[***20]** often be impossible to determine whether sufficient process had been provided to a person, as the state could provide additional process before the actual deprivation or elect not to deprive that person of property at all, in which case no harm would occur. Thus, while the "actionable harm" in *Frank* occurred independently from the calculable financial injury, the "actionable harm" in a due-process claim is specifically triggered by a deprivation of property.

Accordingly, the Court of Appeals erred by holding that plaintiffs' due-process claims seeking monetary relief accrued when plaintiffs were deprived of process. Rather, these claims accrued only when they were deprived of property, as they incurred no harm before that deprivation. Because the accrual under *MCL 600.5827* of a due-process claim seeking monetary relief "giv[es] rise to [a] cause of action" for purposes of

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MCL 600.6431(3), the six-month period from MCL 600.6431(3) was triggered when plaintiffs were deprived of property.

C. APPLICATION

Plaintiffs allege that they were first deprived of property when their tax refunds were seized or their wages garnished. The Agency does not dispute that the seizure of tax refunds and garnishment of wages constitute deprivations **[***21]** of property, but argues that plaintiffs were *first* deprived of property either when the initial redetermination notices were sent informing plaintiffs of liability or, at the latest, when plaintiffs received the Agency's notices of an intention to intercept their tax refunds or wages.[14] However, the Agency **[*191]** provides no support for its argument that either the redetermination notices or the notices of intent actually *deprived* plaintiffs of their property, rather than merely notifying them of the Agency's future intent to take their property. The Agency's notices of redetermination merely apprised plaintiffs of the amount owed to the Agency; these did not actually seize plaintiffs' property. See Jones v Clark Co, 666 F Appx 483, 486 (CA 6, 2016) ("[Plaintiff] does not have a property interest in not being billed. . . . An erroneously high bill from the government, without more, does not deprive the bill's recipient of a protected property interest[.]").[15] Similarly, the notices of intent advised plaintiffs of what the Agency *will* (at some future time) undertake if a payment is not made, i.e., that a tax refund **[**551]** *will* be seized or that wages *will* be garnished, **[*192]** but again these did not actually deprive plaintiffs of their property.[16] See Millar v Clark Construction Auth, 501 Mich 233, 239; 912 N.W.2d 521 (2018) ("At **[***22]** the time each letter was written, the plaintiff had no actionable WPA claim because no allegedly discriminatory action had occurred; the defendants *intended* to curtail the plaintiff's employment responsibilities, but had not taken any action to implement that intent."). Absent any indication that the Agency's notifications contemporaneously impaired plaintiffs' property interests, we cannot conclude that such notices triggered the "actionable harm" for a claim alleging a violation of due process.[17]

With regard to plaintiff Bauserman, he first incurred a deprivation of property on June 6, 2015, when the Agency intercepted his federal and state income tax refunds. Accordingly, his September 9, 2015 complaint was timely filed "within 6 months following the **[*193]** happening of the event giving rise to the cause of action." MCL 600.6431(3). Similarly, plaintiff Broe first

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[14] The Agency does not argue that plaintiffs possessed a property interest in the continued receipt of future unemployment compensation and therefore we decline to reach that issue. Even assuming that one could have a property interest in the continued receipt of future unemployment compensation, Bauserman and Broe were not seeking additional compensation when the Agency's redeterminations were issued. Accordingly, they were not deprived of any property until their tax refunds were seized.

[15] For example, Bauserman's "notice of redetermination" regarding alleged fraud provided:

> Your actions indicate you intentionally misled and/or concealed Information to obtain benefits you were not entitled to receive.
>
> Benefits will be terminated on any claims active on December 28, 2013.
>
> You are disqualified for benefits under MES Act, Sec. 62(b). Restitution is due under MES Act, Sec. 62(a). The wages used to establish your claim are cancelled and no further benefits will be paid based on those wages. In addition, you are required to pay the penalty assessed based on this determination under MES Act, Sec. 54(b). . . .
>
> * * *
>
> If you disagree with this redetermination, refer to Appeal Rights on the reverse side of this form.

[16] The "notice[s] of intent to reduce/withhold federal income tax refund" provided:

> If you do not pay the amount shown or take other action described below within 60 days of the mail date on this form, **[***23]** the [Agency] *will* submit this benefit overpayment balance (restitution) to . . . the United States Department of Treasury . . . [which] *will* reduce or withhold any federal income tax refund you may be due and will instead forward that amount to the [Agency.] [Emphasis added.]

[17] This Court has previously held that it "is beyond dispute that a money judgment rendered in . . . litigation against the defendant would deprive it of property." Williams, 430 Mich at 611. Accordingly, we do not hereby imply that the "actionable harm" in a due-process claim can *only* occur when collection proceedings begin. However, merely expressing a *future* intent to deprive one of property is an insufficient triggering event. See Jones, 666 F Appx at 486; Millar, 501 Mich at 239. Because the notices at issue only reflect a future intent to seize property, and because the Agency has offered no persuasive argument that the notices *actually* deprived plaintiffs of their property, these did not trigger the six-month notice period under MCL 600.6431(3).

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incurred a deprivation of property when his tax refunds were seized in May 2015, and therefore his claim against the Agency was also timely filed under MCL 600.6431(3).[18] However, plaintiff Williams first incurred a deprivation of property when his wages were garnished on May 16, 2014, and his claim was not filed within six months of that deprivation.[19] Thus, plaintiffs Bauserman and Broe timely filed their claims, while plaintiff Williams did not.

IV. CONCLUSION

It is yet to be determined whether plaintiffs will succeed on their claims against **[**552]** the Agency. However, **[***24]** plaintiffs Bauserman and Broe did timely comply with the notice requirements of MCL 600.6431(3) and therefore are not procedurally barred on that basis from the substantive consideration of their claims. We thus affirm in part and reverse in part the judgment of the Court of Appeals and remand to that court for further proceedings consistent with this opinion.[20]

Stephen J. Markman

Bridget M. McCormack

Brian K. Zahra

David F. Viviano

Richard H. Bernstein

Elizabeth T. Clement

Concur by: Bridget M. McCormack

Concur

[*194] MCCORMACK, C.J. (*concurring*).

I concur in the majority opinion. If MCL 600.6431(3)'s sixth-month notice period governs the plaintiffs' claims, it started to run when the state deprived the plaintiffs of a property interest without due process. I write separately, however, because I am not convinced that our strict-compliance rule from *McCahan* and *Rowland* for notice of statutorily created claims applies to a due-process claim in particular, or to constitutional tort claims at all. If a different standard governs a due-process claim, then Mr. Williams's claim might also survive. But since Mr. Williams has not made this argument, I join the majority opinion's result.

We held in Rowland v Washtenaw Co Rd Comm, 477 Mich 197; 731 N.W.2d 41 (2007), that a suit may be dismissed for failure to comply with **[***25]** a statutory notice requirement even if the defendant was not prejudiced by the lack of notice, abrogating our precedent holding notice requirements unconstitutional with no actual prejudice. We reasoned that "inasmuch as the Legislature is not even required to provide a defective highway exception to governmental immunity, it surely has the authority to allow such suits only upon compliance with rational notice limits." Rowland, 477 Mich at 212. In other words, when the government waives its immunity from suit, it may do so on its own terms, subject only to rational-basis review. And the notice provision survived our rational-basis review.

Our opinion in McCahan v Brennan, 492 Mich 730; 822 N.W.2d 747 (2012), followed. We explained that it is "the sole province of the Legislature to determine whether and on what terms the state may be sued" and that "the judiciary has no authority to restrict or amend those terms." Id. at 732. And so we extended the *Rowland* rule to apply to the notice provision in MCL 600.6431 **[*195]** (the same Court of Claims notice provision at issue) and other statutory notice or filing provisions like it. Id. at 732-733.

But we have not held that the same is true of constitutional claims generally, or due-process claims in particular.[1] And I'm not sure we should: *Rowland*'s

[18] This is true regardless of whether the time elapsed is calculated as ending upon the filing of Bauserman's complaint or upon the filing of the amended complaint on October 19, 2015, which added Broe as a named plaintiff to the action.

[19] Williams's claim was untimely regardless of whether the triggering event was the termination of his receipt of future unemployment compensation or the later garnishment of his wages and interception of his tax refund. Moreover, Williams has not argued that each garnishment of his wages "g[ave] rise to" a new cause of action.

[20] On remand, the Court of Appeals should consider the Agency's argument that it is entitled to summary disposition on the ground that plaintiffs failed to raise cognizable constitutional tort claims.

[1] As the majority explains, the Court of Appeals did so in Rusha v Dep't of Corrections, 307 Mich App 300; 859 N.W.2d 735 (2014); see also Mays v Snyder, 323 Mich App 1, 30-37;

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governmental-immunity **[***26]** rationale is less persuasive in the constitutional context. The *Rowland* and *McCahan* plaintiffs' substantive claims (for personal injuries resulting from a defective highway condition in *Rowland*, and for automobile tort liability in *McCahan*) existed only by legislative grace—there is **[**553]** no constitutional guarantee of safe roads or payment of personal injury benefits. The state enjoys broad immunity from suit unless it waives its immunity by creating a statutory right of action; the Legislature may place whatever conditions it wishes on rights of its own creation, including a notice requirement. And courts shouldn't undermine those legislatively created conditions.

But it is the Constitution that forbids the government from depriving a person of his property without due process of law. The Legislature is not the source of the due-process right (more often its target), so the fundamental principle that animated our decisions in *Rowland* and *McCahan* isn't implicated here. Whether and how much the Legislature can limit a person's ability to pursue a due-process claim is a first-principles question: A strict-compliance interpretation of the MCL 600.6431(3) notice requirement applied to a due-process **[*196]** claim will **[***27]** permit the Legislature to burden or curtail constitutional rights.[2] How much of a burden is too much?

To be sure, the due-process right, like any other constitutional right, is not absolute. "A constitutional claim can become time-barred just as any other claim can. Nothing in the Constitution requires otherwise." Block v North Dakota, 461 U.S. 273, 292; 103 S. Ct. 1811; 75 L. Ed. 2d 840 (1983) (citations omitted). Constitutional remedies may be "subject to a reasonable time bar designed to protect other important societal values." Hair v United States, 350 F3d 1253, 1260 (CA Fed, 2003). The Legislature may, at its discretion, restrict or change "the forms of action or modes of remedy . . . provided adequate means of enforcing the right remain. In all such cases, the question is one of reasonableness, and we have, therefore, only to consider whether the time allowed in this statute is, under all the circumstances, reasonable." Terry v Anderson, 95 U.S. 628, 633; 24 L. Ed. 365 (1877).

But that's the question: is the six-month, no-exceptions notice provision reasonable when the government has taken a person's property without due process?[3] The answer **[**554]** matters for Mr. Williams. Hypotheticals **[*197]** show why it's a hard question: If the Legislature

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916 N.W.2d 227 (2018) (affirming a denial of summary disposition because application of the notice provision would have divested the plaintiffs of the ability to vindicate alleged constitutional violations by depriving them of access to the courts).

[2] Of course MCL 600.6431(3) requires only that *notice* of a claim be filed within six months; and the complaint itself must be filed within three years. But in many cases, claims may be time-barred by the initial notice requirement before a victim ever realizes she was harmed. Some "deprivations, such as those involving denial of due process or of equal protection, will be far more subtle" than a more obvious tort like a battery. Felder v Casey, 487 U.S. 131, 146; 108 S. Ct. 2302; 101 L. Ed. 2d 123 n 3 (1988). "In the latter, and by no means negligible, category of constitutional injuries, victims will frequently fail to recognize within the 4-month statutory period that they have been wronged at all." *Id.*

[3] It's no secret that notice-of-claim statutes burden claimants' rights—that's the point. Notice-of-claim statutes are "designed to minimize governmental liability . . . ." Felder, 487 U.S. at 153. And although notice-of-claim statutes can shield the state against statutory claims, they may have to yield to higher authorities like the Constitution or federal law. For example, the United States Supreme Court has held that such abbreviated periods for bringing claims conflict with 42 USC 1983 and thus are preempted by federal law. The Court held that Wisconsin could not apply its four-month notice period to bar § 1983 claims in its state courts:

> A state law that conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law. [Felder, 487 U.S. at 153.]

Similarly, the Court overruled a Maryland case that applied the state's six-month limitations period to an employment discrimination case under the Civil Rights Act:

> [T]he legislative choice of a restrictive 6-month limitations period reflects in part a judgment that factors such as minimizing the diversion of state officials' attention from their duties outweigh the interest in providing employees ready access to a forum to resolve valid claims. That **[***29]** policy is manifestly inconsistent with the central objective of the Reconstruction-Era civil rights statutes, which is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief. [Burnett v Grattan, 468 U.S. 42, 54-55; 104 S. Ct. 2924; 82 L. Ed. 2d 36 (1984).]

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enacted a statute that required me to notice my intent to challenge a local ordinance that limits gun ownership to one weapon **[***28]** per household within 24 hours of having my weapon confiscated, we would surely be troubled by that barrier to my ability to vindicate my *Second Amendment* rights. And likewise if I wait 50 years to complain that denial of a park permit for my annual church picnic violated the *First Amendment*, we would think it unfair for the government to be on the hook when there is likely no information available or witnesses around to contest the complaint. I don't know where this six-month notice period for a claim that the state has taken my tax refund without due process falls on that continuum.

[*198] Mr. Williams has not challenged the application of *MCL 600.6431(3)* to his due-process claims; he has instead conceded that the six-month notice period for property damage or personal injury applies to his claims. Given that, I agree with the majority that Mr. Williams's claim is untimely because he failed to file notice within six months of the May 2014 garnishment, when he first suffered a deprivation of property.

Bridget M. McCormack

CAVANAGH, J., did not participate in the disposition of this case because the Court considered it before she assumed office.

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APPENDIX 155

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MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT

PERFORMANCE AUDIT
OF

UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS AND NONMONETARY ELIGIBILITY DETERMINATIONS

UNEMPLOYMENT INSURANCE AGENCY
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

March 2011



THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

641-0315-10

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The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

– Article IV, Section 53 of the Michigan Constitution

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Michigan

Office of the Auditor General

REPORT SUMMARY

Performance Audit

Unemployment Insurance Benefit Overpayments and Nonmonetary Eligibility Determinations

Unemployment Insurance Agency

Department of Energy, Labor & Economic Growth

Report Number: 641-0315-10

Released: March 2011

The Unemployment Insurance Agency's (UIA's) primary responsibility is to collect State unemployment taxes from employers and pay State and federal unemployment insurance (UI) benefits to eligible claimants. Eligible claimants can receive up to 99 weeks of UI benefits. For the three-year period ended September 30, 2010, UIA paid UI benefits totaling $15.4 billion. UIA reported overpayment recoveries totaling $89.7 million for calendar years 2007 through 2009. Prolonged high unemployment depleted UIA's funding reserves and required borrowing from the federal government to pay State UI benefits. As of September 30, 2010, the outstanding loans totaled $3.8 billion.

Audit Objective:

To assess the effectiveness of UIA's efforts to prevent, detect, and recover UI benefit overpayments.

Audit Conclusion:

We concluded that UIA's efforts to prevent, detect, and recover UI benefit overpayments were not effective. We noted two material conditions (Findings 1 and 2) and five reportable conditions (Findings 3 through 7).

Material Conditions:

UIA needs to improve its controls to help ensure that it correctly classifies claimants' intentional misrepresentations or concealment of material facts to obtain UI benefits as fraud. As a result of the control weaknesses, we estimate that UIA did not assess fraud-related penalties totaling from $81.5 million to $191.8 million. (Finding 1)

The Benefit Payment Control Unit (BPC) did not have effective controls to ensure that its claimant wage and UI benefit payment cross match process consistently detected overpayments to claimants. As a result, we estimate that during fiscal years 2007-08 and 2008-09, BPC may not have detected and recovered as much as $55.7 million to $61.3 million in UI benefit overpayments and associated penalties. (Finding 2)

Reportable Conditions:

BPC did not properly investigate or document its investigation of potential false claims identified in its cross matches of new hire databases (Finding 3).

UIA had not established a reciprocal agreement with the U.S. Department of Labor to allow for a cross-program benefit offset process to recover UI benefit overpayments (Finding 4).

BPC did not consistently verify claimants' identities with the Social Security Administration. Also, BPC frequently did not document, retain documentation of, or timely complete its claimant identity verification efforts. (Finding 5)

The Benefit Overpayment Collections Unit (BOC) did not consistently request the Department of Attorney General to obtain civil judgments against claimants who were delinquent in paying restitution for overpaid UI benefits. Also, BOC did not effectively monitor the employment status of those claimants with civil judgments obtained against them. (Finding 6)

UIA had not established and implemented procedures to identify and recover UI benefits improperly paid to deceased claimants (Finding 7).

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Audit Objective:
To assess the effectiveness of UIA's efforts to complete nonmonetary eligibility determinations in a timely manner.

Audit Conclusion:
We concluded that UIA's efforts to complete nonmonetary eligibility determinations in a timely manner were not effective. We noted three reportable conditions (Findings 8 through 10).

Reportable Conditions:
UIA did not timely adjudicate nonmonetary issues regarding claimants' eligibility for UI benefits (Finding 8).

UIA did not ensure that alien claimants met federal and State eligibility requirements for receiving UI benefits (Finding 9).

UIA did not promptly issue new determinations holding claimants ineligible for UI benefits for those claimants strongly suspected of UI benefit fraud exceeding $5,000 (Finding 10).

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Summary of Effects:
We estimate that UIA failed to identify and pursue recovery of UI benefit overpayments of up to $72.5 million as identified in Findings 2, 4, 5, 7, 8, and 9:

Overpayments (in millions)

Claimant wage and benefit cross match process (Finding 2)	$17.9
Cross-program benefit offset process (Finding 4)	12.1
Verification of claimant identity (Finding 5)	8.2
Deceased claimants (Finding 7)	0.4
Untimely nonmonetary eligibility determinations (Finding 8)	26.0
Ineligible alien claimants (Finding 9)	7.9
Total	$72.5

We estimate that UIA did not assess fraud-related penalties ranging between $120.0 million and $236.6 million as identified in Findings 1, 2, and 7:

Unassessed Penalties (in millions)

Classification of claimants' misrepresentations (Finding 1)	$ 81.5 - $191.8
Claimant wage and benefit cross match process (Finding 2)	37.8 - 43.4
Deceased claimants (Finding 7)	0.7 - 1.4
Total	$120.0 - $236.6

For Findings 1, 4, 5, and 8, we estimated our results by projecting the results of our nonstatistical tests of randomly selected sample items to the population of items subject to testing. Although nonstatistical sampling does not provide an explicit level of confidence for the projection of test results to a population, it is a commonly used and industry-accepted audit sampling methodology. Our nonstatistical sampling methodology utilized randomly selected samples from the identified periods, thus attempting to ensure that the items tested provided true representations of the entire population.

For Finding 2, we estimated our results based on UIA's identified overpayments from other quarterly periods.

For Findings 7 and 9, the reported overpayments and unassessed penalties were derived from a full review of applicable UIA database records.

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Agency Response:
Our audit report includes 10 findings and 14 corresponding recommendations. UIA's preliminary response indicated that it agrees with 13 recommendations and partially agrees with 1 recommendation.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: http://audgen.michigan.gov

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THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

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March 22, 2011

Mr. Stephen M. Geskey, Director
Unemployment Insurance Agency
Department of Energy, Labor & Economic Growth
Cadillac Place
Detroit, Michigan
and
Mr. Steven H. Hilfinger, Director
Department of Energy, Labor & Economic Growth
Ottawa Building
Lansing, Michigan

Dear Mr. Geskey and Mr. Hilfinger:

This is our report on the performance audit of Unemployment Insurance Benefit Overpayments and Nonmonetary Eligibility Determinations, Unemployment Insurance Agency, Department of Energy, Labor & Economic Growth.

This report contains our report summary; description of agency; audit objectives, scope, and methodology and agency responses; comments, findings, recommendations, and agency preliminary responses; three exhibits, presented as supplemental information; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a plan to address the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

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TABLE OF CONTENTS

UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS AND NONMONETARY ELIGIBILITY DETERMINATIONS
UNEMPLOYMENT INSURANCE AGENCY
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

	Page
INTRODUCTION	
Report Summary	1
Report Letter	3
Description of Agency	7
Audit Objectives, Scope, and Methodology and Agency Responses	9
COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES	
Effectiveness in Preventing, Detecting, and Recovering Benefit Overpayments	13
1. Classification of Claimants' Misrepresentations	14
2. Claimant Wage and UI Benefit Payment Cross Match Process	20
3. New Hire Cross Matches	23
4. Cross-Program Benefit Offset Process	25
5. Verification of Claimant Identity	26
6. Civil Judgments and Wage Garnishments	30
7. UI Benefit Payments to Deceased Claimants	33
Effectiveness in Completing Nonmonetary Eligibility Determinations in a Timely Manner	35
8. Nonmonetary Eligibility Determinations	35
9. Alien Claimants	38
10. Claimant Fraud	40

RECEIVED by MSC 12/9/2020 3:51:27 PM

SUPPLEMENTAL INFORMATION

Exhibit 1 - Unemployment Insurance Agency's Statement of Conditions Affecting Its Operations 44

Exhibit 2 - Application for Unemployment Insurance Benefits 45

Exhibit 3 - Excerpt from Electronic Application for Unemployment Insurance Benefits 46

GLOSSARY

Glossary of Acronyms and Terms 48

RECEIVED by MSC 12/9/2020 3:51:27 PM

Description of Agency

The federal Social Security Act of 1935 created the Unemployment Insurance Program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. In response to this Act, the Unemployment Insurance Agency (UIA), Department of Energy, Labor & Economic Growth, was originally created as the Michigan Employment Security Commission by the Michigan Employment Security Act of 1936, being Sections 421.1 - 421.75 of the *Michigan Compiled Laws*.

UIA helps jobless workers and their families by providing a temporary income while the workers are unemployed and seeking new employment. Unemployment insurance (UI) helps employers by keeping a skilled work force on hand until jobs become available. UIA administers the eligibility determination and benefit payment processes from its central office in Detroit and four regional claim centers. In addition, UIA has 10 problem resolution offices located throughout the State to assist claimants with questions or concerns regarding their claims.

For calendar years 2008 and 2009, UIA reported that it processed 2.5 million initial unemployment claims and 21.9 million continued unemployment claims. For the three-year period ended September 30, 2010, UIA paid UI benefits totaling $15.4 billion. UIA reported overpayment recoveries totaling $89.7 million for calendar years 2007 through 2009.

The State provides up to 26 weeks of UI benefits, which it funds with an employer payroll tax. Also, as of September 30, 2010, various federally funded programs provided up to 73 additional weeks of UI benefits. UIA's tax receipts and employer reimbursements are deposited in the State's Unemployment Compensation Fund. Also, the Internal Revenue Service levies a payroll tax on Michigan employers to fund the federal share of extended UI benefit programs and UIA administrative costs and to provide loans to eligible states that do not have sufficient financial resources to meet their UI obligations. As of September 30, 2010, the outstanding amount of such federal loans to Michigan totaled $3.8 billion. Because of the poor national economy, the federal government waived interest on these loans through December 31, 2010. However, barring any legislative changes, interest will begin to accrue in 2011. UIA has estimated the interest charges for 2011 to be approximately $117 million.

As of November 13, 2010, UIA had 950 permanent full-time employees and 284 limited-term employees.

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Audit Objectives, Scope, and Methodology and Agency Responses

Audit Objectives

Our performance audit* of Unemployment Insurance Benefit Overpayments and Nonmonetary Eligibility Determinations, Unemployment Insurance Agency (UIA), Department of Energy, Labor & Economic Growth, had the following objectives:

1. To assess the effectiveness* of UIA's efforts to prevent, detect, and recover unemployment insurance (UI) benefit overpayments.

2. To assess the effectiveness of UIA's efforts to complete nonmonetary eligibility determinations* in a timely manner.

Audit Scope

Our audit scope was to examine the program and other records of the Unemployment Insurance Agency related to unemployment insurance benefit overpayments and nonmonetary eligibility determinations. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, conducted from May through November 2010, primarily covered the period October 1, 2007 through September 30, 2010.

Supplemental information was provided by UIA and is presented as Exhibit 1. Our audit was not directed toward expressing a conclusion on this information and, accordingly, we express no conclusion on it.

Audit Methodology

We conducted a preliminary review of UIA's operations to form a basis for defining our audit scope. Our preliminary review included interviewing various members of UIA management and staff; reviewing applicable State and federal laws, regulations, codes,

** See glossary at end of report for definition.*

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policies, procedures, and manuals; examining reports from various internal and external audits and reviews of UIA and similar organizations; identifying and examining pertinent management reports; conducting Internet research to identify industry standards, best practices, and headline events; and obtaining an understanding of and documenting UIA's internal control* related to eligibility determinations and UI benefit overpayment identification and recovery.

To accomplish our first objective, we identified the various cross matches that UIA used to discover UI benefit overpayments. We also identified those cross matches that resulted in the establishment of the most restitution and assessed the timeliness, completeness, and effectiveness of management's oversight of UIA's cross match and related investigatory processes. Also, we examined UIA's establishment of restitution and related recovery efforts, including its billing processes; use of the Michigan Department of Treasury's tax intercept program; referral of delinquent accounts to the Department of Attorney General for civil judgments*; monitoring of civil judgments for wage garnishment opportunities; referrals to UIA's Fraud Investigation Unit; and UI benefit offset. In addition, we reviewed UIA's use of its Benefit Accuracy Measurement Program* results to effect needed changes. Further, we assessed the appropriateness of UIA's classification of overpayments as either fraudulent or not fraudulent.

To accomplish our second objective, we calculated UIA's timeliness in completing nonmonetary eligibility determinations. Also, we calculated the financial impact of UIA's untimely processing of nonmonetary eligibility determinations on a randomly selected sample of nonmonetary eligibility determinations that resulted in the identification of UI benefit overpayments. In addition, we assessed UIA's compliance with State and federal requirements for determining the eligibility of noncitizen aliens* for UI benefits.

Our audit procedures included the use of both nonstatistical and statistical techniques. Findings 1 and 6 included statistical projections of error rates from attribute samples. Finding 1 also included a nonstatistical projection of the dollar value of unassessed penalties. Our nonstatistical projection applied an average dollar error per sampled item against the population subject to sampling. We did not complete a statistical projection of unassessed penalties because the total dollar value of the population subject to sampling, a required element for making such a projection, was not readily available. Findings 4, 5, and 8 also included nonstatistical projections derived by

** See glossary at end of report for definition.*

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applying the average dollar error or error rate for sampled items to the respective population. Although nonstatistical sampling does not provide an explicit level of confidence for the projection of test results to a population, it is a commonly used and industry-accepted audit sampling methodology. Our nonstatistical sampling methodology utilized randomly selected samples from the identified periods, thus attempting to ensure that the items tested provided true representations of the entire populations.

When selecting activities or programs for audit, we use an approach based on assessment of risk and opportunity for improvement. Accordingly, we focus our audit efforts on activities or programs having the greatest probability for needing improvement as identified through a preliminary review. Our limited audit resources are used, by design, to identify where and how improvements can be made. Consequently, we prepare our performance audit reports on an exception basis.

Agency Responses

Our audit report includes 10 findings and 14 corresponding recommendations. UIA's preliminary response indicated that it agrees with 13 recommendations and partially agrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require UIA to develop a plan to address the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

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COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

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EFFECTIVENESS IN PREVENTING, DETECTING, AND RECOVERING BENEFIT OVERPAYMENTS

COMMENT

Background: The funding mechanism for the federal-state unemployment system was designed to accumulate benefit reserves during periods of economic growth so that it could pay unemployment insurance (UI) benefits during periods of economic decline. However, because of Michigan's high unemployment rate over the past several years, employer contributions and reimbursements to the Unemployment Compensation Fund (UCF) fell significantly below the UI benefits paid from UCF and rendered UCF insolvent. To continue paying State UI benefits, the State requested and received loans from the federal Unemployment Trust Fund. As of September 30, 2010, the outstanding loans totaled $3.8 billion. Because of the poor national economy, the federal government waived interest on these loans through December 31, 2010. However, barring any legislative changes, interest will begin to accrue in 2011. The Unemployment Insurance Agency (UIA) has estimated the interest charges for 2011 to be approximately $117 million.

Audit Objective: To assess the effectiveness of UIA's efforts to prevent, detect, and recover UI benefit overpayments.

Audit Conclusion: We concluded that UIA's efforts to prevent, detect, and recover UI benefit overpayments were not effective. Our assessment disclosed two material conditions*. UIA needs to improve its controls to help ensure that it correctly classifies claimants' intentional misrepresentations or concealment of material facts to obtain UI benefits as fraud* (Finding 1). Also, the Benefit Payment Control Unit (BPC) did not have effective controls to ensure that its claimant wage and UI benefit payment cross match process consistently detected overpayments to claimants (Finding 2).

Our assessment also disclosed five reportable conditions* related to new hire cross matches, the cross-program benefit offset process, verification of claimant identity, civil judgments and wage garnishments, and UI benefit payments to deceased claimants (Findings 3 through 7).

** See glossary at end of report for definition.*

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Summary of Effects: We estimate that UIA failed to identify and pursue recovery of UI benefit overpayments of up to $38,550,000 and did not assess fraud-related penalties ranging from $120,000,000 up to $236,600,000 as identified in Findings 1, 2, 4, 5, and 7.

For Findings 1, 4, and 5, we estimated our results by projecting the results of our nonstatistical tests of randomly selected sample items to the population subject to sampling. Although nonstatistical sampling does not provide an explicit level of confidence for the projection of test results to a population, it is a commonly used and industry-accepted audit sampling methodology. Our nonstatistical sampling methodology utilized randomly selected samples from the identified periods, thus attempting to ensure that the items tested provided true representations of the entire populations.

For Finding 2, we estimated our results based on UIA's identified overpayments from other quarterly periods.

For Finding 7, the reported overpayments and unassessed penalties were derived from a full review of applicable UIA database records.

FINDING

1. Classification of Claimants' Misrepresentations

UIA needs to improve its controls to help ensure that it correctly classifies claimants' intentional misrepresentations or concealment of material facts to obtain UI benefits as fraud. As a result of the control weaknesses, we estimate that UIA did not assess fraud-related penalties totaling from $81.5 million to $191.8 million.

When UIA employees determine that UIA overpaid a claimant, they designate whether the overpayment resulted from the claimant knowingly misrepresenting or concealing material facts. Numerous employees throughout UIA make these designations, generally with limited oversight. Although UIA provided these employees with some limited guidance on making fraud determinations based upon the available evidence, it did not provide appropriate guidance for obtaining all necessary evidence. When UIA discovered potentially intentional misrepresentations, it sent a request for pertinent information to the applicable claimant. However, in accordance with UIA procedures, when a claimant did not respond to UIA's initial request for information, UIA generally ceased its

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investigation and issued a determination based upon the limited information that it had already assembled. In these instances, we noted that UIA generally classified the misrepresentation as unintentional, citing that it did not have sufficient information to determine otherwise.

Section 421.54 of the *Michigan Compiled Laws* provides for penalties of 200% and 400% for fraudulent overpayments totaling less than $500 and fraudulent overpayments totaling $500 or more, respectively. Also, claimants lose their right to UI benefits for the affected benefit year as of the date UIA receives notice of or initiates investigation of a possible fraud, whichever date is earlier. In addition, the statute of limitations for collection of the overpayment is increased from 3 years to 6 years.

From October 1, 2007 through August 21, 2010, UIA issued 1.3 million nonmonetary eligibility determinations. UIA records indicated that approximately 177,000 of these nonmonetary eligibility determinations were untimely and resulted in UIA establishing restitution for UI benefit overpayments. We reviewed 50 randomly selected nonmonetary eligibility determinations with benefit overpayments totaling $40,726. We identified 10 (20.0%) instances that had strong indications of claimant fraud but were not classified as fraudulent by UIA employees or were not sufficiently investigated by them. Based on the population tested, there is a 95% probability that the actual incorrect classification and insufficient investigation rate ranges from at least 8.8% to as much as 31.2%.

Upon review of the 10 cases, UIA stated that it agreed that 4 cases involved claimant fraud. UIA also stated that additional information would have been useful for evaluating 3 other cases. However, UIA disagreed that there was claimant fraud or a need to obtain additional information for the 3 remaining cases. Relevant information regarding the 3 cases includes:

(1) This claimant stated on his UI application that he was laid off because of a lack of work. The employer protested the claim stating that the claimant was on a military leave of absence during a specified four-week period and was not on layoff. Claimants on a military (voluntary) leave of absence do not qualify for UI benefits. In response to questioning, the claimant provided UIA with his orders to report for Army Reserve training during the contested four-week period and also twice mentioned or alluded to his "leave" in written

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correspondence with UIA. Also, when the claimant made his biweekly certification for UI benefits, he committed a second potentially fraudulent act by stating that he was not working and was available for work during the contested four-week period. Because the claimant was not available for work, he did not qualify for UI benefits. The claimant committed another potentially fraudulent act in his biweekly certification by failing to report the wages earned for his Army Reserve training. These wages would have nullified his UI benefits.

UIA informed us that it did not consider the claimant's cited reason for being unemployed to be fraud because the claimant had been on layoff for approximately a week before and several days after his reserve training. Also, UIA informed us that it did not consider the claimant's failure to report that he was working to be fraud because the claimant may have looked at his Army Reserve training as service to his country and not a job. Finally, UIA informed us that it did not consider the claimant's failure to report his earnings to be fraud because he did not receive payment until his training had ended. However, UIA clearly instructs claimants to report wages earned (as opposed to received) during each week that they certify for UI benefits.

(2) This claimant stated on his UI application that he was laid off for lack of work. The employer protested the claim stating that the claimant voluntarily quit because he was dissatisfied with the job. If the claimant had correctly stated that he voluntarily quit without good cause attributable to the employer, he would not be eligible to receive UI benefits related to this employment. When questioned about the discrepancy, the claimant admitted that he had quit his job because the business was being sold and he had no guarantee of continued pay or hours. UIA informed us that, because the claimant did not exhibit malice, it did not consider his actions to be fraudulent. However, this rationale is inconsistent with UIA's working definition of fraud, which includes the intentional misrepresentation of material facts to obtain UI benefits.

(3) The 100% owner and president of a small company stated on his UI application that the business from which he laid himself off was not family employment. However, the UI application clearly describes family employment as employment in a business that is owned by the claimant or specified members of the claimant's family (see Exhibit 2, item 46, and

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Exhibit 3, fourth question). The Michigan Employment Security Act limits UI benefits for claimants working in family employment to a maximum of 7 weeks as opposed to 26 weeks for other claimants.

UIA stated that it did not believe that the claimant intentionally provided false information because the claimant stated that neither he nor the Michigan Works! employee who reportedly helped the claimant complete his UI benefit application considered the claimant's 100% ownership in his business to be family employment. However, the claimant stated in his application for extended UI benefits that he had worked in family employment. In addition, there was no documented evidence that UIA had attempted to corroborate the claimant's statement with Michigan Works!. Notwithstanding, there should have been little or no ambiguity that the claimant's 100% business ownership constituted family employment. When asked about her disqualification for UI benefits for the same time period and reason, the claimant's wife stated that she also asked a Michigan Works! employee how to answer the family employment question because she (the claimant's wife) did not own any part of her husband's business. This statement indicates that the claimant's wife understood that ownership of the business constituted family employment. The claimant, as owner and president of the business, laying himself off for nearly a year was also somewhat suspicious and, together with the nondisclosure of family ownership, warranted a referral to, and investigation by, UIA's Fraud Investigation Unit. This referral and investigation was not made. After UIA established restitution for the UI benefit overpayment, the claimant requested that UIA waive his restitution because of financial hardship. The waiver request showed that the claimant was heavily indebted, a common motive for committing fraud.

If UIA had classified as fraudulent the 7 cases that, upon further examination, it either considered fraudulent or recognized the need for additional clarifying information, these 7 claimants would have been subject to penalties totaling $23,044, an average of $3,292 per claimant. Similarly, if UIA had classified as fraudulent the 3 cases that, based upon further examination, it still did not consider fraudulent or did not require clarifying information, these 3 claimants would have been subject to penalties totaling $31,148, an average of $10,383 per claimant. If our nonstatistical test results reflect the conditions present throughout the population of untimely nonmonetary determinations, and we do not assert that they

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do, we estimate that there would be 35,400 (177,000 x 20%) misclassifications with unassessed fraud-related penalties totaling $191.8 million (35,400 x $5,419) derived from all 10 cases or 24,780 misclassifications with unassessed fraud-related penalties totaling $81.5 million derived from the 7 aforementioned cases and 10,620 misclassifications with unassessed fraud-related penalties totaling $110.3 million derived from the 3 aforementioned cases. We did not complete a statistical projection of unassessed penalties because the total dollar value of the population subject to sampling, a required element for making such a projection, was not readily available.

Not included within this estimate were penalties associated with approximately 62,000 nonmonetary eligibility determinations that UIA processed timely (unlike the 177,000 nonmonetary eligibility determinations that were not processed timely) and that had associated restitution but were not subject to testing. Nothing came to our attention to suggest that the misclassification rate for these 62,000 nonmonetary eligibility determinations would differ significantly from our calculated misclassification rate for the 177,000 nonmonetary eligibility determinations. However, the average unassessed penalty could be smaller because UIA made these 62,000 nonmonetary eligibility determinations timely.

RECOMMENDATION

We recommend that UIA improve its controls to help ensure that it correctly classifies claimants' intentional misrepresentations or concealment of material facts to obtain UI benefits as fraud.

AGENCY PRELIMINARY RESPONSE

UIA partially agrees. UIA informed us that some claimant misrepresentations were inappropriately misclassified and acknowledges that corrective action is needed. UIA also informed us that improved controls could help ensure appropriate classification of claimants' misrepresentations. However, UIA disagrees with the estimated amount of fraud-related penalties not assessed.

UIA stated that its management, with assistance from internal legal counsel, performed a thorough analysis and concluded that only 4 of the 10 cases cited should have been deemed fraudulent. According to UIA, the amount of fraudulent penalties that should have been assessed in these 4 cases is $1,690 and, by extrapolating the value of these cases to the entire population, the cumulative

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amount of missed fraud penalties totals $5,982,600, thus significantly less than the reported $191.8 million. UIA also stated that in making a judgment about fraud, or about any other adjudication issue, UIA staff must carefully consider the statements of the employer and the claimant. According to UIA, in reaching a conclusion about fraud or about any circumstance in which benefits are denied, longstanding Michigan unemployment insurance case law requires that UIA apply the law to the facts narrowly to deny benefits (and certainly narrowly when considering imposing a double, treble, or quadruple penalty) *Tomei* v *General Motors Corp*, 194 MichApp 180 (1992).

UIA informed us that it has made substantial progress identifying and addressing fraud. According to UIA, it has issued $39.3 million in restitution and fraud penalties in 2010, another $24.5 million in 2009, and another $14 million in 2008. UIA responded that the 2010 data reveals a 60% increase over 2009 and a 180% increase over 2008.

UIA also informed us that it employs hundreds of unemployment insurance examiners (UIEs) who decide unemployment benefit issues, including fraud determinations. According to UIA, UIEs generally do not perform these adjudicatory functions until they have achieved three to five years of UIA experience and have undergone extensive adjudication and practicum training. UIA responded that, as a result of working on thousands of claims, staff become aware of, and quickly identify, the common mistakes and misconceptions that claimants make because of common issues that cause the claimants confusion, as the UIEs have been able to observe over time, rather than from the intent to defraud. UIA stated that ultimately, in every case, the claims examiner must exercise his/her professional judgment and discretion as to the disposition.

UIA further informed us that, collectively, these controls provide UIA with reasonable but not absolute assurance that correct classifications of claimants' intentional misrepresentations are made. UIA stated that it will continue to work to improve staff training by incorporating lessons learned from newly discovered fraud practices and schemes.

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FINDING

2. Claimant Wage and UI Benefit Payment Cross Match Process

BPC did not have effective controls to ensure that its claimant wage and UI benefit payment cross match process consistently detected overpayments to claimants. As a result, we estimate that during fiscal years 2007-08 and 2008-09, BPC may not have detected and recovered as much as $55.7 million to $61.3 million in UI benefit overpayments and associated penalties.

UIA requires claimants to biweekly certify their employment status and report their gross wages for the week(s) that they claim UI benefits. Claimants who receive gross wages that are less than 150% of their full weekly benefit amount* are generally eligible for partial UI benefits. To verify that claimants accurately report their gross wages to UIA, BPC's procedures require it to cross match UIA's employer-reported quarterly wage records and UI benefit payment records to identify claimants who received UI benefits and had gross wages that may preclude their eligibility for part or all of the UI benefit. Also, the procedures require BPC to investigate identified claimants by comparing their respective employers' weekly wage records with the wages reported by the claimants during the biweekly certification process and to contact the claimants for additional information when it appears that they have not accurately reported their wages to UIA. Further, when BPC identifies unreported wages, BPC's procedures require it to calculate the corresponding UI benefit overpayment; assess penalties, if necessary; and establish restitution. Finally, the procedures require BPC to document its investigation activities.

Our review of BPC's implementation of these procedures disclosed:

a. BPC did not conduct cross matches of UIA's employer-reported quarterly wage records and UI benefit payment records for 4 (50.0%) of the 8 quarters within fiscal years 2007-08 and 2008-09. Also, as of August 1, 2010, BPC had not conducted quarterly cross matches for fiscal year 2009-10. Near the close of our audit fieldwork, BPC conducted the cross match for the first quarter of fiscal year 2009-10. However, BPC informed us that it had no plan to conduct the four quarterly cross matches that it had not conducted in fiscal years 2007-08 and 2008-09 because of work load constraints.

* *See glossary at end of report for definition.*

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For the 4 quarterly cross matches that it did conduct, BPC reported that it identified UI benefit overpayments totaling $7.1 million, some of which BPC identified as fraudulent. Also, BPC referred an additional estimated $5.8 million in UI benefit overpayments to UIA's Fraud Investigation Unit (FIU) for fraud determination. Fraud-related penalties associated with the $7.1 million in overpayments would have ranged from $4.1 million to $8.1 million and fraud-related penalties related to the estimated $5.8 million referred to FIU would have totaled up to $23.2 million. If BPC had conducted cross matches for the remaining four quarters of fiscal years 2007-08 and 2008-09 with similar results, identified overpayments and fraud-related penalties would have increased by $40.1 million to $44.2 million during the two fiscal years.

b. BPC did not identify for investigation and recovery of potential overpayments claimants who had UI benefits and employer-reported wages below established review thresholds. Prior to fiscal year 2008-09, BPC established a minimum quarterly threshold of seven weeks of benefit payments and $7,000 in employer-reported quarterly wages before it would initiate an investigation of potential overpayments. To reduce its investigative work load, beginning with the third quarter of fiscal year 2008-09, BPC increased the UI benefit payment threshold from seven to nine weeks. Increasing the UI benefit payment threshold to nine weeks reduced the total number of claimants identified for investigation in the third and fourth quarters of fiscal year 2008-09 by 7,857, an average of 38.7% per quarter. If BPC's identified overpayments decreased proportionate to the reduction in claimant investigations, its annual overpayments and assessed fraud-related penalties identified for investigation potentially decreased by $5.0 million and $10.5 million, respectively, to $5.0 million and $12.1 million, respectively. A lack of readily available data precluded us from estimating the potential overpayments for claimants with UI benefits and employer-reported wages below the original thresholds. However, based on the change in potential overpayments using the original and revised thresholds, the amount is likely to be significant. At the time of our audit, BPC informed us that it was evaluating further threshold increases to further reduce BPC's work loads.

c. BPC did not send follow-up requests for claimants' weekly wages to employers that failed to respond to BPC's initial requests for the information.

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Also, BPC did not attempt to identify and contact employers that consistently failed to respond to BPC's wage data requests. When an employer did not respond to a wage data request, BPC ceased its investigative process without determining the appropriateness of UI benefit overpayments under investigation. Although we could not readily determine how often employers failed to respond to BPC's wage data requests, BPC estimated the frequency at approximately 60%. Considering the significant amount of overpayments that BPC identified in its completed investigations of cross match results, even a modest increase in the employer response rate could result in a significant increase in identified overpayments and assessed fraud-related penalties.

d. BPC did not periodically perform a supervisory review of completed investigations of cross match results to ensure that they were accurate, timely, and sufficiently documented. We reviewed available documentation for 42 such investigations and found that BPC staff frequently failed to document their investigation activities, thereby precluding any determination about the appropriateness of the investigations. Also, BPC employees generally did not timely contact claimants or assess penalties and establish restitution, when necessary.

RECOMMENDATIONS

We recommend that BPC establish effective controls to ensure that its claimant wage and UI benefit payment cross match process consistently detects overpayments to claimants.

We also recommend that BPC recover overpayments and associated penalties related to claimants who received UI benefits for which they were ineligible.

AGENCY PRELIMINARY RESPONSE

UIA agrees. UIA informed us that the wage and benefit payment cross match has been completed for the third and fourth quarters of 2009 as well as for all quarters in 2010. UIA stated that BPC had begun performing the consecutive quarterly cross matches before this audit began and will continue to process the cross match each quarter. UIA also stated that wages are not retained in the UI system after eight quarters; therefore, it is not possible to complete cross matches from previous quarters.

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FINDING

3. New Hire Cross Matches

BPC did not properly investigate or document its investigation of potential false claims identified in its cross matches of new hire databases. As a result, BPC potentially lost recovery of a significant amount of overpayments and associated penalties.

Title 42, Section 653a of the *United States Code* requires employers to promptly report the name, address, and social security number (SSN) of all newly hired, rehired, or recalled employees to the State Directory of New Hires* (SDNH), which is aggregated into the National Directory of New Hires* (NDNH). BPC's procedures require it to cross match UIA's benefit payment records with records of newly hired, rehired, or recalled employees included in SDNH and NDNH. The purpose of the cross matches is to identify claimants who continue to receive benefits after being hired, rehired, or recalled. The procedures require BPC to investigate these claimants by reviewing information already available at UIA; contacting the claimants' employers; and, if necessary, contacting the claimants. When a UI benefit overpayment is confirmed or when a claimant fails to provide BPC with requested information, BPC is required to pursue restitution of the overpayment plus associated penalties.

Our attempts to obtain and review SDNH and NDNH cross matches occurring between October 1, 2007 and June 30, 2010 and between October 1, 2007 and May 1, 2010 resulted in BPC informing us that it did not maintain documentation related to the SDNH cross matches conducted prior to March 2009. Also, BPC could not locate documentation related to the claimants and related investigations for 19 of the 67 SDNH cross matches occurring between March 3, 2009 and June 30, 2010 because BPC staff did not return them to the supervisor or the documentation was misplaced during an office move. From the remaining cross matches that were on file, we randomly selected and reviewed 20 claimants. Our review disclosed:

a. BPC did not investigate 8 (40.0%) of the claimants identified in cross matches. BPC informed us that it lacked sufficient staffing to investigate many of the claimants identified in the SDNH cross matches, focusing instead on NDNH

** See glossary at end of report for definition.*

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cross matches because they should identify the same claimants as the SDNH cross matches, albeit at a later date. Thus, we expanded our testing to an analysis of the electronic records of NDNH cross matches, which disclosed that BPC had not investigated 4,356 (19.4%) of the 22,502 claimants identified in the NDNH cross matches conducted from October 1, 2007 through May 1, 2010. BPC informed us that it was unaware of its failure to investigate these claimants.

Although we did not make a determination of the amount of overpayments that may have resulted from BPC's failure to investigate claimants identified in its cross matches, the importance of such investigations is significant. For example, BPC reported that during the period January 1, 2008 through September 30, 2010, its investigations resulted in identification of UI benefit overpayments totaling $2.4 million. In addition, fraud-related penalties associated with these overpayments ranged from $818,000 to $2.0 million. If BPC had investigated all claimants identified in the aforementioned cross matches, it is likely that BPC would have significantly increased these amounts.

b. BPC did not follow up with employers that did not respond to BPC's original wage data requests. When an employer did not respond to a wage data request, BPC ceased its investigation, thus precluding the identification of potential overpayments.

c. BPC did not document its investigation of 7 (35.0%) claimants identified by the cross matches. Without such documentation, BPC cannot ensure that the investigations were complete, accurate, and timely.

RECOMMENDATION

We recommend that BPC properly investigate and document its investigation of potential false claims identified in its cross matches of new hire databases.

AGENCY PRELIMINARY RESPONSE

UIA agrees. UIA stated that some of the 4,356 records identified encompass quarterly wage information that UIA agrees was not investigated but will now be investigated on a quarterly basis. UIA informed us that additional follow-up is needed when employers fail to respond to BPC's original wage requests. UIA also

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informed us that better documentation should be maintained to ensure that investigations are complete, accurate, and timely. UIA will take immediate action to comply with these aspects of the finding.

UIA stated that the NDNH national database provides more accurate new hire information than the SDNH database because an employer-supplied W-4 is required as opposed to the undocumented new hire information supplied to the SDNH database. UIA also stated that the date of hire is a required field on the NDNH database but not on the SDNH database. UIA informed us that this data is essential to the investigation. UIA also informed us that, accordingly, it supports BPC's decision not to investigate cross matches identified on SDNH reports on a regular basis as these investigations tend to be unproductive and based on inaccurate and incomplete data.

FINDING

4. Cross-Program Benefit Offset Process

UIA had not established a reciprocal agreement with the U.S. Department of Labor (USDOL) to allow for a cross-program benefit offset process to recover UI benefit overpayments. As a result, we estimate that UIA did not recover $12.1 million in UI benefit overpayments identified from October 1, 2007 through September 15, 2010 and a potentially significant but undetermined amount for benefit overpayments identified prior to but still outstanding (i.e., not written off) during this period.

Section 421.62 of the *Michigan Compiled Laws* authorizes UIA to recover UI benefit overpayments by offsetting (i.e., reducing) the UI benefits still payable to applicable claimants. Up to 100% and 20% of claimants' otherwise payable UI benefits can be offset to recover overpayments with and without associated claimant fraud, respectively. However, to offset UI benefit payments from one program (e.g., State-funded) to recover an overpayment made from another program (e.g., the federally funded Emergency Unemployment Compensation Program), the State must enter into a reciprocal agreement with USDOL. The reciprocal agreement guarantees to USDOL that the State will offset benefit payments from the State's UI benefit program when the related overpayments were made from a federal UI program and vice versa.

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As of September 15, 2010, there were 19,296 claimants with outstanding UI benefit overpayments totaling $37.6 million that UIA identified between October 1, 2007 and September 15, 2010 to whom UIA paid UI benefits after identifying their benefit overpayments and who were not seeking bankruptcy protection. We examined 16 of the claimants with outstanding overpayments totaling $27,373 and noted that UIA could have recovered a total of $8,783 (32.1%) for 11 (68.8%) claimants by using cross-program offset. If our nonstatistically derived percentage of outstanding overpayments collectible through cross-program offset (32.1%) is reflective of the conditions present throughout the population of overpayment cases identified during the aforementioned period ($37.6 million), and we do not assert that they are, we estimate that UIA could have increased its overpayment recoveries by $12.1 million ($37.6 million x 32.1%).

UIA informed us that it did not enter into a reciprocal agreement with USDOL because UIA was waiting to implement a new electronic data system capable of conducting cross-program benefit offset. However, the cross-program benefit offset has been available since 1987.

RECOMMENDATION

We recommend that UIA establish a reciprocal agreement with USDOL to allow for a cross-program benefit offset process to recover UI benefit overpayments.

AGENCY PRELIMINARY RESPONSE

UIA agrees. UIA informed us that it has considered a method to implement the cross-program benefit offset; however, because of other information technology priorities and limited information technology resources, such implementation has not occurred. UIA stated that requirements for the new UI system include this provision. UIA also stated that it is in the early stages of updating its 25 year old computer system and that this cross-program benefit offset process is to be included within the project.

FINDING

5. Verification of Claimant Identity

BPC did not consistently verify claimants' identities with the Social Security Administration (SSA). Also, BPC frequently did not document, retain documentation of, or timely complete its claimant identity verification efforts. As a

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result, we estimate that UIA paid UI benefits to ineligible claimants and failed to establish restitution for improper payments totaling as much as $8.2 million.

Title 42, Section 1320b-7 of the *United States Code* requires UIA to obtain and use each claimant's SSN to help identify information needed for determining the claimant's eligibility for UI benefits. Also, UIA's procedures require it to provide SSA with each new claimant's reported SSN, date of birth, and first and last name for verification with SSA's records. SSA provided daily discrepancy reports to UIA identifying claimants whose information did not match, in whole or in part, the information on file with SSA. BPC's procedures require it to investigate the identified discrepancies for claimants who meet the unemployment program's other eligibility requirements by requesting supporting information from the claimants. Generally, BPC accomplished this by mailing a request for information to each applicable claimant. The procedures also require BPC to hold claimants ineligible for UI benefits and establish restitution, if applicable, when a claimant fails to answer BPC's request for information within 14 days or if the claimant-provided information fails to resolve the discrepancy. The procedures further require BPC to document its discrepancy investigation activities.

We requested the daily discrepancy reports for October 1, 2007 through June 1, 2010. However, BPC informed us that it discarded all discrepancy reports received prior to September 1, 2009. Also, BPC could not locate 44 (22.3%) of the 197 reports for September 1, 2009 through June 1, 2010 because BPC's investigative staff did not return the reports. Further, of the remaining 153 reports that were returned, BPC did not review them to ensure that all identified discrepancies were investigated.

Our review of 42 randomly selected discrepancies from the 153 returned reports disclosed:

a. As of August 31, 2010, BPC had not investigated 2 (4.8%) discrepancies that SSA identified 196 and 234 days earlier. UIA overpaid the 2 claimants a total of $15,754. BPC staff stated that they mistakenly overlooked 1 of the 2 discrepancies but intentionally dismissed the other discrepancy, and discrepancies similar to it, because it related to the extension of an existing claim and not to a new claim.

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If the errors identified in our nonstatistical random sample are representative of those in the estimated population of discrepancies from October 1, 2007 through August 31, 2010, and we do not assert that they are, we estimate that BPC overlooked discrepancies with potential overpayments totaling $7.1 million. We calculated this estimate by dividing the total number of discrepancies reported (409) for 14 randomly selected days by the total number of new claims filed (49,919) during these same days. We multiplied this quotient (0.0082) by the total new claims from the cited period (2,312,024) to estimate the total discrepancies reported during the period (18,959). Further, we multiplied this estimate (18,959) by the average potential overpayment per discrepancy for the 42 audited discrepancies ($375).

b. BPC did not initiate investigations timely for 10 (23.8%) claimants. Claimants who satisfy eligibility requirements will generally continue to receive UI benefits during a discrepancy investigation. Thus, it is imperative that BPC complete its investigations in a timely manner. Absent a timeliness standard, we considered an investigation initiation untimely if BPC initiated it more than 7 days after SSA reported the related discrepancy. BPC did not initiate the investigation for the 10 claimants until 8 to 121 days after SSA reported the discrepancies. In addition, BPC did not timely terminate 8 (19.0%) claimants' eligibility for UI benefits after the claimants failed to provide BPC with requested identity-related information within the required 14-day period. The requests for information were outstanding from 34 to 272 days before BPC either terminated the claimants' UI benefit eligibility or verified the claimants' identity.

As of August 31, 2010, UIA had overpaid 4 (40%) of these claimants a total of $11,893. If BPC had timely investigated these cases and/or timely discontinued payments to claimants who did not respond to requests for identity-related information within the required 14 days, UIA could have avoided making $2,490 (20.9%) of the overpayments. If the conditions identified in our nonstatistical sample testing are representative of the conditions present in the estimated population of discrepancies from October 1, 2007 through August 31, 2010, and we do not assert that they are, $1.1 million in benefit overpayments could have been avoided, thereby negating the need for recovery. To calculate this estimate, we divided the $2,490 in identified avoidable overpayments by the number of discrepancies

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reviewed (42) to determine the average avoidable overpayment per discrepancy reviewed. We multiplied the product ($59) by the estimated number of discrepancies for the cited period (18,959).

c. BPC did not document when it requested and received identification-related information and/or resolved discrepancies for 18 (42.9%) claimants in accordance with BPC's procedure. Without this documentation, BPC could not prove that it appropriately and timely investigated identified discrepancies.

d. BPC did not investigate discrepancies for claimants whose employers applied for UI benefits on the claimants' behalf through UIA's electronic employer-filed claims process. Rather, UIA relied on each employer to ensure the accuracy of its employees' identity-related information. Despite this, BPC did not notify employers when their employees' identity-related information disagreed with SSA's information. UIA informed us that there were approximately 151,000 new employer-filed claims during the three-year period ended September 30, 2010.

As of September 30, 2010, the State had outstanding federal loans to the Unemployment Compensation Fund (UCF) totaling $3.8 billion. Consequently, to help repay the outstanding federal loans, it is imperative that UIA improve its overpayment identification efforts.

RECOMMENDATIONS

We recommend that BPC consistently verify all claimants' identities with SSA.

We also recommend that BPC document, retain documentation of, and timely complete its claimant identity verification efforts.

We further recommend that BPC identify and investigate all discrepancies that it did not previously investigate.

AGENCY PRELIMINARY RESPONSE

UIA agrees and informed us that it now verifies claimants' identities and is documenting its verification efforts. UIA also informed us that it is reviewing SSA investigations to ensure that all identity discrepancies are resolved.

RECEIVED by MSC 12/9/2020 3:51:27 PM

UIA responded that it should be noted that every investigation does not result in a determination that an overpayment occurred. According to UIA, a discrepancy will occur if the name or numbers (on the SSN or date of birth) are transposed because of human error or if the claimant had not properly updated SSA records when a change of name occurred. UIA stated that, after reverification with SSA, these cases are no longer kept per SSA guidelines. UIA also stated that, for 2010, the percentage of discrepancies that resulted in an overpayment was approximately 6.5%.

FINDING

6. Civil Judgments and Wage Garnishments

The Benefit Overpayment Collections Unit (BOC) did not consistently request the Department of Attorney General to obtain civil judgments against claimants who were delinquent in paying restitution for overpaid UI benefits. Also, BOC did not effectively monitor the employment status of those claimants with civil judgments obtained against them. As a result, BOC missed opportunities for recovering claimant benefit overpayments from approximately 6,000 claimants via civil judgments, which extend time recovery periods and provide for the garnishment of future wages.

BOC's procedures require it to request the Department of Attorney General to obtain civil judgments against claimants who owe at least $1,000 in restitution for overpaid UI benefits, have quarterly wages of $5,000 or more, and have not paid restitution for two consecutive months. Civil judgments against claimants allow the Department to pursue recovery of UI benefit overpayments and related penalties through wage garnishment and, although not done, through attachment of liens to delinquent claimants' real and personal property. Also, civil judgments extend the time allowed for recovering UI benefit overpayments and related penalties on cases with and without claimant fraud from 6 years and 3 years, respectively, to 10 years. UIA stated that it did not use liens to enhance its collections because of the severe penalties imposed for not removing liens timely.

For the 35.5-month period ended September 15, 2010, we identified 80,725 claimants with active restitution accounts totaling approximately $250 million. We analyzed UIA records for the 24-month period ended June 30, 2010 (a lack of readily available quarterly wage data prohibited an analysis of the entire

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35.5-month period) and identified 2,691 claimants who had not paid any restitution and met all BOC civil judgment criteria. The 2,691 claimants owed restitution totaling $18.0 million. We also identified 5,200 claimants owing a total of $32.8 million in restitution who had paid some restitution and met all other BOC civil judgment criteria sometime during the period July 1, 2008 through June 30, 2010. Because we could not readily determine how many of these 5,200 claimants failed to make restitution payments during at least two consecutive months (and therefore met all 3 civil judgment criteria), we reviewed the detailed restitution payment data for 25 randomly selected claimants. Sixteen (64.0%) of the claimants failed to make restitution payments during two consecutive months. Based on our test results, we estimate that BOC could have pursued civil judgments for 3,328 (5,200 x 64.0%) of the 5,200 claimants. Using a statistical estimation methodology, there is a 95% probability that the true error rate (civil judgments not pursued) could range from a low of 44.84% to a high of 83.16%. Based on this range, we project that the number of civil judgments that BOC could have pursued ranges from at least 2,332 judgments to as many as 4,324 judgments.

Despite an estimated 6,019 (2,691 + 3,328) claimants qualifying for a civil judgment during the cited 24-month period, during the larger 35.5-month period ended September 15, 2010, BOC requested civil judgments for only 534 claimants. BOC stated that insufficient computing resources prohibited it from electronically identifying and referring all applicable claimants to the Department of Attorney General.

The Department of Attorney General informed us that when it obtains civil judgments against claimants, it first attempts to establish payment plans with the claimants and, when necessary, attempts to garnish the claimants' wages. When claimants do not make restitution payments in accordance with their agreed upon payment plans or are not working, the Department informed us that it sends the claimants' case files back to BOC. It then becomes BOC's responsibility to identify and notify the Department when claimants start working. To accomplish this, BOC informed us that it haphazardly reviews returned claimant case files to determine if the claimants are working. BOC also informed us that, after an undefined period of inactivity, it sends the claimant case files to its records warehouse. Once there, all efforts to recover the associated UI benefit overpayments through the Department are suspended.

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We reviewed available documentation for 10 randomly selected claimants who, based on employer-reported quarterly wage data submitted to UIA, appeared to be working after the date of their civil judgments. We identified 1 (10.0%) claimant whom BOC should have, but did not, refer to the Department of Attorney General and 1 (10.0%) claimant who BOC did not refer to the Department until 10 months after UIA obtained the claimant's wage information. Also, BOC could not locate the case files for 5 (50.0%) claimants who were not eligible for garnishment at the time of our review but whose civil judgments were still effective for at least 8 more years. It is likely that BOC had sent these case files to its records warehouse.

During the three fiscal year period ended September 30, 2010, UIA informed us that it wrote off as uncollectible $86.0 million in accounts receivable related to claimant UI benefit overpayments. With more civil judgments and wage garnishments, BOC could have recovered or greatly extended its recovery time for much of this amount.

RECOMMENDATIONS

We recommend that BOC consistently request the Department of Attorney General to obtain civil judgments against claimants who are delinquent in paying restitution for overpaid UI benefits.

We also recommend that BOC effectively monitor the employment status of claimants with civil judgments obtained against them.

AGENCY PRELIMINARY RESPONSE

UIA agrees. However, UIA informed us that there are several impediments to accomplishing its desired goal:

- The report used to determine the delinquent accounts that may meet garnishment criteria must be reviewed page by page and averages 2,500 pages per monthly report.

- Each case must be manually calculated.

- The manual assembly of documentation and media presentation to the Department of Attorney General.

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- A lack of staff to work exclusively on judgment/garnishment case preparation.

- Additional attorneys will be necessary to process the increased number of judgments required for the garnishment process.

UIA informed us that as an alternative to the time and labor intensive processes currently in use, software with the ability to gather determinations of overpayment, employment data, and wage information into a comprehensive report would greatly reduce the time needed to find a case with all elements required for judgment/garnishment. UIA stated that it is working toward designing, developing, and implementing a new computer system that is expected to incorporate and enhance the administrative efficiencies in regard to this paper intensive process. UIA also stated that there are several software packages that it is exploring to assist in this effort.

According to UIA, in early 2011, the Internal Revenue Service (IRS) is expected to allow states to intercept federal income tax refunds from claimants who are delinquent in restitution repayments. UIA informed us that it is committed to participating in this program immediately upon permission being granted by the IRS. According to UIA, this additional source of monies will reduce the amount and number of restitution accounts and result in larger sums deposited into the UI Trust Fund. Also, UIA stated that the recently created Benefit Enforcement Unit's mission is to actively pursue collection of restitution through all means available, including assisting the Department of Attorney General in significantly increasing the number of judgments obtained and wage garnishments pursued through the various county courts in the State. UIA also stated that as the process is refined, it is anticipated that the number of garnishments will increase twofold in the coming year and continuously increase thereafter.

FINDING

7. UI Benefit Payments to Deceased Claimants

UIA had not established and implemented procedures to identify and recover UI benefits improperly paid to deceased claimants. As a result, UIA did not identify and recover improper UI benefit payments totaling up to approximately $350,000 made from October 1, 2007 through June 30, 2010. Because most of the improper

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payments would likely be fraudulent, additional fraud-related penalties would range from $700,000 to $1.4 million.

To obtain UI benefits, UIA requires otherwise eligible claimants to biweekly certify that they were able and available to work, seeking work, etc., during the prior two-week period. Claimants generally made these certifications by phone. To help reduce the incidence of fraud, UIA assigned claimants personal identifying numbers to use in their biweekly certifications. However, because claimants did not have to appear in person when certifying for benefits and because their personal identifying numbers could easily be known to family members or others, there is heightened risk of UI benefit fraud related to deceased claimants. Because it was not possible for UIA to immediately know when a claimant died, related UI benefit fraud was not readily detected.

To identify the deceased claimants who improperly received UI benefits, we cross matched UI benefit payment records covering the period October 1, 2007 through June 30, 2010 to the State's official death records. We found 115 deceased claimants for whom UIA continued to make UI benefit payments. The improper UI benefit payments ranged from 1 to 87 weeks and totaled as much as $32,594 for a single claimant.

Section 421.54 of the *Michigan Compiled Laws* provides for penalties of 200% and 400% for fraud-related overpayments totaling less than $500 and overpayments totaling $500 or more, respectively. Consequently, fraud-related penalties for the $350,000 in fraudulent overpayments would range from $700,000 ($350,000 x 200%) to $1.4 million ($350,000 x 400%).

RECOMMENDATION

We recommend that UIA establish and implement procedures to identify and recover UI benefits improperly paid to deceased claimants.

AGENCY PRELIMINARY RESPONSE

UIA agrees and acknowledges that benefit payments may have been issued to a small number of deceased persons, most of which UIA suspects were because of identity theft. UIA informed us that it plans to address this problem by implementing an automated cross match process (utilizing appropriate State or federal databases) on the proposed new UI system. UIA stated that, in the interim,

RECEIVED by MSC 12/9/2020 3:51:27 PM

it will perform a manual cross match process to detect deceased claimants and will pursue legal remedies when appropriate.

EFFECTIVENESS IN COMPLETING NONMONETARY ELIGIBILITY DETERMINATIONS IN A TIMELY MANNER

COMMENT

Audit Objective: To assess the effectiveness of UIA's efforts to complete nonmonetary eligibility determinations in a timely manner.

Audit Conclusion: We concluded that UIA's efforts to complete nonmonetary eligibility determinations in a timely manner were not effective. Our assessment disclosed three reportable conditions related to nonmonetary eligibility determinations, alien claimants, and claimant fraud (Findings 8 through 10).

Summary of Effects: We estimate that UIA potentially made improper UI benefit overpayments of $33,900,000 as identified in Findings 8 and 9.

For Finding 8, we estimated our results by projecting the results of our nonstatistical tests of randomly selected sample items to the population of items subject to sampling. Although nonstatistical sampling does not provide an explicit level of confidence for the projection of test results to a population, it is a commonly used and industry-accepted audit sampling methodology. Our nonstatistical sampling methodology utilized a randomly selected sample from the identified period, thus attempting to ensure that the items tested provided a true representation of the entire population.

For Finding 9, the reported overpayments were derived from a full review of applicable UIA database records.

FINDING

8. Nonmonetary Eligibility Determinations

UIA did not timely adjudicate* nonmonetary issues* regarding claimants' eligibility for UI benefits. As a result, we estimate that UIA may have made improper UI

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benefit payments totaling $26.0 million from October 1, 2007 through August 21, 2010.

To qualify for UI benefits, the Michigan Employment Security Act requires claimants to meet various earnings and nonmonetary eligibility requirements. The nonmonetary eligibility requirements include having a qualifying job separation reason, being able and available to work, seeking work, and registering for work with the State's workforce agency. When an issue arises as to whether a claimant meets one or more of the various nonmonetary eligibility requirements, UIA must obtain and weigh the relevant facts from the applicable employer, claimant, and/or third party and issue a nonmonetary eligibility determination. If a claimant has already begun receiving UI benefits when an issue arises, the claimant will continue to receive the UI benefits pending UIA's issuance of a determination on the issue. Thus, to limit potential overpayments, it is imperative that UIA timely complete its nonmonetary eligibility determinations. Recognizing the importance of timely nonmonetary eligibility determinations, USDOL's Employment and Training Administration established a performance standard requiring that at least 80% of nonmonetary eligibility determinations (excluding those resulting from an appeal) be completed within 21 days of the opening of the related issue.

From October 1, 2007 through August 21, 2010, UIA completed 1.3 million nonmonetary eligibility determinations. UIA records indicated that approximately 177,000 (13.6%) of these nonmonetary eligibility determinations were untimely and resulted in UIA establishing restitution for UI benefit overpayments. Not included within this amount were nonmonetary eligibility determinations that were subsequently appealed.

To assess the financial impact of untimely nonmonetary eligibility determinations, we randomly selected and reviewed 50 such determinations that resulted in UIA establishing restitution for UI benefit overpayments. The UI benefit overpayments associated with the 50 sampled items totaled $40,726 for an average of $815 per determination. If UIA had processed the nonmonetary eligibility determinations timely, it would have reduced the overpayments by $7,359 (18.1%) for an average of $147 per determination. Because the total restitution for the 177,000 nonmonetary eligibility determinations was not readily available, we could not statistically project our results. However, if our nonstatistical test results are reflective of the conditions present for the 177,000 nonmonetary eligibility

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determinations previously noted, and we do not assert that they are, we estimate that UIA could have reduced its benefit overpayments during the cited period by $26.0 million (177,000 x $147).

UIA attributed its untimely processing of nonmonetary eligibility determinations to the significant increase in unemployment experienced during our audit period. While this may have exacerbated UIA's untimeliness, it is noteworthy that untimely determinations have been a persistent condition for many years. In our June 18, 1992 audit of the Unemployment Insurance Program, we noted a similar condition and recommended that nonmonetary eligibility determinations be processed on a timely basis.

RECOMMENDATION

We recommend that UIA timely adjudicate nonmonetary issues regarding claimants' eligibility for UI benefits.

AGENCY PRELIMINARY RESPONSE

UIA agrees and informed us that it has taken action to comply.

According to UIA, the audit period enveloped the Great Recession in its entirety during which Michigan experienced the highest national unemployment rate for 48 consecutive months (from May 2006 through April 2010). Beginning in July 2008 and ending in December 2010, an unprecedented nine separate federal unemployment benefit extensions were enacted into federal law, averaging just 3½ months between extensions. The historical circumstances of the Great Recession disrupted UIA operations in a variety of contexts, including the issuance of timely nonmonetary adjudications.

Also according to UIA, when the ninth unemployment extension was signed into law on or about Friday, December 17, 2010, it provided a continuous status-quo extension through 2011. Unlike the previous federal extensions, UIA now has the longest period of operational certainty and continuity since June 2007. To effectively leverage the strategic opportunity afforded by the 13-month extension, UIA quickly designed and executed a strategy to address and redress this finding.

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Further according to UIA, the new strategy was launched on January 24, 2011 and, in three weeks' time, UIA produced a 15% net decrease in pending items, including nonmonetary adjudications. UIA informed us that, as a consequence, it fully expects that it will continue to make substantial progress on this finding in the months to come and, if production continues at the present pace, expects to be current within approximately six to eight months.

FINDING

9. Alien Claimants

UIA did not ensure that alien claimants met federal and State eligibility requirements for receiving UI benefits. As a result, from October 1, 2007 through June 30, 2010, UIA potentially made improper UI benefits payments totaling up to $7.9 million to 1,201 alien claimants.

To qualify for UI benefits, the Michigan Employment Security Act requires that all claimants meet minimum earnings requirements during their base period* and be available for work during every week for which they certify for benefits. In addition, Section 3304(a)(14)(A) of the Internal Revenue Code requires alien claimants to be legally authorized to work in the United States during their base period and during any weeks for which they certify for benefits. Claimants' base period earnings are used to calculate their weekly benefit amount and their number of weeks of UI benefit eligibility. Claimants who are not legally authorized to work in the United States are not available to work in the United States and, consequently, do not meet the State's availability requirement for receiving UI benefits.

To help ensure that only eligible alien claimants receive UI benefits, the federal Social Security Act requires alien claimants to provide UIA with documentation supporting their identity and legal work authorization status. Although UIA verified that alien claimants were authorized to work in the United States on the date the claimants applied for UI benefits, UIA generally did not obtain and use the required documentation to determine if the alien claimants were authorized to work during their base period or during the weeks that they received UI benefits.

* *See glossary at end of report for definition.*

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We quantified the potential improper payments by summing all payments made to alien claimants after their work authorization dates recorded in UIA's database had expired. It is possible that some of the 1,201 alien claimants previously noted had valid extensions to their work authorization dates and were eligible for UI benefits but had not submitted the related documentation to UIA or UIA had not updated the authorization date in its database.

UIA informed us that it did not obtain and use the required documentation from alien claimants because it relied on the employer community to verify the identity and legal work authorization status of the aliens during their base period and benefit year.

RECOMMENDATION

We recommend that UIA ensure that alien claimants meet federal and State eligibility requirements for receiving UI benefits.

AGENCY PRELIMINARY RESPONSE

UIA agrees. UIA informed us that it follows the instructions provided by USDOL in Unemployment Insurance Program Letter (UIPL) 07-98 for verification of aliens using the Systematic Alien Verification for Entitlement (SAVE) Program. UIA also informed us that the SAVE verification is always performed at the application for unemployment benefits. UIA stated that, in addition, since the beginning of the Emergency Unemployment Compensation program in 2008 and the payment of extended benefits in Michigan in 2009, SAVE verification has been performed for each claimant applying for benefits under those programs as well.

UIA informed us that it is considering procedures to re-verify work authorization after the document expiration date (for those documents that contain an expiration date). UIA also informed us that it is centralizing the SAVE process within one unit in order to more efficiently use its staff to better monitor all SAVE transactions to make sure that they continue to be handled correctly.

UIA stated that its procedures regarding alien claimants presenting documentation by entering the document number during the automated claim filing process are consistent with the instruction provided by USDOL in UIPL 05-97. UIA also stated that it only relies on employers to verify legal work authorization with employers

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who have elected to use UIA's employer-filed claim process and have agreed to do so in order to file UI claims on behalf of their employees.

FINDING

10. Claimant Fraud

UIA did not promptly issue new determinations holding claimants ineligible for UI benefits for those claimants strongly suspected of UI benefit fraud exceeding $5,000. As a result, UIA continued to pay UI benefits to ineligible claimants.

Section 421.27(a)(1) of the *Michigan Compiled Laws* states that UIA must issue a new determination holding a claimant ineligible for UI benefits before it can stop paying UI benefits to a previously eligible claimant. UIA informed us that when it strongly suspected that claimants fraudulently obtained UI benefits exceeding $5,000, it referred the claimants to UIA's Fraud Investigation Unit (FIU). However, it was not until FIU completed its investigation and obtained a disposition from the court that UIA issued a new determination holding applicable claimants ineligible for UI benefits. For fraud cases totaling less than $5,000, UIA claims examiners issue determinations without seeking prosecution through the courts.

FIU informed us that it received 3,636 fraud referrals in fiscal year 2009-10 and that, as of October 2010, it was approximately 12 months behind investigating new referrals. Also, FIU stated that its investigations, once started, typically take a month to complete and court proceedings last up to four months. Thus, up to 17 months may elapse before UIA stops claimants involved in UI benefit fraud from obtaining UI benefits. Such a time frame increases the risk for significant benefit overpayments.

Our audit procedures, though not specifically designed to identify situations such as this, identified one such case. On August 26, 2009, UIA referred a claimant to FIU who had worked full time while simultaneously certifying for and receiving 31 weeks of UI benefits totaling $7,341. In a written statement to UIA, the claimant admitted to defrauding UIA because of personal financial difficulties. However, from August 27, 2009 through September 25, 2010, the claimant continued to work full time and fraudulently obtain UI benefits. In addition, on September 26, 2010, the claimant opened a new UI claim based on the wages earned during the period that the claimant reported being unemployed and received UI benefits. Under the

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new claim, UIA inappropriately deemed the claimant eligible for continued UI benefits. From August 27, 2009 through December 25, 2010, the claimant fraudulently received additional UI benefits totaling $19,462. As the claimant has already indicated that his actions were motivated by personal financial problems, the likelihood that UIA will fully recover the $26,803 in UI benefit overpayments and $107,212 in fraud-related penalties is significantly diminished.

UIA informed us that it did not issue new determinations on fraud-related cases before referring them for prosecution as many courts refuse to hear cases involving claimants who have already been assessed fraud-related penalties, an action that coincides with the issuance of a new determination. Notwithstanding, it is incumbent upon UIA to prioritize the issuance of new determinations for claimants who have committed UI benefit fraud and continue to receive UI benefits.

RECOMMENDATION

We recommend that UIA promptly issue new determinations holding claimants ineligible for UI benefits for those claimants strongly suspected of UI benefit fraud.

AGENCY PRELIMINARY RESPONSE

UIA agrees with the single case cited and has acknowledged that additional benefits were paid for this fraud referral case. UIA informed us that this case was being prosecuted in February 2011.

UIA stated that, in 2009, investigative caseloads increased because of the increase in unemployment claims. UIA informed us that there has always been a direct correlation between the number of claims filed and the number of fraud referrals. UIA stated that an insufficient number of trained investigative staff was in place to handle this increased work load. UIA also stated that the increased work load led to longer time frames before the investigation could be conducted. According to UIA, in fiscal year 2008-09, FIU closed 1,076 cases and, for fiscal year 2009-10, FIU closed 1,749 cases: a 62% increase. Also according to UIA, for fiscal year 2009-10, referrals were double the amount of closed cases.

UIA informed us that, for fiscal year 2010-11, UIA has closed 1,294 cases. UIA responded that by doubling the staff in FIU and by assigning 6 additional staff to triage referrals by gathering background information, it enabled additional production increases as investigative agents concentrated on prosecutions. UIA forecasts a reduction of 25% to the current caseload level this fiscal year. UIA

informed us that the addition of staff will decrease the time to case resolution. The UIA also informed us that the criminal conviction rate for UIA is 100%, with 16 convictions for fiscal year 2008-09, 175 convictions for fiscal year 2009-10, and 147 convictions for fiscal year 2010-11 to date.

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SUPPLEMENTAL INFORMATION

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Exhibit 1

Unemployment Insurance Agency's (UIA's)
Statement of Conditions Affecting Its Operations

The audit period (October 1, 2007 through September 2010) enveloped the Great Recession in its entirety (December 2007 through June 2009). In addition to unemployment rates (14.6%) not seen in nearly 30 years, the Great Recession produced an unprecedented number of federal unemployment extensions, which extended eligibility dates and added weeks to the federal unemployment extensions. From June 2008 through December 2010, there were nine separate federal laws extending unemployment benefits, with an average of just 3½ months between extensions. While each extension produced operational challenges (uncertainty as to duration, increased customer contacts, and increased claims activity), the most recent federal extension signed into law on or about December 17, 2010 established a 13-month extension providing the agency with the greatest operational certainty and continuity experienced since 2007.

In regard to collection activities recovering both overpayments and penalties, the UIA increased receipts in 2010 ($45.7 million) by 84% over 2007 ($24.8 million), 67% over 2008 ($27.3 million), and 22% over 2009 ($37.4 million); for a total amount recovered of $135.2 million over the past 4 years.

For reasons both independent of and related to this report, the agency has already implemented a number of strategies designed to improve program performance. The deficiencies noted and areas of improvement identified strengthen the agency's resolve to improve Michigan's unemployment insurance system.

Source: Unaudited information obtained from the Unemployment Insurance Agency, Department of Energy, Labor & Economic Growth.

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Application for Unemployment Insurance Benefits

UIA 1554-M
(Rev. 6-04)

PLEASE PRINT CLEARLY OR TYPE – USE BLACK INK
DO NOT WRITE IN SHADED AREAS

☐ Check this box if your name or address has changed since your last claim.

State of Michigan
Department of Labor & Economic Growth
UNEMPLOYMENT INSURANCE AGENCY

Authorized by MCL 421.1, et seq.

APPLICATION FOR UNEMPLOYMENT BENEFITS

Completion of this form is required to qualify for benefits.

UIA No.

1. YOUR SOCIAL SECURITY NUMBER | 2. ADDT'L. SOCIAL SECURITY NUMBER | 3. YOUR LAST NAME | 4. YOUR FIRST NAME | 5. Initial

6. YOUR BIRTH DATE | 7. YOUR MAILING ADDRESS | 8. YOUR CITY | 9. STATE | 10. ZIP CODE

11. COUNTY | 12. AREA CODE and TELEPHONE NO. | 13. YEARS OF SCHOOL YOU COMPLETED | 14. YOUR SEX ☐ MALE ☐ FEMALE | 15. ADDITIONAL NAME WORKED UNDER (INCLUDE MAIDEN NAME) IN LAST 18 MONTHS

16. To claim a person(s) as a dependent you must have provided more than half the cost of his or her support for at least 90 days immediately before the first week of your new claim. If the relationship has existed less than 90 days, the person must have received more than half the cost of his or her support from you for the duration of the marital or parental relationship. A person may be claimed as a dependent by only one unemployed worker at a time.
Persons you may claim as dependents considered by age and relationship:

AGE OF DEPENDENT	RELATIONSHIP TO YOU
Any Age	Your spouse
Under Age 18	Your child, grandchild, adopted child, stepchild, orphaned brother or sister
Over Age 18, and Under Age 22 if Full-time Student	Your child, grandchild, adopted child, stepchild, orphaned brother or sister
Over age 18 if physically or mentally infirm and unable to work	Your child, grandchild, adopted child, stepchild, orphaned brother or sister, mother or father
Over age 65	Your mother or father

Enter the TOTAL dependents you are claiming in the box below. Do not claim yourself. **No. of Dependents** ☐

17. ENTER YOUR DRIVER LICENSE OR STATE ID NUMBER.

18. STATE ISSUED BY: ☐ Michigan ☐ Other

19. DO YOU WANT FEDERAL AND MI STATE TAXES WITHHELD? YES ☐ NO ☐
IF "YES," NUMBER OF TAX EXEMPTIONS

20. ARE YOU WORKING FULL-TIME THIS WEEK? ..... YES ☐ NO ☐

21. ARE YOU A CITIZEN OR NATIONAL OF THE UNITED STATES? ..... YES ☐ NO ☐
IF "NO", A COPY OF YOUR INS DOCUMENT IS REQUIRED. SEE INSTRUCTION SHEET.

22. IF YOU ARE NOT A CITIZEN OR NATIONAL, ARE YOU IN SATISFACTORY IMMIGRATION STATUS? ..... YES ☐ NO ☐ | WHAT IS YOUR ALIEN REGISTRATION NUMBER AND EXPIRATION DATE?

23. *(Optional)* ARE YOU HISPANIC OR LATINO? .... YES ☐ NO ☐

24. *(Optional)* IN ADDITION TO ITEM 23, ARE YOU:
Please check one: ☐ White ☐ Black or African American ☐ Asian ☐ Pacific Islander or Native Hawaiian ☐ Native American Indian or Alaskan Native

25. ARE YOU ATTENDING A SCHOOL OR COLLEGE? ... YES ☐ NO ☐
CIRCLE DAYS YOU ATTEND: S M T W T F S
TOTAL HOURS AM: _____ TOTAL HOURS PM: _____

26. WERE YOU HOSPITALIZED OR UNABLE TO WORK 14 DAYS OR MORE BECAUSE OF ILLNESS OR INJURY DURING THE PAST THREE YEARS? IF "YES," GIVE DATES.
YES ☐ NO ☐ FROM _____ THROUGH _____

27. DID YOU PERFORM SERVICES AS A PROFESSIONAL ATHLETE IN THE PAST 18 MONTHS? ..... YES ☐ NO ☐

28. WERE YOU PAID GROSS WAGES OF AT LEAST $1,810 WITH ALL EMPLOYERS SINCE FILING YOUR LAST NEW CLAIM? YES ☐ NO ☐
IF "NO," ENTER YOUR GROSS EARNINGS WITH ALL EMPLOYERS SINCE FILING YOUR LAST NEW CLAIM. $_____ *(Approximate)*

29. IF YOU RECEIVE, OR APPLIED FOR, RETIREMENT BENEFITS INDICATE:
RETIREMENT EFFECTIVE DATE _____
MONTHLY AMOUNT: $ _____ LUMP SUM AMOUNT $ _____
RECEIPT DATE OF FIRST RETIREMENT CHECK: _____
BUSINESS NAME: _____
ARE YOU RECEIVING OR WILL YOU RECEIVE RETIREMENT BENEFITS FROM MORE THAN ONE EMPLOYER. ..... YES ☐ NO ☐
IF "YES," INCLUDE THIS INFORMATION AND YOUR SOCIAL SECURITY NUMBER ON A SEPARATE SHEET.
CHECK BOX:
☐ DID NOT CONTRIBUTE
☐ CONTRIBUTED LESS THAN ONE-HALF THE COST
☐ CONTRIBUTED HALF OR MORE OF THE COST

30. DURING THE LAST 18 MONTHS:
A. WERE YOU EMPLOYED BY THE FEDERAL GOVERNMENT (EITHER CIVILIAN EMPLOYMENT OR MILITARY SERVICE)? YES ☐ NO ☐ IF "YES", A COPY OF FORM DD 214-MEMBER 4 COPY, OR SF-8 & SF-50 ARE REQUIRED. SEE INSTRUCTION SHEET.
1. MILITARY SERVICE? ..... YES ☐ NO ☐ ACTIVE DUTY DATES: FROM _____ TO _____
2. CIVILIAN EMPLOYMENT? ..... YES ☐ NO ☐ DATES: FROM _____ TO _____
B. DID YOU FILE AN UNEMPLOYMENT CLAIM AGAINST, OR RECEIVE BENEFITS FROM, A STATE OTHER THAN MICHIGAN? ..... YES ☐ NO ☐
IF "YES," WHICH STATE? _____
C. HAVE YOU WORKED IN ANOTHER STATE, GUAM PUERTO RICO, OR THE VIRGIN ISLANDS? ..... YES ☐ NO ☐

Continue with Item 32 on the Reverse Side.

31. **— DO NOT WRITE IN THIS AREA — FOR AGENCY USE ONLY —**

FIPS CITY CODE	FILING DATE	BYB DATE	OCCUPATION CODE

FIPS COUNTY CODE	PROFILE	CLAIM TYPE	PROCESS TYPE
		NEW ☐ TC ☐ AC ☐	I - UI ☐ F - UCFE ☐ C - CO-MINGLE ☐ X - UCX ☐

UIA 1554-M Reverse Side (Rev. 6-04)

SOCIAL SECURITY NUMBER | CK DIGIT

LIST EACH EMPLOYER YOU WORKED FOR DURING THE LAST 18 MONTHS, BEGINNING WITH YOUR LAST EMPLOYER. INCLUDE ANY WORK PERFORMED FOR FEDERAL, STATE, OR LOCAL GOVERNMENT, AND ANY WORK PERFORMED IN OTHER STATES. DO NOT WRITE IN SHADED AREAS. PLEASE PRINT CLEARLY OR TYPE. USE BLACK INK.

MOST RECENT

32. BUSINESS NAME | 33. FIRST DAY WORKED | 34. LAST DAY WORKED | EMPLOYER ACCOUNT NUMBER | MULTI-UNIT | CHECK DIGIT

35. PAYROLL ADDRESS | 36. CITY | 37. STATE | 38. ZIP CODE | 39. COUNTY/STATE WORKED IN | FIPS CNTY | 40. AREA CODE and TELEPHONE NO. ( )

41. REASON FOR SEPARATION *(Enter the reason number in the box)*
(1) LAID OFF/LACK OF WORK
(2) FIRED
(3) QUIT
(4) RETIRED (Voluntarily)
(5) RETIRED (Involuntarily)
(6) LABOR DISPUTE ☐ Strike ☐ Lockout
(7) OTHER (Explain in Item 42)
(8) STILL EMPLOYED FULL-TIME ☐
(9) FIRED FOR ANY OF THE FOLLOWING:
☐ WILDCAT STRIKE
☐ IMPRISONMENT
☐ DRUGS ☐ THEFT
☐ ASSAULT AND BATTERY
☐ WILLFUL DESTRUCTION

42. EXPLAIN THE REASON FOR YOUR SEPARATION.

43. JOB TITLE

44a. DO YOU EXPECT TO RETURN TO WORK FOR THIS EMPLOYER WITHIN 120 DAYS? ☐ YES ☐ NO
If "Yes," give date _____. If NO, you must register for work. See Instruction Sheet for details.

44b. ARE YOU REQUIRED TO OBTAIN EMPLOYMENT THROUGH A UNION HIRING HALL? ☐ YES ☐ NO

44c. DID YOU HAVE ANY OTHER LAYOFFS OR SEPARATIONS FROM THIS EMPLOYER DURING THE PAST 18 MONTHS? ☐ YES ☐ NO
IF "YES," WHAT WERE YOUR GROSS EARNINGS WITH THIS EMPLOYER SINCE THAT LAYOFF OR SEPARATION? $_____ *(Approximate)*
IF "NO," WHAT WERE YOUR GROSS EARNINGS WITH THIS EMPLOYER IN THE PAST 18 MONTHS? $_____ *(Approximate)*

NEXT EMPLOYER

32. BUSINESS NAME | 33. FIRST DAY WORKED | 34. LAST DAY WORKED | EMPLOYER ACCOUNT NUMBER | MULTI-UNIT | CHECK DIGIT

35. PAYROLL ADDRESS | 36. CITY | 37. STATE | 38. ZIP CODE | 39. COUNTY/STATE WORKED IN | 40. AREA CODE and TELEPHONE NO. ( )

41. REASON FOR SEPARATION *(Enter the reason number in the box)*
(1) LAID OFF/LACK OF WORK
(2) FIRED
(3) QUIT
(4) RETIRED (Voluntarily)
(5) RETIRED (Involuntarily)
(6) LABOR DISPUTE ☐ Strike ☐ Lockout
(7) OTHER (Explain in Item 42)
(8) STILL EMPLOYED FULL-TIME
(9) FIRED FOR ANY OF THE FOLLOWING:
☐ WILDCAT STRIKE
☐ IMPRISONMENT
☐ DRUGS ☐ THEFT
☐ ASSAULT AND BATTERY
☐ WILLFUL DESTRUCTION

42. EXPLAIN THE REASON FOR YOUR SEPARATION.

43. JOB TITLE

44a. DO YOU EXPECT TO RETURN TO WORK FOR THIS EMPLOYER WITHIN 120 DAYS? ☐ YES ☐ NO
If "Yes," give date _____.

44b. ARE YOU REQUIRED TO OBTAIN EMPLOYMENT THROUGH A UNION HIRING HALL? ☐ YES ☐ NO

45. CHECK BOX IF YOU HAVE OR WILL RECEIVE ANY OF THE FOLLOWING PAYMENTS FOR ANY PERIOD AFTER YOUR LAST DAY OF WORK:
☐ VACATION ☐ HOLIDAY ☐ BONUS ☐ PAYMENT IN LIEU OF NOTICE ☐ DISABILITY COMPENSATION ☐ SEVERANCE PAY ☐ SALARY CONTINUATION
☐ OTHER _____ GROSS AMOUNT $ _____ PERIOD COVERED: from _____ to _____

46. DID YOU WORK IN FAMILY EMPLOYMENT AS DEFINED BELOW? ..... ☐ YES ☐ NO
DEFINITION: EMPLOYMENT IN A BUSINESS OR CORPORATION IN WHICH THE MAJORITY INTEREST IS OWNED BY YOU ALONE; OR BY YOU TOGETHER WITH YOUR SON, DAUGHTER OR SPOUSE; OR BY ONE OR ANY COMBINATION OF THESE INDIVIDUALS; OR BY YOUR MOTHER AND/OR FATHER IF YOU ARE UNDER THE AGE OF 18.
IF YOU WERE EMPLOYED UNDER THE CONDITIONS STATED ABOVE DURING THE LAST 18 MONTHS, PLEASE GIVE THE NAME(S) OF THE BUSINESS(ES): _____

NOTE: IF YOU HAD MORE THAN 2 EMPLOYERS DURING THE PAST 18 MONTHS, ATTACH A SEPARATE SHEET.

47. YOUR CERTIFICATION: I HEREBY APPLY FOR A DETERMINATION OF MY UNEMPLOYMENT BENEFIT RIGHTS. I DECLARE THAT I AM A CITIZEN OF THE UNITED STATES OR I AM IN SATISFACTORY IMMIGRATION STATUS. I CERTIFY THAT ALL OF THE INFORMATION SUBMITTED BY ME ON THIS FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. **I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINE, AND/OR IMPRISONMENT, AND/OR COMMUNITY SERVICE FOR FALSE STATEMENTS TO SECURE BENEFITS.**

YOUR SIGNATURE: _____ DATE: _____ DATE D/E _____ INITIALS _____

MAIL IMMEDIATELY
UNSIGNED APPLICATIONS CANNOT BE PROCESSED. INCLUDE REQUIRED DOCUMENTS.

Allow 5 days for mail delivery. If not received by this Agency by the Friday following the week containing your last day of work, this claim will be effective with the week in which it is received. Mail to UIA, P.O. Box 169, Grand Rapids, Michigan 49501-0169.

Source: Unemployment Insurance Agency's Application for Unemployment Benefits

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Exhibit 3

Excerpt from Electronic Application for Unemployment Insurance Benefits

Eligibility

Wednesday, March 09, 2011

Quit ☒

Are you working full-time this week?	*	Yes	No
Are you attending school or training?	*	Yes	No
Do you want state and federal taxes withheld from your unemployment benefits?	*	Yes	No
Did you work in family employment? Family employment is defined as a business with more than 50% ownership by you, or you together with your son, daughter, or spouse, or any combination of these individuals.	*	Yes	No

Click "Proceed" to continue.

Proceed

Source: https://bwuc-claims.state.mius/mipilot/claim/Controller.asp March 9, 2011

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GLOSSARY

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Glossary of Acronyms and Terms

adjudicate	A process by which UIA reviews evidence to come to a decision that determines rights and obligations of the parties involved.
alien	A person who is legally permitted to remain in a country that is foreign to him or her. This includes guest workers, tourists, legal permanent residents, and student visa resident aliens. Specifically, this kind of alien may be referred to as a legal alien of that country. An alien who is present in that country unlawfully or without authorization is known as an illegal alien of that country.
base period	A period of four consecutive completed quarters in which wages are considered to determine if an individual can establish a claim for unemployment benefits.
Benefit Accuracy Measurement Program	A program to determine the accuracy of paid and denied unemployment claims.
BOC	Benefit Overpayment Collections Unit.
BPC	Benefit Payment Control Unit.
civil judgment	A final court decision from a civil lawsuit often ordering a party to pay a certain sum of money to the other party.
effectiveness	Success in achieving mission and goals.
FIU	Fraud Investigation Unit.
fraud	A UI benefit overpayment that was caused by an intentional misrepresentation or concealment of a material fact by the claimant.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives.

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	Internal control includes the processes for planning, organizing, directing, and controlling program operations. It includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
IRS	Internal Revenue Service.
issue	A matter that is in dispute concerning requirements for collecting UI benefits.
material condition	A reportable condition that could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
National Directory of New Hires (NDNH)	A national repository of employment, unemployment insurance, and quarterly wage information. NDNH includes records from each state's SDNH, quarterly wage and unemployment insurance data from state workforce agencies, and new hire and quarterly wage data from federal agencies.
nonmonetary eligibility determination	A decision made by an initial authority based on facts related to an issue detected that has the potential to affect a claimant's past, present, or future benefit rights and for which a determination of eligibility was made. Nonmonetary eligibility determination criteria include having a qualifying job separation reason, being able and available to work, seeking work, and registering for work with the State's workforce agency.
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or

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	function to improve program operations, to facilitate decision making by parties responsible for overseeing or initiating corrective action, and to improve public accountability.
reportable condition	A matter that, in the auditor's judgment, falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the objectives of the audit; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
SAVE	Systematic Alien Verification for Entitlement.
State Directory of New Hires (SDNH)	A federally required directory of employers' new hires, rehires, and recalled employees.
SSA	Social Security Administration.
SSN	social security number.
UCF	Unemployment Compensation Fund.
UI	unemployment insurance.
UIA	Unemployment Insurance Agency.
UIE	unemployment insurance examiners.
UIPL	Unemployment Insurance Program Letter.
USDOL	U.S. Department of Labor.
weekly benefit amount	The amount payable to the claimant, if eligible, for each week of entitlement in a benefit year.

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APPENDIX 166

A Guide To

Unemployment Insurance Appeals Hearing



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Table of Contents

Basic Terms Used at a Hearing.....4-5

Administrative Law Judge — Parties
Evidence — Witnesses

Why Is It Important to Attend the Hearing?.....6

What Happens First?.....7-8

Preparation Before the Hearing.....8-10

Who And What Should Be Brought to the Hearing?..10-11

What Happens at the Hearing?.....11-15

What Happens After the Hearing?.....15-16

Burden Of Proof: the Key to Making Your Best Case.....16

Misconduct Cases. 16-17

Voluntary Leaving Cases.....17-18

Refusal of Suitable Work Cases.....18

Eligibility for Benefits.....19

Liability/Tax Issues.....20

Some Final Words.....20-22

Michigan Supreme Court Definition of "Misconduct" for Unemployment Compensation Cases.....22

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INTRODUCTION

Unemployment Insurance hearings are conducted by the Michigan Administrative Hearing System (MAHS). The purpose of this booklet is to help you understand what happens at an unemployment insurance hearing, so you can make your best case to the Administrative Law Judge (ALJ). We hope that after you have read this booklet, you will understand whom and what to take to the hearing, what you must prove, and how to do so.

The information in this booklet is not legally binding; it is provided for informational purposes only.

Free Representation

Independent **Advocates** may be available to assist you in presenting your case before the Administrative Law Judges. THERE IS NO COST TO YOU FOR THE SERVICES OF AN ADVOCATE.

One group of Advocates assists only unemployed workers; the other group assists only employers. The employer advocates will assist in matters related to both unemployment benefits and unemployment taxes.

You can choose your own **Advocate** from among those available in your area. They have all passed a comprehensive examination regarding their knowledge of the unemployment insurance law and procedures.

The Advocacy Program is operated by the Unemployment Insurance Agency (UIA). For more details about the Advocacy Program, call the UIA at 1-800-638-3994 and choose menu item #2. If you wish to have an Advocate represent you, call as soon as you have filed your appeal from the UIA's Redetermination to the Michigan Administrative Hearing System (MAHS).

Basic Terms Used At a Hearing

*W*e'll begin by explaining some of the terms used most often in a hearing.

An ALJ is an attorney who works for the MAHS, hearing and deciding cases involving unemployment compensation. The ALJ's job is to hold a hearing to consider the evidence – oral and in writing – presented by all parties at the hearing. After this hearing, the ALJ issues a written decision making findings of fact and conclusions of law. The ALJ may also question the witness(es). The ALJ then decides how the law must be applied to those facts.

Parties are the people whose rights might be affected by the outcome of an unemployment compensation case. There may be three parties at a hearing: the unemployed worker (the individual seeking the unemployment benefits), the employer (the business that is, or may be, charged for the payment of benefits, or whose tax rate or liability for taxes is in question), and the Unemployment Insurance Agency (UIA).

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If a case gets to the ALJ, it usually means that there is a disagreement about the previous UIA decision (Redetermination). An employer may feel that the unemployment benefits should not be paid, or that the employer should not have to pay unemployment taxes, or that his/her tax rate is wrong. An unemployed worker may feel that the UIA should not have denied his or her claim for benefits. The UIA may be at the hearing to support its previous rulings.

Evidence can be anything used by a party to convince the ALJ about the facts of the case.

The most common type of evidence is called **testimony**, which means statements made, under oath or affirmation, at the hearing, by a party or one of the party's witnesses, who has first-hand knowledge of the events.

Evidence can also be in written form, but there must be someone present at the hearing who can testify (give testimony) from their own knowledge about any documents. In reaching a decision later, the ALJ must decide how much importance to give to each statement or document admitted as evidence.

Witnesses are people who are brought or subpoenaed (ordered to appear) to the hearing by either party to give testimony about facts they personally know about. The ALJ may limit the number of witnesses testifying about the same facts.

These are the terms we'll need to get started. Throughout the rest of this booklet, we'll be explaining some additional terms, as they come up.

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Why Is It Important to Attend the Hearing?

There are several reasons why it is important for you to attend the hearing:

1. If you are the party who appealed the case and you do not appear at the hearing, the ALJ may dismiss the case (that is, cancel the appeal) for lack of prosecution (that is, failure to appear to carry forward the appeal). This means the UIA Redetermination is affirmed.

2. If you are the party required to "make the case," and you are not present at the hearing, then no one will be present at the hearing to "make the case." You will probably lose.

3. The ALJ attaches importance only to sworn testimony, and to documents supported by sworn testimony. For that reason, even though the UIA may have agreed with your point-of view in the past, the ALJ must take a fresh look at the evidence, and cannot give much weight to the documents found in the file unless someone is at the hearing to testify about them.

4. The hearing is generally your last chance in the appeal process to present the facts of your case. Even though there are further steps available in the appeal process after the hearing, with rare exceptions the only evidence that will be taken into consideration during the rest of the appeal process is the evidence presented at the hearing.

Appeals to the Michigan Compensation Appellate Commission (MCAC) and the courts usually involve only arguments about the law, not about the evidence. For that reason, the administrative hearing is critical in the appeal process.

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What Happens First?

The Agency first issues a decision called a Determination, which tells whether unemployment benefits will be paid, how much will be paid per week, and how many weeks will be paid. If either party disagrees with the Determination, they can protest, indicating their reasons for disagreeing. The Agency will review the case and issue a redetermination. The Redetermination may affirm the Determination, or it may modify or reverse the Determination.

One of the parties (unemployed worker or employer) may disagree with the Redetermination. That party sends or delivers to the Agency a written appeal, asking for a hearing before an ALJ of the Michigan Administrative Hearing System (MAHS).

If the appeal is received on time, it is scheduled for a hearing. If the appeal is received late, the ALJ must dismiss the appeal. However, if a party withdraws the late appeal before the hearing, and the appealing party requests the UIA reconsider its last decision, then the Agency will determine whether the reason for the lateness of the appeal amounts to "good cause." If good cause is found the lateness of the protest or appeal will be excused. If the appealing party appeals an adverse UIA decision, the ALJ will issue an order either finding or not finding good cause, and will make a decision about the issue of the case.

After the appeal is filed, all parties will receive a Notice of Hearing, telling them where and when the hearing will take place. The hearing is held either at a regional hearing location or by telephone.

MAHS mails the Notice of Hearing at least 10 days before the scheduled hearing date (or 20 days in advance for a fraud case.) The back of the Notice of Hearing contains some very important information you need to review about the hearing. **Be sure to read it carefully before the date of the hearing!**

Preparation Before the Hearing

You are entitled to have an attorney, or an Advocate from the UIA's Advocacy Program, or other representation with you at the hearing, although representation is not required. If either party does not have an attorney, Advocate or representative at the hearing, the ALJ will ask questions. Each party should also be prepared to ask questions of all witnesses. If you or your attorney, Advocate, or representative, or a witness, are unable to attend the hearing, you may write or fax the ALJ and request an adjournment (postponement) of the hearing, giving the reasons for the request.

The ALJ will only grant adjournments for exceptionally good reasons. Generally, having another appointment which could be rescheduled is not a sufficient reason for an adjournment. In an emergency, call the ALJ's office before the hearing and explain the situation. Sometimes, if not all necessary witnesses are available, the hearing is held with the available witnesses, and the hearing is concluded on another day.

Even if you choose to represent yourself, you need to decide whether to have witnesses at the hearing. You should ask your witnesses to participate in the hearing well in advance of the hearing and tell them the date and time of the hearing.

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Advise your witnesses to tell the truth about what happened, but do not tell them what to say or how to say it.

If a witness might not appear voluntarily, you may obtain a **subpoena** to require that person to appear. The subpoena may be obtained from the UIA or the ALJ's office. The party should give the witness the subpoena in a reasonable time before the scheduled hearing. The UIA will not deliver subpoenas for the party. After the hearing, a person who appears at a hearing under subpoena can receive a small fee for his or her time, as well as mileage. This fee will be paid and mailed by the Michigan Administrative Hearing System.

If the case involves a quit or a firing, the parties should bring as witnesses those persons who have personal knowledge of the details of the quit or firing, such as a supervisor or co-worker.

Since you will have an opportunity at the hearing to ask questions of the other party and their witnesses, you should consider asking the ALJ's office, in advance of the hearing, if you can look at the case file. From the file, you can see what statements the other party made to the UIA. Often, those are the same statements they will make at the hearing. Knowing what statements the other party will likely make may help you in deciding who your witnesses should be, and what questions you should ask the other party.

Before the hearing, it is a good idea to write down questions you wish to ask the other party, as well as important points you wish to make on your own behalf. Take your notes to the hearing; they will give you added confidence and allow the hearing to proceed more smoothly. However, because your notes can only be used to refresh your memory, your testimony cannot consist of reading your notes aloud.

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Before the hearing, decide what documents (attendance records, employer policy statements, doctors' statements, check stubs) you will need to make your case. Also, be sure to take the witnesses who can testify as to their own knowledge of the documents. Doctors' statements and government records (such as safety inspection reports) may generally be admitted without the presence of a witness.

If you are hearing-impaired or have difficulty speaking or understanding English, you may request that a qualified interpreter attend the hearing to translate for you. If you need an interpreter, you should notify the ALJ's office as early as possible. If you take your own interpreter, the ALJ may postpone the hearing until the ALJ's office can schedule an independent interpreter.

Who and What Should Be Taken to the Hearing?

*N*aturally, the unemployed worker and employer should attend the hearing. Unemployed workers should attend because their right to benefits is in question. Employers should attend because the ALJ's decision may affect their liability or cause their accounts to be charged for benefits paid. (Sometimes, a representative of the UIA also attends the hearing.) The ALJ may also permit observers at the hearing.

In deciding whom, if anyone, you should present as a witness, it is important to keep in mind that the hearing operates within the general requirements of the rules of evidence much like a court. The ALJ will not accept most **hearsay** testimony, that is, testimony not within the witness's own first-hand knowledge. For example, the ALJ cannot permit a party

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or witness to answer a question by saying "I don't know what happened, but from what Joe tells me...." If "Joe" knows what happened, then "Joe" should have appeared at the hearing. Nobody else can testify as to what "Joe" would have said had he been at the hearing. If, for example, a worker's attendance is at issue, the person with the most personal knowledge should appear as a witness to describe the worker's attendance and any warnings given by the employer to the worker.

In addition to presenting witnesses with personal knowledge of the facts, parties may wish to introduce documents to support the testimony of the witnesses. Documents include such things as attendance records, written warnings, dates of verbal warnings, layoff notices, and letters or other correspondence that bear on the case. The employer's keeper of business records should be present at the hearing to testify about them, and to testify that they are the actual records.

Another reason it is important to present witnesses, in addition to documents, is that only a person who is present at the hearing (in person or by phone) can be cross-examined by the other party. A notarized statement generally cannot, therefore, be used at the hearing in place of a witness.

What Happens at the Hearing?

When parties scheduled for an in-person hearing arrive at a regional location of the Michigan Administrative Hearing System, they should first sign the sign-in sheet where the case is listed. It is located in the lobby area.

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The parties should then be seated in the waiting area. It is a good idea to arrive at the hearing location 10 or 15 minutes early.

The ALJ calls the case and decides who can enter the hearing room. The ALJ sits at a desk, or sometimes behind a judge's bench, and the parties and their witnesses and representatives usually sit at a table in front of the ALJ's desk. The ALJ will direct the parties and witnesses where to sit.

The ALJ begins by introducing him- or herself by name, making sure he or she has the names of all the parties, witnesses, representatives, Advocates and attorneys.

Hearings are recorded. If an appeal is later taken, the recording may be typed up as a written transcript if requested by the Michigan Compensation Appellate Commission. If a transcript is not otherwise prepared, one can be requested by the claimant or employer, but there is a charge for preparation of the transcript. A download of the recording is available at no charge by calling (313) 456-0423. If the recording is very long, a CD may have to be prepared, for which there is a charge. It is important for everyone to speak loudly and slowly, and not rustle papers or interrupt others, so that a clear recording can be made. The recording and the documents that are accepted as exhibits become the "record" of the hearing that is reviewed at higher levels of appeal. A transcript will be prepared if there is an appeal to a circuit court.

The ALJ asks the parties and witnesses to raise their right hands, and then administers an oath or affirmation to each of the parties and witnesses, asking them to swear or affirm that they will tell the truth, the whole truth, and nothing but the truth.

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The ALJ then identifies each of the participants in the hearing for the record, and summarizes the issue being appealed and the UIA's Redetermination.

Often, the ALJ requests that the witnesses be **sequestered**, that is, asked to sit outside the hearing room while the other witnesses are testifying, so that the witnesses are not influenced by each other's testimony. An ALJ may also determine that the testimony of the witnesses is "cumulative," that is, that they will all be testifying to the same set of facts. In that case, the ALJ may accept the testimony of only one of the witnesses, and not permit the party's other witnesses to testify.

The ALJ usually asks the party with the burden of proof to present his or her case first. There is a more complete discussion of who has the burden of proof, and what that means, on page 17 of this booklet.

If the party with the burden of proof has a representative, Advocate, or attorney, that person usually asks the party and the witnesses questions. This process is called **direct examination**. If the party with the burden of proof does not have a representative, Advocate, or attorney, the ALJ may ask the questions. Even if the party has a representative, Advocate, or attorney, the ALJ may ask additional questions to clarify testimony. The ALJ will also give the party with the burden of proof an opportunity to present his or her case in narrative fashion.
After the party with the burden of proof presents testimony, the other party has the opportunity to ask questions of each witness.

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This is called **cross-examination**. If the party has a representative, Advocate, or attorney, that person conducts the cross-examination; if the party does not have a representative, Advocate, or attorney, the ALJ conducts the cross-examination, or may ask the party to do so. Next, the other party presents direct testimony, and that party's witnesses may be cross-examined.

Sometimes during a hearing, an issue comes up that was not originally part of the case, and was not indicated on the Notice of Hearing. In that situation, the ALJ permits an adjournment to allow the parties to prepare for that issue. If they feel prepared to give evidence on the new issue, the parties can agree to give up their right to an adjournment, and continue with the hearing.

The ALJ is responsible for getting all of the information needed to fully understand the facts of the case. An important function of the ALJ is **fact-finding**. In some cases, this may mean that the ALJ takes over the function of direct- or cross-examination, and that the ALJ will exclude the testimony of some witnesses.

The ALJ is also responsible for ensuring that the rules of evidence are generally followed throughout the hearing. For that reason, the ALJ may rule that certain testimony is hearsay or is not relevant to the case and cannot be allowed, or that certain documents cannot be accepted, or that the testimony of certain witnesses will not be permitted.

The ALJ is responsible for directing the progress of the hearing. When the ALJ attempts to closely control the hearing, he or she is not being rude. Rather, the ALJ is ensuring that the hearing is not prolonged by testimony unrelated to the issues.

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At the conclusion of the hearing, the ALJ may give the parties an opportunity to make closing statements, summarizing their positions on the issues in the case if the ALJ believes such statements will assist him or her in deciding the facts of the case.

The procedures followed at in-person hearings are also followed for hearings held by telephone, as much as possible. However, when a hearing is going to be held by telephone, each party must mail to the ALJ and the other party, a copy of any documents expected to be discussed at the hearing. These documents should be mailed in time to reach the other party and the ALJ at least 3 days before the scheduled hearing date.

What Happens After the Hearing?

After the hearing, the ALJ reviews the testimony of the parties, some of which may conflict as to the facts. The ALJ may also take into account the demeanor of the parties and their witnesses, that is, the manner in which they presented testimony and answered questions and the consistency of a witness's testimony. This may help the ALJ determine the credibility (believability) of the parties and witnesses.

Based on these factors, the ALJ makes "findings of fact," that are included in the ALJ's written decision. In addition, the ALJ decides how the unemployment compensation law applies to the facts of the case, and makes conclusions of law. The most important factor the ALJ uses in making his or her decision is this: HAS THE PARTY WITH THE BURDEN OF PROOF SUCCESSFULLY MET THAT BURDEN? (See page 16 of this booklet for information about Burden of Proof.)

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The ALJ will usually issue a decision within 60 days of the date of the hearing. Any losing party may appeal the decision to the Michigan Compensation Appellate Commission. The last page of the decision includes information about how to appeal. It is also possible to request a rehearing before the ALJ, but this will be granted only at the discretion of the ALJ, based upon the reason stated in the request for rehearing.

The ALJ cannot talk about the case with a party, before or after the hearing, because this would be unfair to the absent party. Thus, the ALJ cannot take a party's telephone call. The ALJ's office personnel can answer questions about the scheduling of the case or issuance of the decision.

Burden of Proof: the Key to Making Your Best Case

In every hearing, the ALJ's attention is focused on one primary issue: Has the party with the burden of proof carried that burden by substantial evidence, with first-hand testimony, and other admissible evidence?

Misconduct Cases

In a misconduct case, the burden is always on the employer to prove:

(1) That the unemployed worker engaged in misconduct, and
(2) That the misconduct occurred in connection with the work.

In unemployment compensation cases, the Michigan Supreme Court has defined "misconduct" as a willful or wanton

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disregard of the employer's interest, or negligence of such seriousness as to imply disregard of the employer's interest.

However, the mere inability to do the job, or a good faith error in judgment, is not considered misconduct. In some cases, the employer may have a perfectly good and valid reason to discharge an employee, but that reason still might not amount to misconduct for purposes of the unemployment compensation law.

The exact wording of the Michigan Supreme Court definition of misconduct is found on page 22 of this booklet.

The employer may need to show, through testimony and, if possible, documents, that (1) the employer had a policy on the particular conduct involved; (2) the employer applied the policy equally to all employees; and (3)the employer had not previously condoned the actions that resulted in the discharge. In some cases, it is useful for the employer to show that the unemployed worker had received warnings about infractions, but that the unemployed worker continued in the misconduct after the warnings.

However, where the employee's misconduct is a serious offense, the employer need not warn the employee prior to discharge.

Voluntary Leaving Cases

In a voluntary leaving case, the burden is on the unemployed worker to prove:

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(1) That the leaving was **voluntary but with good cause attributable to the employer**, or
(2) That the leaving was **involuntary** (for example, due to personal health reasons).

To show that a leaving was with good cause attributable to the employer, the unemployed worker must prove that some condition existed that would have made continued employment unacceptable to a reasonable person. This condition must have been brought to the employer's attention and the employer failed to correct it.

Unsafe working conditions, failure to pay wages when due, or failure to provide promised benefits or promotions (things over which the employer has control but fails to correct) are examples of situations that could amount to good cause attributable to the employer for the worker to voluntarily leave a job.

To prove that a leaving was involuntary, the unemployed worker may, for example, prove that a health reason, verified by a doctor, prevented the worker from continuing to do the job, that the worker informed the employer of this fact and unsuccessfully tried to find another job with the same employer and that the worker unsuccessfully sought a leave of absence from the employer. (However, a person who is unable to do any work he or she has done in the past, or work he or she was trained to do, is no longer part of the labor force, and would not be eligible for unemployment benefits until again able to work.)

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Refusal of Suitable Work Cases

In a refusal of suitable work case, the burden of proof is on the **employer** to show:

(1)That **the employer made an offer of work** to the unemployed worker;
(2)That the work offered was **suitable**;
(3)That the offer was **for a job that really existed**;
(4)That the offer was **specific**; and
(5)That the unemployed worker **refused the offer**.

Elements of suitability of a job include wages, distance from the worker's residence, length of unemployment, and risk to the unemployed worker's health, safety, or morals.

The burden then shifts to the unemployed worker to show that he or she had **good cause** to refuse the offered suitable work.

Eligibility for Benefits

In an eligibility case, the burden of proof is always on the **unemployed worker** to prove that he or she filed a claim and, for every week he or she is claiming benefits, he or she was:
(1)Able to work;
(2)Available for full-time, suitable work;
(3)Actively seeking work, unless this requirement has been excused; and
(4)Reporting for benefits as directed by the UIA, or had good cause for not reporting or filing as directed.

It is a good idea for the unemployed worker to keep notes about where he/she looked for work each week, and to take these notes to the hearing.

Liability/Tax Issues

An employer's liability/tax issues may include, but are not limited to, the following:

- The employer believes that he/she should not have been deter- mined liable to pay unemployment taxes
- The employer believes that he/she should not have been deter- mined a successor of another employer's business
- The employer disagrees with the tax rate.

If appealing these issues, the employer must bring supporting documents to the hearing, as well as appropriate witnesses.

Some Final Words

The best advice for parties appearing before an ALJ is to be prepared for the hearing:

1. Know what the issue (question) before the ALJ is. It is indicated in the Notice of Hearing. Also, read the important information on the back of the Notice of Hearing.
2. Know who has the burden of proof.
3. Know what has to be proved in order to carry that burden of proof.
4. Review the file in advance, so that you can plan the major points you wish to make, and can plan the questions you wish to ask the other party.

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5. Take to the hearing the necessary papers and witnesses. Make sure that the witnesses are persons who can offer testimony as to their own knowledge.
6. Arrive at the hearing on time.

If the decision of the ALJ is not in your favor, you may either request a rehearing before the ALJ (for example, if you have additional facts that were not available to you at the time of the original hearing), or you may appeal the ALJ's decision to the **Michigan Compensation Appellate Commission (MCAC),** which is a separate agency from the UIA and from the portion of the Michigan Administrative Hearing System that holds ALJ hearings. The 30-day time limits for filing either a request for rehearing before the ALJ, or an appeal to the MCAC, will be on the last page of the ALJ's decision.

You must file within the time limits given. If your request for a rehearing is late but within one year of the ALJ's decision, your request will be considered to be a request for a **reopening** of the case before the ALJ, who will then have to decide whether you have "good cause" for requesting a reopening.

When it receives an appeal, the MCAC reviews the recording of the ALJ hearing or it may request a written transcript of that hearing, which is the written form of the recording made at the hearing. The MCAC will then decide whether the ALJ properly weighed the facts presented at the hearing and properly applied the law to the facts. Occasionally, if requested by the parties, the MCAC will allow parties to appear in person before the Commission to present oral arguments.

We believe that if you follow the suggestions made in this booklet, you will be able to make your best case. We hope that by reading this booklet, you will know how to prepare for

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the hearing and what to expect, and will feel more at ease when attending the hearing.

In addition, the Michigan Administrative Hearing System welcomes your comments about your hearing and about this booklet (what should be added, what needs clarification, etc.). Please direct your comments, in writing, to the Director, Michigan Administrative Hearing System, 611 W. Ottawa, 2nd Floor, Lansing, Michigan 48933.

****

The following is the definition of misconduct adopted by the Michigan Supreme Court in the case of *Carter* v *Employment Security Commission*, 364 Mich 538, 541 (1961):

"[Misconduct in an unemployment compensation case is] ... conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the [unemployment compensation] statute."

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State of Michigan
Talent Investment Agency
Unemployment Insurance

Michigan Administrative Hearing System

Rick Snyder
State of Michigan
Governor

Wanda Stokes
Director

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APPENDIX 17

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Office of the Auditor General

Follow-Up Report on Prior Audit Recommendations

Claimant Services

Unemployment Insurance Agency
Department of Labor and Economic Opportunity

February 2020

State of Michigan Auditor General
Doug A. Ringler, CPA, CIA

641-0318-14F

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The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution

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OAG
Office of the Auditor General

Report Summary

Follow-Up Report

Claimant Services

Unemployment Insurance Agency (UIA) Department of Labor and Economic Opportunity (LEO)

Report Number:
641-0318-14F

Released:
February 2020

We conducted this follow-up to determine whether UIA had taken appropriate corrective measures in response to the one material condition and four of the reportable conditions noted in our April 2016 audit report.

Effective August 11, 2019, Executive Order No. 2019-13 abolished the Talent Investment Agency and transferred UIA to LEO, formerly the Department of Talent and Economic Development.

Prior Audit Information	Follow-Up Results		
	Conclusion	**Finding**	**Agency Preliminary Response**
Finding #1 - Material condition Improvement needed for adjudicating issues with potentially false or misleading information. Agency agreed.	Complied	Not applicable	
Finding #2 - Reportable condition Continued enhancements needed for communicating with current and prospective unemployment insurance claimants. Agency agreed.	Partially complied	Reportable condition still exists. See Finding #2.	Agrees

Prior Audit Information *(Continued)*	Follow-Up Results		
	Conclusion	**Finding**	**Agency Preliminary Response**
Finding #6 - Reportable condition Improvements needed to consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing.	Partially complied	Reportable condition still exists. See Finding #6.	Agrees
Improvements needed for separation-related nonmonetary determinations. Agency agreed.	Complied	Not applicable	Not applicable
Finding #7 - Reportable condition Evaluation of the Worker Profiling and Reemployment Services system needed.	Not complied	Reportable condition still exists. See Finding #7.	Agrees
Periodic review and update of profiling model needed. Agency agreed.	Complied	Not applicable	Not applicable
Finding #8 - Reportable condition Improvement needed to ensure that claimants are referred to reemployment services.	Not complied	Reportable condition still exists. See Finding #8.	Agrees
Improvement needed to help ensure participation in reemployment services. Agency agreed.	Complied	Not applicable	Not applicable

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Phone: (517) 334-8050

Office of the Auditor General
201 N. Washington Square, Sixth Floor
Lansing, Michigan 48913

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Laura J. Hirst, CPA
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February 25, 2020

Mr. Steve Gray, Director
Unemployment Insurance Agency
Cadillac Place
Detroit, Michigan
and
Mr. Jeff Donofrio, Director
Department of Labor and Economic Opportunity
300 North Washington Square
Lansing, Michigan

Dear Mr. Gray and Mr. Donofrio:

This is our follow-up report on the one material condition (Finding #1); four of the reportable conditions (Findings #2, #6, #7, and #8); and the eight corresponding recommendations reported in the performance audit of Claimant Services, Unemployment Insurance Agency, Talent Investment Agency, Department of Talent and Economic Development. That audit report was issued and distributed in April 2016. Additional copies are available on request or at audgen.michigan.gov.

Your agency provided preliminary responses to the follow-up recommendations included in this report. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during our follow-up. If you have any questions, please call me or Laura J. Hirst, CPA, Deputy Auditor General.

Sincerely,

Doug Ringler

Doug Ringler
Auditor General

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TABLE OF CONTENTS

CLAIMANT SERVICES

	Page
Report Summary	1
Report Letter	3
Introduction, Purpose of Follow-Up, and Agency Description	6
Prior Audit Findings and Recommendations; Agency Plan to Comply; and Follow-Up Conclusions, Recommendations, and Agency Preliminary Responses	7
Findings:	
1. Improvement needed for adjudicating issues with potentially false or misleading information.	7
2. Continued enhancements needed for communicating with current and prospective UI claimants.	9
6. Improvement needed to meet federal performance standards.	12
7. Evaluation of the WPRS system and review of the profiling model needed.	14
8. Improvement needed to ensure that claimants are referred to and participate in reemployment services.	16
Follow-Up Methodology, Period, and Agency Responses	18
Glossary of Abbreviations and Terms	21

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INTRODUCTION, PURPOSE OF FOLLOW-UP, AND AGENCY DESCRIPTION

INTRODUCTION

This report contains the results of our follow-up of the one material condition* (Finding #1); four of the reportable conditions* (Findings #2, #6, #7, and #8); and the eight corresponding recommendations reported in our performance audit* of Claimant Services, Unemployment Insurance Agency (UIA), Talent Investment Agency, Department of Talent and Economic Development, issued in April 2016.

Effective August 11, 2019, Executive Order No. 2019-13 abolished the Talent Investment Agency and transferred UIA to the Department of Labor and Economic Opportunity (LEO), formerly the Department of Talent and Economic Development.

PURPOSE OF FOLLOW-UP

To determine whether UIA had taken appropriate corrective measures to address our corresponding recommendations.

AGENCY DESCRIPTION

The federal Social Security Act of 1935 created the unemployment insurance (UI) program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. In response to this Act, UIA was originally created as the Michigan Employment Security Commission by the Michigan Employment Security Act of 1936, being Sections 421.1 - 421.75 of the *Michigan Compiled Laws*.

UIA helps jobless workers and their families by providing up to 20 weeks of regular UI benefits while they seek new employment.

From October 1, 2018 through June 30, 2019, UIA reported that it received 234,406 new claims and paid UI benefits totaling $602.1 million to 200,740 unduplicated claimants, and its administrative expenditures totaled $119.9 million. As of June 30, 2019, UIA had 635 employees.

** See glossary at end of report for definition.*

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PRIOR AUDIT FINDINGS AND RECOMMENDATIONS; AGENCY PLAN TO COMPLY; AND FOLLOW-UP CONCLUSIONS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

FINDING #1

Audit Finding Classification: Material condition.

Summary of the April 2016 Finding:
UIA needed to improve its efforts in making and communicating (re)determinations of intentional misrepresentation* to claimants. Between October 1, 2013 and March 31, 2015, UIA issued 60,324 (re)determinations finding intentional misrepresentation. Specifically, for the 60 (re)determinations that we reviewed, UIA did not:

a. Make adequate attempts to contact claimants who did not respond to UIA's original request for information related to 77% of the (re)determinations that we reviewed or inform claimants in the requests for information that failure to respond would result in a finding of intentional misrepresentation.

b. Obtain and/or consider sufficient information to support some adjudications*.

c. Provide claimants with the reasons for, or facts that led to, its adjudications.

Recommendation Reported in April 2016:
We recommended that UIA improve its efforts to obtain supporting information and provide claimants with the facts and rationale for (re)determinations of intentional misrepresentation.

AGENCY PLAN TO COMPLY*

On November 15, 2017, UIA stated that it had fully complied and noted that this finding involved a time period during which it utilized an automated computer system for issuance of fraud determinations. UIA indicated that it ceased use of the system for issuance of fraud determinations in August 2015 and staff now review the case files before making such determinations. UIA also indicated that it enhanced its information request form to include simplified instructions, modified determination language, and added additional space for typed explanations on the online form. In addition, UIA indicated that it updated its intentional misrepresentation form to include the facts, supporting information, and reasons when issuing a finding of intentional misrepresentation.

** See glossary at end of report for definition.*

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FOLLOW-UP CONCLUSION

Complied.

From July 1, 2018 through June 30, 2019, UIA initiated 308 (re)determinations finding intentional misrepresentation. For the 10 intentional misrepresentation cases that we reviewed, our follow-up noted that UIA:

a. Complied.

   UIA made efforts to contact all 9 claimants who did not respond to UIA's original request for information related to (re)determinations through e-mails and follow-up telephone calls.

b. Complied.

   For the 3 claimants who ultimately responded to UIA's requests for additional information, UIA obtained and considered sufficient information to support its (re)determinations.

c. Complied.

   For the 3 cases for which UIA ultimately issued a written (re)determination of intentional misrepresentation, UIA communicated the reasons or facts that led to its decision.

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FINDING #2

Audit Finding Classification: Reportable condition.

Summary of the April 2016 Finding:
UIA needed to improve and enhance its communications with claimants. Specifically, UIA:

a. Did not answer 89% of the telephone calls made to its call center. Also, callers abandoned 29% of the answered calls while on hold for a UIA representative.

b. Had not examined the feasibility of a social media* presence.

c. Did not ensure that webcasts (videos) linked from its Web site were operational and included information related to its Michigan Web Account Manager (MiWAM).

d. Did not specify the time period associated with employment-related questions included in its requests for information sent to claimants.

Recommendation Reported in April 2016:
We recommended that UIA continue to enhance existing and explore the feasibility of adding social media methods and processes for communicating with current and prospective UI claimants.

AGENCY PLAN TO COMPLY

On November 15, 2017, UIA stated that it had complied with parts and was in the process of complying with the remaining parts of the finding. Specifically, UIA indicated that it:

a. Evaluated best practices, contracted with a reengineering expert, identified key performance indicators, implemented a procedure for handling known seasonal increases in new claims and telephone calls, and would finalize a plan to improve the entire call center operation by December 31, 2017.

b. Implemented use of social media, including Twitter and Facebook, to communicate UI-related information to the public. UIA also indicated that it began posting tips on its Web site and sending information directly to claimants by e-mail.

c. Expanded the number of online videos available for claimants and employers and will continue to identify additional opportunities for improving the selection of videos.

d. Would update its request for information form by December 31, 2017 to include the specific weeks for which information is sought.

* *See glossary at end of report for definition.*

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FOLLOW-UP CONCLUSION

Partially complied. A reportable condition still exists.

Our follow-up noted that UIA had:

a. Not complied.

UIA reports identified 311,186 calls that were made to the UIA call center during a sample of 6 business weeks, including 66,461 (21%) calls that were routed to the customer service representative queue. UIA data indicated that callers abandoned 18,381 (28%) of the 66,461 calls, as follows:

Business Week Ended	Abandoned Calls	
August 17, 2018	3,181	(30%)
August 24, 2018	2,556	(24%)
November 2, 2018	3,407	(33%)
February 15, 2019	2,953	(24%)
March 22, 2019	3,293	(31%)
June 28, 2019	2,991	(25%)
Total	18,381	

For the remaining 244,725 (79%) calls, UIA did not have data to determine whether the calls were successfully routed to one of the self-service queues, ended by the caller, or unanswered.

b. Complied.

UIA established and utilized a social media presence on U.S. Department of Labor (USDOL) suggested platforms, including Twitter, Facebook, and YouTube, to communicate UI-related topics to the public.

c. Complied.

UIA expanded the selection of webcasts available on its Web site to include information relating to MiWAM. Also, all available webcasts were working properly on UIA's Web site as of August 7, 2019.

d. Complied.

UIA updated its request for information form to include the specific week for all 5 forms that we reviewed.

FOLLOW-UP RECOMMENDATION

We recommend that UIA continue to improve its call center operations to reduce the number of abandoned and potentially unanswered telephone calls.

FOLLOW-UP AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

UIA agrees with the follow-up recommendation. During the period of review (July 1, 2018 through June 30, 2019), UIA was using an older phone system. In September 2019, UIA subsequently implemented a new phone system that includes, among other features, a chat function. As a result, the customer wait-times and abandoned calls have dramatically improved.

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FINDING #6

Audit Finding Classification: Reportable condition.

Summary of the April 2016 Finding:
UIA did not consistently meet federal performance standards and needed to improve the quality of its separation-related nonmonetary determinations*. Specifically:

a. UIA's performance related to initial benefit payments was below standard for 14 (67%) months during the 21-month period ended June 30, 2015.

b. UIA did not complete at least 80% of nonmonetary determinations within 21 days. For the quarter ended March 31, 2015, UIA's timely completion of separation and non-separation determinations was 72% and 74%, respectively.

c. Michigan did not achieve the average age of pending lower authority appeals of 30 days or less. For the quarter ended June 30, 2015, Michigan was the second lowest performing state relative to this core measure with its average age of 94 days.

d. UIA met the federal standard for quality scores of its separation-related nonmonetary determinations; however, its performance was inconsistent from quarter to quarter, significantly lagged that of its non-separation related determinations, and was only 1% above the minimum acceptable performance level of 75% for the quarter ended June 30, 2015.

Recommendations Reported in April 2016:
We recommended that UIA continue to take actions to consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing.

We also recommended that UIA continue to improve the quality of its separation-related nonmonetary determinations.

AGENCY PLAN TO COMPLY

On November 15, 2017, UIA indicated that its performance during calendar year 2016 surpassed the federal acceptable performance levels, that it would continue to monitor the performance standards through December 2017, and that it would continue to take actions to consistently meet the federal performance standards.

FOLLOW-UP CONCLUSIONS

Conclusion for first recommendation - Partially complied. A reportable condition still exists.

* *See glossary at end of report for definition.*

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Our follow-up for the first recommendation noted that UIA had:

a. Not complied.

   For 9 (75%) of the 12 months reviewed, UIA did not make at least 87% of all initial benefit payments within 21 days. During these 12 months, UIA's performance ranged from 65% to 88%, with an average of 78% per month.

b. Not complied.

   For all 4 quarters reviewed, UIA did not complete at least 80% of all nonmonetary determinations within 21 days. UIA's performance ranged from 63% for the quarter ended June 30, 2019 to 73% for the quarter ended December 31, 2018.

c. Complied.

   For all 4 quarters reviewed, UIA met the average age of pending lower authority appeals of 30 days or less standard, with an average age of 15 days per quarter.

Conclusion for second recommendation - Complied.

Our follow-up for the second recommendation noted that for all 4 quarters reviewed, UIA consistently earned high-quality scores of at least 75% of its separation-related nonmonetary determinations. UIA's performance ranged from 83% for the quarter ended September 30, 2018 to 89% for the quarter ended June 30, 2019.

FOLLOW-UP RECOMMENDATION

We again recommend that UIA continue to take actions to consistently meet federal performance standards related to initial benefit payments and nonmonetary determination processing.

FOLLOW-UP AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

UIA agrees with the follow-up recommendation. UIA made progress toward meeting federal performance standards since implementing several strategies to increase first payment promptness and nonmonetary determination timeliness.

UIA is also receiving assistance from the National Association of State Workforce Agencies (NASWA) Integrity Center to increase Michigan's performance.

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FINDING #7

Audit Finding Classification: Reportable condition.

Summary of the April 2016 Finding:
UIA had not evaluated the effectiveness of its reemployment services* system in reducing participants' length of unemployment and amount of UI benefits paid. Also, UIA had not reviewed and updated its profiling* model since 2003 to identify claimants who were most likely to exhaust their UI benefits before returning to work.

Recommendations Reported in April 2016:
We recommended that UIA periodically evaluate the effectiveness of its Worker Profiling and Reemployment Services (WPRS) system.

We also recommended that UIA periodically review and update its profiling model.

AGENCY PLAN TO COMPLY

On November 15, 2017, UIA stated that it had complied with the first recommendation and was in the process of complying with the second recommendation. Specifically, UIA indicated that:

a. For the first recommendation, it transitioned from the WPRS system to the Reemployment Services and Eligibility Assessment (RESEA) program, effective April 1, 2016, and in coordination with the Michigan Workforce Development Agency (MWDA), it ensures that RESEA reports are generated, guidelines are followed, and feedback is shared on success stories and areas for improvement. UIA prepared two RESEA reports for the USDOL: Employment and Training Administration (ETA) 9128 Reemployment and Eligibility Assessment Workload and ETA 9129 Reemployment and Eligibility Assessment Outcomes. UIA and MWDA used these reports to measure program effectiveness.

b. For the second recommendation, it completed a preliminary analysis of planned updates to its profiling model; planned to test the updated model by December 31, 2017; and plans to perform biannual reviews of the model thereafter.

FOLLOW-UP CONCLUSIONS

Conclusion for first recommendation - Not complied. A reportable condition still exists.

Our follow-up for the first recommendation noted that UIA held monthly meetings with MWDA to review the ETA reports, which UIA indicated were reviewed for trends to identify best practices or opportunities for RESEA program improvements. However, UIA did not conduct evidence-based evaluations* to determine if

** See glossary at end of report for definition.*

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the RESEA program was effective in relation to outcome measures, such as a reduction in the average number of weeks participants receive benefits in comparison with claimants not participating in the program. Also, UIA did not document its monthly meetings with MWDA or any actions taken based on review of the ETA reports.

Conclusion for second recommendation - Complied.

Our follow-up for the second recommendation noted that UIA implemented enhancements to its profiling model in November 2017, including the addition of variables such as the claimant's work history and the delay between claimants' employment separation and claim filing date. Also, UIA conducted periodic reviews of the model in February 2019 and May 2019.

FOLLOW-UP RECOMMENDATION

We recommend that UIA periodically conduct evidence-based evaluations of the effectiveness of its RESEA program.

FOLLOW-UP AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

UIA agrees with the follow-up recommendation. UIA will pursue an Interagency Agreement with the Department of Technology, Management, and Budget's Bureau of Labor Market Information and Strategic Initiatives (LMISI) to collect, develop, and analyze workforce, economic, demographic, and labor market information in support of initiatives designed to strengthen Michigan's unemployment insurance and workforce systems. The purpose is to supply customized, evidence-based information and analysis to support effective decision-making, program management, and oversight of workforce/talent development efforts in the State.

The agreement with LMISI will assist UIA in the development of key program metrics and in the creation and improvement of advanced analytics tools, including the evaluation and redesign of the WPRS predictive model.

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FINDING #8

Audit Finding Classification: Reportable condition.

Summary of the April 2016 Finding:
UIA did not consistently ensure that claimants were referred to and participated in reemployment services. Specifically, UIA:

a. Inappropriately excluded 37% of the claimants that we reviewed for referral because UIA did not record the claimants' county of residence in the Michigan Integrated Data Automated System (MiDAS).

b. Automatically excused, without consequence, 7% of the total claimants scheduled for mandatory participation in reemployment services when the claimants stated that they missed their scheduled appointment because they did not receive the appointment notifications.

Recommendations Reported in April 2016:
We recommended that UIA consistently refer claimants meeting UIA's mandatory reemployment service participation criteria to MWDA for reemployment services.

We also recommended that UIA take action to reduce the number of claimants excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment.

AGENCY PLAN TO COMPLY

On November 15, 2017, UIA stated that it had complied with both recommendations. Specifically, UIA indicated that it:

a. Corrected an oversight in its claim data gathering process and now obtains the claimant's county of residence, thus enabling UIA to assign each claimant to the appropriate Michigan Works! Agency (MWA) office for reemployment services.

b. Began sending electronic appointment notifications for reemployment services on August 14, 2017 to claimants who had designated electronic communication as their preferred method of communication. Also, in an effort to increase mandatory participation, UIA began allowing claimants to reschedule their appointment and having MWA contact claimants through e-mail about reemployment services.

FOLLOW-UP CONCLUSIONS

Conclusion for first recommendation - Not complied. A reportable condition still exists.

Our follow-up for the first recommendation noted:

- For the last two quarters of calendar year 2018, UIA referred 1,466 (14%) fewer claimants to the MWA offices than the 10,556 total estimated spots available for the

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period based on the allocated funding. UIA profiled 139,505 claimants during this period. Also, for 15 (58%) of the 26 weeks that we reviewed, UIA referred an average of 56 fewer claimants to the MWA offices than the 406 weekly spots available. UIA's weekly referrals to the 16 MWA offices ranged from 99 to 971 claimants, an average of 350 per week.

- For the first two quarters of calendar year 2019, UIA referred 445 (4%) fewer claimants to the MWA offices than the 11,830 total estimated spots available for the period based on the allocated funding. UIA profiled 128,807 claimants during this period. For all 26 weeks that we reviewed, UIA referred an average of 17 fewer claimants to the MWA offices than the 455 weekly spots available. UIA's weekly referrals to the 16 MWA offices ranged from 433 to 439 claimants, an average of 438 per week.

Conclusion for second recommendation - Complied.

Our follow-up for the second recommendation noted that UIA reduced the total number of claimants excused, without consequence, from mandatory participation in reemployment services for any reason to 3%.

FOLLOW-UP RECOMMENDATION

We again recommend that UIA consistently refer claimants meeting UIA's mandatory reemployment service participation criteria to MWA for reemployment services.

FOLLOW-UP AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

UIA agrees with the follow-up recommendation. The discrepancy in weekly referrals was communicated on October 8, 2019 and corrected moving forward on October 12, 2019. UIA will perform a quarterly review to ensure the appropriate number of claimants are being referred to the MWA offices.

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FOLLOW-UP METHODOLOGY, PERIOD, AND AGENCY RESPONSES

METHODOLOGY

We reviewed UIA's corrective action plan, new and updated policies and procedures, and interviewed UIA personnel. Specifically, for:

a. Finding #1, we:

- Analyzed UIA's intentional misrepresentation (re)determination population based on its updated manual process compared with the number of cases previously reported based on its automated process.

- Evaluated the clarity and comprehensiveness of UIA's communications and actions for 10 of the 308 cases for which UIA initiated an intentional misrepresentation (re)determination from July 1, 2018 through June 30, 2019. We randomly selected the cases to eliminate bias and enable us to project our results to the entire population.

b. Finding #2, we:

- Conducted a physical walk-through of UIA's call center operation on August 5, 2019.

- Reviewed call center statistics for 6 of the 52 business weeks from July 1, 2018 through June 30, 2019 to determine if UIA effectively answered and resolved claimant telephone calls. We randomly selected the weeks to eliminate bias and enable us to project our results to the entire population.

- Evaluated UIA's use of various best practices for communication included within the USDOL's UI Claimant and Employer Message Toolkit and the Michigan Department of Technology, Management, and Budget's Statewide Social Media Guidelines Book.

- Reviewed UIA's efforts to communicate with claimants and potential claimants via social media and UIA's Web site on July 30, 2019 and August 7, 2019, respectively.

- Analyzed UIA's communications with claimants for 5 cases for which UIA initiated an intentional misrepresentation (re)determination from July 1, 2018 through June 30, 2019 to determine whether UIA specified the time periods associated with its employment-related questions.

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c. Finding #6, we:

- Analyzed UIA's performance relative to selected USDOL ETA's UI performance standards for the 4 quarters ended June 30, 2019.
- Obtained an understanding of USDOL ETA's UI data validation process and reconciled MiDAS summary data to the ETA's data download files for a selected ETA report.

d. Finding #7, we:

- Reviewed the UIA profiling methodology and changes to model variables for July 1, 2018 through June 30, 2019.
- Confirmed that UIA and MWDA scheduled various RESEA meetings from July 1, 2018 through June 30, 2019 and inquired whether UIA had performed evidence-based evaluations of RESEA.
- Reviewed the reemployment initiatives and RESEA referral strategies within 3 UIA State quality service plan quarterly reports for July 1, 2018 through March 31, 2019 and the UIA State Plan Narrative for October 1, 2018 through September 30, 2019.
- Reviewed the USDOL ETA reports related to reemployment services to determine if the reports included outcome metrics relevant to evaluating the effectiveness of the RESEA program.

e. Finding #8, we:

- Analyzed UIA's reemployment services data for July 1, 2018 through June 30, 2019 to determine whether UIA consistently referred claimants meeting UIA's mandatory participation criteria to MWA for reemployment services.
- Analyzed the USDOL ETA 9128 quarterly reports for July 1, 2018 through June 30, 2019 to determine the number of claimants excused, without consequence, from mandatory RESEA participation.

PERIOD

Our follow-up generally covered July 1, 2018 through June 30, 2019.

AGENCY RESPONSES

Our follow-up report contains 4 recommendations. LEO's preliminary response indicates that UIA agrees with all 4 of the recommendations.

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The agency preliminary response that follows each follow-up recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

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GLOSSARY OF ABBREVIATIONS AND TERMS

adjudication	A process by which UIA reviews evidence to come to a decision that determines rights and obligations of the parties involved.
agency plan to comply	The response required by Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100). The audited agency is required to develop a plan to comply with Office of the Auditor General audit recommendations and to submit the plan to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.
ETA	Employment and Training Administration.
evidence-based evaluation	The use of evidence-based practices to evaluate the effectiveness of a program. Evidence based means that the programs, approaches, and practices are evaluated by statistics and scientific methods to prove that they have a positive impact on the target population served by the program. Evidence based is different from anecdotal evidence and historical traditions, conventions, feelings, or beliefs, such as stories and testimonials.
intentional misrepresentation	An occasion when a person makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment.
LEO	Department of Labor and Economic Opportunity.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.
MiDAS	Michigan Integrated Data Automated System.
MiWAM	Michigan Web Account Manager.
MWA	Michigan Works! Agency.

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MWDA	Michigan Workforce Development Agency.
nonmonetary determination	A decision made by an initial authority based on facts related to an issue detected that has the potential to affect a claimant's past, present, or future benefit rights and for which a determination of eligibility was made. Nonmonetary eligibility determination criteria include having a qualified job separation reason, being able and available to work, seeking work, and registering for work with the State's workforce agency.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
profiling	A system to identify and rank or score UI claimants by their potential for exhausting their benefits for referral to appropriate reemployment services.
reemployment services	Services including job search assistance and job placement services, such as counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs, and referrals to employers, and other similar services.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.
RESEA	Reemployment Services and Eligibility Assessment.
social media	Forms of electronic communication, using Web sites and applications, through which users create and share content.
UI	unemployment insurance.
UIA	Unemployment Insurance Agency.
USDOL	U.S. Department of Labor.
WPRS	Worker Profiling and Reemployment Services.

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APPENDIX 188

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To: Gay Gilbert, Administrator, U.S. Department of Labor

Cc: Rose Zibert, Acting Regional Administrator, U.S. Department of Labor, Region 5

From: H. Luke Shaefer, Associate Professor, University of Michigan*

Steve Gray, General Manager, Michigan Unemployment Insurance Project

Date: 19 May 2015

Michigan Unemployment Insurance Agency: Unjust Fraud and Multiple-Determinations

The purpose of this memo is to alert you to recent changes at the Michigan Unemployment Insurance Agency (UIA) that are behind an unprecedented increase in the number of fraud cases, separation and non-separation determinations, and appeals of agency determinations. We are deeply concerned that agency procedures, made possible by new IT systems, (1) subject significant numbers of innocent claimants to unjust fraud charges, (2) further deter claims by inundating claimants with confusing multiple determination notices, and (3) exaggerate agency workloads in ways that increase federal administrative funding.

On behalf of Michigan claimants and U.S. taxpayers, we urge the U.S. Department of Labor to investigate UIA's administrative procedures to ensure the agency treats claimants fairly and complies with federal law.

1. **Unprecedented Increase in Fraud Cases, Non-monetary Eligibility Determinations, and Lower Authority Appeals is Cause for Concern**

The recent surge in fraud cases, non-monetary eligibility determinations, and lower authority appeals is particularly troubling in the context of extremely low levels of claims activity. Last year, Michigan's initial claims and benefits paid (adjusted for inflation) fell to a forty-year low, while the number of weekly claims also reached near-historic lows.[1]

a. **Fraud Cases**: Over the most recent four quarters, UIA established 26,882 fraud cases, bringing outstanding receivables to an all-time high of $56.9 million.[2] In 2014, UIA established more than five times the typical number of fraud cases and twice as many as in 2012, the previous high (Figure 1). Whereas in the past, UIA determined about 10 percent of overpayments were due to fraud, the agency now finds fraud in over one-third of overpayment cases.

b. **Non-monetary Determinations and Denials**: After taking into consideration claims activity, the rate of non-monetary determinations has never been higher in the program's recorded

[1] Dating back to 1975, weekly claims were only lower in 1999 and 2000 when the state unemployment rate was 3.7 and 3.6 percent, respectively.

[2] ETA 227, columns 1 and 71, Q2 2014 to Q1 2015 (accessed 5 May 2015).

*** Affiliations are listed for identification purposes only. The views expressed in this memo are those of the authors and do not reflect the views of any of the organizations with which they are affiliated.**

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history (Figure 2). In 2014, the number of non-separation and separation determinations increased by 159 percent and 32 percent, respectively, over the previous year, even as initial claims and claimant contacts declined by nearly ten percent (Table 2).

- *Non-separation*: All non-separation categories increased year-over-year, but the rise in "disqualifying or deductible income" and "other" deserve special attention (Table 2). MiUI saw a number of cases where UIA's computers mishandled partial benefits or improperly attributed earnings to weeks when claimants were unemployed, resulting in automatic fraud determinations. (See claimant example 2.) Finally, while we do not know the cause of the six-fold increase in "other," it is concerning that these determinations do not fall within one of the standard categories.

- *Separation*: A 75 percent increase in "voluntary leaving" determinations led to the year-over-year rise in separation determinations (Table 2). The increase in voluntary leaving determinations is likely the product of a new automated procedure we call "robo-fraud," which we will discuss in greater detail.

- *Denials*: UIA denied 70 percent of a staggering 590,000 determinations in 2014. The denial rate exceeded the long-term average by 13 percentage points and was the highest rate in the program's recorded history. Interestingly, the denial rate for redeterminations fell from 52 percent in 2013 to just 4 percent in 2014. We do not know if this change is the result of a reporting error or a change in policy.

c. **Lower Authority Appeals**: After taking into consideration agency workload, appeals reached an all-time high in 2014 (Figure 3). Last year, 37,500 claimants were involved in appeals—the equivalent of roughly 150 appeals per business day. Claimant appellants outnumbered employer appellants six to one in 2014—twice the historic rate—indicating that negative agency decisions are falling disproportionately on claimants. Moreover, appeals occur less frequently than expected given the high number of determinations. For instance, appellants filed 6.4 appeals per hundred determinations last year, compared to 8.4 on average over the prior two decades.

   Our concern is that multiple and confusing determinations may discourage claimants, and disadvantaged claimants in particular, from appealing unfair agency decisions that they would win at a hearing. Additionally, because many adjudications occur months after a claimant has stopped claiming benefits, former claimants who changed addresses do not learn of the determination within the 30-day appeal window. Failing to appeal is especially damaging in overpayment and fraud cases where claimants may owe tens of thousands of dollars as a result of Michigan's exorbitant four-times fraud penalty and the 12 percent interest rate charged on restitution.

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2. Failure to Meet Federal Performance Standards

Another possible reason for the lack of appeals is that the hearing system is completely overwhelmed by the number of negative agency decisions. Over the previous 12 months, claimants waited an average of 78 days—longest in the nation—for an Administrative Law Judge to hear their case (Table 2). These delays create a serious financial hardship for unemployed workers who may wait over two months for a decision. Additionally, only 65 percent of non-monetary determinations met the federal 21-day timeliness standard (Table 2). The agency's flagrant disregard of federal performance standards is reason enough for an investigation.

Table 1. Core Performance Measures, April 2014 to March 2015

Performance Measure	Michigan	Federal Standard
Non-monetary determinations, 21-day timeliness	64.5 percent	≥80 percent
Average age of pending lower authority appeals	77.9 days	≤30 days

Source: U.S. Department of Labor, State Rankings of Core Measures, (accessed 5 May 2015).

3. "Robo-Fraud" and Multiple Adjudications Explain the Unprecedented Rise in Agency Actions Against Claimants

In 2014, the Michigan Unemployment Insurance Project (MiUI) noticed a significant uptick in clients seeking our help with fraud-related cases and the number of clients being inundated by multiple determination notices. Through the appeals process, MiUI learned that UIA introduced a new, automated computer system that is behind the surge in fraud cases and eligibility determinations. Multiple determinations confuse and frustrate claimants. More seriously, the procedure we refer to as "robo-fraud" is grossly unjust and potentially violates state and federal law.

a. Robo-fraud: UIA's computers search through past and present claimant records, scanning for wage-record irregularities, in addition to reporting discrepancies between claimants and their former employers related to the reason for separation from employment. MiUI frequently sees partial benefits cases where the agency automatically brings fraud charges against claimants who made good-faith efforts to accurately report wages. As claimant example 4 illustrates, in addition to charging claimants with fraud well after their benefits expired, UIA is unable to provide any evidence of wrongdoing at appeals hearings.

More often, however, claimants request help with separation fraud. After UIA's computer system identifies a separation discrepancy, it automatically sends claimants a questionnaire threatening to issue a "determination based on available information," if they fail to respond within ten days. As is illustrated by Exhibit 1, the agency does not explain in any

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detail the nature of the problem in the questionnaire itself or in the ensuing fraud determination letter. (Not until the appeals hearing, do claimants learn the details of the agency's accusations.)

On the back of the questionnaire there are two questions. The first question asks if claimants intentionally provided false information (Exhibit 1). The second question asks claimants why they should have been entitled to benefits. Notably, "I was legally entitled to benefits" is not one of the eight possible responses. The sole purpose of these self-incriminating questions is to provide evidence in support of subsequent fraud charges. Indeed, from a claimant's perspective, there is no "right" way to respond to the questionnaire. UIA automatically levels fraud charges in the following circumstances:

i. when claimants do not respond within ten days;

ii. when claimants provide a timely response that differs from their former employers' response to a similar questionnaire; and

iii. when UIA's disjointed computer system fails to properly record on-time responses that are consistent with employer reports.

Because many Administrative Law Judges recognize the absurdity of this process, MiUI rarely loses robo-fraud cases at appeals hearings. However, we are only able to represent a fraction of claimants swept up by robo-fraud. Even those claimants who are able to afford a lawyer should not be forced to defend themselves against baseless charges. The following are other aspects of robo-fraud that should concern the U.S. Department of Labor.

- **Claimants treated unfairly**: There is no rational reason for UIA to assume by default that reporting discrepancies between claimants and their former employers or the failure to return a questionnaire in ten days constitute fraud. Likewise, there is no justification for accepting by default an employer's explanation for the separation from employment. Claimants and their former employers frequently disagree about the nature of job loss for a variety of reasons, including simple reporting mistakes and good-faith disputes over the specific details. As claimant example 1 illustrates, UIA is retroactively charging claimants with fraud in cases where employers never contested the benefit claim.

- **Claimants do not receive timely notices**: UIA levels fraud charges against claimants whose benefits ended months or even years ago. Because UIA does not have current address information or a way to verify receipt, claimants do not always receive the questionnaires or determination letters. In these cases, claimants do not find out about the charges until UIA is about to garnish their wages and tax refunds or levy their

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bank accounts. Furthermore, after missing all appeals deadlines, claimants must go through the added hurdle of submitting a good-cause request to reopen their cases.

- **Misaligned financial incentives may encourage employers to provide misinformation:** Robo-fraud offers employers a financial incentive to misrepresent the reason for job loss. All employers must do to guarantee a benefit denial is state that their former employees quit, regardless of the real reason for the separation. While UIA is quick to charge claimants with fraud, as far as we can tell employers who provide false information regarding a claimant's separation face no consequences whatsoever. At worst, UIA may charge employers for benefits, if former employees successfully navigate the onerous appeals process.

- **Double-standard applies to claimants and employers**: Even though MiUI rarely loses robo-fraud cases at appeals hearings, we are unaware of a single instance of the agency charging an employer with fraud for misrepresenting the reason for separation. There is no explanation for why robo-fraud should only work against claimants when it is just as reasonable to assume that employers make misrepresentations. (See claimant example 3.)

- **Disadvantaged claimants at greatest risk**: Claimants charged with fraud are not eligible for a hardship restitution waiver (allowed under Michigan law for indigent claimants), nor are they eligible for free representation at appeals hearings through Michigan's Advocacy program. By adding fraud charges on top of garden-variety eligibility decisions, UIA ensures that claimants will be unable to seek financial relief or free representation. It is reasonable to assume many claimants are ill-equipped to advocate on their own behalf or cannot afford a private attorney. Indeed, pro-bono attorneys we spoke with are overwhelmed with robo-fraud cases.

- **Lawsuit filed against UIA for robo-fraud**: On April 21, the United Auto Workers, the Sugar Law Center, and a group of citizens filed a complaint against UIA in federal court to stop robo-fraud.[3]

b. Multiple Adjudications: "Multiple adjudications" are at least partially responsible for the unprecedented rise in eligibility determinations. UIA cites improved efficiency as one of the benefits of the new automated IT infrastructure.[4] However, in the case of eligibility determinations described above, increased efficiency has not improved customer service

[3] *Zynda et al* v. *Zimmer et al,* No. 2:2015cv11449 (Michigan Eastern District Court, 2015).
[4] Michigan Department of Licensing and Regulatory Affairs, Unemployment Insurance Agency, Michigan Integrated Data Automated System & Unemployment Insurance Modernization Project, NASCIO award nomination, http://tinyurl.com/q6dsgvm.

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for claimants or resulted in the more efficient use of federal resources. The U.S. Department of Labor should not reward UIA for exaggerating its workload in a way that increases federal funding or for replacing staff, who once reviewed claimant records, with an IT system.

- While the IT improvements were intended to reduce paperwork, the new computer systems made it much easier (efficient) for UIA to issue multiple determinations related to a single claim. Claimant example 4 illustrates how multiple adjudications resulted in a client receiving 20 determinations on related remuneration issues pertaining to a single claim.

- In a case study touting its services, the company behind UIA's new computing systems, Fast Enterprises, credits a $9 million increase in Michigan's federal administrative funding to the "[i]ncreased non-monetary determination efficiency" made possible by the new computing system.[5]

4. **Automatic Garnishment of Wages and Tax Refunds:** As a result of robo-fraud and 2011 state legislation, there is now an uninterrupted pipeline from workers' bank accounts, tax refunds, and wages to UIA. From the initial fraud determination to the garnishment of wages and tax refunds, there are few legal barriers in place to protect claimants from UIA. (See claimant example 2 below.) Moreover, Michigan's severe four-times fraud penalty makes it more difficult for thousands of claimants to recover from unemployment.

   - Whereas in the past, UI returned fraud proceeds to the UI trust fund, Public Act 269 of 2011 allows the agency to retain a portion of collections, giving UIA a financial incentive to find fraud where none exists.[6]

   - The legislation also increased the percentage of wages that UIA may garnish from 20 to 50 percent and eliminated the requirement that the agency seek a court order before garnishing wages. This policy is particularly harmful to low-wage workers who cannot afford to have their paychecks reduced.

   - UIA often garnishes tax refunds and wages with little or no notice. UIA likely fails to provide proper notification because the agency does not have current mailing addresses for claimants who may have collected benefits months or years prior.

[5] Fast Enterprises. Michigan's Unemployment Insurance Solution. http://www.fastenterprises.com/documents/MichiganCaseStudy.pdf.
[6] For a summary of Public Act 269 of 2011, see http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-0806-N.pdf.

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Recommendations

Our analysis of administrative data provides evidence of a system-wide effort that charges innocent claimants with fraud and discourages unemployed workers from claiming benefits. The recent procedural changes behind these increases are leading to a loss of confidence in the state unemployment insurance program. In our experience, innocent claimants accused of committing fraud are often overwhelmed by a sense of injustice, while exaggerated accounts of fraud undermine confidence in the unemployment insurance system.

The dramatic procedural changes wrought by the automated IT infrastructure justify a review by the U.S. Department of Labor to ensure that agency procedures treat claimants fairly and comply with federal law. We urge you to consider the following actions:

1. Investigate the causes behind the unprecedented increase in fraud cases, non-monetary determinations, and appeals.

2. Conduct a comprehensive review of UIA's recent staff reductions as well as new automated procedures, including robo-fraud, multiple adjudications, the garnishment of claimant wages and tax refunds, and the levying of claimant bank accounts.

3. Review the integration of UIA's IT systems to verify that the online claimant portal is user friendly and that agency forms, such as the fraud questionnaire and fraud determination, serve a legitimate purpose, are easy to understand, are accessible for persons with disabilities or limited English proficiency, and provide meaningful information.

Thank you for your consideration. Please feel free to contact us with further questions.

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*** Affiliations are listed for identification purposes only. The views expressed in this memo are those of the authors and do not reflect any of the organizations with which they are affiliated.**

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Steve Gray is the general manager and a founder of the nonprofit Michigan Unemployment Insurance Project (MiUI), which marshals law students to represent jobless workers denied unemployment insurance benefits by the state. Steve is also a clinical assistant professor and director of the University of Michigan Law School's Unemployment Insurance Clinic. He specializes in public benefits litigation and advocacy and administrative law. As a 2008-09 Fulbright Scholar, Steve help establish a legal aid clinical program and taught at the University of Namibia Law School. Steve has worked in civil legal aid in one capacity or another since his graduation from the University of Illinois College of Law in 1987.

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Claimant Anecdotes[7]

Example 1: UIA Charges Claimant with Fraud after Employer Error

Amanda Balma is a Certified Nursing Assistant who was working at a rehabilitation center in Okemos, MI. The rehabilitation center laid Amanda off in early 2014 after learning that she was pregnant and could no longer preform the heavy lifting required to care for patients. Her employer encouraged her to apply for unemployment insurance benefits. The employer characterized her separation for the unemployment insurance agency as a leave of absence as they hoped to hire Amanda back once her lifting restriction ended. Amanda applied for and received benefits without incident from March through August 2014.

Three months after her benefits ended, Amanda, now a new mother, received a notice from the unemployment insurance agency stating that she committed an intentional misrepresentation and owed over $20,000 in fines. Her employer's well-intentioned, but mistaken, mischaracterization of the layoff as a leave of absence triggered the agency's computers to issue an automatic fraud determination. As the agency performs no due diligence, Amanda and her newborn child will start their lives together over $20,000 in debt to the state.

Example 2: Agency Error Leads to Automatic Garnishment of Tax Refund

After losing his job in February 2014, electrician and Washtenaw county resident, Kevin Grifka applied for and received unemployment insurance benefits, before finding work in the fall of 2014. Months after his benefits ended and he had returned to work, the agency sent him a notice claiming that he owed over $12,000. This was the first time Kevin had any indication that there was a problem; yet, the administrative hearing system denied his request for an appeal because the agency claimed Kevin did not respond on time to an initial ineligibility letter, a notice he never received.

The agency decided retroactively that Kevin was ineligible for benefits because its computer system erroneously spread his earnings over an entire quarter, including the period of time when he was unemployed and receiving benefits. A human reviewing Kevin's file would have spotted this mistake. Not recognizing the error, however, the agency's automated system went to work, totaling up the amount overpaid, plus penalties, and printing off a form letter. Perhaps the most troubling aspect of Kevin's case is that nothing prevented the agency from garnishing $9,000 from his federal and state tax refunds as payment for its own mistakes.

Example 3: Claimant and Former Employer Disagree over the Reason for Job Loss

[7] Examples 1-3 are taken from *Zynda et al* v. *Zimmer et al,* No. 2:2015cv11449 (Michigan Eastern District Court, 2015). The fourth example uses a pseudonym and is based on information provided by a claimant attorney.

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Brian Saylor, a resident of Oakland County, worked for a lawn sprinkler and plumbing business in 2013, until a manager told him he was laid off with only a few days remaining in the season. After losing his job, Brian collected UI benefits for 15 weeks until he received a letter from the agency stating that he committed fraud by intentionally providing false information. The agency assessed over $19,000 in penalties because Brian's employer claimed that he quit his job, which if true, may have made him ineligible for benefits.

Spotting the discrepancy between the claimant and employer explanations for the job loss, the agency's computer system automatically determined that Brian was ineligible for benefits and that he committed fraud. When Brian appealed, an Administrative Law Judge found no proof that Brian quit his job, reversing the agency's initial ineligibility and fraud decisions. Brian's case illustrates the clear double-standard at work. A simple discrepancy between an employer and a former employee is enough for the agency to deny benefits and, more seriously, charge claimants with fraud. When Administrative Law Judges decide for claimants, UIA does not charge the employer with fraud. Meanwhile, there is no mechanism in place to penalize UIA for leveling unjustified charges or failing to meet its burden of proof.

Example 4: Multiple Adjudication and Wrongful Partial Benefit Fraud Charges

Ms. Barbara Hills started receiving UI benefits in 2009 after losing her full-time job. During the recession, Barbara struggled to find full-time employment but landed several part-time jobs that qualified her for partial benefits. She dutifully reported her wages each week and never heard from the unemployment insurance agency about any issues with her eligibility.

Imagine the shock Barbara felt when a series of determination notices began piling up in her mailbox in May and June 2014. Not only did UIA find Barbara ineligible for benefits from October 2010 to August 2013 because her wages were too high, the agency also accused her of committing fraud for misrepresenting her earnings. Between restitution and a four-times fraud penalty, Barbara owed the state over $60,000. Over a two month period, UIA's computer system automatically mailed Barbara ten overpayment and ten fraud determinations, all for the same underlying issue. She had to protest each of these determinations separately.

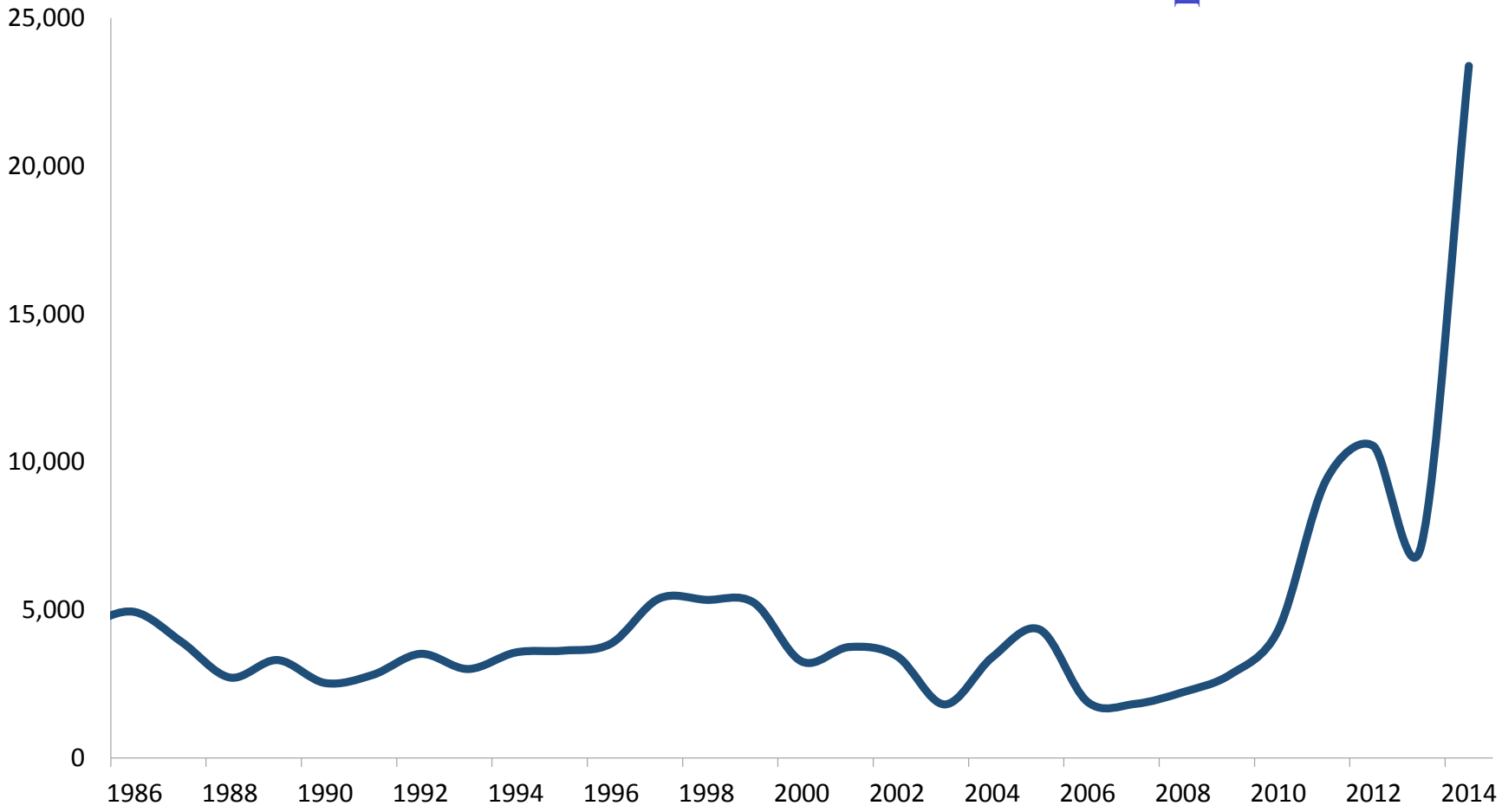
As is true in nearly all robo-fraud cases, UIA was unable to provide any evidence of misrepresentation at a hearing before an Administrative Law Judge. Once the judge determined that Barbara had not committed fraud, many of the overpayment redeterminations exceeded the statute of limitations. After adjudicating the first determination, the parties agreed that Barbara did not commit fraud and did not owe anything for the expired determinations. Nonetheless, the Administrative Law Judge separately adjudicated the remaining 19 redeterminations, mindlessly reading through the instructions and procedures for each redetermination.

UIA's automatically generated determination notices create a great deal of confusion and frustration for claimants, in addition to wasting court resources. Had a person reviewed Barbara's case, she would have packaged the determinations together. More fundamentally, whereas the computer was unable to parse the case's underlying merits, a person may have found a better solution than flooding Barbara with letters and demanding an exorbitant penalty.

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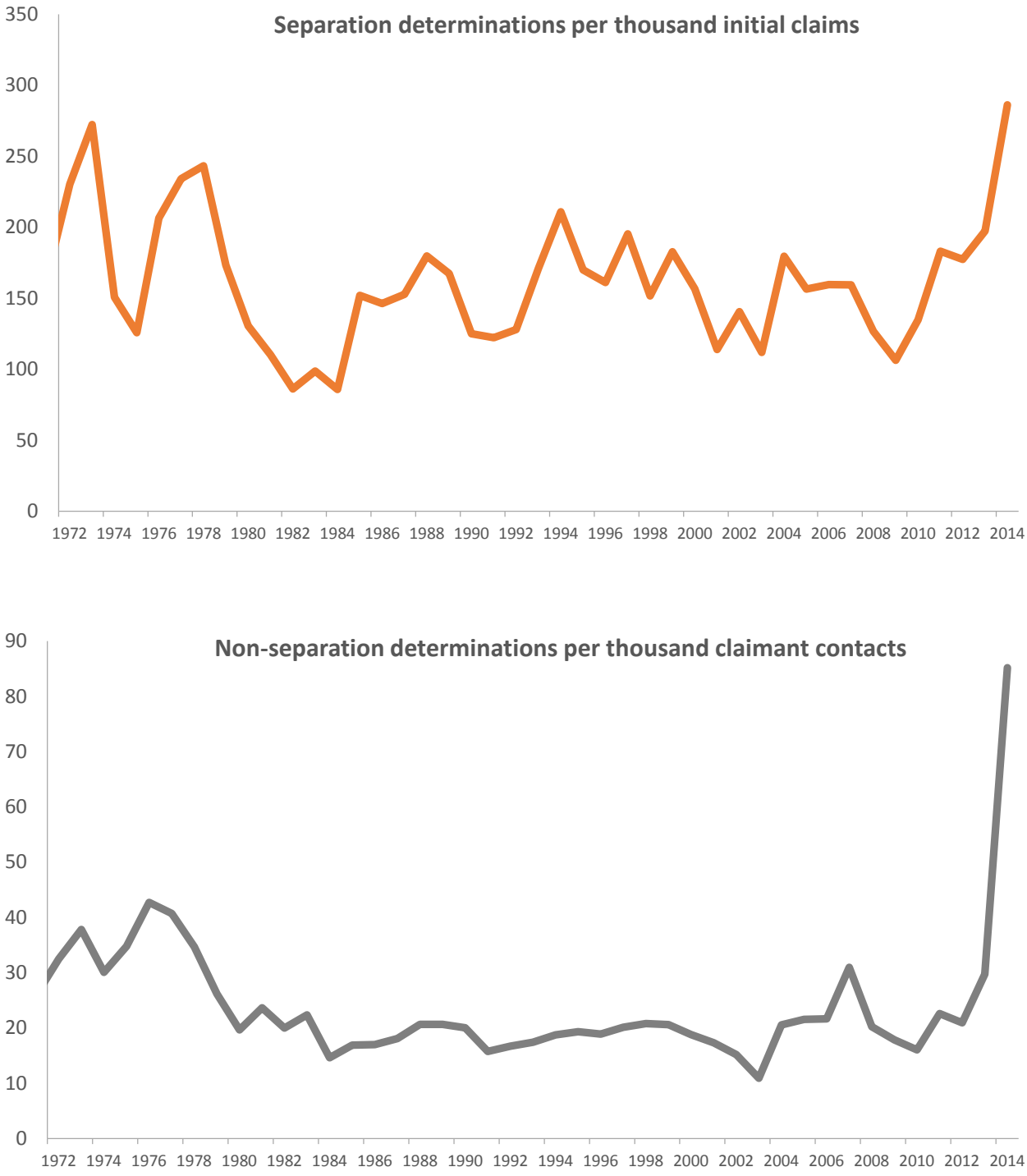
Figure 1: Number of Annual Fraud Cases Established



Source: Authors' analysis of U.S. Department of Labor, ETA 227, accessed 21 March 2015.

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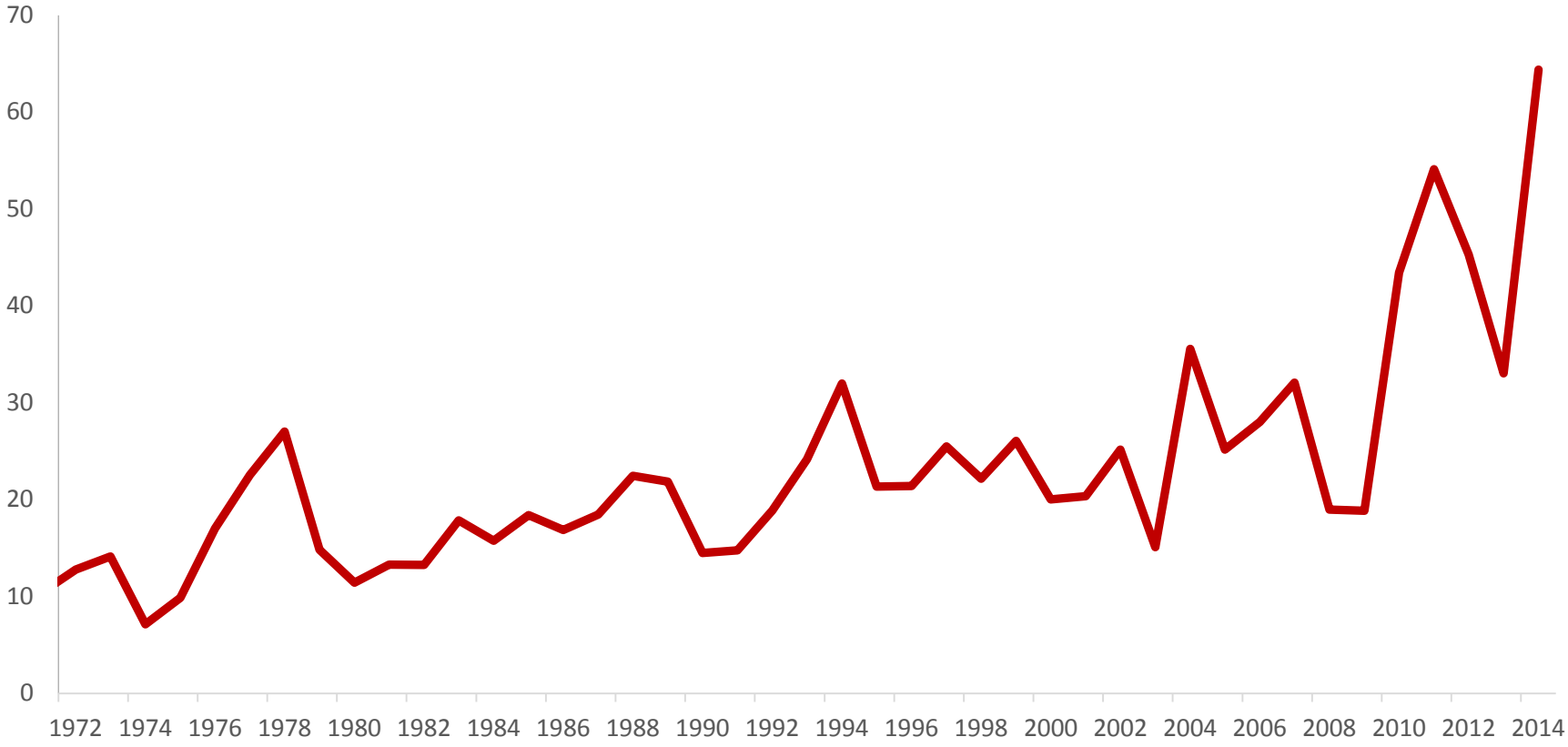
Figure 2: Annual Separation and Non-Separation Determinations



Note: Claimant contacts are initial claims plus continued claims. Charts exclude multi-claimant determinations.
Source: Authors' analysis of U.S. Department of Labor, ETA 207, accessed 21 March 2015.

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Figure 3: Annual Number of Claimants Involved in Appeals per thousand Initial Claims



Note: Includes only single-claimant, lower authority appeals.

Source: Authors' analysis of U.S. Department of Labor, ETA 5130, accessed 21 March 2015.

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Table 2. Michigan Non-separation and Separation Determinations and Denials

A. Non-separation Determinations

	Initial and Continued Claims	**Total Non-separation Issues**	Able, Available & Actively Seeking	Disqualifying or Deductible Income	Refusal of Suitable Work	Report Require Call-ins & other	Refusal Profiling Referrals	Other (aliens, athlete, school)
2009	15,167,973	**271,156**	67,070	27,243	8,985	111,840	13	56,005
2010	9,229,289	**148,179**	45,069	10,949	4,193	61,221	8	26,739
2011	7,172,896	**162,102**	47,062	7,455	4,361	75,497	7	27,720
2012	6,383,148	**133,626**	37,823	4,438	2,369	69,748	10	19,238
2013	5,479,612	**163,106**	37,352	9,177	1,541	90,525	262	24,249
2014	4,964,688	**422,973**	69,917	43,232	3,231	166,296	478	139,819
% change 2013-14	*-9%*	***159%***	*87%*	*371%*	*110%*	*84%*	*82%*	*477%*

B. Separation Determinations

	Initial Claims	**Total Separation Issues**	Voluntary Leaving	Discharge for Misconduct	Other
2009	1,463,878	**155,630**	57,050	97,819	761
2010	905,747	**122,202**	40,363	81,410	429
2011	768,447	**140,778**	51,090	89,038	650
2012	709,182	**125,835**	43,775	81,553	507
2013	639,539	**126,292**	40,918	83,419	1,955
2014	583,161	**166,926**	71,454	95,472	0
% change 2013-14	*-9%*	***32%***	*75%*	*14%*	*-100%*

C. Denial Rates

	Total Determinations & Redeterminations	Total Determinations	Total Redeterminations
2009	53%	52%	57%
2010	53%	57%	44%
2011	59%	62%	52%
2012	62%	63%	58%
2013	64%	67%	52%
2014	57%	70%	4%

Note: Includes single-claimant totals only.
Source: Authors' analysis of U.S. Department of Labor, ETA 207, accessed 21 March 2015.

UIA 1302
(Rev. 06-14)
Rick Snyder
GOVERNOR

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LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

Authorized By
MCL 421.1 et seq.
Sharon Moffett-Massey
DIRECTOR

[redacted]

Mail Date: [redacted]
Letter ID:
CLM:
Name:

Notice of Determination

Case Number: [redacted]
SSN:
Claimant:

BYB:
Employer Number:
Involved Employer: [redacted]

Issues and Sections of Michigan Employment Security Act involved: Misrepresentation and 62(b).

Your actions indicate you intentionally misled and/or concealed information to obtain benefits you were not entitled to receive.

Benefits will be terminated on any claims active on [redacted]

You are disqualified for benefits under MES Act, Sec. 62(b). Restitution is due under MES Act, Sec. 62 (a). The wages used to establish your claim are cancelled and no further benefits will be paid based on those wages. In addition, you are required to pay the penalty assessed based on this determination under MES Act, Sec. 54(b). If the amount of restitution due is less than $500, the penalty is double the restitution due, except that for a subsequent intentional misrepresentation the penalty amount is four times the restitution due. If the amount of restitution due is $500 or more, the penalty is four times the restitution due.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this (re)determination, refer to "Protest Rights and Appeal Rights" on the reverse side of this form.

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UIA 1713 C/E
(Rev. 06-14)
Rick Snyder
GOVERNOR

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
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Authorized By
MCL 421.1 et seq.
Sharon Moffett-Massey
DIRECTOR

[redacted]

Mail Date: [redacted]
Letter ID: [redacted]
CLM: [redacted]
Name: [redacted]

6

Request for Information Relative to Possible Ineligibility or Disqualification

Employer Name [redacted]
Employer Number
Benefit Year Begin

A question of eligibility and/or qualification has been raised on this claim. Please respond to the questions on the reverse side of this form. You should keep a copy for your records. The completed form must be received by UIA within 10 calendar days of the mail date shown. ***Failure to respond to this request for information will result in issuance of a determination based on available information.***

Respond by Mail:	UIA PO Box 169 Grand Rapids MI 49501-0169
Fax:	(517) 636-0427
Inquiry Line:	1-866-500-0017
TTY Customers:	1-866-366-0004

Respond online: You can submit "Request for Information Relative to Possible Ineligibility or Disqualification" responses electronically through MiWAM. To access MiWAM, go to www.michigan.gov/uia, and click on the link, "UIA Online Services for Unemployed Workers". If you already have an existing MiWAM account, log in and select "Additional Fact Finding is required for your claim". If you do not have an existing MiWAM account, you can register to create an account by selecting "Register As a New User", and follow the prompts. Online responses must be submitted within 10 calendar days of mail date shown above.

If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you would be subject to any or all of the following:

- You would have to repay money received **and** would have to pay a penalty of two times (if less than $500 of improper payments) or four times (if $500 or more of improper payments) the amount of benefits fraudulently received.
- The two times penalty would be increased to a penalty of **4 times** the amount of improper payments if it were a second or subsequent offense.
- Your benefits would be stopped and you will lose remaining benefits.
- You would be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these.
- Intentional misrepresentation to obtain benefits in **excess** of $3,500 is a felony and you may be prosecuted in criminal court.

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[redacted]

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Additional information is necessary regarding Misrepresentation: Voluntary Quit/Personal Reasons.

Did you intentionally provide false information to obtain benefits you were not entitled to receive?

Yes No

Why do you believe you were entitled to benefits?

1. I needed the money
2. I had not received my payment when I reported for benefits
3. I reported the net dollar amount instead of the gross dollar amount paid
4. I did not understand how to report my earnings or separation reason
5. I thought my employer reported my earnings for me
6. Someone else certified (reported) for me
7. Someone else filed my claim for me
8. Other

You may provide a statement and evidence regarding this issue before a (re)determination is made on this matter. You must provide a response to the questions above and if you failed to previously report this information, explain why. This form must be received by the Agency within 10 calendar days of the mail date shown on page 1. Submit copies (not the originals) of any records which you believe support your position, such as pay stubs, layoff slip, federal income tax form, W-2, etc. If you require additional space, attach additional page(s). Please include your name, Claim ID and Letter ID as shown on page 1 of this form on all documents that you submit.

Certification: I certify that the information I have reported is true and correct to the best of my knowledge and belief. I understand that there are penalties of fines and/or imprisonment and/or community service for false statements as indicated on the front side of this form.

Signature _____ Date _____ Telephone Number _____

Print Name _____ Title _____

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APPENDIX 199

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Benefit Accuracy Measurement State Data Summary
Improper Payment Information Act Performance Year 2017

The Benefit Accuracy Measurement (BAM) program is designed to determine the accuracy of paid and denied claims in three major Unemployment Insurance (UI) programs: regular State UI, Unemployment Compensation (UC) for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). State Workforce Agencies (SWAs) select weekly random samples of paid and denied claims. State BAM investigators audit these paid and denied claims to determine whether the claimant was properly paid benefits or properly denied benefits. The results of the BAM statistical samples are used to estimate accuracy rates for the populations of paid and denied claims. The BAM program provides a continuous feedback loop on the state and federal methods of administration.

This report is designed to provide information gathered by the BAM program for Improper Payment Information Act (IPIA) performance year (PY) 2017, and some analysis of this information. Based on the errors identified and information gathered, states will be able to develop plans and implement corrective actions to ensure accurate administration of state law, rules, and procedures. The major objectives of the BAM program are to:

- Assess the accuracy of UI payments;
- Estimate the UI improper payment rate as required by Improper Payments Information Act (IPIA) of 2002;
- Promote improvements in program accuracy and integrity; and
- Encourage more efficient administration of the UI program.

The basis for determining payment and denial accuracy are federal and state law, administrative codes and rules, and official policy. Therefore, the system is designed to be comprehensive in coverage by including all areas of the claims process where errors could occur. The BAM program is a diagnostic tool for Federal and SWA staff to use in identifying systemic errors and their causes and in correcting and tracking solutions to these problems.

This analytical report uses the BAM data for the 12-month period (July 2016 through June 2017) and is aligned with the reporting period used by the UI program in the Department of Labor's Agency Financial Report (AFR). In this analytical report, rates are shown at a national level, which is the sum of the 52 SWAs. The SWAs consist of the 50 states, Puerto Rico, and the District of Columbia. Each SWA's data are provided in separate linked documents. The United States Virgin Islands is exempt from operating a BAM program.

Under 20 CFR 602.21(g), the U.S. Department of Labor's (Department) Employment Training Administration (ETA) compiles and releases the BAM program results each year on behalf of the states. The Department accomplishes this requirement by the

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release of annual results on its Web site: https://www.dol.gov/general/maps and the associated data page https://www.dol.gov/general/maps/data.

IPIA and the subsequent statutory amendments (the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012) require agencies to examine the risk of erroneous payments in all programs and activities they administer. Federal law defines the term improper payment as: "(A)…any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and (B) includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for credit for applicable discounts." Agencies are required to review all programs and activities they administer and identify those that may be susceptible to significant erroneous payments. IPERIA defines "significant improper payments" as gross annual improper payments (i.e., the total amount of overpayments and underpayments) in the program exceeding (1) both 1.5 percent of program outlays and $10,000,000 of all program or activity payments made during the year reported or (2) $100,000,000 (regardless of the improper payment percentage of total program outlays). The UI program meets both of these criteria. Additionally, IPERA codifies the requirement for valid statistical estimates of improper payments such as those generated by the BAM program, and compels actions to reduce improper payments. SWAs make all UI payment decisions. Therefore, the Department requires SWAs to review their BAM program improper payment estimates and report their planned activities to prevent, detect, reduce, and recover improper payments in an UI Integrity Action Plan (ET Handbook No. 336, see, Appendix V).[1]

The Department reports the overpayment and the underpayment rate to the Office of Management and Budget (OMB) as part of its IPIA[2] reporting. The IPIA PY 2017 (IPIA 2017) includes the period July 2016 through June 2017 (Batch Range 201627 through 201726). It is extremely important that the BAM programs in each SWA accurately measure the level of improper payments in its state so that performance against the state and national targets can be properly evaluated. BAM is critical to assessing improvements in program accuracy and integrity and encouraging more efficient administration of the UI program.

UI benefit payments included in BAM for the IPIA 2017 PY decreased to $30.68 billion compared with $30.89 billion during the IPIA 2016 PY. IPIA 2017 BAM paid claims results are based on 24,644 valid sample cases[3]. This represents a completion rate of 99.88 percent. BAM investigators completed claimant interviews in 21,754 or 88.27 percent of the completed cases. The remaining audits were completed based on

[1] Unemployment Insurance Program Letter (UIPL) No. 21-17 ; and ET Handbook No. 336

[2] U. S. Department of the Treasury PaymentAccuracy.gov Web Page: http://www.paymentaccuracy.gov

[3] States sampled 24,701 payments and deleted 27 payments as being out of the scope of the review, BAM investigators completed 24,644 of the remaining 24,674 valid cases. Puerto Rico was unable to complete 30 cases due to a catastrophic storm interrupting UC operations.

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information obtained from agency records, the claimants' former employers, and third-party sources, such as labor unions and private employment agencies. As this linked document shows (IPIA_2017_Method_Claimant_Information_Obtained.xlsx in sheet titled "Paid Claims error % x response"), investigators are able to identify payment accuracy issues in cases, in which interviews are not completed. This limits nonresponse bias.

Readers are strongly cautioned that it may be misleading to compare one state's payment accuracy rates with another state's rates. No two states' written laws, regulations, and policies specifying eligibility conditions are identical, and differences in these conditions influence the potential for error. States have developed many different ways to determine monetary entitlement to UI. Additionally, nonmonetary requirements are, in large part, based on how a state interprets and enforces its law. Two states may have identical laws but may interpret them quite differently. States with stringent or complex provisions tend to have higher improper payment rates than those with simpler, more straightforward provisions (See the 2017 "Comparison of State Unemployment Laws," https://oui.doleta.gov/unemploy/comparison2017.asp).

Because the BAM data are based on relatively small samples, the estimated improper payment rate is subject to sampling and non-sampling errors. Sampling errors are errors that arise in a data collection process as a result of taking a sample from a population rather than using the whole population. Therefore a confidence interval, expressed as +/- x percentage points, is constructed for the estimated improper payment rates. The actual rate is expected to lie within 95 percent of the intervals constructed from repeated samples of the same size and selected in the same manner as the BAM sample. Non-sampling errors are errors or biases that arise in a data collection process as a result of factors other than taking a sample. These errors can include, but are not limited to, timeliness of data collection, data entry errors, biased questions in fact-finding, biased decision making, and inappropriate analysis and conclusions completed by state investigators or false or inaccurate information provided by survey respondents.

The Department's approved improper payment rate computation methodology can be found in UIPL 09-13 Change 1 (January 27, 2015). Corrective action and integrity plans for FY 2018 are based on this computation methodology. IPERA requires an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under the IPIA.

In this report, the Department uses six analytical measures to assess SWA payment accuracy and estimate the risk of erroneous denial of benefits. Individual SWA rates reflect state law, administrative codes or rules, and policies. National results reflect the 52 SWAs' findings.

The Analytical Measures (Rates):

1. **Overpayment Rate** - The overpayment rate is defined in UIPL No. 09-13, Change 1. It is the total weighted amount of payments determined to be overpaid divided by the weighted dollar amount paid in the BAM sample population. The rate includes fraud, nonfraud recoverable, and nonfraud nonrecoverable overpayments. It excludes

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payments that are technically proper due to finality, warnings issued for the failure to conduct an active search for work, or due to rules other than finality. All causes and responsible parties are included in this rate.

2. **Underpayment Rate** – The underpayment rate is defined in UIPL No. 9-13 Change 1. It is the total weighted amount of payments determined to be underpaid divided by the weighted dollar amount paid in the BAM sample population. All causes and responsible parties are included in this rate. It includes errors where additional payment is made to the claimant. It excludes those errors that are technically proper due to finality rules or technically proper due to rules other than finality.

3. **Improper Payment Rate** – This rate includes UI benefits overpaid plus UI benefits underpaid divided by the total amount of UI benefits paid. Overpayments, underpayments, and total UI benefits paid are estimated from the BAM survey results of paid UI claims in the state UI, UCFE, and UCX programs. Overpayments and underpayments determined to be technically proper under state UI law for finality and other reasons are excluded from the measure.

4. **Agency Responsibility Rate** - This rate includes overpayments for which the SWA was either solely responsible or shared responsibility with claimants, employers, or third parties, such as labor unions or private employment referral agencies. The rate includes fraud, nonfraud recoverable overpayments, and nonfraud nonrecoverable overpayments. It excludes payments that are technically proper due to finality or other rules.

5. **Fraud Rate** - The definition of unemployment compensation (UC) fraud varies from state to state – there is no federal definition of fraud in the UC program. Generally, fraud involves a knowing and willful act and/or concealment of material facts to obtain or increase benefits when benefits are not due. States vary on the level of evidence required to demonstrate a knowing and willful act or the concealment of facts. An overpayment which is classified as a fraud overpayment in one state might be determined to be a nonfraud overpayment in another state. Often fraud determinations include looking at a pattern of action or the claimant's certification of erroneous information under the penalty of perjury. Also states differ on the implementing fraud administrative penalty determinations. In some states, a fraud determination becomes effective on the date of the fraudulent act. In other states, the administrative penalty takes effect on the determination date. Since fraud determination criteria and thresholds vary throughout the SWAs, the individual state rates reflect these differences. The rate includes all causes and responsible parties.

6. **Improper Denial Rates** - BAM estimates the percentage of claimants improperly denied benefits. This rate includes three subcategories. These subcategories are monetary denials, separation denials, and nonseparation denials. The BAM program does not assign a dollar estimate to improper denial rates; however, improper denials are corrected when permitted by law.

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For a detailed listing of these rates for each state, click on the following link (Please note that excel spreadsheets may have several worksheets or tabs of data): IPIA_2017_Integrity_Rates_All_States.xlsx

I. Paid Claims Accuracy

The Code of Federal Regulations (20CFR602) requires States to conclude all findings of inaccuracy as detected through quality control (QC) (now known as BAM) investigations with appropriate official actions in accordance with the applicable State and Federal laws and to classify its findings in benefit payment cases as proper payments, underpayments, or overpayments, and in benefit denial cases as proper or improper denials or underpayments. The state's method of administration must ensure payment when due or prohibit payment when not due. The classification system for payment accuracy includes seven codes. The classification system for denials includes six codes.

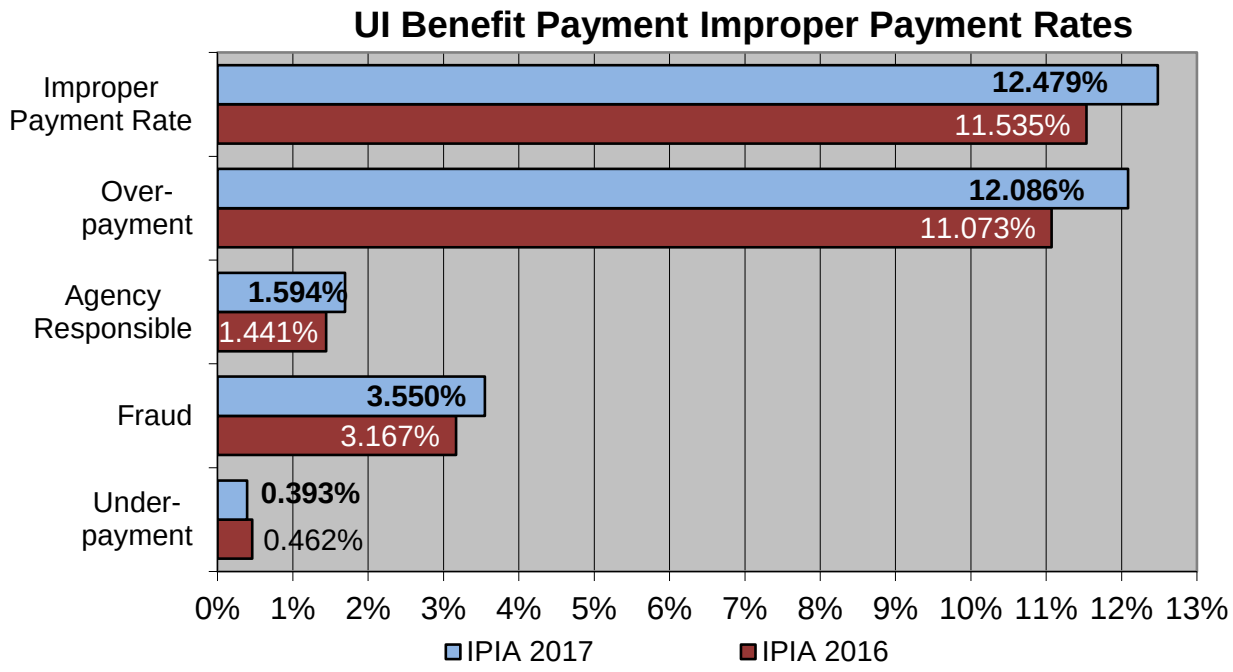
For each paid UI week investigated, referred to as the Key Week (KW), BAM investigators record whether the payment was proper or improper and, if technically proper or improper, the type of erroneous payment. Payment errors on the key week are weighted and used to generate improper payment estimates. The coding of BAM audit findings is required to be consistent with the laws, rules, and written policies of each SWA[4]. BAM captures 110 data elements for each sampled payment or denial.

The BAM data set includes demographic information as well as before and after investigation elements for eligibility conditions. Data for nine of these elements are completed only for improper and technically proper payments or erroneous denials. The Department uses these elements to produce the various integrity rates listed. (ET_395_Handbook_5th_Edition_BAM_State_Operations_Guidance).

Each integrity rate represents a different view of the BAM data set. The BAM data construct provides multiple perspectives; and payment errors may be included or excluded for a specific rate (See IPIA_2017_Methodology_and_Program_Description Integrity Rate definitions). The Fraud and Agency Responsible Rates are subsets of the overpayment rate. Also, the data structure allows for the development of individual overpayment cause rates, which excludes the impact of other erroneous payments.

[4] Comparison of State Unemployment Laws, https://oui.doleta.gov/unemploy/comparison2017.asp

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The chart above summarizes five paid claim accuracy (PCA) rates, which are used for communicating overpayment estimates.

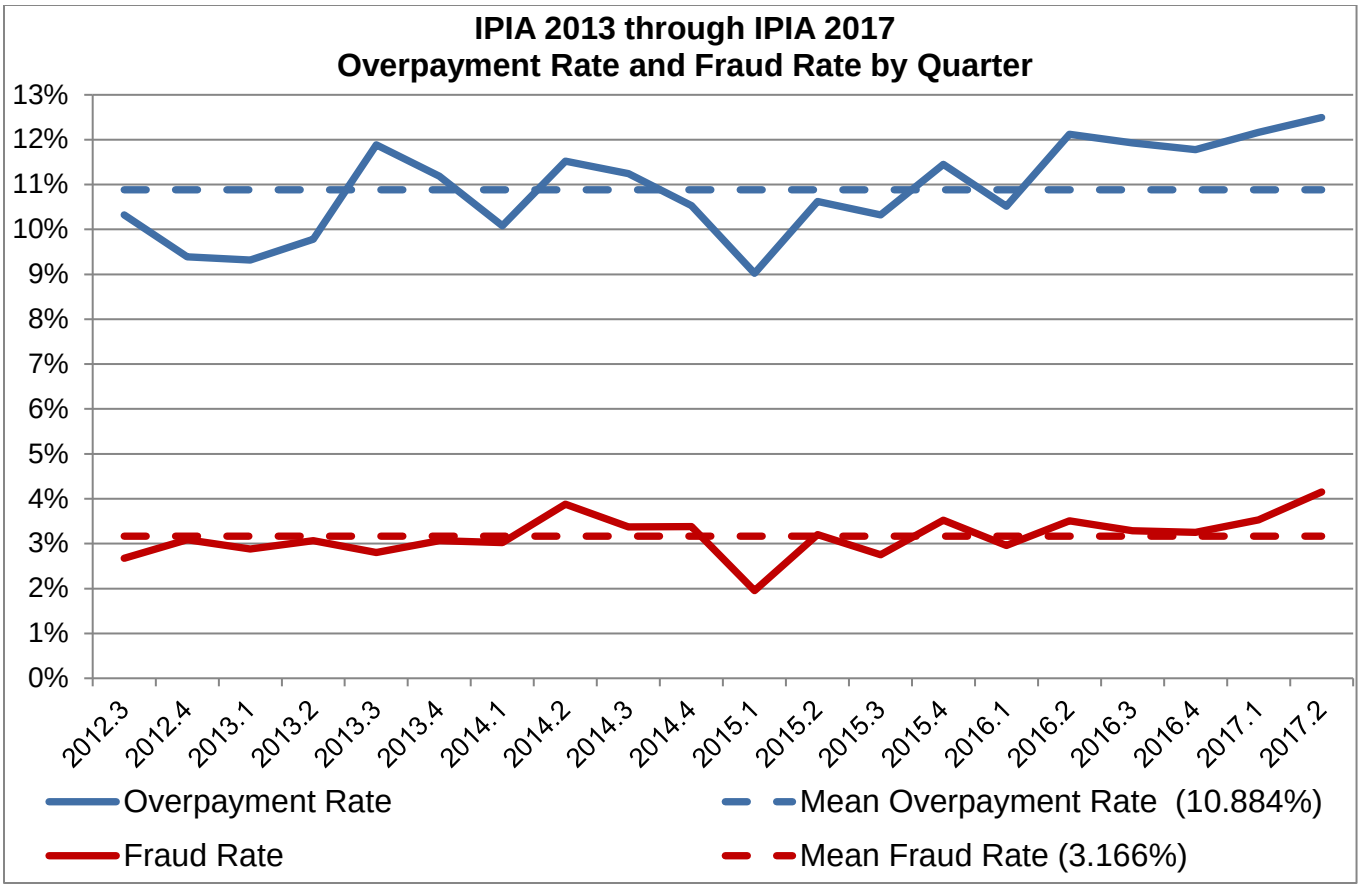
For a detailed listing of these rates for each state, click on the following link (the spreadsheet may have several pages or worksheets):
IPIA_2016_-_IPIA_2017_Integrity_Rate_Changes.xlsx

Overpayment Time Series

The following chart displays the overpayment and fraud rates by calendar quarter. For the period IPIA 2013 to IPIA 2017, the average revised overpayment rate was 10.884 percent.

Reviewers should be aware that SWAs' rates show a higher degree of volatility from one quarter to the next. The quarterly volatility is in part due to the small sample sizes pulled at the state level; the probability of sampling a given number of weeks with payment errors; and seasonal factors. This volatility demonstrates that SWAs should be cautious in making performance assumptions and judging corrective actions effectiveness based on one single calendar quarter of data.

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Footnote: For data display consistency, the 2013 data is presented using the same calculation methodology as described in UIPL No. 9-13 change 1.

For a detailed listing of these and other rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_13_IPIA_17_Overpayment_Rate_by_Quarter_&_State.xlsx

Overpayment by Cause and Integrity Rate

UI initial and continuing eligibility requirements are complex. Benefit payments are limited to weekly benefit amounts and overall maximum benefit amounts. Benefits are restricted to a specific time period (benefit year). Claimant turnover is high with finite benefit duration and opportunities to return to employment. Eligibility is determined on a week by week basis. Each week is an opportunity for a new improper payment. Payment and payment eligibility decisions are made by state government agencies using state specific Information Technology (IT) systems. There is no federal standard for the level, experience, and quality of training for personnel responsible for making program eligibility determinations or certifying that payments are accurate. This complexity lends itself to improper payments; therefore, the causes of these improper payments are diverse. Errors can occur at any of the process points discussed below. However, if the error does not affect the key week payment, then it is treated as a proper payment from the integrity rate estimates.

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Federal law establishes certain requirements for the UC program. The Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) set broad coverage provisions, some benefit provisions, the Federal tax base and rate, and administrative requirements. One of the major functions of the Federal government is to ensure conformity and substantial compliance[5] of state law, regulations, rules, and operations with Federal law. As a condition of receiving administrative grants, each state's methods of administration must ensure payment when due.[6] The Department has always interpreted "when due" in Section 303(a)(1), SSA, to require accuracy to ensure that payments are not made when they are not due.[7]

All states require that a claimant must have earned a specified amount of wages or must have worked a certain number of weeks or calendar quarters in covered employment or must have met some combination of the wage and employment requirements within his/her base period, to qualify for benefits. The specific wage requirements vary by state. The purpose of such qualifying requirements is to restrict benefits to covered workers who are genuinely attached to the labor force (see https://oui.doleta.gov/unemploy/content/sigpros/2010-2019/January2017.pdf).

All state laws provide that, to receive benefits, a claimant must be free from disqualification for actions such as voluntary leaving work without good cause, or discharge for misconduct connected with the work, or refusal of suitable work. Such disqualifying actions may occur prior to the initial application or claim for benefits or at any point during the benefit year. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic causes.

All state laws must provide or be interpreted in such a manner that a claimant must meet week-to-week eligibility requirements to receive benefits. Claimants certify their weekly eligibility status when claiming benefits. Generally, claimants must be able to work, available for work, registered for employment services, report when directed to the agency, and actively seeking work. Some states provide dependent allowances in certain instances. Finally, claimants may be subject to a reduction in benefit amounts payable based on any benefit year earnings (partial employment) or deductible income received (i.e. pension payments, vacation pay, severance payments).

The BAM program - as a statistical survey - uses standardized questionnaires to gather information to determine improper payments and their causes. The surveys include claimant, employer, and third party interviews and are designed to identify potential eligibility or payment issues. When a potential eligibility or payment issue is identified that could affect the key week accuracy, the investigator must pursue and resolve the issue. In making determinations of eligibility, a BAM investigator must comply with the Secretary's Standard for Claim Determinations and apply all facets of state law, administrative code and official policy to the case findings to determine whether a key

[5] See https://unemploymentinsurance.doleta.gov/unemploy/conformity.asp
[6] Section 303, Social Security Act. https://www.ssa.gov/OP_Home/ssact/title03/0303.htm
[7] UIPL No. 04-01 (October 27, 2000) https://wdr.doleta.gov/directives/attach/UIPL4-01.cfm

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week payment is proper or improper (20 CFR 602.21(c)(4)). Although the legal basis for determining whether a payment is proper or improper may be different from state to state, the causes of errors are common across the nation.

The BAM program relies on a standardized coding system to categorize improper payments[8] into major categories. The table below displays the common error cause codes and UI improper payment terminology.

Error Cause Codes	Cause Group Description
100 - 119; 150 -159	Benefit Year Earnings
120 -149	Deductible Income
200 – 259	Base Period Wage Issues
300 – 329	Separation Issues
400 – 419	Able & Available Issues
420 – 429	Work Search Issues
460 – 469	Employment Service Reg.
430 - 459; 470 – 489	Other Eligibility Issues
500 – 519	Dependents' Allowances
600 – 639	Other Issues

(See IPIA_2017_Methodology_and_Program_Description Integrity Rate definitions for inclusion or exclusion from various rates).

UIPL No. 21-17[9] requires states to analyze their BAM data to identify the top root causes for improper payments and to develop strategies that will be effective in reducing or recovering improper payments. The following chart displays the percent of the dollars overpaid by integrity rate and cause category. The distribution of the causes for UI overpayments and the total amount overpaid varies considerably among the three overpayment integrity rates. The elements included or excluded from the various rates influence this cause distribution.

IPIA 2017 Overpayments (OP) by Cause and Integrity Rate Percent of the Estimated Dollars Overpaid			
Cause	Overpayment Rate	Fraud Rate	Agency Responsible Rate
Work Search	37.440%	3.120%	3.915%
Benefit Year Earnings	26.383%	54.813%	16.756%
Separation Issues	17.297%	26.823%	35.377%
Able+Available	5.548%	6.477%	3.178%

[8] https://wdr.doleta.gov/directives/attach/ETHandbook_395_Ch5_acc.pdf, Chapter V, pp. V-5 through V-7
[9] https://wdr.doleta.gov/directives/attach/UIPL/UIPL_21-17_Acc.pdf

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IPIA 2017 Overpayments (OP) by Cause and Integrity Rate Percent of the Estimated Dollars Overpaid			
Cause	Overpayment Rate	Fraud Rate	Agency Responsible Rate
Other Eligibility	3.493%	4.817%	10.368%
Base Period Wage Issue	3.143%	0.326%	3.914%
ES Registration	2.207%	0.102%	13.418%
Sev./Vac./SSI/Pension	2.181%	0.305%	5.303%
Other Issues	2.125%	3.211%	7.629%
Dependent Allowance	0.182%	0.006%	0.143%
Total $ Overpaid by Rate	$3,707,543,451	$1,088,928,763	$519,095,002

An analysis of the top three causes nationally – Work Search, Benefit Year Earnings, and Separations -- is outlined below.

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Integrity_Rates_by_Cause.xlsx

Work Search Issues

Cause Work Search Issues	Overpayment Rate	Fraud Rate	Agency Responsible Rate
Estimated Amount by Cause	$1,366,464,900	$33,977,042	$20,322,211
Estimated $ Overpaid by Rate	$3,707,543,451	$1,088,928,763	$519,095,002
Percent of Total $ Overpaid	37.440%	3.120%	3.915%

The Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) amended the Social Security Act Section 303 by adding (a)(12): "A requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." [10] UIPL No. 05-13 (p. 3; January 10, 2013) provides that "Federal Unemployment Compensation (UC) law establishes strictly limited circumstances under which states may not hold UC claimants to the work search requirement." Because Federal UC law does not specifically define "actively seeking work," states have discretion in establishing requirements. Therefore, readers are cautioned to not make any state to state comparisons.

As displayed in the IPIA 2017 Overpayment Cause By Integrity Rate table above, work search issues are the leading cause for overpayments, but they are not a significant

[10] https://www.ssa.gov/OP_Home/ssact/title03/0303.htm#ftn16

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cause of the fraud overpayments. Additionally, work search overpayments do not represent a significant portion of those improper payments for which the agency had full or partial responsibility.

Over 37 percent of UI improper payments are the result of work search errors. Work search errors are currently the primary driver of the increase in the UI improper payment rate as states have implemented stricter work search requirements. UI claimants are required to certify weekly that they have met the state's work search requirements and to document their work search in accordance with the state's law.

States vary with regards to their work search standards. In many states, claimants must make a minimum number of employer contacts, employment applications, and/or work search activities each week. Within a state there may be differences in the number of work search actions required based on local labor market characteristics, while in other states the number of contacts is standard throughout the state. Some states allow certain activities such as attending job search seminars or networking to be considered acceptable work search activities. Depending on the occupation, some states require claimants to contact the employer in person. As a condition of eligibility, many states require a claimant to maintain a log, record, or other documentation of weekly work search actions and provide the record for verification purposes. In other states the claimant must provide information about their work search actions when questioned. A few states allow a claimant to simply attest or certify their eligibility without presenting any detailed information about what action the individual may have made in their active search for work.

As a result of these diverse work search eligibility requirements and enforcement standards, there is tremendous variability in work search error rates among states. A lower error rate could reflect a higher rate of work search compliance within the state (which in turn could be due either to greater search efforts by claimants or to less stringent requirements for work search). Other variables include the circumstances under which the SWA considers claimants' lack of compliance in work search or reporting as constituting an improper payment; varying SWA standards for verification of claimant provided contacts/activities; differences in how BAM audits are conducted; or the SWA BAM investigators' failure to consistently apply state laws in evaluating its cases.

In 2016, the Department's Chief Evaluation Office assisted the UI program in organizing an independent technical working group (TWG) of UI program experts, statisticians, and economists that was tasked with developing a study methodology to determine the proportion of the improper payment rate that is attributable to certain structural elements of the program. Among their findings and recommendations, even without further study, is that the vast majority of work search errors are not preventable as a result of the due process requirements associated with detection of a work search error. Federal law requires that when an issue is detected the claimant has a right to receive notice and to provide information. As part of the "payment when due" policy described above, there is a presumption in UI that the claimant will continue to be eligible once initial eligibility is

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determined and should, therefore, be paid. If an eligibility issue associated with work search (or any other eligibility issue) is detected, there is a requirement to pay for a claimed week no later than the week after an issue is detected. The time it takes to work through the necessary due process steps prevents states from stopping the payment before it is must be paid. In this circumstance, for sound policy reasons, states must make payments that have the potential to later be considered improper under the Federal definition.

The BAM investigator must review a sufficient number of work search actions to determine whether the claimant met state requirements. The BAM program assigns three classifications to actions reviewed. These are:

(1) Acceptable - documentation exists in the BAM file that such employer contacts, employment applications, or state approved work search activities were made by claimant and were acceptable within state's written law/policy on active search for work.

(2) Unverifiable - the investigator was unable to establish sufficient information to make a judgment of whether the work search activities were either acceptable or unacceptable within the state's written law/policy on work search.

(3) Unacceptable - written documentation exists in the BAM file that such contacts or activities were not made at all by claimant or were made but are unacceptable within the framework of state's written law or policy or the work search activity occurred outside of the week investigated.

Work search actions classified as acceptable or unverifiable count towards meeting the state's work search requirement. For performance year 2017, the BAM work search improper payment estimates are based on verification activities representing 19,828 key weeks with an average of 2.29 work search verifications per week totaling 45,441 actions reviewed. Overall, 92.18% percent of the claimant's work search activities meet state requirements. This includes those contacts and/or work search activities which are classified as acceptable or unverifiable. Work search contacts, employment applications, and activities deemed unacceptable do not satisfy a count towards meeting the state's numeric requirements.

Total number of Key Week employer contacts, employment applications, and/or work search activities investigated reviewed for eligibility determination purposes and work search required	Percent Investigated employer contacts, employment applications, and/or work Search activities Acceptable	Percent Investigated employer contacts, employment applications, and/or Work Search Activities Unverifiable	Percent Investigated employer contacts, employment applications, and/or Work Search Activities Unacceptable
45,441	47.24%	44.94%	7.82%

The table below shows that 7.02 percent, or 1,392 of 19,828 claimants were held ineligible for benefits due to a failure to meet state work search requirements.

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Count of cases work search required (g1) =1	Percent of the 24,644 cases where active work search required	Count of cases work search required (g1) = 1 & contacts and /or activities investigated	Percent of work search required cases with contacts and /or activities investigated for eligibility	Total Count of Work Search in-eligibility	Percent of work search required cases with Key Week work search ineligibility
19,828	80.46%	15,891	80.14%	1,392	7.02%

The BAM dataset includes a number cases where work search was required with zero work search actions investigated. This includes instances of nonresponse and cases where the claimant provided no evidence of work search actions. States address such failures or lack of evidence differently. Furthermore, work search documentation requirements vary from state to state. Some states hold the claimant ineligible for the week because the claimant failed to provide required work search documentation establishing an active search for work while other states do not.

Additionally, states' continued claim processes vary. Some states continued claim systems are capable of capturing and requiring the claimant to provide detailed work search information with each week claimed. Therefore, in a few states work search information is available to evaluate when the claimant fails to report to a review of their actions.

Finally, there is one other category where claimants are held ineligible for benefits due to work search issues. This involves situations where the claimant provided information that initially exempted the individual from work search requirements. For example, the person may have said that they were a member of a union with a hiring hall and they obtained their employment through union referrals or that they had a definite recall date, therefore the work search requirement was waived. However, the investigator's verification with the union found that the claimant was not in good standing or the investigator's verification with the employer found that the claimant had no definite recall date. In such a situation, the claimant might be held ineligible for a failure to conduct an active work search because the exemption was invalid. Investigators identified 23 work search ineligibilities out of the 4,816 cases where the person was initially exempt from work search requirements.

BAM data indicates that in 80.258 percent of weeks compensated, in the population subject to BAM sampling, claimants were required to conduct an active search for work. In 19.733 percent of the cases, the investigator found that claimants were attached to an employer or that the person met a recognized work search exemption or condition which fulfills the requirement. In the final 0.009 percent of the cases, investigators indicated that the state was not in conformity with federal law by indicating that the state did not have a work search requirement. Investigator coding relative to this last cohort of cases may represent a BAM coding or staff training issue.

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(g1) Work Search Requirement	BAM Case Count of Work search Requirement	Estimated number of weeks by requirement	Estimated Percent of the population
Not Applicable, if no active work search policy	4	8,253	0.009%
Required to actively seek work (in addition to union contact if applicable)	19,828	73,171,407	80.258%
An agency directive temporarily suspended the claimant's normal work search for the Key Week	159	673,887	0.739%
Union deferral (seeking work only through union)	1,332	5,124,303	5.621%
Job attached deferral (temporary lay-off, recall, partial, industry attached)	2,994	11,267,994	12.359%
Other deferral (disability, Jury service, school etc.)	327	923,995	1.013%
Total	24,644	91,169,839	100.00%

Work search verification is very workload intensive. Random audits can detect work search improper payments, but not prevent them. Messaging and ensuring claimants understand work search requirements is another strategy that the Department has supported through the development of messaging tools and funding for state implementation.

For a detailed listing of work search compliance for each state, click on the following link (note: the spreadsheet has multiple tabs or worksheets):
IPIA_2017_Work_Search_Verification_Outcomes.xlsx

Benefit Year Earnings Issues

Cause Benefit Year Earnings	Overpayment Rate	Fraud Rate	Agency Responsible Rate
Estimated Amount by Cause	$985,214,222	$596,872,136	$86,981,583
Estimated $ Overpaid by Rate	$3,707,543,451	$1,088,928,763	$519,095,002
Percent of Total $ Overpaid	26.383%	54.813%	16.756%

As displayed in the IPIA 2017 Overpayment Cause by Integrity Rate table, unreported or misreported benefit year earnings (BYE) are the second leading cause of UI overpayments. They account for more than half (54.81 percent) of UI fraud overpayments and slightly more than a quarter (26.38 percent) of the overpayments included in the Overpayment Rate. However, BYE errors represent a smaller portion (16.76 percent) of the Agency Responsible rate.

The UI system is designed to maintain and to encourage claimant attachment to the workforce overall and to their previous employers when feasible. The system does this by allowing partial payments, which are reduced for BYE (weekly benefit amount reduced as a result of wages, commissions, bonuses, tips or gratuities, odd jobs or self-

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employment income) and through Short-Time Compensation programs (also known as Workshare).[11] Because UI benefits only replace a portion of the claimant's previous base period wages[12], states have devised various earnings disregard and benefit reduction provisions.[13] Ultimately, these payment adjustments require accurate reporting of these BYE. Generally, claimants are required to report this income when earned (not when paid) and claimants are required to report gross earnings, not net earnings. This benefit year earnings reporting procedure is part of the continued claims taking process (See claim filing methods by state IPIA_2017_Claim_Filing_Methods.xlsx).

For regular UI, states reported that they compensated 90,707,229 weeks during the IPIA 2017 year. Of these 90,707,229 weeks, states reported that they reduced the amount of benefits paid in 7,248,292 weeks or 7.99 percent of the weekly payments made. The BAM program collects data for several important UI eligibility criteria before and after the investigation. Claimant earnings and adjustments to the claimant's weekly benefit amount (WBA) for the paid week investigated by BAM (referred to as the key week) can produce useful information related to benefit year earning (BYE) improper payments. The following table summarizes the earnings and adjustments data after BAM investigations, that is, it compares the information at the time the claimant received benefits to the findings after the investigation.

IPIA Period July 1, 2016 through June 30, 2017 Benefit Year Earnings (BYE) Analysis		
24,644		Completed BAM Reviewed Cases
		Over Reported Earnings
2,143	8.70%	Total Cases completed initially reported benefit year earnings (BYE)
278	12.97%	Of the 2,143 cases with earnings 278 had BYE over reported
	$46.25	Average amount BYE over reported in the key week
	$19.50	Median amount BYE over reported in the key week
		Accurately Reported Earnings
1,159	54.08%	Of the 2,143 cases 1,159 had BYE amounts accurately reported
	$197.43	Average amount of BYE accurately reported in the key week
	$171.00	Median amount of BYE accurately reported in the key week
		Under Reported Earnings
706	32.94%	Of the 2,143 cases with earnings, 706 had BYE under reported
	$106.96	Average amount BYE of under reported in the key week
	$39.00	Median amount BYE of under reported in the key week

[11]Short-Time Compensation (STC) provides partial UC benefits to individuals whose usual hours of work are reduced to avert the layoff of workers. STC is a program that allows an employer to request UI agency approval of a plan that provides the STC benefits to those workers whose hours are reduced.
[12] See Wage Replacement Ratios in the IPIA_2017_Base_Period_Wages_Report.xlsx spreadsheet
[13] 2017 Comparison of State Laws; Chapter 3 Monetary Entitlement; Table 3-8; pp. 3-17 to 3-19; https://unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2017/monetary.pdf ;

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IPIA Period July 1, 2016 through June 30, 2017 Benefit Year Earnings (BYE) Analysis		
		Failed to Report Earnings
22,501	91.30%	Of the 24,644 cases 22,501 had no BYE initially reported
879	3.91%	Of the 22,501 cases 879 not initially reporting BYE actually had BYE
	$426.61	Average unreported or concealed BYE amount in the key week
	$323.00	Median unreported or concealed BYE amount in the key week

In IPIA 2017, the BAM program reviewed 24,644 key weeks. From these 24,644 paid weeks, 22,501 or 91.30 percent of the weeks selected had no benefit year earnings reported at the time of payment. From these 24,644 paid weeks, 2,143 or 8.70 percent of the weeks investigated had benefit year earnings reported at the time of payment. Slightly more than 54 percent (1,159 weeks) of the 2,143 key weeks with benefit year earnings initially reported actually had the earnings reported accurately. However, 706 weeks, representing 32.94 percent of the weeks with earnings initially reported, had under reported earnings (claimant earned more than reported), and 278 weeks (12.97 percent) of the weeks had over reported earnings (claimant earned less than what they reported).

Additionally, investigators found 879 weeks or 3.91 percent of the 22,501 weeks with no benefit year earnings initially reported actually had earnings income, which should have been reported. The vast majority of these identified 879 cases had benefits amounts payable to the claimant decreased or reduced completely because the claimant was found to be working part time or full time.

Separation Issues

Cause Separation Issues	Overpayment Rate	Fraud Rate	Agency Responsible Rate
Estimated Amount by Cause	$647,146,858	$292,082,993	$183,637,864
Estimated $ Overpaid by Rate	$3,707,543,451	$1,088,928,763	$519,095,002
Percent of Total $ Overpaid	17.297%	26.823%	35.377%

As displayed in the IPIA 2017 Overpayment Cause by Integrity Rate table (page 9), issues involving the claimant's reasons for separating from work (separation issues) are the third leading cause of UI overpayments. They account for 17.297 percent of the overpayment rate and 26.823 percent of the fraud overpayments. Separation issues are the leading cause (35.377 percent) of the amount overpaid for which the agency had full or partial responsibility.

Overpayments attributable to separation issues involve inadequate or inaccurate claimant and/or employer separation information resulting in improper payments. They involve claimants who are ultimately determined to be ineligible for UI when information

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disclosing that claimants had disqualifying job separations, such as quitting a job without good cause or being discharged for misconduct under the state UI law. The SWAs have the crucial responsibility of identifying and pursuing separation issues, conducting fair and impartial fact finding hearings, and determining whether the employment separation is disqualifying. Separation fact finding hearings involve input from both employers and claimants and the facts may be disputed. In some instances, the SWA contributes to separation improper payments.

Cause	Prior Agency Action*	Estimated Amount
SEP	(40) SWA Had Documentation - Did Not Resolve Issue	$86,080,185
SEP	(50) Procedures Not Followed Preventing Detection	$42,387,364
SEP	(30) SWA Took Incorrect Action	$41,806,881

The Benefits Timeliness and Quality (BTQ) guide sheets 1 and 2 in the ET Handbook No. 301, 5th Edition, show the complexities of fact finding and the central role SWAs play in determining eligibility. However, the process demands employers and claimants provide complete and timely facts to separation adjudicators, so the state can appropriately apply the law.

To address UI improper payments caused by separation-related issues, ETA, in collaboration with SWAs, implemented the State Information Data Exchange System (SIDES), which was designed to enable more rapid and accurate communications between SWAs and employers, resulting in better initial eligibility determinations and a reduction in UI improper payments. While SWAs' and employers' participation in SIDES is voluntary, DOL provided $43.4 million to 51 SWAs to build and integrate SIDES into their current systems and to market the benefits of SIDES to employers. As of January 2017, 48 of the 51 SWAs were using SIDES. The Department's Office of Inspector General found SIDES has contributed to reductions in separation-related improper payment rates in SWAs sampled during a recent audit.[14] Efficiencies and improvements can be found in every state.

Overpayment Responsibility by Integrity Rate

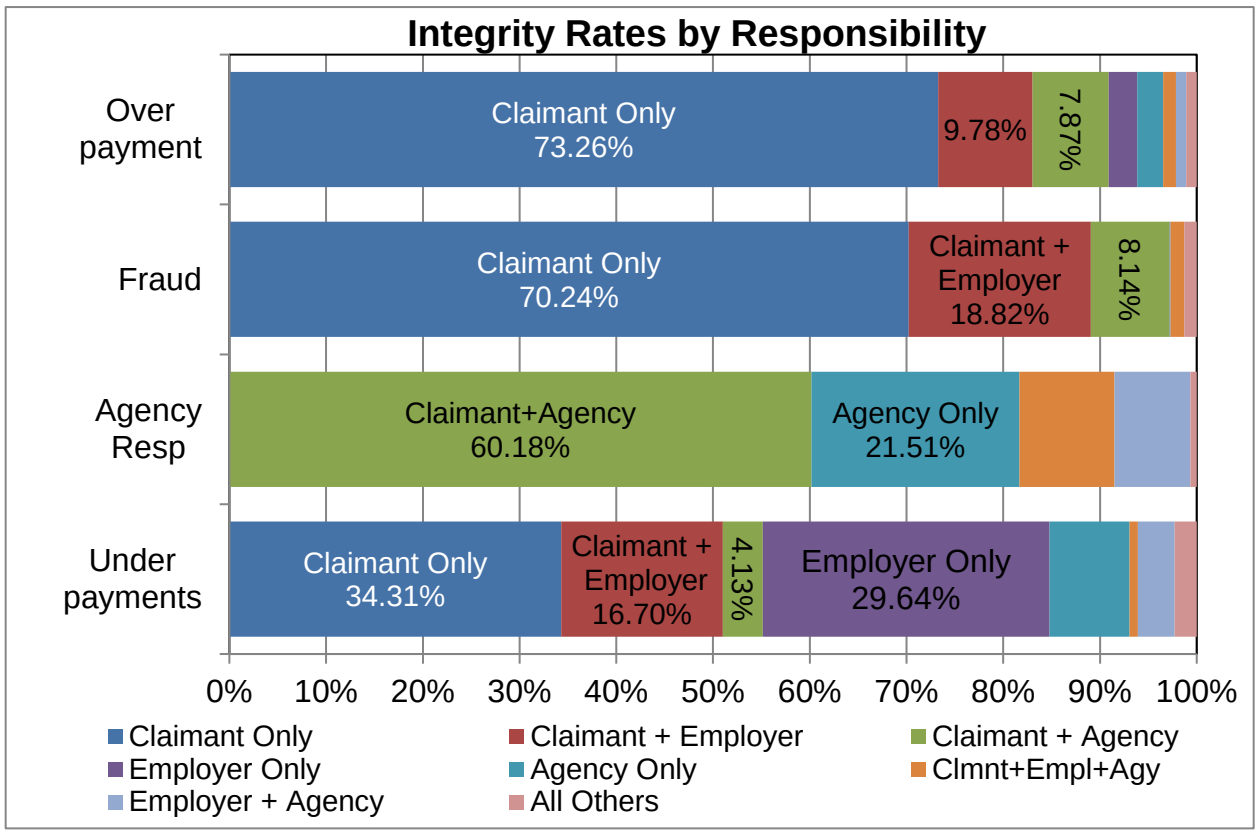
The BAM program identifies the party or parties responsible for all payment errors. As with cause, the distribution of overpayment responsibility varies considerably by integrity rate. The BAM investigator attributes responsibily to varius parties based on their actions or inaction. Improper payment responsibility may be assigned to one or more parties.

Eligibility for UC is determined on a week-by-week basis. During a continued claim series, a claimant must certify continuing eligibility for each week. The SWA makes continued benefit payments based on the presumption of eligibility and the claimant's

[14] https://www.oig.dol.gov/public/reports/oa/2017/04-17-003-03-315.pdf

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ongoing certification that requirements have been met. If a question of eligibility arises, the SWA is required to conduct an investigation to establish evidentiary facts and make a subsequent determination of eligibility or ineligibility.[15] Such a determination may affect past, present, or future benefit payments.



The overpayment rate is the broadest measure of overpayments. Since claimants control much of the information used to establish the presumption of weekly eligibility, it is not surprising that claimants alone were responsible for almost 73 percent of the dollars overpaid included in the overpayment rate. Errors resulting in overpayments that were attributed exclusively to the SWA accounted for 2.67 percent of the amount overpaid. The claimant and agency were jointly responsible for an additional 7.87 percent of the dollars overpaid, and the claimant and employer were jointly responsible for an additional 9.78 percent of the dollars overpaid.

Claimants alone were responsible for 70.24 percent of the fraud overpayments. Claimants along with employers were responsible for almost 18.82 percent of fraud overpayments. Nearly all of the remainder of the fraud includes claimant and agency responsibility.

[15] UIPL No. 04-01, "Payment of Compensation and Timeliness of Determinations during a Continued Claims Series" https://wdr.doleta.gov/directives/attach/UIPL4-01.cfm

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The agency rate includes improper payments in which the agency had contributory responsibility. The SWA was solely responsible for almost 21.5 percent of the amount overpaid included in the agency rate. Agencies shared responsibility with claimants, employers, or third parties for the remainder.

For a detailed listing of these rates for each state, click on the following links (note: spreadsheets may have several pages or worksheets):
IPIA_2017_Integrity_Rates_by_Responsibility.xlsx
IPIA_2017_Overpayment_Rate_Cause_and_Responsibility.xlsx

Claimant Action Prior to Sample Selection for Overpayments

Responsibility for improper payments are assigned based on the action that various parties take on the payment. Prior claimant action provides additional details on improper payment responsibility and helps prioritize ways to prevent, reduce, and detect overpayments.

Continuing eligibility for UI is determined on a week-by-week basis. During a continued claim series, a claimant must certify his/her continuing eligibility for each week. Errors can occur anywhere in this business process. In the case of payment errors, BAM identifies the action that the claimant took prior to the sample's selection. BAM assigns a code to indicate action(s) taken by the claimant affecting the payment error issue by recording the following actions:

- Claimant provided adequate and timely information to SWA for determination.
- Claimant provided adequate information to SWA after due date for determination.
- Claimant provided timely but inadequate information to SWA for determination.
- Claimant provided inadequate/incorrect information to SWA after due date for determination.
- Claimant did not respond to SWA request for information.
- SWA did not request the claimant to provide information.

Depending on the cause, BAM often finds claimants responsible for overpayments because they are a principal source of eligibility information. The data further emphasizes the importance of verifying separation and earnings information with employers and conducting these verification actions.

For a detailed listing of this rate, click on the following link (note: the spreadsheet may have several pages or worksheets): IPIA_2017_Cause_x_Prior_Claimant_Action.xlsx

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Agency Action Prior to Sample Selection for Overpayments

In the case of payment errors, BAM case reviews identify the action that the state agency took before the payment was selected for the BAM sample. Prior agency action provides additional details on improper payment responsibility and helps prioritize ways to prevent, reduce, and detect overpayments. In the case of payment errors, BAM identifies the action that the SWA took prior to the sample's selection.

At the time the SWA made payment, BAM found most overpayments were not detectable through normal agency procedures. Slightly less than 84 percent of the overpayments determined to be due to fraud were not detectable through normal agency procedures at the time the payment was made. BAM found that special agency actions (e.g., crossmatching with the National Directory of New Hires or taking additional steps to secure claimant and/or employer information) were required to prevent or detect these overpayments. The remaining fraud overpayments were distributed among the other prior agency action categories. The table below shows overpayments by prior agency action.

Prior Agency Action*	Percent of Dollars Paid	Percent of Dollars OP	Estimated Amount
Issue Not Detectable by normal procedures	10.140%	83.90%	$3,110,562,838
Sufficient Infor But Did Not Resolve Issue	0.825%	6.82%	$253,020,609
Identified But Took Incorrect Action	0.336%	2.78%	$103,155,774
Procedures Not Followed Precluding Detection	0.340%	2.81%	$104,331,909
In Process of Resolving	0.321%	2.66%	$98,614,705
Detected Thru NDNH Xmatch	0.072%	0.59%	$22,040,564
Detected Thru Wage Xmatch	0.048%	0.40%	$14,846,972
Agency provided incorrect information	0.003%	0.03%	$970,079
Total	12.086%	100.00%	$3,707,543,450
Amt. Paid			$30,675,108,501

For overpayments included in the overpayment rate, BAM estimates that 83.9% or $3.11 billion of the $3.71 billion of UI benefits overpaid were not detectable through normal agency procedures. BAM results indicate the agency had sufficient information but did not resolve the issue for $253 million or 6.8 percent of the amount overpaid, and the agency identified the overpayment issue but took the incorrect action in about $103 million or 2.8 percent of dollars overpaid. The agency failed to follow its own procedures, which precluded the ability to prevent the overpayment in an additional $104 million or 2.8 percent of the overpayment rate dollars overpaid. At the time BAM selected the sample, the agency had resolved or was in the process of resolving improper payments constituting 2.7 percent of the amount overpaid. Additionally, the agency identified 1.0 percent of these overpayments using crossmatches.

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For the Agency Responsible Rate, BAM estimated SWAs were responsible for approximately $519.1 million in overpayments because they had full or partial responsibility for the overpayment. Of these, the agency had sufficient information to identify the overpayment issue but did not resolve the issue for 51 percent of the amount overpaid; the agency took the incorrect action for 21.3 percent and did not follow procedures thereby precluding the SWA's ability to detect the payment error for 20.3 percent of the amount overpaid. The remaining overpayments for which the agency had full or partial responsibility were either not detectable through normal procedures at the time the payment was made or the agency had resolved or was in the process of resolving improper payments or the error was committed by another SWA. Again, we note there are structural "due process" requirements in the UI program that prevent stopping payment without an opportunity for the claimant and employer to be heard. This requirement is for good policy reasons and in many cases requires the SWA to proceed with payment of benefits that may later be determined to be improper.

For a detailed listing of these rates for each state, click on the following links (note: spreadsheets may have several pages):
IPIA_2017_Integrity_Rates_Cause_x_Prior_Agency_Action.xlsx

Employer Action Prior to Sample Selection for Overpayments

In the case of payment errors, BAM case reviews identify the action that the employer took before the payment was selected for the BAM sample. Prior employer action provides additional details on improper payment responsibility and helps prioritize ways to prevent, reduce, and detect overpayments. As discussed in the previous section, BAM considers a large majority of the overpayments included in the overpayment rate and fraud rate to be undetectable by the agencies during their usual payment administration processes, and thus prohibitively expensive for the agency to prevent. However, BAM detects the majority of its payment errors through the verification of claim information with employers.

Although claimants provide most of the information that agencies use in determining eligibility for UI benefits, employers also provide critical information to the agencies. Employers provide wage information, which is used to calculate the claimants' monetary eligibility and weekly benefit payments. Employers respond to notices of new initial and additional claims by providing information on the reason for the claimant's separation from work. Employers submit notices of new hire, which agencies use to detect claims filed by individuals who have returned to work. Employers also provide detailed information that may corroborate or contradict claimant provided information on issues that affect eligibility, such as information concerning availability for work, work search, job refusal, and benefit year earnings.

BAM data show that prior employer action is a critical factor in the agency's ability to prevent or detect many overpayments. BAM assigns a code to indicate action(s) taken

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by the employer affecting the payment error issue and records the following employer actions:

- Employer provided adequate information to SWA in a timely manner for the payment determination.
- Employer provided adequate information after due date for payment determination.
- Employer provided inadequate/incorrect information in a timely manner for payment determination.
- Employer provided inadequate/incorrect information after due date for payment determination.
- Employer did not respond to request for information.
- Employer did not report claimant as a "New Hire" as required by law.
- Employer, as an interested party, was not requested by agency to provide information for determination.
- Not an employer-related issue.

Because the state agency uses employer provided information in its eligibility determinations, the accuracy and timeliness of this information affect whether benefits were properly paid. The following table displays prior employer actions for each of the integrity rates. The highlighted cells reflect employers' action that may lead to improper payments.

IPIA 2017 Integrity Rates – Estimated Dollars Overpaid by Prior Employer Action

	Overpayment Rate Overpayments	Fraud Rate Overpayments	Agency Rate Overpayments
Total Estimated Overpaid	$3,707,543,454	$1,088,928,759	$519,095,002
Employer action as of the time that the payment was selected for audit			
Not An Employer Issue	$1,691,350,975	$123,033,931	$162,750,310
Agency Did Not Request	$837,003,443	$503,055,291	$62,592,254
Adequate and Timely Information	$580,840,626	$230,025,076	$198,248,308
Did Not Respond to request	$292,427,778	$149,168,090	$38,507,408
Inadequate information	$188,706,429	$21,803,755	$33,634,341
Did Not Report New Hire	$62,351,055	$46,832,450	$920,620
Not Timely information	$46,260,762	$14,372,978	$21,035,486
Inadequate and Untimely	$8,602,386	$637,188	$1,406,275
Estimated dollars overpaid where a different employer action may have produced a different outcome	$598,348,410	$232,814,461	$95,504,130

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IPIA 2017 Integrity Rates – Estimated Dollars Overpaid by Prior Employer Action

	Overpayment Rate Overpayments	Fraud Rate Overpayments	Agency Rate Overpayments
Percent of Total Dollars overpaid where a different employer action may have produced a different outcome	16.14%	21.38%	18.40%

The highlighted sections show estimated overpayments where a different employer action in response to a claim may have produced a different outcome. BAM estimates that employer actions contribute 16.14 percent of the overpayments included in the overpayment rate, 21.38 percent to the fraud rate dollars overpaid, and 18.40 percent of the overpayments included in the agency responsible rate. Overall, BAM data shows that prior employer participation is an essential factor in the prevention or detection of many overpayments.

For example, over $235.6 million overpaid in the overpayment rate involved verification difficulties dealing with employment separations. A significant portion of these improper payments involved situations where the employer did not respond to the agency's request for separation information. An additional $95.7 million overpaid involved employer verification problems and benefit year earnings. These overpayments may have been prevented or reduced if timely or accurate information had been provided.

For a detailed listing of these rates for each state, click on the following links (note: spreadsheets may have several pages or worksheets):
IPIA_2017_Integrity_Rates_Cause_x_Prior_Employer_Action.xlsx

Point of Detection

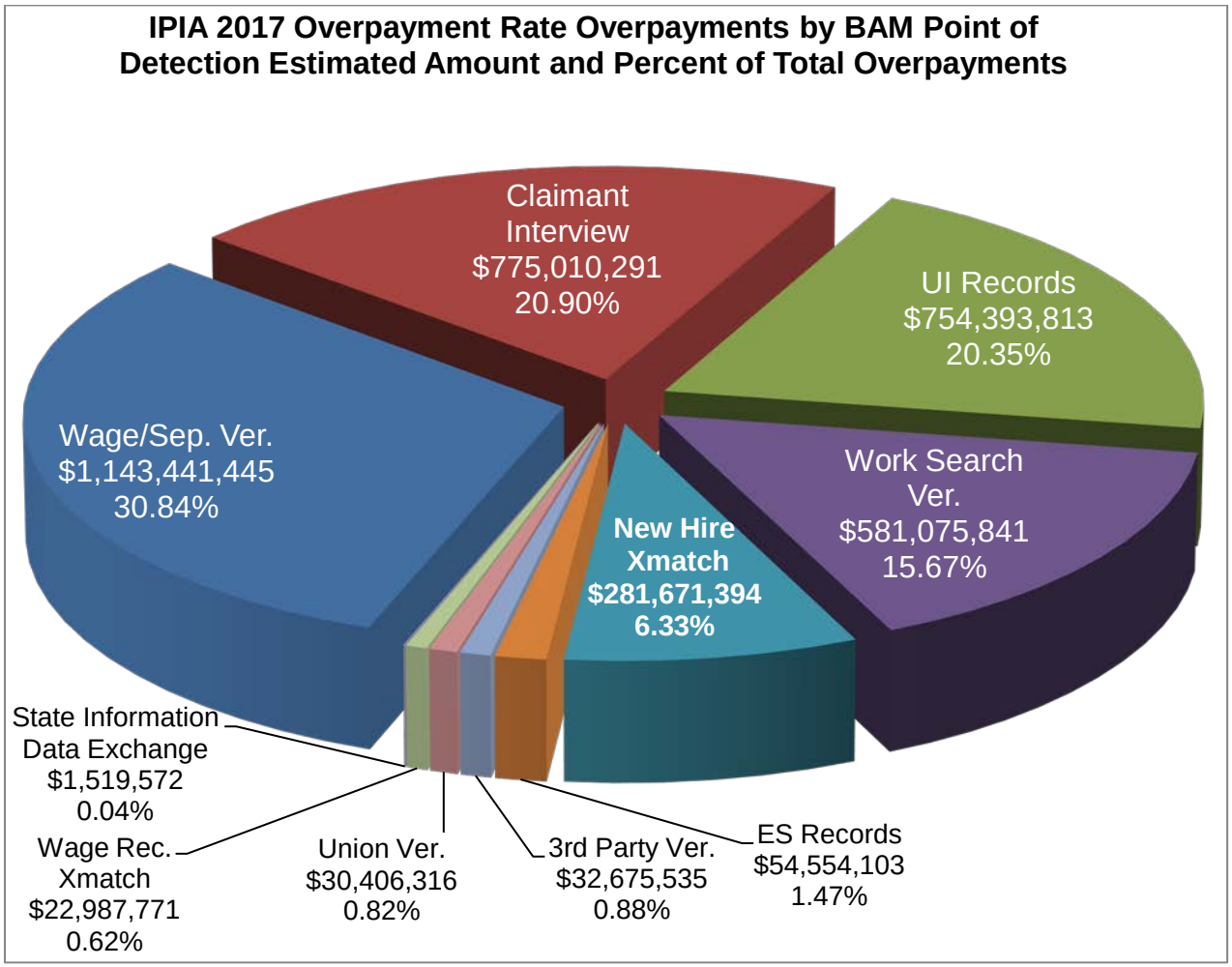
BAM records the point in its audit process at which it first detects a payment error. BAM detects most payment errors by verifying base period wages, benefit year earnings, and separation information with employers. The data suggest that taking additional steps to secure employer information or to conduct more in-depth claimant interviews may impact overpayment amounts. For example, BAM found significant errors when payment information is corroborated with employers and through extensive claimant interviews.

Within this framework, it is important to note that the BAM audit process differs substantially from normal UI operations in terms of cost, time, and effort. BAM exhausts all avenues in obtaining information. Whereas, normal UI operations make reasonable attempts to obtain information, but must make determinations based on available information in order to make timely payments. Therefore, this procedural difference may contribute to BAM identifying some of these overpayments which are not detected by the agency.

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BAM also captures whether the agency had identified the overpayment at the time of sample selection. In many cases, the SWA has not taken action on the new hire crossmatch hit when BAM selects its case. This strongly suggests that SWA should review and improve their crossmatch workflow processes and adjust their crossmatch parameters to optimize new hire detections.

Aggregate IPIA 2017 Point of Detection data are displayed in the following chart.



For a detailed listing of these rates for each state, click on the following links (note: spreadsheets may have several pages or worksheets):
IPIA_2017_Integrity_Rates_by_Point_of_Detection.xlsx

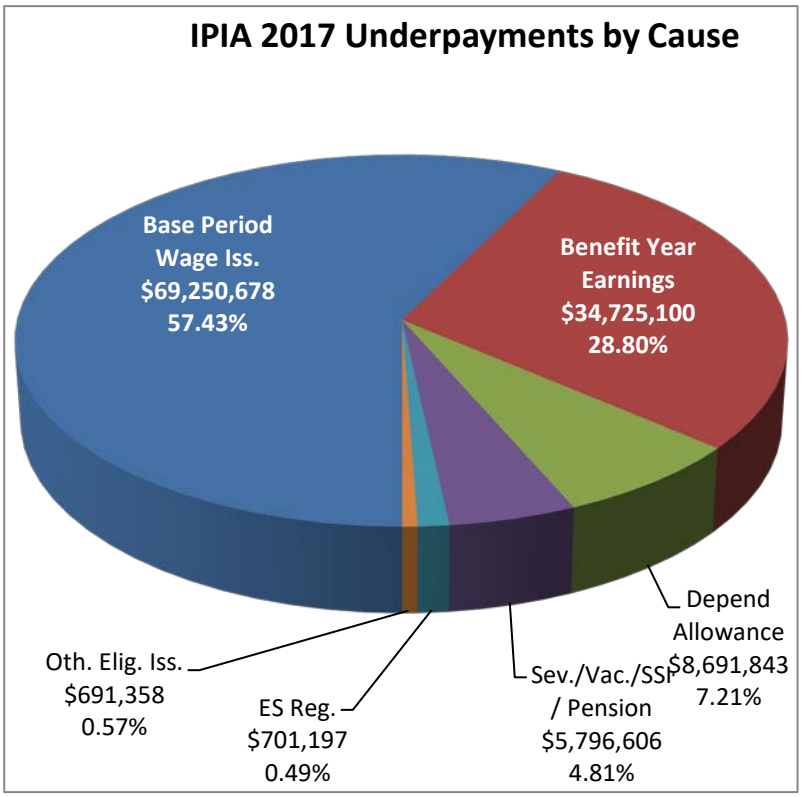
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II. Underpayments

Underpayment Rate

IPIA requires estimates of underpayment rates, in addition to overpayments. BAM estimates that a total of $120.6 million was underpaid in IPIA 2017, compared with $142.6 million in IPIA 2016.

IPIA 2017 data excludes technically proper underpayments. As a percentage of UI benefits paid, the IPIA 2017 national underpayment rate of 0.393 percent is slightly lower than the IPIA 2016 rate of 0.462 percent. State underpayments ranged from 0.01 percent in Arizona to 1.26 percent in District of Columbia.



As with overpayments, the BAM program captures the cause of and responsibility for underpayments. Errors in reporting or recording base period wages accounted for 57.38 percent of the amount underpaid and represented 0.23 percent of the amount of UI benefits paid. Employers report employees' wages to SWAs each calendar quarter. SWAs use these wages to establish a claimant's base period, which in turn is used in the calculation of weekly benefit amounts and maximum benefit amounts. Instances in which the weekly benefit amount increases after the BAM investigation represent underpayments used to produce the portion of the estimate.

Accuracy Finding	Base Period Wages		Weekly Benefit Amount		Maximum Benefit Amount	
	% of Cases	Avg. Error	% of Cases	Avg. Error	% of Cases	Avg. Error
Correct	85.47%		94.87%		92.93%	
Understated	7.91%	($6,244.19)	2.93%	($32.87)	4.37%	($1,181.06)
Overstated	6.63%	$5,473.37	2.20%	$45.45	2.70%	$1,397.10
Total	100.00%		100.00%		100.00%	

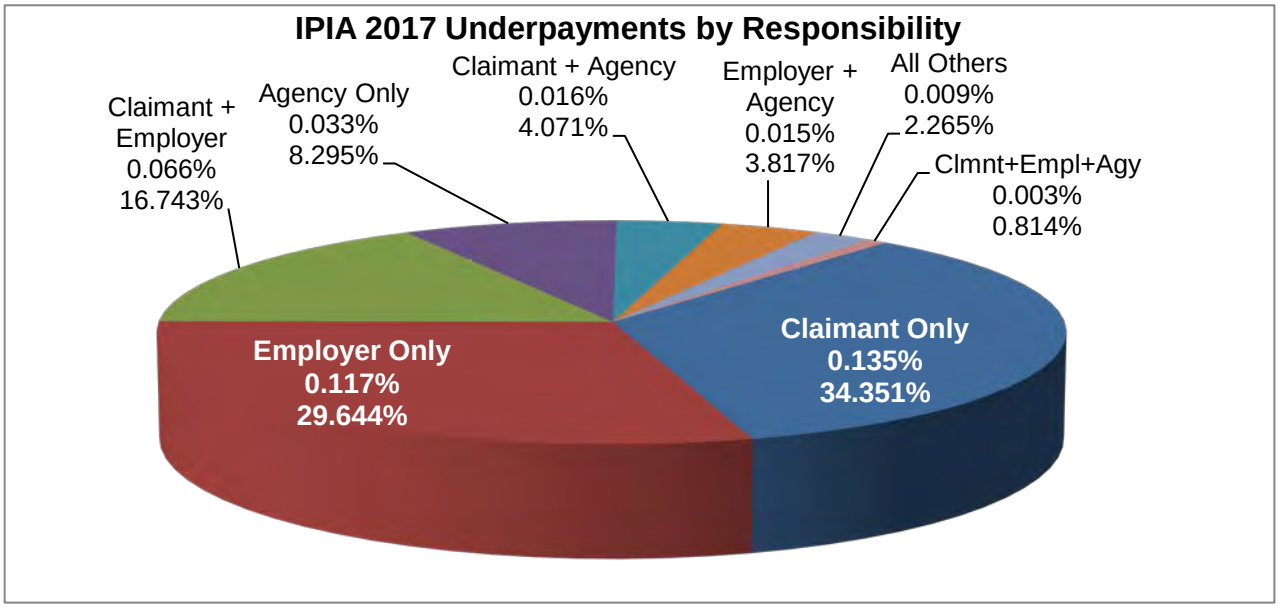
(See IPIA_2017_Base_Period_Wages_Report.xlsx for individual state findings. The spreadsheet has several worksheets or tabs and includes worksheets for underpayment cause and responsibility.)

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Errors in reporting or recording benefit year earnings were the second leading cause of underpayments – 28.8 percent of all underpayments and 0.11 percent of UI benefits paid. Generally, claimants can work and earn wages while collecting UI benefits as long as they report their earnings. However, weekly UI payments may be adjusted downward based on claimant reported earnings. For many of these underpayments, the claimant may have over reported their weekly earnings and, because of this error, BAM found that UI benefit amount paid was too small.

IPIA Period July 1, 2016 through June 30, 2017 Benefit Year Earnings Analysis		
24,644		Completed Cases
2,143	8.70%	Total Cases completed initially reported benefit year earnings (BYE)
278	12.97%	Of the 2,143 cases with earnings 278 had BYE over-reported
	$46.25	Average amount BYE over-reported in the key week
	$19.50	Median amount BYE over-reported in the key week

As with overpayments, the BAM program captures the responsibility for underpayments. The chart below shows the distribution of underpayment responsibility. Employers alone were responsible for 29.64 percent of amount underpaid, which represented 0.117 percent of the amount of UI benefits paid.



Claimants alone were responsible for an additional 34.35 percent of the amount underpaid, which represented 0.135 percent of the amount of UI benefits paid. Because SWAs often send out confirmations to the claimant and base period employers at the time of monetary determination, responsibility for these types of underpayments are highly distributed.

The underpayments estimated from BAM paid claims samples represent underpayments only for those claimants eligible for UC.

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III. Denied Claims Accuracy

Denied Claims Accuracy Rates

Each week, BAM units in the SWAs select samples of denied UI claims from three populations (defined by the type of issue on which a benefit denial was based) -- monetary, separation, and nonseparation. Denied Claim Accuracy (DCA) measures the accuracy of disqualifying monetary, separation, and nonseparation determinations for both intrastate and interstate claims.

Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. DCA investigators verify facts contained in the case file, obtain any missing information, and conduct new and original fact-finding that may impact the denial determination. The DCA audits record error information in a manner similar to paid claim accuracy: Dollar Amount of Error, Error Issue Action Code, Error Cause, Error Responsibility, Error Detection Point, Prior Agency Action, Prior Employer Action, DCA Action Appealed, and Prior Claimant Action.

DCA Rate Table

The following table summarizes the DCA rates for the three denial categories.

IPIA 2017 US Denied Claims Accuracy Rates

Denial Type	BAM Population of Denials	Improper Denial Rate*	Adjusted Improper Denial Rate**	Over-Payment ****	Proper Denial***
Monetary	874,202	15.11%	11.62%	0.07%	0.83%
Separation	1,580,478	10.59%	6.69%	0.15%	6.74%
Nonseparation	2,662,362	11.82%	8.90%	0.72%	5.05%

DCA Rate Table Notes:

In several states, the population from which the BAM DCA samples were selected may not include all of the determinations that meet the definition for inclusion in the DCA population. This limits the degree to which inferences about the population can be made from BAM DCA data. States are still in the process of resolving these population issues.

* Improper Denial Rate is the percentage of denied claims that BAM DCA concluded were erroneous, whether or not official agency action was taken to issue payment or increase claimant's WBA, MBA or remaining balance.

** Adjusted Improper Denial Rate excludes erroneous denials that were corrected by the agency and claims for which eligibility was established on appeal prior to DCA case completion.

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*** Proper Denial is the percentage of properly denied claims, but BAM identified a procedural error, such as basing the determination on the wrong reason or section of the law or applying an incorrect period of denial.

**** Overpayments are discussed below.

Monetary Denials

SWAs determine the monetary[16] eligibility of claimants when they file a new initial claim or a transitional claim (to establish a new benefit year). In IPIA 2017, SWAs determined that 89.21 percent of the 9.04 million new initial and transitional claims were monetarily eligible.

The BAM program estimates that 15.11 percent of the 874,202 monetary denials included in the BAM DCA population were improper. This compares to an improper denial rate of 14.79 percent in IPIA 2016. These UI claims were denied because the agency had initially determined that the claimant had not earned sufficient wages in covered employment prior to being unemployed or failed to meet other requirements for monetary eligibility, such as sufficient earnings in a minimum number of weeks. The BAM DCA audit identified additional wage credits or an alternate or extended base period for these claimants that had not been included in the original monetary determination or identified other errors in the original determination.

For many of these improper monetary denials, the SWA had identified the additional wages and issued a redetermination establishing eligibility independent of the BAM investigation, or the initial denial was reversed on appeal. When the improper monetary denial rate is adjusted for these agency initiated redeterminations or appeals reversals, the improper denial rate for monetary determinations drops to 11.62 percent. This rate is higher than the adjusted improper denial rate of 10.47 percent in IPIA 2016. During IPIA 2017 monetarily eligible claimants who received a first payment were compensated $5,273 over the duration of the claim. However, these improper denials of benefits are not included in the underpayment rate or totals.

One thing stands out in the monetary denial data. In states with alternative base period (ABP) provisions only 55.39 percent or 283,485 of the 511,765 claimants who were monetarily denied received a determination regarding their alternative base period eligibility. Generally, the ABP provision provides that a claimant use the four most recent completed calendar quarters in the base period, prior to filing the claim for benefits, if the individual is found ineligible for the regular base period (first four of the last five completed quarters). In other words, such state laws allow claimants two methods at becoming monetarily eligible. In 2017, 39 of states had ABP provisions in their state laws.

[16] See the 2017 Comparison of State Unemployment Laws Chapter 3 for Monetary Entitlement https://oui.doleta.gov/unemploy/pdf/uilawcompar/2017/monetary.pdf

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The BAM program records the agency's action whether the state redetermined the claimant's monetary eligibility prior to or during the course of the DCA investigation. For those claimants initially monetarily denied in states with ABP provisions, consideration of the alternative method ranges from less than one percent of the population to 100% of the population.

Separation Denials

In order to be eligible for UC, states require claimants to be unemployed due to no fault of their own, discharged for non-disqualifying reasons, or must have voluntarily left employment for a non-disqualifying reason provided in state law (such as workplace harassment, unsafe working conditions, domestic violence, or to relocate with a spouse). Agencies conduct determinations of eligibility when a separation issue has been identified. Separation issues generally involve an act of misconduct (fired) or leaving employment (quit). The agency gathers information from the claimant, employer, and relevant third parties through structured interviews. Based on the findings of fact and the application of state laws, SWAs issue a determination on whether the claimant is eligible for benefits.

Separation issues normally are identified when a new initial claim or an additional claim is filed. Generally, separation issues are addressed after a claimant is found monetarily eligible In IPIA 2017, there were approximately 8.07 million monetarily eligible new initial claims and approximately 4.48 million additional claims. No separation determinations were required for nearly 73.45 percent of these claims, because the reason for separation was lack of work or reduction in workforce. SWAs completed almost 3.33 million separation investigations and found disqualifying circumstances in 1.62 million of these determinations that resulted in denial of benefits.

In IPIA 2017, BAM estimated that 10.59 percent of the 1.58 million separation denials included in the BAM DCA population were improper, compared with 10.54 percent estimated for IPIA 2016. When redeterminations and appeal reversals are taken into account, the improper denial rate for separations in IPIA 2017 is adjusted to 6.69 percent, compared with 6.69 percent in IPIA 2016. Nationally, the BAM program estimates that approximately 105,734 of the 1,580,478 employment separation denials subject to audit were incorrectly determined, resulting in improperly denied benefits.

Nonseparation Denials

Nonseparation issues include the claimant's ability to work, availability for work, disqualifying and unreported earnings and income during the benefit year, failure to meet work search requirements, and failure to report as required by the SWA to provide information related to the UI claim or to receive reemployment services. There is often a distinction between issues that result in disqualifications and issues that result in a single or a specific number of weeks of ineligibility. Disqualified claimants have no right to benefits until they requalify, usually by obtaining new work or by serving an established disqualification period. In some cases, benefits and wage credits may be reduced. An ineligible worker is prohibited from receiving benefits until the condition causing the ineligibility ceases to exist. Eligibility issues are generally determined on a week-by-week basis. Although nonseparation issues can be detected at various points

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in the UI claims taking process, these issues generally affect the claimant's eligibility for continued claims of UI.

In IPIA 2017, SWAs made payments for 91.85 million weeks. SWAs completed 3.37 million nonseparation determinations and concluded that 2.84 million of those investigations should result in denial of benefits.

For the 2.66 million nonseparation denials included in the DCA population, BAM estimates an improper denial rate of 11.82 percent and when redeterminations and appeals reversals are taken into account, the adjusted improper denials rate is 8.90 percent.

Overpayments and Proper Denials

The BAM program determined that small percentages of the monetary denials (0.07 percent) separation denials (0.15 percent) and nonseparation denials (0.72 percent) resulted in overpayments. Overpayments can occur if the period of disqualification for UI benefits was less than it should have been and the claimant received compensation during the period that he or she should have been ineligible for benefits. Overpayments can also occur if the claimant received a partial payment that was too large. A partial payment is a reduction in the claimant's weekly benefit amount and is issued when the claimant has earnings or other deductible income (such as pension, vacation, severance, and Supplemental Security Income) for weeks of claimed UI benefits. For some of these compensated weeks, the BAM audit identified additional income that reduced benefits further or in some cases eliminated eligibility for benefits entirely.

In all three types of denials, the BAM program concluded that the claimant was properly denied but the agency committed a procedural error, such as basing the determination on the wrong reason or section of the law or applying incorrect dates to the period of denial. For example, a claimant may have been denied because of a monetary determination that the claimant had earned insufficient wages in the minimum number of weeks required by state law. The BAM audit determined that the claimant did meet the minimum weeks test, but was still ineligible due to insufficient total wage credits earned in the base period. For separation and nonseparation determinations, these errors typically involve citing the wrong issue or the wrong section of the law in the determination (for example, quit versus fired or availability versus reporting).

For a detailed listing of these denial rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Denied_Claims_Accuracy_&_Error Rates.xlsx

Agency Action for Improper Denials

Not every improper denial results in the agency issuing a payment to the claimant (i.e., increasing the claimant's weekly benefit amount, maximum benefit amount, or dependents' allowance), for example, in some states, determination finality applies . In 68 percent of the improper monetary denial cases reviewed as part of the BAM review,

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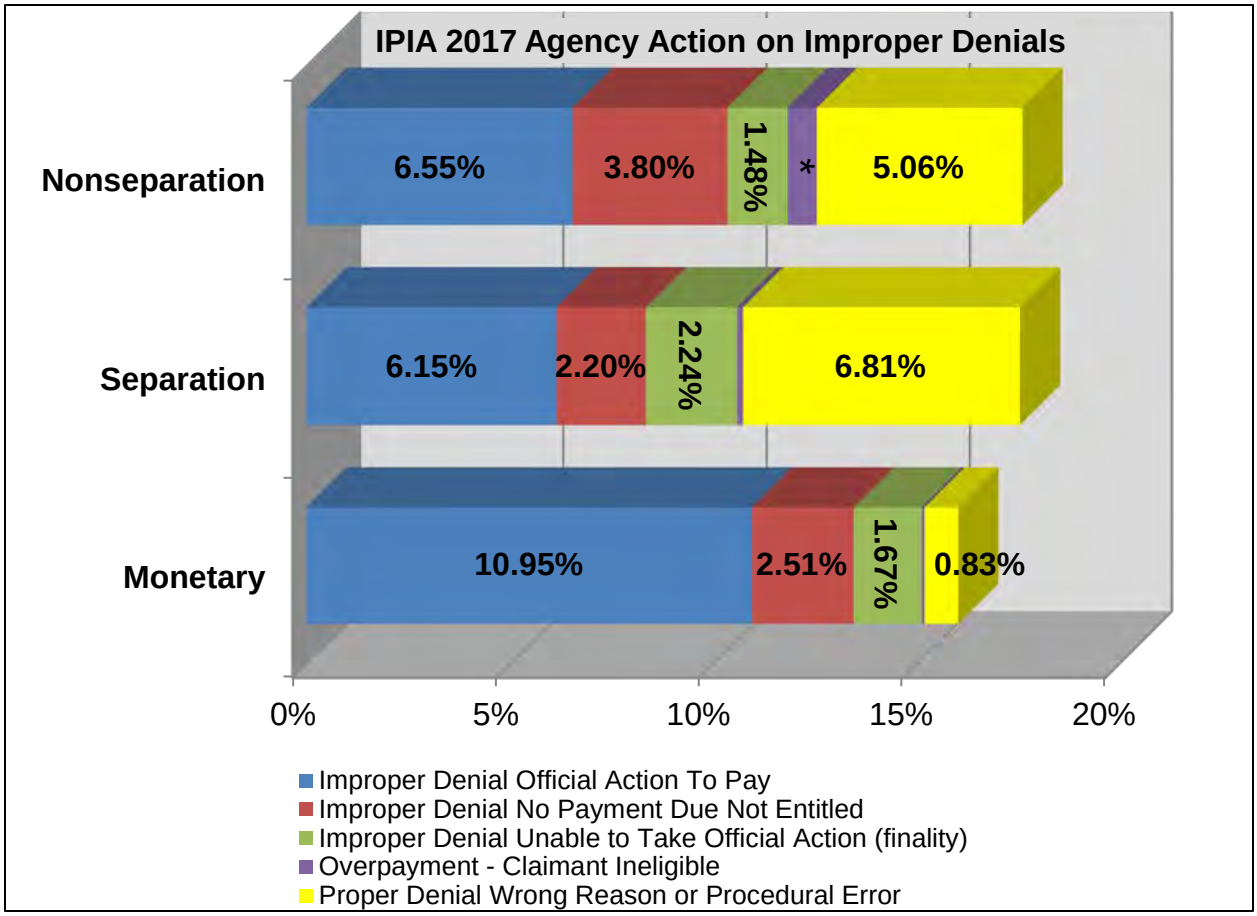
the agencies or BAM took action to ensure that benefits were paid for just Additionally, in the other types of denials reviewed, 35 percent and 37 percent of the claimants improperly denied for separation and nonseparation issues respectively, received benefits. In some cases, claimants are ineligible for payment due to other disqualifying issues. In other cases, the agency is precluded from taking action because of the time that has elapsed since the denial was issued (determination finality rules) or by other provisions of the law. Data shows that finality rules apply to 10.5 percent of the monetary denials, 12.8 percent of the separation denials, and 8.4 percent of the nonseparation denials.

BAM investigators record the following agency actions:

- Official Action - Agency or BAM took action to issue payment;
- No Payment Due - Claimant was not entitled to payment due to other disqualifying issue or the claimant did not file a claim for the week(s), which were improperly denied;
- Other Improper - No official action could be taken due to finality or other provisions of state law prohibiting redetermination;
- Overpayment - Claimant received payment for weeks of unemployment to which he or she was not entitled; and
- Procedural Error - Claimant properly denied, but BAM identified a procedural error on the part of the agency such as applying the wrong section of the law.

The following graph summarizes the denial error rates by outcome and whether agency action was possible.

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*Less than one percent

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Agency_Action_on_Improper_Denials_By_Denial_Type.xlsx

Cause for Improper Denials

The distribution of the causes of improper denials varies considerably among the three denial types and rates. The elements included or excluded from the various rates are controlled by business process definitions, which influences the distribution. Generally, the improper denial cause is directly related to the sample type. For example, monetary denials are related to the base period wages.

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Improper_Denials_by_Cause.xlsx

Responsibility for Improper Denials

The party responsible for erroneous denials varies by type of denial determination. Employers were solely responsible for almost 19.62 percent of the erroneous monetary

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denials due to misreporting or underreporting employees' wages. A small percentage of these improper monetary denials involved employers misclassifying claimants as independent contractors during the base period. Claimants were responsible for another 25.70 percent of the erroneous monetary denials, and agency error accounted for approximately 17.73 percent of the improper monetary denials. States often hold claimants responsible for improper monetary denials because the state sends a notice to the claimant showing the information used. That monetary determination notice instructs the claimant to notify the state if the information used is incorrect. The remainder of the improper monetary denials had shared responsibility between these parties and others.

The SWAs were solely responsible for 39.55 percent of the incorrect separation denials and 35.99 percent of the improper nonseparation denials. Employers and the SWAs were jointly responsible for just over 13.84 percent of the erroneous separation denials. Claimants were solely responsible for approximately 35.43 percent of the erroneous nonseparation denials.

Responsibility For Improper Denials -- IPIA 2017

Denial Sample Type	Improper Denial Rate	Estimated Number Improper Denied	Percent of the Improper Denial Rate						
			Claimant Only	Agency Only	Employer Only	Employer & Agency	Employer & Claimant	Claimant & Agency	All Others
Monetary	15.11%	132,092	25.70%	17.73%	19.62%	5.83%	15.34%	9.55%	6.23%
Separation	10.59%	167,373	12.34%	39.55%	4.14%	13.84%	7.01%	13.19%	9.95%
Nonseparation	11.82%	314,691	35.43%	35.99%	1.35%	3.14%	7.05%	11.94%	5.11%

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Improper_Denials_by_Responsibility.xlsx

Improper Denials by Prior Agency Action

Because the SWAs, either solely or jointly with other parties, are responsible for the majority of the erroneous nonmonetary denials and for a significant proportion of the monetary denials, it is instructive to examine agency action prior to the DCA investigation. Agencies had resolved or were in the process of resolving 22.21 percent of the erroneous monetary denials. However, 46.64 percent of the improper monetary denials could not be detected through the normal claims taking procedures. Typically, these are claims for which the employer incorrectly reported the wages or the claimant failed to inform the agency that s/he had out-of-state wage credits. For some states with ABP provisions, the state operational procedures may not have been modified to obtain the most recent completed quarter's wage information.

For improper nonmonetary denials, the agency identified the issue but took the incorrect action for 51.34 percent of the improper separation determinations and 33.25 percent of the erroneous nonseparation determinations.

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Prior Agency Action For Improper Denials -- IPIA 2017
July 1, 2016 through June 30, 2017 (Batch Range 201627 - 201726)

Sample Type	Not Detect	Agency Resolved	Incorrect Action	Not Resolved	Procedure Not Followed	Detected By XMatch	Provided incorrect Info	Other SWA Error
Monetary	46.64%	21.21%	4.82%	17.25%	9.83%	0.05%	0.16%	0.04%
Separation	20.85%	12.64%	51.34%	9.47%	5.67%	0.00%	0.03%	0.00%
Nonseparation	35.51%	16.98%	33.25%	7.17%	6.36%	0.00%	0.73%	0.00%

Although the agency followed its procedures, the issue or information was undetectable for 20.85 percent of the improper separation determinations and slightly more than 35 percent of the erroneous nonseparation determinations. For these claims the agency issued its determination to deny eligibility based on information that, although incomplete, was the best available under normal procedures at the time of its decision.

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Improper_Denials_by_Prior_Agency_Action.xlsx

Separation Denial Issues

A slight majority of the separation denials concerned voluntary quits (VQ), almost in balance with number of discharges, other separation issues accounted for the balance. "Other" separation denials include a small number of labor disputes, military separations, or claimants who were still job attached (partial unemployment). Claims that were denied for VQ issues were slightly more likely to be in error (10.64 percent) than denials issued for discharge (10.54 percent). Separation denials that were based on "Other" issues were incorrect at a slightly higher rate (10.93 percent). The following table displays sample and population classification of these separation denial determinations and improper denial rates by type.

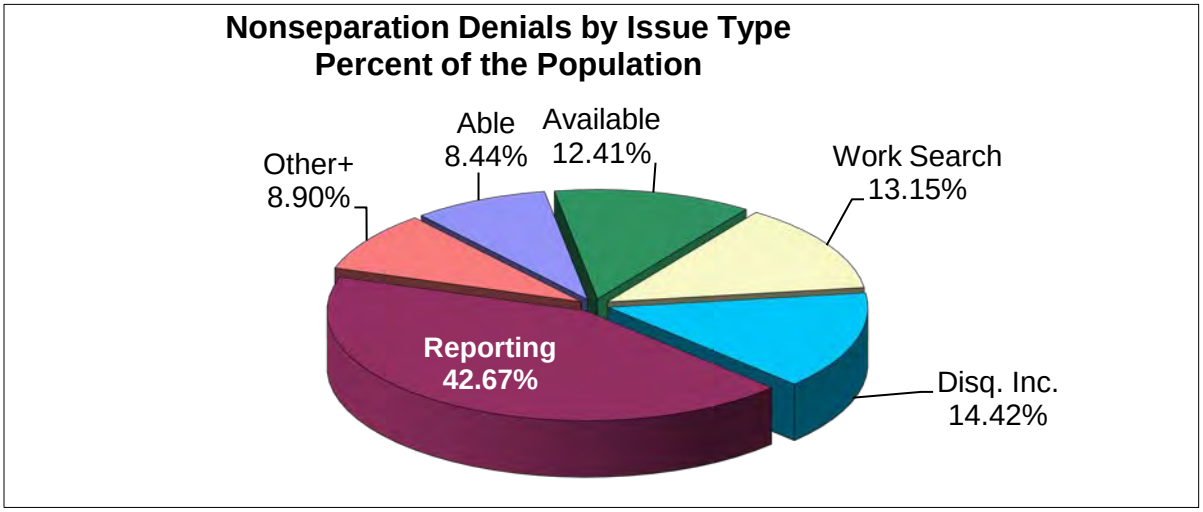
Separation Type	Sample Cases	Population of separation type denial	Percentage of Type in Population	Improper Denials
Voluntary Quit	4,209	795,534	50.34%	10.64%
Discharge	3,864	775,032	49.04%	10.54%
Other	73	9,911	0.63%	10.93%
Total	8,146	1,580,478	100.00%	
Total % Improper Denials for all Separation Type				10.59%

For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Denied_Claims_Accuracy_Separation_Determinations.xlsx

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Nonseparation Denial Issues

The largest category of nonseparation denials in IPIA 2017 concerns claimants failing to report when SWAs require them to provide information related to the UI claim or to receive reemployment services.



Failing to report is followed by issues involving disqualifying income issues and work search denials. The remaining nonseparation denials are distributed among several issues, such as being available for work, other issues, and being able to work. The "Other" nonseparation denial category includes issues such as refusal of suitable work, alien, athlete, school, and seasonality.

The following table displays sample and population classification of these nonseparation denial determinations and improper denial rates by type.

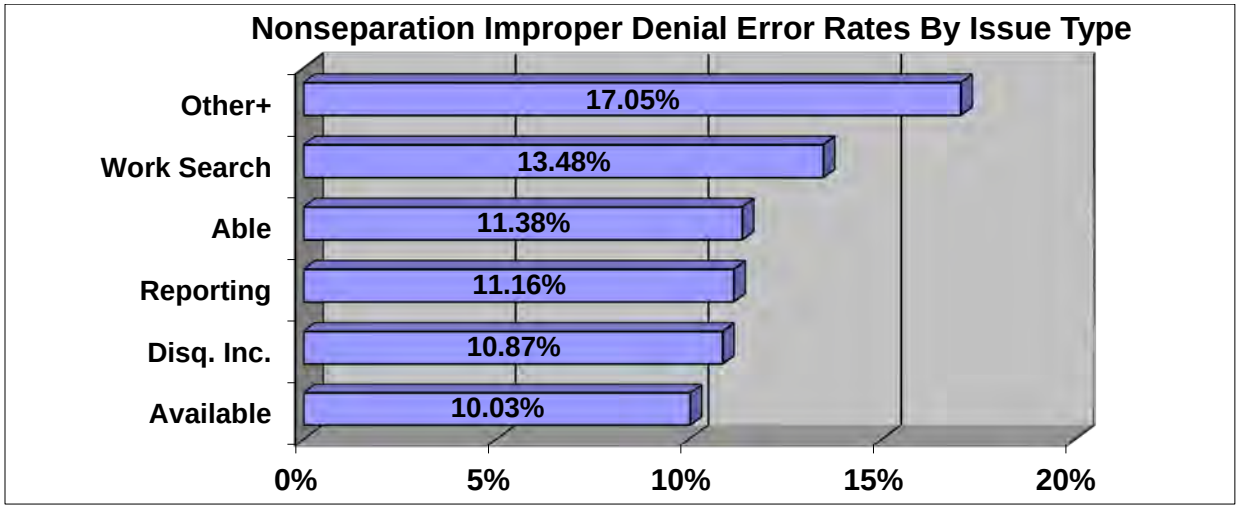
Nonseparation Denial Type	Sample Cases	Population of Denials	Percentage of Denial in Population	Percent Improper Denials
Reporting	3,097	1,136,040	42.67%	11.16%
Disq. Inc.	1,423	383,837	14.42%	10.87%
Work Search	1,037	350,089	13.15%	13.48%
Available	977	330,529	12.41%	10.03%
Other+	815	236,865	8.90%	17.05%
Able	793	224,613	8.44%	11.38%
N/A	3	389	0.01%	0.00%
Total	8,145	2,662,362	100.00%	
% Improper				11.82%

+Other includes refusal of suitable work, alien, athlete, school, seasonality issues.

Failure to report denials represent the largest population of nonseparation denials and had an improper denial rate of 11.16 percent. Determinations that denied eligibility because the claimant had disqualifying or deductible income represented the second largest portion of nonseparation denials. Determinations involving other issues (refusal

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of suitable work, alien, athlete, school, seasonality) had one of the smallest portions of determinations but had the highest improper denial rate (17.05 percent). The following chart shows improper nonseparation denial error rates by the type of issue.



For a detailed listing of these rates for each state, click on the following link (note: the spreadsheet may have several pages or worksheets):
IPIA_2017_Denied_Claims_Accuracy_Nonseparation_Determinations.xlsx

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Links to Additional BAM Paid and Denied Claims Data and BAM Methodology

Integrity Rates*

- IPIA_2017_Integrity_Rates_all_states.xlsx
- IPIA_2016_-_IPIA_2017_Integrity_Rate_Changes.xlsx

Integrity Rates - Cause / Responsibility*

- IPIA_2017_Integrity_Rates_x_Cause.xlsx
- IPIA_13_IPIA_17_Overpayment_Rate_by_Quarter_&_State.xlsx
- IPIA_2017_Work_Search_Verification_Outcomes.xlsx
- IPIA_2017_Integrity_Rates_by_Responsibility.xlsx
- IPIA_2017_Overpayment_Rate_Cause_and_Responsibility.xlsx

Integrity Rates - Prior Action / Point of Detection*

- IPIA_2017_Integrity_Rates_Cause_x_Prior_Agency_Action.xlsx
- IPIA_2017_Cause_x_Prior_Claimant_Action.xlsx
- IPIA_2017_Integrity_Rates_Cause_x_Prior_Employer_Action.xlsx
- IPIA_2017_Integrity_Rates_by_Point_of_Detection.xlsx
- IPIA_2017_Claim_Filing_Methods.xlsx

Underpayments and Denied Claim Accuracy*

- IPIA_2017_Base_Period_Wages_Report.xlsx
- IPIA_2017_Denied_Claims_Accuracy_&_Error Rates.xlsx
- IPIA_2017_Agency_Action_on_Improper_Denials_By_Denial_Type.xlsx
- IPIA_2017_Improper_Denials_by_Cause.xlsx
- IPIA_2017_Improper_Denials_by_Prior_Agency_Action.xlsx
- IPIA_2017_Denied_Claims_Accuracy_Separation_Determinations.xlsx
- IPIA_2017_Denied_Claims_Accuracy_Nonseparation_Determinations.xlsx
- IPIA_2076_Improper_Denials_by_Responsibility.xlsx

BAM Methodology

- IPIA_2017_Methodology_and_Program_Description.pdf
- IPIA_2017_Method_Claimant_Information_Obtained.xlsx
- IPIA_2017_State_Contacts.xlsx
- ET_395_Handbook_5th_Edition_BAM_State_Operations_Guidance
- Code_of_Federal_Regulations-Quality_Control_in_the_Federal_State_UI_System

Other References

- Comparison_of_State_Unemployment_Insurance_Laws_IPIA_2017
- Significant_Provisions_of_State_UI_Laws

*** Note: the spreadsheets may have several pages or worksheets**

Prepared by:
U. S. Department of Labor
Employment and Training Administration
Office of Unemployment Insurance
Division of Performance Management (January 2018)

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APPENDIX 2020

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What are the penalties for fraudulently collecting unemployment benefits?

- Your benefit year may be terminated and any remaining rights to benefits canceled.
- For all (re)determinations, decisions and orders of intentional misrepresentation issued **on or after** July 1, 2018, the penalty assessed is 1 times the amount obtained for the first offense, 1.5 times the amount obtained for the second or subsequent offense and 4 times the amount obtained for cases involving identity theft.
- For determinations issued **prior** July 1, 2018, *and* redeterminations of determinations issued **prior** to July 1, 2018, the fraud penalties will continue to be 2 times the overpayment if the amount obtained was less than $500.00 and 4 times the overpayment if the obtained amount was $500.00 or more.

RELATED CONTENT

What is an overpayment?

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