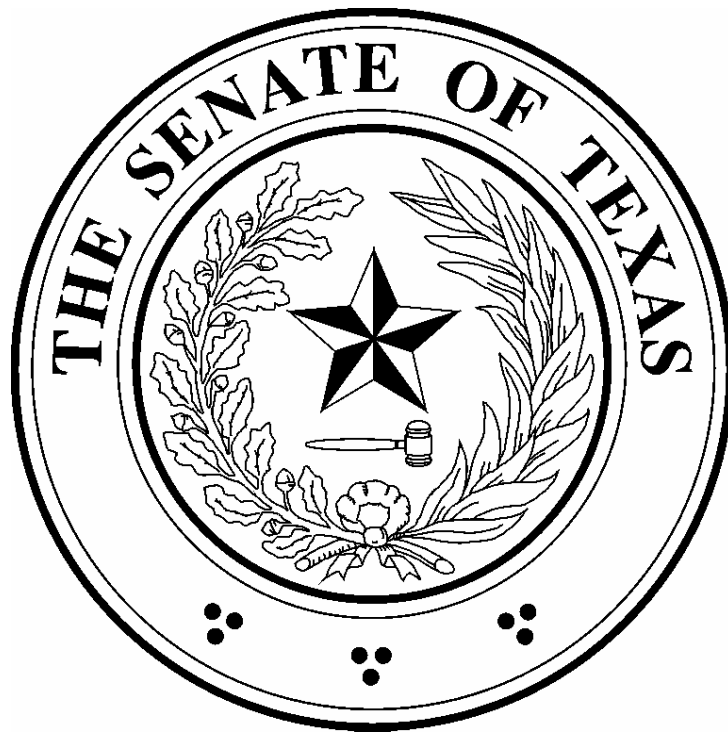

SENATE COMMITTEE
ON
BUSINESS AND COMMERCE

TEXAS UNEMPLOYMENT COMPENSATION
INSURANCE PROGRAM



INTERIM REPORT TO THE
79TH TEXAS LEGISLATURE



Senator Troy Fraser
Chairman
 Senator Kip Averitt
Vice Chairman
 Senator Ken Armbrister
 Senator Kim Brimer

Senator John Carona
 Senator Craig Estes
 Senator Mike Jackson
 Senator Eddie Lucio
 Senator Leticia Van de Putte

The Texas Senate Business and Commerce Committee

December 1, 2004

The Honorable David Dewhurst
 Lieutenant Governor of Texas
 The Capitol, Second Floor East
 Austin, Texas

Dear Governor Dewhurst:

On behalf of the Senate Committee on Business and Commerce, I hereby submit the interim report on the Texas unemployment compensation insurance program for consideration by the 79th Texas Legislature.

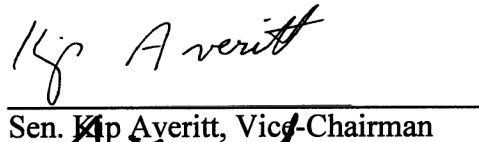
This report was prepared pursuant to interim committee charge number one to study and make recommendations relating to the Texas unemployment compensation insurance program, including, but not limited, the following:


- trends in benefit fraud and claim overpayments;
- effectiveness of Texas Workforce Commission (TWC) management and operational practices; development and implementation of innovative unemployment fraud detection and collection strategies by the TWC;
- other governmental research on misclassification of workers resulting in underpayments to the Unemployment Insurance Trust Fund;
- options for leveraging federal funds; and
- the feasibility of targeted audits to detect fraud.

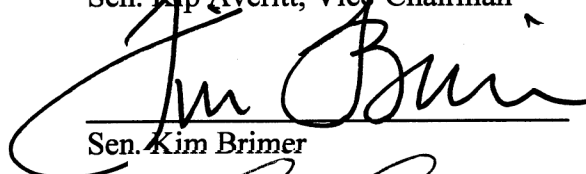
Include recommendations to improve the transition of individuals off unemployment insurance, such as enhancing claimant job search programs and placement strategies.

Respectfully Submitted,

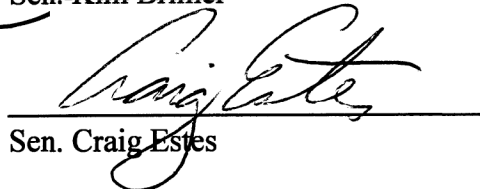

 Sen. Troy Fraser, Chairman

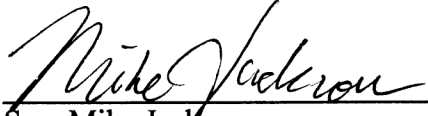

 Sen. Kip Averitt, Vice-Chairman

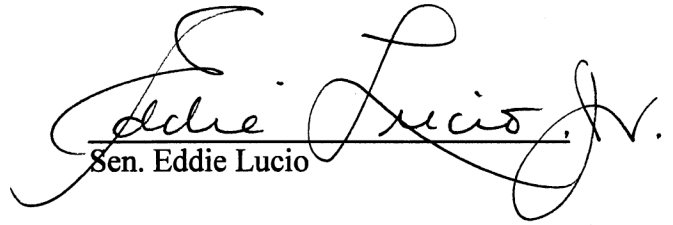

 Sen. Ken Armbrister


 Sen. Kim Brimer


 Sen. John Carona


 Sen. Craig Estes


Sen. Mike Jackson


Sen. Eddie Lucio


Sen. Leticia Van de Putte

Interim Charge Number One

During the interim of the 78th Legislature, the Lieutenant Governor requested that the Senate Business & Commerce Committee study the unemployment compensation insurance program administered by Texas Workforce Commission. The interim charge reads as follows:

Study and make recommendations relating to the Texas unemployment compensation insurance program, including, but not limited to, the following:

- Trends in benefit fraud and claim overpayments
- Effectiveness of Texas Workforce Commission (TWC) management and operational practices
- Development and implementation of innovative unemployment fraud detection and collection strategies by the TWC
- Other governmental research on misclassification of workers resulting in underpayments to the Unemployment Insurance Trust Fund
- Options for leveraging federal funds
- The feasibility of targeted audits to detect fraud.

Include recommendations to improve the transition of individuals off unemployment insurance, such as enhancing claimant job search programs and placement strategies.

In order to explore the issues relating to unemployment insurance, Senate Business & Commerce Committee staff sought the input of stakeholders as well as government agency personnel and policy makers. Additionally, the Senate Business & Commerce Committee held a public hearing on March 24, 2004 for the express purpose of hearing invited and public testimony on this charge.

Issue Background

The U.S. Department of Labor (DOL) and the Texas Workforce Commission (TWC) jointly administer the Texas Unemployment Insurance (UI) program. The UI program provides temporary, partial income replacement to workers who lose their jobs through no fault of their own. The dual purpose of UI is to maintain a minimal safety net so qualified unemployed workers can meet their most essential financial needs and to stabilize the local economy in times of economic recession. UI has been in existence nationally since 1935, when the *Social Security Act* was enacted by Congress; the State of Texas paid its first UI benefits in January 1938.¹

All fifty states, Puerto Rico, the District of Columbia, and the Virgin Islands have their own separate and self-contained UI programs. Eligibility, benefit amounts, length of time benefits are available, disqualification provisions, and tax structure are determined by the state law under which the UI claims are established. UI programs vary significantly from state to state. However, each state's administration of UI must conform to guidelines established by federal law.

Unemployment Insurance Management and Operational Practices

The TWC is the state government agency charged with overseeing and providing workforce development services to employers and job seekers of Texas. Among the philosophical ideologies that guide the work of the agency are the belief in conducting business in accordance with the highest standards of ethics, accountability, and efficiency, and the belief that the workforce system of Texas must be employer-driven.²

TWC meets its UI responsibilities by processing benefit claims, providing information to the general public and interested parties, ensuring programmatic quality and adherence to federal and state law, administrative rules, and performance standards. The TWC also provides a formal appeals procedure for disputed claims.

TWC's specific UI program activities include the following:³

- Accepting and processing claims for UI benefits
- Providing information to claimants, employers, and the general public about the UI program and other TWC reemployment efforts
- Providing information to claimants and employers about the status of individual claims for unemployment benefits

¹Southern Legislative Conference, *Unemployment Insurance in a Diminishing Economy: Recent Trends in the Southern Legislative Conference States* (July 2002).

²TWC Vision, Mission, and Philosophy, <http://www.twc.state.tx.us/twcinfo/misvis.html> (November 2004).

³TWC Self-Evaluation Report of Sunset Advisory Commission (August 2001).

- Determining the liability for tax and collecting taxes from employers pursuant to the Texas Unemployment Compensation Act, and providing tax-related information and forms to employers
- Investigating and documenting facts provided by employers and claimants, and adjudicating questions of fact that arise in connection with claims
- Maintaining qualitative and quantitative performance standards by individual claimstakers and by the claimstaking system as a whole
- Investigating and remedying claims irregularities, documentation issues, and potential improper payments
- Processing appeals of claims determinations from both employers and claimants, and issuing Appeal Tribunal decisions after formal appeals hearings
- Processing appeals from Appeal Tribunal decisions for Commission review.

There are several eligibility requirements that workers in Texas must meet to qualify for UI benefits. A worker must have separated from his or her last place of employment under qualifying circumstances (i.e., no fault of the worker). A worker must have had wages in at least two of the four base period calendar quarters, and must have earned sufficient wages in the base period.⁴

To maintain eligibility for receipt of UI benefits, a claimant must be able and available at all times for full-time work. A UI claimant must make an active search for work and maintain a written log of work search activities. He or she must apply to suitable jobs when referred and accept a suitable job when offered. A claimant must register with the Local Workforce Development office and participate in required re-employment activities. He or she must file certifications every two weeks via an automated telephone voice response system, report any wages received during the period, and affirm availability for suitable work and active work searching. Finally, a UI claimant must contact TWC when instructed to do so.⁵

Unemployment Insurance Program Funding

The TWC distributes approximately \$1.9 billion annually in total benefits paid to claimants, and processed 1,006,257 initial unemployment claims in fiscal year 2004. State law requires that not later than October 1 of each year, TWC compute a maximum and minimum benefit amount based upon a formula, prescribed in law, which uses the average weekly wage in covered employment. Annually for 2003, the maximum amount of weekly benefit in Texas was \$330 and the minimum amount was \$53; in 2004 the maximum and minimum benefit amounts were \$336 and \$54. The maximum term of receiving benefits in Texas is 26 weeks and the average duration is just under 17 weeks.

⁴TWC Self-Evaluation Report of Sunset Advisory Commission (August 2001).

⁵Ibid.

Payroll taxes levied against employers provide the funding for UI.⁶ TWC assesses and collects state UI payroll taxes from employers quarterly. For 2004, TWC data show an actual effective tax rate ranging from 0.67 percent to 8.26 percent, with an effective average tax rate of 1.74 percent. Additionally, the total cost per employee per year ranged from \$60 to \$743, with an average of \$156.

The four components of the state UI tax are the general tax, replenishment tax, deficit tax and the Unemployment Obligation Assessment. The general tax is experience rated (each employers' tax rate is calculated based on benefits paid). The replenishment tax is not experience rated. It enables the UI trust fund to cover benefits not charged to a specific employer; all employers must collectively cover these benefits. The deficit tax is assessed and collected only in years when UI Trust Fund fails to meet the floor. The Unemployment Obligation Assessment is to collect amounts needed to pay bond obligations due and to collect the interest due on loans from the federal government. The bond obligation tax rate is experience rated, based upon the employer's prior year tax rate. The interest tax rate is the same for all employers in a given year and is calculated by Commission rule. State statute mandates the floor to be at least one percent of annual wages and the ceiling not to exceed two percent of annual wages. The UI Trust Fund is currently meeting its statutory minimum floor requirements; as of September 2004, the statutory floor was determined to be \$768.6 million and the projected balance in the Fund was \$889 million.

After TWC assesses and collects state UI payroll taxes from Texas employers, these funds are deposited into the Trust Fund from which benefits are paid to unemployed workers. The federal government collects a separate employer tax, called the Federal Unemployment Tax Act (FUTA) tax. FUTA taxes are paid annually to the Internal Revenue Service by employers. These taxes fund state and federal UI administrative expenses and other program costs.

TWC has historically received only a fraction, 37 percent in 2002, of FUTA tax dollars that Texas employers remitted for UI administration. The balance of FUTA tax funds has been redistributed to other states to subsidize their UI administration, or remained in federal coffers. In 2002, \$531 million was collected from Texas employers, but only \$196 million was returned to Texas in the form of administrative grants (see Appendix A). Texas had one of the lowest federal UI administration allotments per unemployed person of any administering entity in 2002; Texas' allotment per unemployed person was \$129, compared to an average of \$240 (see Appendix A).

The current DOL Resource Justification Model used to determine state return on FUTA is not favorable to Texas. Federal law requires that distribution of FUTA funds is based on the population of the state, the estimated number of persons covered by the state law,

⁶Funding is technically also provided by payments from reimbursing employers, such as political subdivisions, state agencies, and school districts, which do not pay into the UI system in the traditional way but directly reimburse for UI claimant benefits.

the cost of proper and efficient administration of such law, and other relevant factors.⁷ However, administration grants tend not to reflect the statutory mandates, but rather the cost of doing business in each state. The current DOL model appears to reward overspending and inefficiency, and penalizes streamlining and cost-reduction in UI administration. TWC has provided comments to the DOL encouraging modifications to the Resource Justification Model to improve fairness and efficiency.

TWC and DOL have begun discussions concerning the implementation of a pilot program called the “State Choice Proposal.” This proposed pilot program would allow a state to take primary UI funding and administration authority. TWC estimates that implementation of this program would result in Texas employers annually saving 56 percent of their current FUTA taxes. State legislation would be necessary to allow TWC to collect employer taxes for the administration of UI and to provide the necessary statutory framework for TWC to become the administrator of these funds.

Benefit Accuracy Measurement

Benefit Accuracy Measurement (BAM) is a DOL program designed as a diagnostic tool to determine the accuracy and integrity of the UI program. State workforce agencies, such as TWC, select weekly random samples of UI claim cases. BAM investigators audit these claims to determine if claimants were properly awarded benefits or properly denied eligibility.

When considering BAM data, the DOL strongly cautions that it may be misleading to compare one state's accuracy rates with another state's rates. No two states' laws, regulations, and policies are identical. Differences in these conditions influence the potential for error. States with stringent or complex provisions tend to have higher improper payment rates than those with simpler, more straightforward provisions. However, for the purposes of this report, the BAM data is informative in generally assessing trends in benefit fraud and claim overpayment.

Attached in Appendix B is the BAM state by state comparison of UI overpayment rates for 2002.

The 2002 BAM statistics indicate that Texas may be lagging behind other states in UI fraud and overpayment detection and prevention. BAM statistics show that 20.71 percent of the UI funds spent in benefits to claimants are in fact overpayment errors; within this amount 2.5 percent are classified as fraudulent overpayment errors and 18.2 percent are classified as non-fraudulent overpayment errors. The national average overpayment error rate is 9.1 percent.⁸

⁷42 U.S.C. § 502(a).

⁸U.S. Department of Labor 2002 Benefit Accuracy Measurement National Data Summary (see Appendix B).

BAM categorizes overpayments by cause. Below is a list of overpayment error causes and definitions, listed in the relative order of significance to Texas' overpayment rate. Included is each cause's percent contribution to Texas' total benefit overpayment rate (with all causes adding up to the 20.71 total). Also included is the national average causal contribution information.

- **Work Search**
 - During 2002, Texas required two work search contacts per week. When BAM data indicated that claimants did not actually complete those work search contacts, UI benefits received were counted as overpayments.
 - BAM data show that 7.72 percent of the 20.71 percent overpayment rate was due to work search errors (compared to 1.43 percent of the national overpayment rate of 9.1 percent).
- **Benefits Year Earnings**
 - This category is comprised of several issues; the largest component is unreported earnings by claimants who have returned to work but continue to collect UI benefits.⁹
 - BAM data show that 4.15 percent of the 20.71 percent overpayment rate was due to benefits year earnings errors (compared to 2.15 percent of the national overpayment rate of 9.1 percent).
- **Other Issues**
 - BAM data show that 2.47 percent of the 20.71 overpayment rate was due to a general category of "other issues" (compared to 0.34 percent of the national overpayment rate of 9.1 percent).
- **Separation**
 - Separation refers to whether a claimant is unemployed through no fault of their own, as opposed to terminated for misconduct or voluntarily quit without good cause.
 - BAM data show that 2.06 percent of the 20.71 percent overpayment rate was due to separation errors (compared to 1.98 percent of the national overpayment rate of 9.1 percent).
- **Job Services Registration**
 - Texas requires that claimants have an active job service registration on file and must take personal responsibility in the registration process.
 - BAM data show that 1.21 percent of the 20.71 percent overpayment rate was due to job service registration errors (compared to 0.83 percent of the national overpayment rate of 9.1 percent).
- **Base Period Wages**
 - This category refers to accuracy of wages on which UI benefits are based.

⁹U.S. Department of Labor 2002 Benefit Accuracy Measurement National Data Summary (see Appendix B).

- BAM data show that 1.07 percent of the 20.71 percent overpayment rate was due to base period wage errors (compared to 0.65 percent of the national overpayment rate of 9.1 percent).
- **Able and Available**
 - In Texas, in order to be considered able and available for work one must: (a) have adequate transportation and child care arranged; (b) be willing and able to work all the days and hours required for the type of work sought; (c) be willing to accept the usual rate of pay for a person of the same qualifications and experience; and (d) be able to work full-time.¹⁰
 - BAM data show that 1.02 percent of the 20.71 percent overpayment rate was due to able and available errors (compared to 0.78 percent of the national overpayment rate of 9.1 percent).
- **Severance/Vacation/Social Security/Pension**
 - BAM data shows that 0.53 percent of the 20.71 percent overpayment rate was due to the presence of these other sources of income (compared to 0.33 percent of the national overpayment rate of 9.1 percent).
- **Other Eligibility Issues**
 - BAM data show that 0.47 percent of the 20.71 percent overpayment rate was due to other eligibility errors (compared to 0.61 percent of the national overpayment rate of 9.1 percent).

The leading cause of overpayment error in Texas is work search issues. Further, BAM data indicate that Texas has a significantly higher percentage of overpayment due to this cause than other states. At the time of the 2002 BAM, TWC required two work search contacts per week. It is likely that Texas' strict work search requirements increased the overpayment rate for this error cause compared with states requiring fewer work search contacts.

BAM calculates a state workforce agency's overall overpayment rate incorporating all causes of overpayments, even those that would be difficult to detect. TWC asserts that an "operational rate" would provide a more accurate assessment tool. An operational rate of TWC overpayment rate would exclude consideration of certain overpayment causes including work search, job service registration, base period wage, and certain miscellaneous issues. Removing consideration of these causes would reduce Texas' 2002 annual overpayment rate from 20.7 percent to 8.35 percent.¹¹ Considering only the operational rate would bring Texas' overpayment rate more in line with other states' overpayments rates; however, it would still be significantly higher than the national average operational rate of 5.04 percent. For further discussion of operational rate compared to overall overpayment rate see Appendix C.

¹⁰TWC BAM Overpayment Rates: Discussion of Texas' Ranking and Contrasting State Requirements (see Appendix C).

¹¹TWC BAM Overpayment Rates: Discussion of Texas' Ranking and Contrasting State Requirements (see Appendix C).

TWC UI Integrity Focus

TWC has been making recent strides to increase the integrity of the UI program. In 2003, a UI Performance Integrity Plan was developed by TWC to reduce overpayments. Among the tasks completed, TWC created a new Program Integrity Division in November 2003. This division's purpose is to aggressively address overpayment and fraud in UI, as well as to ensure integrity in other TWC programs.

The agency has strengthened their work search requirements to require a minimum of three work search contacts weekly. Claimants are automatically disqualified if the work search requirement is not met. An innovative way the agency is ensuring program integrity is through random work search verifications; one thousand claimant work logs are verified weekly by TWC staff. Also, the agency expects that improvements made to TWC's Work in Texas program should reduce UI rates in general by facilitating employee to employer matches, thus returning UI recipients to work faster and reducing the duration of UI benefits.

TWC is also enlisting the help of employers to reduce overpayments. According to TWC, \$43 million is lost annually to overpayments that arise when decisions initially made in favor of UI claimants are later reversed.¹² Those claimants can collect benefits for weeks or months pending the outcome of employer appeals. Many employers have adopted the strategy of presenting little or no information during the initial claims investigation. When they fail to provide timely information, employers lose otherwise winnable UI cases at the initial level. Employers may appeal, but if employers win the appeal the benefits already dispersed are very difficult to recover. TWC is asking employers to cooperate in preventing this type of overpayment. Additionally, the agency is asking for more employer participation in reporting new hires so that TWC has better data for crossmatching UI claimants.

Additional information on TWC progress with fraud and overpayment related activities is available in Appendix D.

Governor Rick Perry has also become active in TWC's efforts to improve program integrity. On July 12, 2004, Governor Perry issued Executive Order RP36 which provided a directive to all state agencies to establish wide-ranging efforts to detect and eliminate fraud in government programs. Governor Perry specifically requested that TWC prioritize anti-fraud and abuse efforts in the UI Program. He further stated that a reduction in benefit fraud and claims overpayments would benefit employers and citizens by promoting the goals of the UI system, and would improve the solvency of the UI Trust Fund.

Governor Perry directed TWC to prioritize prevention, detection and elimination of fraud and abuse in the UI Program through several measures. First, TWC should identify any state policies, management and operational practices, weaknesses in existing computer

¹² Texas Business Today, TWC, From the Dais (Spring 2004).

cross-matching systems, and other appropriate factors that are ineffective in preventing and detecting fraud and abuse in the UI Program. Also, TWC should develop innovative strategies to address benefit fraud and claims overpayments, identify any worker misclassification resulting in underpayments to the UI Trust Fund, and improve claimants' job search and placement strategies in order to reduce the percentage of claimants who exhaust unemployment compensation benefits. The Governor instructed the agency to identify and implement national best practices for detecting and prosecuting fraudulent schemes, identify cost-effective strategies designed to eliminate fraud, reduce benefit payment inaccuracies, and increase recovery of claims overpayments and employer delinquent accounts. In addition, TWC should make recommendations on the benefit of authorizing the commission to enter into contractual arrangements with private collection agencies to assist in pursuing uncollected overpayments of unemployment benefits. Finally, the Governor instructed the agency to implement a comprehensive process to promote high quality benefit determination, avoid improper disqualification or denial of benefits, and increase the profile of its fight against fraud on its website.

Recent Legislation

Legislation has been filed the previous two legislative sessions which would require a third party assessment of the UI system. Senate Bill 444, filed in the 77th Regular Legislative Session, would have required either the State Auditor or an independent contractor to study UI fraud and make recommendations to improve the integrity of the UI system. This bill required implementation of part of the Texas Comptroller of Public Accounts report, *e-texas: smaller, smarter, faster government*, and the measure was expected to save the UI Trust Fund approximately six million dollars annually in overpayments.¹³ Senate Bill 444 did not pass.

House Bill 1496, filed in the 78th Regular Legislative Session, instructed the State Auditor to review UI fraud and overpayment trends and to devise improvement strategies. In addition, House Bill 1496 required TWC to develop legislation to allow contingency fee contracts with private collection agencies. The fiscal note prepared by the Legislative Budget Board estimated that the measures in House Bill 1496 would save \$8.6 million annually from the UI Trust Fund, and would have a one time cost of \$318,400 from federal administration funds. House Bill 1496 passed through the Legislature with no opposition, but was vetoed by the Governor due to constitutional separation of powers concerns related to giving the State Auditor authority over TWC. The veto proclamation stated the Governor's support of the intent of the legislation and required TWC to implement its own fraud detection and collections strategies.

¹³Texas Comptroller of Public Accounts, *e-Texas: smaller, smarter, faster government*, (December 2000).

Public Hearing Summary

The Senate Business & Commerce Committee held a public hearing at the Texas State Capitol on March 24, 2004 to hear testimony on Interim Charge One. Invited testimony included Diane Rath, TWC Chair and Commissioner Representing the Public; Ron Lehman, TWC Commissioner Representing Employers; Bill Hammond with Texas Association of Business (TAB); and Rick Levy with Texas AFL-CIO. Chairman Fraser provided the opportunity for public testimony and no individuals came forward.

TWC Chair Diane Rath provided a general high level overview of the UI system and its funding mechanisms. She went on to discuss that, due to the turbulent economy, the UI Trust Fund was insolvent in December 2002. Texas was borrowing money from the federal government at a six percent interest rate. Legislation passed in the 78th Legislative Session allowed TWC to sell bonds to meet the UI Trust Fund floor in lieu of borrowing funds from the federal government. The proceeds of this bond sale were used to reimburse the federal government and pay claimants' benefits, while keeping money circulating in the economy and avoiding a deficit tax for the present year. Rath explained that the bond sale of \$1.4 billion (sold at a 1.9 percent average interest rate) is estimated to save Texas employers \$300 million over the five year repayment period.

Rath also discussed Texas' dismal return on FUTA taxes sent to the federal government. TWC receives only 37 percent of \$550 million in FUTA taxes that employers send to the federal government for program administration. Rath explained that the DOL formula tends to reward states that cannot cover their own administrative expenses, and disfavors states that are more efficient or technologically driven.

The latest DOL formula allocated Texas the maximum administration grant cut possible, five percent, despite problems in the Texas economy and high unemployment. Rath stated that efforts have been made to encourage Congress and the DOL to change the UI administration funding formula. Furthermore, she estimated that if Texas were allowed to self fund administration of the UI program, Texas employers could save about \$20 per employee in taxes annually.

Next, TWC Commissioner Ron Lehman testified on issues related to UI overpayment, as well as specific solutions and overall goals to increase system effectiveness. He stated that most employers support the concept of UI but need assurances of high system integrity with minimal fraud and abuse. A survey of employers indicated that one in five had personally known of an employee who received undeserved benefits, and 31 percent expressed that TWC could do a better job of administration. Lehman anticipated that employers will become increasingly satisfied with the UI system because of recent TWC administration improvements.

Lehman also addressed the DOL BAM report on UI administration performance. The DOL ranked Texas as one of the worst in overpayment of benefits. The estimated 20.71 percent of total benefits lost to overpayment equates to approximately \$455 million lost

annually. Lehman pointed out that outright fraud contributes to the high rate of overpayments, but it does not constitute the majority of overpayment errors.

In November 2003 TWC tightened their work search rules, requiring all claimants to perform three work search contacts per week. TWC further defined that these contacts must be productive. TWC provided flexibility to local workforce boards to set lower work search contacts in rural areas with few employers; however, these work search rules are the most strict in the country. Lehman explained that rigid work search rules and other requirements make it easier to appear to fall short in the BAM. In other words, the BAM report on Texas appears to be worse than it is. Illustrating the causes behind Texas' overpayment rate is not an excuse for poor performance, stated Lehman, but merely provides a fuller and more accurate picture.

Another distinct measure of the effectiveness of the UI system is exhaustion rate. This is the percentage of UI beneficiaries who use up all their benefits before becoming reattached to the workforce. Lehman explained that a fundamental issue for TWC in administering UI and other workforce programs is reattachment to workforce. Lehman stated that Texas has witnessed dramatic improvements; in 2002, 64 percent of UI recipients exhausted their benefits before finding work, compared to approximately 52 percent in 2003.

Lehman shared TWC's immediate action plan to address problems in UI administration and reduce overpayment of benefits. TWC is attempting to increase prosecution of serious fraud cases and is actively seeking UI fraud tips from Texans. TWC is also completing predictive fraud analysis and cross matching UI claimant data with various other data sources including the Texas Attorney General's New Hire database, Texas Workers Compensation Commission, Texas Department of Criminal Justice, and the U.S. Social Security Administration. Also, TWC is requiring agency staff to verify claimant work search log information, making 1,000 work search verification calls a week to ensure the honesty of claimants.

Finally, Lehman discussed that TWC has created a separate Division of Program Integrity to ferret out abuse in all TWC programs, including the UI program. A strategic plan has been created to guide the Division of Program Integrity. He stated that improvements have become apparent since the implementation of this set of integrity procedures.

Lehman discussed that in June 2003, five measures were put in place that he believes matter most to employers. These measures include market share (the number of employers listing job vacancies with TWC workforce system), job openings filled, employer sustainability, employers repeat usage of TWC workforce system, and initial claimants placed (including claimants placed within ten weeks). These "measures that matter" are a focused effort to both reduce UI benefits duration and exhaustion rates and to improve system integrity. He also suggested legislative action that would improve the UI system. Redefining "last employing unit" in the statute would help identify "sham" employer relationships and improve system integrity.

Bill Hammond represented business interests and began his testimony by complimenting the TWC on taking steps in the right direction. He pointed out, however, that BAM data indicates that UI fraud and overpayments in Texas cost nearly 21 percent of \$2.2 billion annually. Compared to the 9.3 percent national average, Hammond believes there is room for improvements. He also called attention to BAM measures on duration of time on benefits. The average benefit duration is 16.8 weeks in Texas; this ranks 37th out of the 53 entities providing benefits. He also stated that Texas' benefit exhaustion rate of 52 percent ranks 47th out of 53.

Hammond suggested several improvements to the UI system. He stated that overpayments should not be retained by claimants, even if TWC was responsible for the error. He also proposed hiring outside collection firms on a performance basis to retrieve overpayments. Hammond asked that TWC set a firm public goal in terms of reduction of overpayments. If Texas overpayments were reduced to the rate of the national average, this would save Texas businesses significant amounts of money. Hammond also suggested requiring the Legislature to affirmatively raise employer taxes to pay UI benefits. Since the rate of UI employer taxes is automatically raised by statute when the floor is not met, the issue fails to receive deserved attention in the Legislature. Another idea he proposed is the creation of UI personal savings accounts, similar to individual retirement accounts, instead of the current UI system. Workers could make payment into a third party UI account; since most people never make a claim, it could also be used for retirement.

Hammond further stated that TAB is concerned about employer misconduct, namely the misclassification of workers to evade paying UI taxes and the formation of new corporations for the sole purpose of reducing UI taxes (both discussed in more detail in Rick Levy's testimony). However, he stated that current laws are sufficient in this area.

Rick Levy spoke representing the AFL-CIO and the labor perspective. He stated that UI is not welfare nor an entitlement. It is insurance which workers pay for indirectly out of the total wage package. Premiums are paid, and if a worker has a loss UI should provide coverage. Levy felt that underlying the previous testimony was the belief that UI is regarded as a "cash cow," and that unemployed workers regularly defraud the system. However, he testified that this is not usually the case.

Levy advised that the UI system is not fully meeting the needs of workers in Texas. Texas has one of the highest unemployment rates in nation, 6.3 percent statewide at the time of the hearing, and much higher in some areas of the state. However, the reciprocity rate (how many unemployed workers actually receive UI) is very low. Texas ranks 47th out of 53 in the number of unemployed workers who actually receive benefits; only 28 percent of all unemployed individuals in Texas receive UI benefits. The reciprocity rate would be higher if eligibility were based on most recent wages and if part-time workers were eligible for UI. Levy advised that the low reciprocity rate is also a function of disqualification due to separation issues; Texas has twice the national average of

disqualifications due to separation issues. Levy feels there are many roadblocks in the Texas UI system that prevent benefits from getting to people who need and deserve them.

Levy believes that the existing UI system is, contrary to what other witnesses purport, a very conservative system which does not unduly burden Texas employers. The employer tax burden in Texas, calculated as UI taxes as a percentage of total wages, is similar to or lower than the employer tax obligations in states geographically proximate to Texas. In addition, since 1994 this percentage has decreased from 0.6 percent of total wages to approximately 0.4 percent.

Levy is very concerned with employer fraud. AFL-CIO has supported bills in previous sessions that emphasize overall program integrity. He feels that efforts should focus on both UI claimants and employers. Employer integrity should be at least as high a priority as claimant integrity, especially considering the relative dollar amounts related to employer corruption. He states that funds lost to employer fraud dwarf the amount lost to claimant overpayment and fraud. Additionally, Levy wants TWC to address underpayments and wrongful denial of benefits as well as overpayments.

Levy further discussed employer fraud in the UI system. Misclassification of full-time employees as contract workers (to avoid paying UI benefits) and SUTA¹⁴ “dumping” are both strategies that are becoming increasingly common as certain consulting firms market them as a means to cut costs. SUTA dumping occurs when a company sets up a dummy corporation in order to reduce its UI tax rate. Since employer payroll tax rates are based in part on how much UI benefits are paid to their unemployed workers, some employers create or buy corporations with low payroll tax rates and transfer their payroll. This practice has spawned a cottage industry of consultants who help dishonest employers exploit this tax loophole. Levy pointed to a North Carolina law that categorizes SUTA dumping as a felony and places legal responsibility on both employers and consultants. Also, Levy encouraged better detection of intentional employee misclassification through the aggressive use of targeted employer audits and statistical modeling.

The intention of UI is to take care of unemployed workers and to provide benefits when appropriate. Levy supports a strong emphasis on overall UI program integrity, including the reduction of employer and employee abuse, underpayments and overpayments.

¹⁴SUTA refers to State Unemployment Tax Act

Recommendations

1. The Texas UI program serves a critical function in our economy. It is imperative that this program is run efficiently and with integrity. Although TWC has made a strong effort to reduce fraud and overpayments, there continues to be room for improvement. TWC should seek additional ways to improve operations and management of the UI program. The Committee recommends that legislation be drafted and introduced during the 79th Legislative Session that would require the TWC to seek an outside audit and study of the UI program. This outside audit and study would provide a complement to TWC's existing internal auditing procedures.
2. Only 37 percent of FUTA taxes collected by the federal government from Texas employers are returned to this state for UI administration. Efforts should be made to ensure that Texas is returned a higher percentage of FUTA tax dollars. This includes supporting the consideration of alternatives to the current UI administration funding system. Contingency legislation should be drafted in light of a possible federal pilot study proposal which, if adopted, would provide Texas the option of primary funding the state's UI program administration. TWC estimates that implementation of this program would result in Texas employers annually saving 56 percent of their current FUTA taxes. Contingency legislation should allow TWC to collect employer taxes for the administration of UI, and provide the necessary statutory framework for TWC to become the administrator of these funds.

Appendix A

**FUTA RECEIPTS VS. AMOUNTS RETURNED
FY 2002 (in \$Millions)**

STATE	Estimated FUTA			Administrative Grants			Total
	Total	EUCA	ESAA	UI	ES	Other	
ALABAMA	98.1	14.4	83.6	32.7	11.2	5.2	49.1
ALASKA	14.4	2.1	12.3	22.7	8.2	2.2	33.2
ARIZONA	127.1	18.7	108.4	34.2	11.7	5.0	51.0
ARKANSAS	57.3	8.4	48.9	23.4	6.6	4.0	34.0
CALIFORNIA	839.3	123.4	715.9	409.2	89.8	42.8	541.7
COLORADO	125.6	18.5	107.2	38.3	10.4	6.4	55.1
CONNECTICUT	89.5	13.2	76.3	52.0	8.5	6.4	67.0
DELAWARE	23.2	3.4	19.8	9.2	2.3	1.3	12.8
DIST. OF COLUMBIA	22.7	3.3	19.4	10.0	3.5	1.8	15.4
FLORIDA	398.6	58.6	340.0	75.3	35.5	14.1	125.0
GEORGIA	219.1	32.2	186.9	52.5	19.8	7.3	79.7
HAWAII	27.9	4.1	23.8	13.6	3.4	2.0	19.0
IDAHO	28.8	4.2	24.6	16.8	6.9	2.3	25.9
ILLINOIS	331.1	48.7	282.5	128.4	32.2	15.2	175.8
INDIANA	150.3	22.1	128.2	42.2	14.6	7.2	63.9
IOWA	72.5	10.7	61.9	22.9	7.2	5.1	35.2
KANSAS	69.9	10.3	59.7	18.9	6.8	3.8	29.5
KENTUCKY	91.1	13.4	77.7	25.9	10.1	4.0	40.1
LOUISIANA	94.6	13.9	80.7	24.5	11.1	4.1	39.8
MAINE	29.2	4.3	24.9	14.5	4.2	2.8	21.5
MARYLAND	129.5	19.0	110.5	47.8	13.8	6.8	68.3
MASSACHUSETTS	173.5	25.5	148.0	72.1	15.6	9.8	97.5
MICHIGAN	252.0	37.0	214.9	115.7	25.3	15.4	156.4
MINNESOTA	144.0	21.2	122.8	47.5	12.7	7.6	67.8
MISSISSIPPI	56.0	8.2	47.8	20.0	7.4	3.4	30.8
MISSOURI	136.9	20.1	116.7	44.4	14.1	7.7	66.2
MONTANA	16.9	2.5	14.4	8.2	5.6	2.1	15.9
NEBRASKA	43.9	6.5	37.4	13.2	6.7	2.4	22.3
NEVADA	62.4	9.2	53.2	27.5	5.6	3.1	36.2
NEW HAMPSHIRE	33.9	5.0	28.9	10.6	3.2	1.9	15.6
NEW JERSEY	219.4	32.3	187.2	98.0	21.4	9.7	129.0
NEW MEXICO	35.1	5.2	29.9	12.4	6.3	2.6	21.3
NEW YORK	439.6	64.6	375.0	175.8	47.1	24.4	247.3
NORTH CAROLINA	210.0	30.9	179.1	59.6	19.5	10.6	89.7
NORTH DAKOTA	13.6	2.0	11.6	6.7	5.7	1.7	14.1
OHIO	297.5	43.7	253.8	80.8	28.4	16.6	125.8
OKLAHOMA	72.2	10.6	61.6	20.6	8.2	5.2	34.0
OREGON	85.3	12.5	72.8	48.9	10.0	7.5	66.3
PENNSYLVANIA	300.7	44.2	256.5	140.5	30.6	18.5	189.6
PUERTO RICO	42.7	6.3	36.4	16.4	10.5	2.3	29.2
RHODE ISLAND	24.5	3.6	20.9	15.1	2.8	1.7	19.6
SOUTH CAROLINA	94.3	13.9	80.5	30.8	10.0	5.4	46.2
SOUTH DAKOTA	17.0	2.5	14.5	5.9	5.3	1.6	12.8
TENNESSEE	141.3	20.8	120.5	33.3	14.0	6.0	53.3
TEXAS	531.0	78.1	452.9	125.5	51.2	19.2	195.9
UTAH	54.8	8.1	46.7	23.7	10.1	4.4	38.2
VERMONT	14.6	2.2	12.5	7.4	2.6	1.6	11.6
VIRGINIA	191.6	28.2	163.5	40.4	15.9	7.1	63.4
VIRGIN ISLANDS	1.9	0.3	1.6	2.1	1.6	0.3	4.0
WASHINGTON	146.1	21.5	124.6	83.5	16.6	12.3	112.4
WEST VIRGINIA	32.6	4.8	27.8	13.2	6.1	3.1	22.3
WISCONSIN	146.3	21.5	124.8	65.2	14.3	9.6	89.1
WYOMING	11.3	1.7	9.6	6.5	4.2	1.5	12.2
TOTAL	7,082.6	1,041.1	6,041.5	2,586.1	756.7	376.3	3,719.2

Source: U.S. Department of Labor, Employment & Training Administration,
February 19, 2004

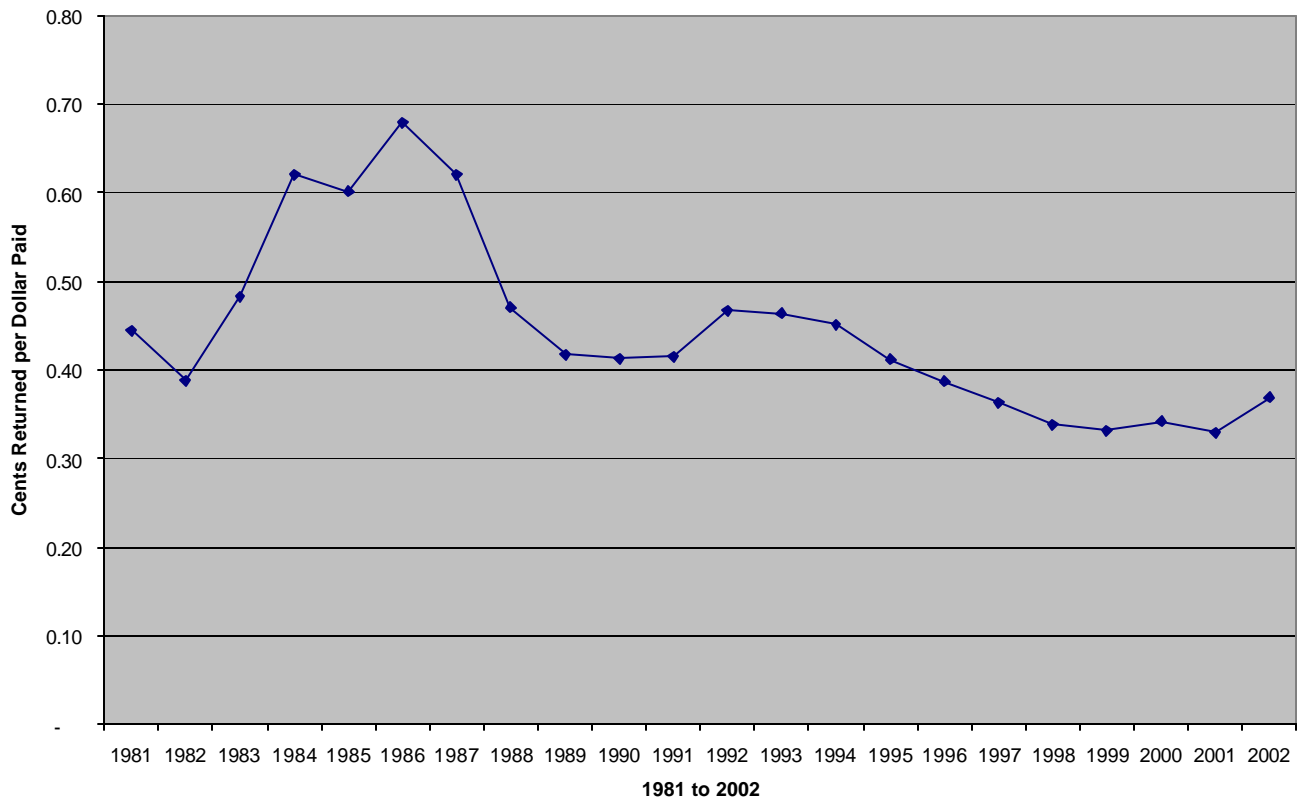
Notes:

- FUTA: Estimated total Federal Unemployment Tax Act receipts.
- EUCA: Share of receipts transferred to the Extended Unemployment Compensation Account.
- ESAA: Share of receipts retained in the Employment Security Administration Account.
- UI: State administrative costs for Unemployment Insurance, excluding postage and a portion of National Activities.
- ES: State administrative costs for Employment Services, excluding postage and a portion of National Activities.

A Comparison of the Federal UI Allotment to the States vs. The Number of Unemployed

	July 1, 2002 Population (millions)	No. in Civilian Labor Force July 02 (thousands)	No. in Civilian Labor Force July 03 (thousands)	No. of Unemployed July 02 (thousands)	No. of Unemployed July 03 (thousands)	Percent Unemploy ed July 02	Percent Unemployed July 03	UI Allotment FY02 (millions)	UI Allotment FY03 (millions)	UI Allotment FY04 (millions)	Allotment per Unemployed Person
TEXAS	21.8	10,891.8	11,147.2	748.5	788.2	6.9%	7.1%	108.1	107.0	101.7	\$129.02
FLORIDA	16.7	8,202.4	8,162.0	465.5	447.3	5.7%	5.5%	64.8	60.4	63.8	\$142.59
ARIZONA	5.5	2,698.1	2,685.3	182.3	177.4	6.8%	6.6%	27.5	25.6	27.1	\$152.49
NORTH CAROLINA	8.3	4,218.2	4,235.4	295.4	292.8	7.0%	6.9%	49.8	46.4	45.7	\$156.21
LOUISIANA	4.5	2,039.2	2,077.6	127.4	156.9	6.2%	7.6%	24.0	25.8	24.8	\$158.08
SOUTH CAROLINA	4.1	2,088.6	2,078.1	123.6	154.0	6.2%	7.4%	26.8	27.9	26.5	\$172.15
INDIANA	6.2	3,236.1	3,272.3	167.5	176.6	5.2%	5.4%	35.6	33.1	31.5	\$178.31
KENTUCKY	4.1	1,998.5	2,030.9	111.1	125.0	5.6%	6.2%	22.8	21.6	22.8	\$182.15
OKLAHOMA	3.5	1,698.7	1,721.2	74.6	93.7	4.4%	5.4%	18.4	17.1	17.6	\$187.84
MISSISSIPPI	2.9	1,311.8	1,348.5	88.9	97.6	6.8%	7.2%	19.2	19.4	18.4	\$188.36
NEW MEXICO	1.9	888.1	911.0	52.4	59.1	5.9%	6.5%	11.7	11.8	11.2	\$190.30
TENNESSEE	5.8	2,969.3	2,935.9	160.6	158.9	5.4%	5.4%	30.7	29.0	30.4	\$191.16
GEORGIA	8.6	4,313.3	4,403.0	235.3	230.8	5.5%	5.2%	46.5	52.1	49.5	\$214.42
OHIO	11.4	5,936.7	6,011.4	348.8	383.3	5.9%	6.4%	69.6	83.5	83.4	\$217.51
MISSOURI	5.7	3,010.9	3,022.4	175.2	175.3	5.8%	5.8%	40.9	38.1	39.1	\$222.78
COLORADO	4.5	2,467.6	2,505.5	140.5	141.9	5.7%	5.7%	30.5	33.6	31.9	\$224.72
KANSAS	2.7	1,442.6	1,501.8	74.7	74.7	5.2%	5.0%	17.3	16.1	17.1	\$228.32
VIRGINIA	7.3	3,809.9	3,879.8	158.4	159.3	4.2%	4.1%	34.9	36.9	36.5	\$228.90
WEST VIRGINIA	1.8	814.7	821.0	50.5	54.8	6.2%	6.7%	12.9	12.2	12.9	\$234.66
ALABAMA	4.5	2,106.9	2,158.1	129.5	125.9	6.1%	5.8%	31.1	30.2	30.7	\$243.53
ARKANSAS	2.7	1,315.4	1,330.0	77.5	79.5	5.9%	6.0%	20.8	21.0	20.0	\$251.37
MICHIGAN	10.1	5,072.6	5,217.1	347.1	416.8	6.8%	8.0%	96.1	105.0	107.0	\$256.73
ILLINOIS	12.6	6,468.0	6,632.0	437.2	431.4	6.8%	6.6%	108.2	111.5	113.1	\$262.26
NEW YORK	19.2	9,551.3	9,536.4	588.5	582.1	6.2%	6.1%	144.8	144.8	153.0	\$262.85
CALIFORNIA	35.1	17,571.0	17,789.9	1,241.3	1,231.8	7.1%	6.9%	342.7	319.2	337.3	\$273.81
MINNESOTA	5.0	2,964.7	2,979.5	124.6	130.5	4.2%	4.4%	36.3	33.8	35.7	\$273.86
OREGON	3.5	1,855.8	1,870.1	132.0	146.5	7.1%	7.8%	38.8	43.0	40.9	\$279.04
NEBRASKA	1.7	975.8	1,001.2	37.5	41.5	3.8%	4.1%	11.8	12.5	11.9	\$287.10
WASHINGTON	6.1	3,160.6	3,168.6	226.6	233.9	7.2%	7.4%	69.7	65.0	68.6	\$293.44
UTAH	2.3	1,197.1	1,222.4	76.9	67.1	6.4%	5.5%	20.5	19.1	20.1	\$299.36
IOWA	2.9	1,686.3	1,658.0	61.5	67.3	3.6%	4.1%	21.2	21.4	20.3	\$301.50
NEW JERSEY	8.6	4,436.2	4,510.8	285.4	293.3	6.4%	6.5%	87.5	85.7	89.6	\$305.49
MASSACHUSETTS	6.4	3,553.9	3,508.2	198.6	196.5	5.6%	5.6%	58.8	60.9	61.4	\$312.22
WISCONSIN	5.4	3,091.6	3,167.7	164.5	175.4	5.3%	5.5%	53.2	60.3	57.3	\$326.76
NEW HAMPSHIRE	1.3	720.1	730.5	31.8	29.5	4.4%	4.0%	8.7	10.0	9.9	\$336.86
PENNSYLVANIA	12.3	6,399.3	6,298.6	367.2	356.7	5.7%	5.7%	122.5	114.2	120.6	\$337.97
MARYLAND	5.5	2,960.8	2,997.8	129.9	139.6	4.4%	4.7%	44.9	52.4	49.8	\$356.59
SOUTH DAKOTA	0.8	434.7	435.8	12.1	13.7	2.8%	3.1%	4.8	5.2	4.9	\$361.06
NEVADA	2.2	1,141.2	1,126.0	62.9	60.5	5.5%	5.4%	22.9	24.4	23.2	\$382.91
RHODE ISLAND	1.1	564.9	581.0	27.3	32.0	4.8%	5.5%	13.6	13.7	13.0	\$405.75
MONTANA	0.9	475.8	490.2	19.2	20.4	4.0%	4.2%	7.4	8.9	8.5	\$414.78
MAINE	1.3	707.7	713.1	25.7	29.4	3.6%	4.1%	13.0	12.7	12.8	\$434.61
IDAHO	1.3	696.8	700.4	35.8	34.9	5.1%	5.0%	15.0	16.0	15.2	\$434.66
DISTRICT OF COLUMBIA	0.6	313.8	320.7	21.3	22.3	6.8%	6.9%	9.4	10.3	9.8	\$437.67
DELAWARE	0.8	428.1	425.2	18.0	17.2	4.2%	4.0%	8.6	8.4	8.0	\$462.81
CONNECTICUT	3.5	1,818.1	1,829.5	84.1	98.4	4.6%	5.4%	43.9	48.9	46.4	\$471.80
VERMONT	0.6	352.6	357.8	12.1	13.4	3.4%	3.7%	6.7	6.4	6.7	\$496.44
HAWAII	1.2	585.8	614.5	25.8	26.5	4.4%	4.3%	11.6	13.0	13.7	\$516.47
NORTH DAKOTA	0.6	355.6	361.2	13.4	11.8	3.8%	3.3%	6.6	7.2	6.8	\$580.37
WYOMING	0.5	276.0	282.2	9.6	9.8	3.5%	3.5%	6.3	5.9	6.2	\$637.72
ALASKA	0.6	335.1	357.7	23.3	24.5	6.9%	6.9%	20.5	19.1	19.2	\$783.62
US	288.7	146,189.0	147,822.0	8,693.0	9,319.0	5.9%	6.3%	2,200.0	2,207.6	2,233.1	\$239.63

Annual Return on Unemployment Insurance Administrative Funds 1981 to 2002



Appendix B

**Benefit Accuracy Measurement Data by National Ranking by Overpayments Cause
CY 2002, Sorted by Total National Rank**

State	Able + Available	Base Period Wage Iss.	Benefit Year Earnings	JS Reg.	Oth. Elig. Iss.	Other Issues	Separation Issues	Sev./ Vac./ SSI/ Pension	Work Search Issues	Total % of Benefit OP	Total % of Benefit OverPaid	Total Benefits Paid	National Rank Total (sum of issue rank)	Total Benefits Paid
LA	17	5	2	5	32	13	5	4	8	20.43%	3	\$277,647,966	94	32
TX*	12	7	4	15	24	1	15	13	5	20.71%	2	\$2,199,992,582	98	6
AZ	5	42	16	17	5	29	27	10	4	16.93%	7	\$357,080,973	162	28
TX**	12	7	34	29	24	1	29	13	5	15.11%	10	\$2,199,992,582	164	6
DE	40	4	1	30	6	30	23	26	16	15.14%	9	\$91,100,674	185	49
NE	21	32	12	3	21	40	11	25	17	17.68%	5	\$122,781,129	187	45
VA	37	39	19	6	27	11	7	41	1	23.51%	1	\$747,666,463	189	17
MT	10	33	25	2	2	35	22	46	10	19.35%	4	\$67,883,891	189	50
US	19	15	22	19	17	15	18	21	20	9.10%	24	\$40,418,659,257	190	1
NV	38	41	7	34	15	10	3	15	15	12.45%	13	\$344,996,305	191	30
NC	16	30	30	45	22	19	1	7	12	13.76%	11	\$1,224,208,909	193	13
IA	8	35	31	46	12	3	2	11	32	12.17%	15	\$367,317,449	195	27
ID	34	28	13	36	13	27	16	20	3	15.18%	8	\$180,782,847	198	39
RI	22	18	11	13	7	34	31	14	26	9.45%	22	\$203,691,659	198	37
MD	45	17	5	32	47	22	17	9	2	17.38%	6	\$468,000,037	202	24
MN	1	22	26	41	8	37	6	2	50	9.86%	20	\$833,846,927	213	15
MO	15	49	8	23	37	5	14	23	27	8.44%	26	\$541,948,987	227	22
AR	14	20	3	31	46	33	10	43	14	10.45%	19	\$320,580,603	233	31
IN	9	12	47	16	31	16	24	47	11	9.50%	21	\$715,870,956	234	18
MI	29	2	33	21	10	28	26	29	28	8.17%	28	\$1,778,307,979	234	9
MS	11	26	15	8	38	41	12	44	23	11.26%	17	\$193,115,219	235	38
NH	3	38	41	20	23	4	35	5	39	7.65%	32	\$107,387,627	240	47
IL	46	19	18	38	9	6	37	18	19	7.82%	31	\$2,516,717,595	241	4
AK	6	11	29	44	16	2	48	17	29	6.67%	39	\$130,775,872	241	43
WY	36	47	32	7	14	17	20	30	21	10.62%	18	\$37,423,239	242	52
UT	24	16	28	43	36	7	38	19	9	9.24%	23	\$249,026,125	243	36
PA	32	25	6	33	11	14	13	40	44	8.15%	29	\$2,209,464,730	247	5
OH	23	6	21	24	29	8	43	33	24	6.93%	36	\$1,423,788,012	247	11
SC	13	27	10	22	19	38	8	39	51	8.54%	25	\$417,230,773	252	26
ME	18	43	46	14	1	32	41	38	6	11.50%	16	\$122,202,956	255	46
CA	2	10	20	39	4	26	39	36	47	7.25%	34	\$5,451,431,546	257	2
NJ	28	1	38	47	20	39	9	22	31	8.21%	27	\$2,081,548,357	262	7
FL	4	23	37	27	28	23	21	27	46	6.44%	40	\$1,227,233,432	276	12
NY	35	14	48	50	3	36	4	12	49	8.11%	30	\$3,204,114,772	281	3
PR	33	3	17	37	49	18	46	1	45	7.21%	35	\$249,869,113	284	35
WA	30	44	36	4	30	42	19	45	33	12.24%	14	\$1,693,132,561	297	10
DC	20	9	9	35	48	49	47	3	52	6.83%	38	\$149,072,744	310	42
KS	27	34	50	1	33	24	53	52	25	13.27%	12	\$345,997,095	311	29
AL	41	46	14	12	42	25	33	28	40	6.85%	37	\$270,507,207	318	33
CO	44	50	49	9	39	12	49	8	43	5.83%	43	\$531,806,916	346	23
SD	39	13	53	53	53	45	36	16	7	7.59%	33	\$30,038,751	348	53
CT	31	40	39	28	34	31	45	6	48	3.95%	47	\$670,811,735	349	20
TN	48	51	35	10	40	9	25	48	42	5.88%	42	\$569,823,398	350	21
OR	7	45	40	48	25	43	28	49	22	5.74%	44	\$793,203,056	351	16
WI	25	37	27	42	51	46	40	34	13	6.44%	41	\$975,686,786	356	14
KY	42	8	24	11	41	50	50	51	35	5.34%	45	\$464,070,782	357	25
GA	26	21	43	26	45	47	42	32	36	3.72%	49	\$701,108,254	367	19
HI	43	36	45	18	43	44	34	37	37	4.28%	46	\$164,225,209	383	40
NM	51	53	44	49	26	20	32	50	30	3.82%	48	\$123,604,799	403	44
ND	49	48	54	54	35	21	30	31	34	3.25%	50	\$40,129,421	406	51
MA	50	29	42	25	44	52	52	24	41	2.40%	53	\$1,920,674,868	412	8
WV	53	31	23	40	50	48	44	35	38	3.21%	51	\$161,661,332	413	41
VT	52	24	52	52	18	53	54	53	53	1.71%	54	\$92,655,823	465	48
OK	47	52	51	51	52	51	51	42	18	2.91%	52	\$255,412,815	467	34

* CY 2002 Annual Estimate

** CY2002 Adjusted Estimate if new initiatives were in place 1 year ago

ERROR RATES REPORT

PAYMENT RATES
 =====

Batches : 200201 to 200252
 Sample Size : 491
 Sample Dollars : \$123,835
 Population Size : 8721497
 Population Dollars : \$2,189,208,944

Weighted Estimates

	Dollars		Cases	
	(%)	(+/-)	(%)	(+/-)
Proper Payments	79.3	3.7	72.7	4.0
Overpayments	20.7	3.7	25.2	3.9
Fraud	2.5	1.4 *	2.7	1.4 *
NonFraud	18.2	3.6	22.5	3.7
UnderPayments	0.1	0.1 *	2.6	1.5 *

Over Payments by Responsibility

Claimant Only	58.7	9.9	56.6	7.0
Claimant+Employer	6.9	5.1 *	6.6	2.3
Claimant+Agency	8.3	5.4 *	11.3	3.7
Claimant+Others	0.3	0.5 **	0.6	1.2 **
Claimant+Employer+Agency	12.8	7.0 *	14.2	4.9
Claimant+Employer+Others	0.0	0.0	0.0	0.0
Claimant+Agency+Others	0.0	0.0	0.0	0.0
Claimant+Employer+Agency+Others	0.0	0.0	0.0	0.0
Employer Only	2.1	2.4 **	4.0	2.1 *
Employer+Agency	0.6	0.9 **	1.4	2.1 **
Employer+Others	1.3	2.5 **	0.6	1.2 **
Employer+Agency+Others	0.0	0.0	0.0	0.0
Agency Only	9.0	5.9 *	8.9	4.6 *
Agency+Others	0.0	0.0	0.0	0.0
Others Only	0.0	0.0	0.0	0.0

Overpayments by Cause

Benefit Year Earning	22.6	8.5	27.8	6.8
Base Period Wages	5.2	4.4 *	5.6	3.6 *
Separation Issues	10.0	6.0 *	9.4	3.5
Work Search	37.3	9.6	36.9	6.4
Other Eligibility Issues	13.0	7.0 *	16.4	5.3
Dependents Allowance	0.0	0.0	0.0	0.0
Other Causes	11.9	6.8	12.2	5.0

- * This estimate should be used with caution as it is relatively imprecise. Any conclusions that are based on this estimate could be misleading due to the large sampling error compared to the estimate. It is recommended that the estimate be recomputed using additional sample cases.

- ** The sampling error associated with this estimate is so large compared to the estimate that the estimate is extremely unreliable. It is strongly recommended that this estimate not be used until additional sample cases are included.

Appendix C

BAM Overpayment Rates

Discussion of Texas' Ranking and Contrasting State Requirements

Background

BAM is a diagnostic tool used to identify payment errors and measure the effect of previously initiated corrective action plans. The BAM program gathers information to assist State Workforce Agencies (SWAs) in developing program improvement plans to correct problems in their UI benefit payment systems and to enable them to measure the effects of implementing those plans. States also use this information in implementing policies to ensure accurate administration of their laws, regulations, and operating procedures.

Based on random samples of UI payments, the sampling procedures are designed to produce samples that are representative of a State's universe of paid UI claims. Each sample represents one compensated week of benefits and each case in the sample is thoroughly reviewed for compliance with the State's UI laws, regulations, policies, and operating procedures. Verification requires confirmation of everything from the base period wages through the Key Week work search contacts made by the claimant. BAM's premise is that total dollars overpaid and underpaid can be estimated by projecting the results from a statistically valid sample of the entire population of payments (excluding temporary programs).

How Overpayments Get Categorized

When BAM concludes determinations made on a claim were not valid, it DOES NOT necessarily mean that the local office or Tele-Center failed to meet Quality Appraisal standards. BAM investigators are required to pursue information far past that required by these offices. In other words, a payment can be improper and the original decision wrong, even if the original investigator made a good decision based on information at hand. BAM investigators do not "grade" the original decision; they conduct independent investigations and their decisions are based on the findings of these investigations.¹

When the independent investigation results in a decision that the Key Week was overpaid, an error is recorded into the following major categories. These categories reflect both monetary and non-monetary eligibility provisions. The table below shows each of the major categories and their role in the calculation of the BAM Annual rate as well as the BAM Operational Rate.

Major Category	Annual Rate	Operational Rate
Work Search	YES	NO
Job Service Registration	YES	NO
Benefit Year Earnings	YES	YES
Separations	YES	YES
Able and Available	YES	YES
Base Period Wages	YES	NO
Other Eligibility	YES	YES
All Other Issues	YES	NO

¹ Benefits Accuracy Measurement – Quality Control State Handbook, 4th Revision, October 22, 1999

Annual Rate versus Operational Rate

While the annual rate includes all overpayment causes, the operational rate includes those overpayments that are generally agreed to contain overpayment errors that the States can be reasonably expected to detect and establish for recovery. The following categories of overpayments are excluded from the operational rate: work search issues, Employment Service registration issues, base period wage issues, and certain miscellaneous causes.

In Texas, the CY2002 annual rate was 20.7% and the operational rate for this same period was 8.35%. A new UI Program Integrity measure requires the state to establish 59% of the operational overpayments projected by BAM, since errors included in this category are considered “detectable”.

Ranking Distortions

BAM data is generally accompanied with the following warning; “Readers are strongly cautioned that it may be misleading to compare one State’s BAM overpayment and underpayment rates with those of other States. No two States’ written laws, regulations, or policies specifying eligibility conditions are identical, and differences in these conditions influence the potential for error. States with stringent, complex provisions will tend to have higher overpayment rates than those with simpler, more straightforward provisions, for example.”

With this in mind Texas laws, rules and policies have resulted in rankings that are above the national average in several of the major overpayment categories. In fact, when the rankings within each of the major categories are combined, the cumulative result for Calendar Year (CY) 2002 would place Texas second in the nation in overpayments. However, in CY2001, Texas does not rank *number one* in any single overpayment category. In CY2002, Texas ranked *number one* in only one category, All Other Issues.

Some of the more obvious contrasting state requirements² are presented in the following sections, and this information can be used to examine the types of variances in state laws, policies and procedures. However, the reader must be aware the variances in requirements produce different overpayment results.³

Active Work Search Requirements

During CY2001 and CY2002, Texas required more than one work search contact per week.

² <http://workforcsecurity.doleta.gov/unemploy/comparison2002.asp>

³ See Attachment A

Numerical Work Search Requirements

While Pennsylvania and California have no numerical work search contact requirements, New Jersey has a requirement of three contacts per week and the claimant is not required to maintain a list of contacts unless notified in advance of a pending interview. New York has no numerical work search contact requirement - its suitable work test requires that the job must be referred to the claimant by the state's Employment Service. South Carolina requires at least one contact per week. In addition, the claimant must get the signature of a person who has hiring authority in the company to verify the job contact. Such a process requires a higher level of employer verification of active work search activities.

Extensive Recordkeeping Requirements

The state of Illinois has an active work search requirement but has no minimum number of contacts per week. The fact that this state ranks high in the nation in overpayments due to work search may be due to the following list of record keeping information required of its claimants:

The claimant must show that he is conducting a thorough, active and reasonable search for appropriate work on his own by keeping records of what he is doing to find work, including: 1) the names and addresses of the employing units contacted and the names of the specific persons contacted, if possible, 2) the dates, methods and results of the contacts, 3) the types of work that the claimant has been seeking, including wages and hours requested or desired, and (4) any other information regarding his work search efforts.

Formal Warnings

Many states have formal warning rules and specific intervention requirements must be met before a claimant can be held ineligible. The state of Washington is included in this category. Washington's Eligibility Review program calls in 40% of claimants. When a claimant has not met the State's work search requirement, a written directive must be issued to inform the claimant of other methods of seeking work, and the directive must explain that failure to comply may result in a denial of benefits. The directive requirements include:

A directive must be written so a claimant has information on which to base his/her future actions and activities. The claimant must be allowed a reasonable length of time to comply with the directive. A directive is appropriate when the claimant needs to:

1. Increase the number of work search contacts;
2. Change the method of seeking work (from resume to in-person contacts, etc.);
3. Expand the geographic area in which the work search is conducted;
4. Seek work in a secondary occupation;
5. Take other actions helpful in locating work.

In addition, this state warns against issuing premature directives as noted in the section below:

10.8 Premature or Arbitrary Directives

Do not issue premature or arbitrary directives. A premature directive is one issued before the claimant has a chance to seek work in his/her usual occupation, to seek work through customary trade practices, or to seek work throughout the local labor market area. An arbitrary directive is one which directs a claimant to do too much to maintain eligibility.

Job Service (JS) Registration

Texas requires that claimants have an active JS registration on file and they must take personal responsibility in that registration process.

California and New York only require JS registration if the claimant is referred through worker profiling or other programs. In CY 2001, Mississippi led the nation in JS overpayments - possibly because they had no automated crosscheck system to verify registration. Simply by changing procedures in CY 2002, Mississippi reduced its overpayment amount in this category by 10.74 percent. Pennsylvania (PA) law requires that all claimants be referred to the Job Service but registration is not a condition of benefit receipt.

On the other hand, at least three states, including Maine, South Carolina and Washington automatically register claimants with the JS system - as part of the initial claims process.

Benefit Year Earnings

Texas requires claimants to report earnings, including any "wages in lieu of notice" received.

States have widely varying provisions for those who report earnings during a benefit year. Some states have a fixed dollar amount; some use a percentage of the weekly benefit amount (WBA), and others use a combination of the two. States with fixed amounts such as Maryland and Oklahoma allow beneficiaries to earn up to \$90 and \$100, respectively, before affecting the WBA. States using this type of calculation could effectively reduce the number of overpayments typically made to lower wage earners. Overpayments caused by Benefit Year earnings can also be caused by misreported pensions, Social Security, vacation pay, wages in lieu of notice, and severance pay.

Separations

Texas bases claimant eligibility on separation from the last employing unit (LEU). The determination involves input from the LEU, the claimant, and the opportunity for rebuttals.

Many States such as New York and Massachusetts require the employer to provide the potential claimant with a form explaining the separation when they leave employment.

The claimant must present the form when filing his initial claim for benefits. This reduces the chance for errors.

By contrast Florida, Missouri and Iowa, adjudicate separations from all base period employers. This process is required because of the potential disqualification, which may reduce base period wages. Because of this, all base period employers are vested in responding due to tax consequences to their accounts.

Some states enforce penalties on employers who do not respond to requests for information. For example, California's law provides the following:

Unemp. Ins. Code Section 1142 provides:

"If the director finds that any employer or any employee, officer or agent of any employer, in submitting facts concerning the termination of a claimant's employment . . . willfully makes a false statement or representation or willfully fails to report a material fact concerning such termination, the director shall assess a penalty against the employer in an amount not less than 2 nor more than 10 times the weekly benefit amount of such claimant . . . Penalties collected under this section shall be deposited in the contingent fund."

Such penalties may influence employer response rates and the quality of responses.

Additional conditions also affect a state's separation determination and the complexity of the determination process. These include the mix of industries, economic conditions, claimant and employer knowledge of UI benefits, ease of filing claims, employment seasonality, and population characteristics. Policies regarding quits and discharges vary by state and are based on statute, administrative rules, and court cases. What is considered a voluntary quit for good cause in one state may disqualify an applicant in another (e.g., quitting for medical reasons). Similarly, states vary in terms of the circumstances in which benefits are granted following a discharge.

Able and Available

In Texas, in order to be considered able and available for work, one must: 1) have adequate transportation and child care arranged, 2) be willing and able to work all the days and hours required for the type of work sought, 3) be willing to accept the usual rate of pay for a person of your qualifications and experience, and 4) be able to work you must be physically able to work full-time.

In CY 2001, Minnesota led the nation in "able and available" overpayments. In Minnesota, "Able to work" means an applicant has the physical and mental ability to perform the usual duties of the applicant's usual occupation or of comparable employment. Furthermore, "... available for suitable employment" means an applicant is ready and willing to accept suitable employment in the labor market area. The attachment to the work force must be genuine. An applicant may restrict availability to suitable

employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.⁴

By contrast, Texas ranked 20th for this category. However, for active work search, Texas ranks 8th while Minnesota ranks 30th. Minnesota has no specific number of contacts required for "active search for work" so enforcement falls under the "able and available" clause of their laws.

The purpose of the U.S. Department of Labor's measure of overpayments is to allow states to monitor their own performance, thereby allowing an independent analysis. It is through this independent analysis that States must evaluate and formulate their own corrective action plan (CAP) or continuous improvement plan (CIP). Programs vary from state to state making it difficult, if not impossible, to make any type of comparison. The only way a legitimate comparison could be made is if all components related to UI and the (SWA's) populations were identical.

In summary, comparing BAM data without first understanding the differences in state laws may be misleading. No two States' written laws, regulations, or policies specifying eligibility conditions are identical, and differences in these conditions influence the potential for error. BAM is a diagnostic tool used to identify payment errors and measure the effect of previously initiated corrective actions. ***States also use this information in implementing policies to ensure accurate administration of their laws, regulations, and operating procedures.***

Attachments:

Additional supporting data showing CY2001 and CY2002 BAM findings

⁴ <http://www.revisor.leg.state.mn.us/stats/268/085.html>

UI Benefit Accuracy Measurement, Rate Changes From CY 2001 to CY 2002								
Sorted by CY 2002 Annual Overpayment Rate								
		CY 2002	CY 2002	CY 2002	CY 2002	CY 2001	2001-02	2001-02
ST	Sample	Amt. Paid	BAM Annual OP Rate	Operational Rate	Fraud Rate	BAM Annual OP Rate	Change	Major issue change
VA	479	\$747,666,463	23.51%	6.22%	2.09%	22.18%	1.33	
TX	491	\$2,199,992,582	20.71%	8.35%	2.51%	14.34%	6.37	Work Search (+3.67)
LA	502	\$277,647,966	20.43%	10.24%	2.91%	11.33%	9.1	ES Registration (+3.66)
MT	360	\$67,883,891	19.35%	6.23%	2.69%	14.49%	4.86	Work Search (+2.80)
NE	360	\$122,781,129	17.68%	6.52%	1.83%	11.96%	5.72	ES Registration (+7.17)
MD	480	\$468,000,037	17.38%	7.97%	2.22%	19.32%	-1.94	
AZ	482	\$357,080,973	16.92%	7.16%	3.44%	13.25%	3.67	
ID	485	\$180,782,847	15.18%	6.72%	3.26%	15.60%	-0.43	
DE	327	\$91,100,674	15.14%	11.49%	6.42%	13.29%	1.84	
NC	520	\$1,224,208,909	13.75%	5.66%	1.83%	11.11%	2.64	
KS	484	\$345,997,095	13.26%	1.04%	0.00%	9.75%	3.51	
NV	486	\$344,997,427	12.45%	9.71%	4.38%	9.75%	2.7	
WA	598	\$1,693,132,561	12.24%	4.06%	2.31%	10.90%	1.34	
IA	480	\$367,317,449	12.17%	6.72%	0.82%	8.02%	4.15	Separation Issues (+2.70)
ME	501	\$122,202,956	11.50%	5.11%	5.21%	18.05%	-6.55	Other Eligibility Issues (-4.08)
MS	480	\$193,115,219	11.25%	4.62%	3.46%	19.91%	-8.65	ES Registration (-10.74)
WY	348	\$37,423,239	10.62%	3.93%	0.41%	11.85%	-1.23	
AR	480	\$320,580,603	10.45%	7.45%	3.37%	12.67%	-2.22	
MN	356	\$833,846,927	9.86%	7.21%	1.01%	8.81%	1.05	
IN	480	\$715,870,956	9.50%	2.35%	0.18%	7.57%	1.93	
RI	480	\$203,691,659	9.45%	5.86%	3.94%	7.17%	2.28	
UT	360	\$249,026,125	9.24%	4.30%	1.12%	13.65%	-4.41	Benefit Year Earnings (-3.83)
US	23,868	\$40,418,661,927	9.10%	5.04%	2.16%	8.19%	0.91	
SC	520	\$417,230,773	8.54%	5.65%	1.94%	8.38%	0.16	
MO	480	\$541,948,987	8.44%	6.85%	5.35%	6.67%	1.77	
NU	452	\$2,081,548,357	8.20%	5.76%	0.92%	11.60%	-3.4	
MI	480	\$1,778,307,979	8.17%	4.61%	0.41%	8.01%	0.16	
PA	481	\$2,209,464,730	8.15%	7.42%	3.41%	6.71%	1.44	
NY	480	\$3,204,114,772	8.11%	3.88%	2.47%	4.79%	3.32	
IL	480	\$2,516,717,595	7.82%	5.66%	0.00%	11.49%	-3.67	Work Search (-1.64)
NH	387	\$107,387,627	7.65%	4.34%	0.80%	3.76%	3.89	
SD	359	\$30,038,751	7.59%	2.69%	1.80%	7.80%	-0.22	
CA	705	\$5,451,431,546	7.25%	5.47%	5.14%	5.64%	1.61	
PR	480	\$249,869,113	7.21%	5.13%	4.09%	N/A	N/A	
OH	486	\$1,423,788,012	6.93%	3.80%	1.05%	7.69%	-0.76	
AL	487	\$270,507,207	6.85%	4.60%	1.91%	7.67%	-0.82	
DC	360	\$149,072,744	6.83%	5.86%	1.69%	8.40%	-1.58	
AK	478	\$130,775,872	6.67%	5.21%	0.95%	7.05%	-0.38	
FL	480	\$1,227,233,432	6.44%	4.61%	0.69%	4.61%	1.83	
WI	480	\$975,686,786	6.43%	3.24%	0.81%	6.75%	-0.31	
TN	480	\$569,823,398	5.88%	3.39%	1.58%	4.91%	0.97	
CO	326	\$531,806,916	5.83%	1.43%	0.00%	N/A	N/A	
OR	450	\$793,203,056	5.74%	4.60%	2.39%	7.49%	-1.76	
KY	440	\$464,070,782	5.34%	2.56%	1.06%	8.17%	-2.83	
HI	481	\$164,225,209	4.28%	2.24%	0.46%	3.05%	1.23	
CT	483	\$670,813,283	3.95%	2.98%	0.70%	3.32%	0.63	
NM	491	\$123,604,799	3.82%	2.81%	1.20%	6.01%	-2.19	
GA	486	\$701,108,254	3.72%	2.21%	1.16%	2.07%	1.64	
ND	360	\$40,129,421	3.25%	1.86%	0.24%	1.96%	1.3	
WV	480	\$161,661,332	3.21%	2.40%	0.55%	2.83%	0.38	
OK	480	\$255,412,815	2.91%	0.95%	0.74%	4.43%	-1.52	
MA	480	\$1,920,674,868	2.40%	1.85%	1.50%	2.93%	-0.53	
VT	337	\$92,655,823	1.71%	1.48%	0.24%	5.54%	-3.84	Separation Issues (-1.30)

Appendix D

TASK DESCRIPTION	Type	Benefit	Timeline
1) Reorganize program integrity functions into a new Program Integrity Division charged with aggressively addressing overpayment, fraud and other program integrity issues across program areas. (<i>Addresses work search, benefit year earnings, eligibility, separation, and base period wage issues.</i>)	Detect, Prevent, Collect	Provides for consolidated, refocused and energized program integrity efforts by coordinating and consolidating similar collection, fraud prevention, and overpayment prevention functions in the Agency.	Complete. 11/03
2) Make Texas a national leader in UI work search requirement stringency by establishing a Commission Rule requiring a minimum of three work search contacts per week and implementing systems to automatically detect when claimants fail to meet the more stringent requirements and automatically issuing disqualifications. (<i>Addresses work search.</i>)	Detect & Prevent	Strengthens work search requirements and further streamlines the processing for detecting and issuing a disqualification for failure to meet the requirement.	Complete. 12/03
5) Update Benefits System to automatically detect changes in employment status and/or earnings between weekly claim periods and automatically initiate investigative processes. (<i>Addresses benefit year earnings, separation and eligibility.</i>)	Detect & Prevent	By correcting this systemic error, TWC could potentially reduce its overpayments by \$90 million. This amounts to 47% of the "operational" overpayments projected by Benefit Accuracy Measurement sample for the year ending March 31, 2003.	Complete. 2/04
6) Correct inappropriate inactivation of job service registrations by automated systems for claimants in active filing status. (<i>Addresses work search.</i>)	Detect	These issues result in weeks paid where the claimant did not technically have an active registration on file (although registrations were reactivated the next week). During CY2002, BAM projected that 124,342 weeks (1.4% of weeks paid or \$24.8 million in Benefits) were remunerated to claimants in this situation.	Complete. 11/03
7) Implement a predictive analysis strategy for targeted investigations by expanding initiatives for verifying work search and validating last work on: 1) individuals who listed short-term employment as their last work, and 2) individuals with a history of fraud. (<i>Addresses work search.</i>)	Detect, Prevent, Collect	Estimated increased overpayments recovery of over \$250,000 annually. Estimated increase in prevention of potential overpayments amounting to over \$550,000.	Complete. 2/04
8) Secure access to additional data sources for verifying claimant eligibility, and establish new database crossmatches with border state agencies with "New Hire" data, Department of Public Safety driver license records, Worker's Compensation records, Texas prison records, county jail records. Contingent on the cooperation and agreement of other agencies.	Detect & Prevent	Expands scope of New Hire crossmatch by detecting claimants in filing status who have been hired in a state bordering Texas. Establishes new crossmatch to detect claimants who filed for weeks of benefits while "unavailable for work" due to incarceration. Enhances identity checks	Removed new hire to be addressed in HR4 through access to National New Hire Data Base. Complete. 12/03

* Under **TASK DESCRIPTION** the *italicized* remark notates which "Cause of Overpayment" is being most directly addressed.

<u>TASK DESCRIPTION</u>	<u>Type</u>	<u>Benefit</u>	<u>Timeline</u>
9) Increase investigations for quarterly wage report cross match results, and enhance cross match processes, including automatically requesting wage information from employers when a possible new hire issue is detected by the cross match. (Also, assess cost benefit of expanded data exchanges and cross matches related to Social Security Disability Insurance (SSDI) Databases, SSA code verification, and the Immigration and Naturalization Service (INS) SAVE System.) <i>(Addresses benefit year earnings.)</i>	Detect & Collect	Substantially increased overpayment recovery will result with the estimated increase to be calculated based on the next twelve months of experience.	In production. Also added 2 fraud investigators. 04/04
10) Send special mailer to 400,000 employers explaining the importance of participating in the "New Hire" reporting system because it supports the New Hire crossmatch fraud prevention effort. <i>(Addresses benefit year earnings.)</i>	Detect	Increasing employer reporting increases the number overpaid claimants detected through our New Hire crossmatching system, and each New Hire crossmatch "hit" produces approx. \$1,741 in overpayments recovered or avoided. In FY2002, TWC recovered or avoided \$7,930,671 in UI Benefits overpayments as a direct result of the New Hire crossmatch. Figures for FY2003 are not yet available, but are expected to exceed \$9 million largely due to marketing efforts by TWC and the OAG designed to increase voluntary employer participation. This is	Complete. 12/03
12) Have Workforce Boards ensure substantial increase in follow-up activities after referring claimants to job openings or Worker Profiling Re-employment Service, and increase accurate entry of outcome codes so that automated cross matches for "failure to attend a job interview", "failure to accept an offer of suitable work", and "failure to participate in re-employment services" will automatically establish open ended ineligibilities. <i>(Addresses work search.)</i>	Detect	Increased detection of ineligibilities will result and improved customer service to employers will be gained by promptly closing filled job orders.	Completed training of State-level and Workforce Partners in 12/03. Legal provided additional assurances that staff could move forward on programming. ES and UI partners will continue to work through procedures. 04/04
13) Increase prosecutions and related collections by enhancing the Benefits System to issue automatically and much more quickly the Notice of Assessment judgment, and further automate the generation of prosecution packets. Also, increase staff hours devoted to preparing cases for prosecution and "bundle" prosecutions (present several cases at once) to maximize District Attorney interest and publicity impact. Publicize convictions both via press releases and the TWC website. <i>(Addresses benefit year earnings and work search.)</i>	Prevent & Collect	Cases will proceed to the Notice of Assessment stage 129 days faster. Estimated rise in collections from increased staffing and numbers of cases proceeding to prosecution stage is projected to exceed \$1,500,000 annually.	Shortened Notice of Assessment process complete. Bundling process in place. Planned automation has been completed. Further enhancements are being researched. 06/04

* Under TASK DESCRIPTION the *italicized* remark notates which "Cause of Overpayment" is being most directly addressed.

<u>TASK DESCRIPTION</u>	<u>Type</u>	<u>Benefit</u>	<u>Timeline</u>
14) Implement a comprehensive process to promote accurate, high quality adjudication decision-making and avoid improper disqualification or denial of benefits. Conduct monthly and quarterly quality assurance reviews on a sample of cases for each adjudicator and each quarter score a sample of cases for each Tele-Center using DOL quality scoring processes. Use scoring results to guide periodic refresher briefings and training sessions. Review BAM data to identify training issues required for the Tele-Centers or procedural issues to improve our communication in claimant interviews and in employer response/interviews. Identify issues where TWC could improve employer and claimant knowledge in order to ensure quality adjudication. <i>(Addresses eligibility, separation base</i>	Prevent	Improved adjudication decision quality and reduced incidents of improper denial of benefits.	Complete. 11/03
15) Re-work the language for fraud prevention on a form that is inserted periodically with the mailing of UI warrants that informs claimants of their responsibilities and the penalties for misrepresentation. The language will specifically address unreported earnings, work search and other eligibility requirements and notifies the claimant that a District Attorney could prosecute under a provision of the Texas Penal Code which could result in a felony conviction. The message will be designed to direct the claimant to read it before signing their unemployment check. <i>(Addresses benefit year earnings.)</i>	Prevent	Conveys an anti-fraud message as well as program information. Strengthens prosecution cases with evidence of additional reminders of consequences for misrepresentation mailed to claimants on a quarterly basis.	Complete. 04/04
16) Coordinate with the Texas Department of Public Safety Fraud Unit to detect, prosecute and deter organized crime efforts and schemes to defraud the UI system. Assist DPS efforts to establish what needs TWC has in reference to identity theft and how this unit might address those needs. Identify resources available in assisting their investigations in identity theft schemes. Establish a contact person to facilitate communication and exchange of information between agencies and establish an ongoing relationship. <i>(Addresses validity of claim.)</i>	Detect, Prevent, Collect	Increased detection and prosecution (collection) of identity theft will result. A cooperative effort among agencies dealing with identity theft is the only avenue for any significant success in addressing this problem.	Completed - 04/04 06/04
17) Implement an initiative to heighten claimant awareness and prevent claimant omissions/errors by delivering key overpayment prevention and related educational messages on continuing eligibility rules and requirements. The initiative will include additional automated telephone system "on-hold" messages, as well as additions and enhancements to the live agent intake and inquiry call handling protocols (scripts). <i>(Addresses work search.)</i>	Prevent	Improved customer awareness and compliance.	Completed - 04/04 05/04
20) Reduce appeal reversal overpayments, with the cooperation of the Commissioner Representing Employers, by encouraging employers and third party UI cost management contractors to respond to notices of initial UI claims filed with timely, detailed separation information. <i>(Addresses all overpayment causes.)</i> <i>Note: Developed into larger project, items in description are complete.</i>	Prevent	Potentially reduce reversal overpayments by an estimated \$33M yearly. (Statistical Sampling revised this estimate from \$33M to \$21M).	Complete. 04/04

TASK DESCRIPTION	Type	Benefit	Timeline
3) Formulate legislative changes that the Agency believes would improve detection, prevention and collection of overpayments and fraud. The opportunities for legislative change will include: a. changes to the definition of last employer b. prevent SUTA dumping c. allow for collection agency to charge fees for overpayment collections d. redefine "improper benefit" e. round up or down to the nearest whole dollar for benefit amounts f. place a cap on the increase of minimum and maximum benefits <i>(Addresses all indicated overpayment causes.)</i>	Collect	Legislative change to redefine last employment to eliminate short term casual jobs from the definition is estimated to potentially save the UI Trust Fund well over \$100 million annually. Garnishing wages would offer a powerful new tool for recovering overpayments, similar to tools in other states. Collections could potentially increase by as much as \$8M.	Need Bill sponsor-no change. 09/04
4) Enhance Tele-Serv interactive voice response system to digitally capture specific work search contact information for use by staff in conducting random work search verification activities for an expanded sample of weekly claims. <i>(Addresses work search.) Implementation dependent upon cost and available funding.</i>	Detect	Streamlines the work search verification process and eliminates the need to fax paper work search logs into Tele-Centers while improving the timeliness of verifications by giving verification staff immediate access to contact records. Full assessment of positive impact will require actual experience after system implementation.	Enhanced work search verification project initiated. Effective week of 02/02/04, UI funded Agency staff are participating in verifying work search contacts of 1,000 claimants each week. Feasibility and effectiveness analysis completed. Automated mainframe log request solution selected over interactive voice response solution as the most cost effective approach. 08/04

* Under **TASK DESCRIPTION** the *italicized* remark notates which "Cause of Overpayment" is being most directly addressed.

TASK DESCRIPTION	Type	Benefit	Timeline
11) Install automated enhancements to capture claimant wage level at claim intake and automatically reduce the minimum wage level on the Workforce work registration to 75% of the prior wage after eight weeks of unemployment. <i>(Addresses work search.) Electronic notification with a list of claimants approaching this point will be sent to each Local Board Area weekly. This will enable Boards to provide additional outreach.</i>	Prevent	Automates the enforcement of the requirement that claimants reduce their wage demand after eight weeks and will automatically increase probability of referral to job openings at the lower wage.	In addition to listed task, beginning 02/04 on hold messages will be broadcast to claimants calling into Tele-Centers regarding reducing their wage requirements at the 8th week. Written notifications are being sent to claimants approaching their 8th week of unemployment. Boards have been provided training & instructions for running reports and have been notified that they may begin running reports on claimants to conduct additional outreach. UI, WIT & Legal met to resolve issues for implementation. Additional programming has been identified to be implemented in Work In Texas system making automatic adjustment to the work application. 07/04
18) Benefits System notifies claimants of 'no work search' when they enter Commission approved training but does not automatically notify claimants of a change in work search requirements when the training ends. Program the benefits system to automatically change the work search from zero to the appropriate number of work search contacts required and notify claimant. <i>(Addresses work search.)</i>	Detect & Prevent	5,715 determinations of Commission Approved Training were issued in SFY 2003. This initiative would increase detection of weeks requiring work searches and automate a manual process that relies on CSR intervention to remember to change the number of work search contacts.	07/04
19) Provide information to employer relating to the proper classification and reporting of workers. The information would include the distinctions between an independent contractor and an employee. Seek efficiencies to expand investigations of employers potentially misclassifying workers.	Prevent	Proper wage credits on file and appropriate taxes paid. Up to approximately \$480K in additional taxes to the Trust Fund.	09/04

* Under **TASK DESCRIPTION** the *italicized* remark notates which "Cause of Overpayment" is being most directly addressed.

TEXAS WORKFORCE COMMISSION

FOCUS ON OVERPAYMENTS AND FRAUD PREVENTION

The purpose of this document is to highlight the sequence of activities related to TWC's increased attention to fraud and overpayments.

Background:

TWC has always been concerned with fraud, and with recent changes in our management staff, we have become even more proactive in the prevention, detection and collection thereof. Here is a brief sequence of new initiatives:

KEY EVENTS AIMED AT FRAUD DETECTION, PREVENTION AND PROSECUTION	APPROXIMATE DATE
Initiated significant changes in UI management staff	July 2003
Reorganized UI's Quality Control operations to avoid potential conflicts of interest related to the proper handling of BAM investigations and findings	September 2003
Contracted new ES measures to local Workforce Boards	September 2003
Initiated a series of improvement efforts known as the 14-Point Plan	October 2003
Began bundling prosecution cases in order to encourage local DA's to cooperate with the TWC in actively participating in our efforts to prosecute fraud	October 2003
Shortened Notice of Assessment (NOA) collection process.	October 2003
Created New Program Integrity Division to aggressively pursue overpayments and fraud	November 2003
Implemented a comprehensive process to promote accurate, high quality adjudication decision-making and avoid improper disqualification or denial of benefits. Conducted monthly and quarterly quality assurance reviews on a sample of cases for each adjudicator and each quarter score a sample of cases for each Tele-Center using DOL quality scoring processes. Used scoring results to guide periodic refresher briefings and training sessions. Reviewed BAM data to identify training issues required for the Tele-Centers or procedural issues to improve our communication in claimant interviews and in employer response/interviews. Identified issues where TWC could improve employer and claimant knowledge in order to ensure quality adjudication.	November 2003
Integrated into the new Program Integrity Division all departments who were performing functions related to data or program integrity, including: Fraud Detection, Performance Reporting and Analysis, Sub-Recipient Monitoring and Statistical Sampling	December 2003
Commission approved more stringent work search requirements	December 2003
Secured access to additional data sources for verifying claimant eligibility in order to establish new database crossmatches with Worker's Compensation records, Texas prison records, county jail records	December 2003
Sent special mailer to 400,000 employers explaining the importance of participating in the "New Hire" reporting system, one of our most successful automated crossmatches for the early detection of benefit overpayments.	December 2003
Implemented new work search requirements	January 2004

Made multiple computer systems interactions to resolve inappropriate inactivation of job service registrations for claimants in active filing status.	January – June 2004
Updated Benefits System to automatically detect changes in employment status and/or earnings between weekly claim periods and automatically initiate investigative processes.	February 2004
Implemented enhanced work search verification initiative to request 1,000 work search logs for verification each week.	February 2004
Implemented Tele-Center "on-hold" recorded messages advising claimants of the requirement to reduce their wage demand after eight weeks of unemployment. Also, began printing notices on the Statement of Account mailed after either weeks of unemployment advising claimants of the requirement to reduce their wage demand.	February 2004
Implemented enhancements to the New Hire crossmatch system to automatically request wage information from employers when the claimant fails to respond to call-in notice.	April 2004
Re-worked the language for fraud prevention on a form that is inserted periodically with the mailing of UI warrants that informs claimants of their responsibilities and the penalties for misrepresentation. The language now specifically addresses unreported earnings, work search and other eligibility requirements and notifies the claimant that a District Attorney could prosecute under a provision of the Texas Penal Code which could result in a felony conviction. The message directs the claimant to read it before signing their unemployment check.	April 2004
Reduced appeal reversal overpayments, with the cooperation of the Commissioner Representing Employers, by encouraging employers and third party UI cost management contractors to respond to notices of initial UI claims filed with timely, detailed separation information.	April 2004
Improved systems for communicating and monitoring technology-related integrity issues.	April 2004
Implemented a BAM Alert strategy to quickly notify users of the Benefits System of potential risks and weaknesses identified through BAM audits of paid and denied claims.	May 2004
Implemented an initiative to heighten claimant awareness and prevent claimant omissions/errors by delivering key overpayment prevention and related educational messages on continuing eligibility rules and requirements. The initiative includes additional automated telephone system "on-hold" messages, as well as additions and enhancements to the live agent intake and inquiry call handling protocols (scripts).	May 2004
Conducted staff retreat for brainstorming additional options for improvement. More than 35 new ideas were generated and prioritized.	May 2004
Added claimants with prior fraud to the existing work search verification project aimed at short-term last employing unit (LEU) claimants.	May 2004
Coordinated with the Texas Department of Public Safety Fraud Unit to detect, prosecute and deter organized crime efforts and schemes to defraud the UI system. Assisted DPS efforts to establish what needs TWC has in reference to identity theft and how this unit might address those needs. Identified resources available in assisting their investigations in identity theft schemes. Established a contact person to facilitate communication and exchange of information between agencies and establish an ongoing relationship.	June 2004
Program Integrity provided fraud training to Tele-Center staff.	June, July 2004
Added new fraud edits to the Benefits Application to look for overlapping claim dates and last worked dates to detect unreported earnings.	July 2004
Hired new project manager to serve as central point of contact for improvement initiatives	August 2004

NEXT STEPS

- Exploring a number of legal changes to close loopholes and enforce compliance.
- Pilot testing a new program that will deliver enhanced training to call center supervisory staff to improve employee performance.
- Redesigning the Benefit Payment Control systems and accounting modules
- Move forward with outstanding and additional ideas to continue to improve process and operations.

Appendix E

MINUTES

SENATE COMMITTEE ON BUSINESS & COMMERCE

Wednesday, March 24, 2004

9:30 a.m.

Betty King Committee Hearing Room, 2E.20

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce was held on Wednesday, March 24, 2004, in the Betty King Committee Hearing Room, 2E.20, at Austin, Texas.

MEMBERS PRESENT:

Senator Troy Fraser
Senator Kip Averitt
Senator Kim Brimer
Senator Craig Estes
Senator Eddie Lucio, Jr.
Senator Tommy Williams

MEMBERS ABSENT:

Senator Kenneth Armbrister
Senator Mike Jackson
Senator Leticia Van de Putte

Chairman Fraser called the meeting to order at 9:36 a.m. There being a quorum present, the following business was transacted:

Chairman Fraser welcomed members and others present to the first interim meeting of the Business and Commerce Committee. The Chairman advised that copies of the Committee Rules, as adopted at the beginning of the 78th legislative session, had been distributed to the members for their review prior to the meeting. The Chairman proposed that the Committee continue to operate under the same rules during the interim unless there was objection. Hearing no objection, it was so ordered.

The Chairman advised that, as the members are aware, the Committee has a number of interim charges to cover during the interim. At this hearing, the Committee would discuss and hear both invited and public testimony on interim charge #1, relating to the Texas unemployment compensation insurance program.

Chairman Fraser called the first invited witness, Chair Diane Rath, Texas Workforce Commission, Commissioner Representing the Public. The Chairman also called Ron Lehman, Texas Workforce Commission, Commissioner Representing Employers. Chair Rath presented

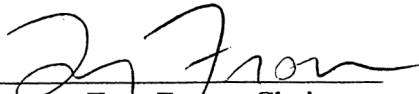
an overview of the status of the Texas unemployment insurance program. Commissioner Lehman discussed overpayments, due particularly to fraud and abuse, and the actions that the Texas Workforce Commission is taking to remedy the situation. Discussion and questions followed regarding various issues within the unemployment insurance program.

Upon completion of testimony and response to members' questions by Chair Rath and Commissioner Lehman, Chairman Fraser called Bill Hammond, President of Texas Association of Business. Mr. Hammond suggested a few changes that might be made to improve efficiency at the agency regarding unemployment insurance. During Mr. Hammond's testimony, Chairman Fraser called Tommy Simmons, counsel for the Texas Association of Business, to respond to members' questions.

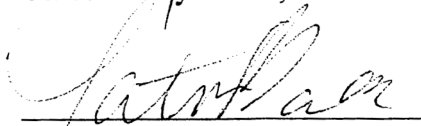
Chairman Fraser then called the final invited witness, Rick Levy, representing the Texas AFL-CIO. Mr. Levy testified that while there are cases of fraud by unemployed workers, there are employers that are skirting their responsibilities through loopholes and fraudulent activities as well. Mr. Levy then presented his testimony and responded to members' questions.

Following Mr. Levy's testimony, the Chairman called for public testimony. There being no public witnesses wishing to testify, Chairman Fraser moved that public testimony be closed; without objection, it was so ordered.

There being no further business, at 11:45 a.m. Senator Averitt moved that the Committee stand recessed subject to the call of the Chairman. Without objection, it was so ordered.



Senator Troy Fraser, Chairman



Tatum Baker, Clerk

WITNESS LIST

Business & Commerce Committee

March 24, 2004 - 9:30 A.M.

TWC Unemployment Insurance Program

ON: Hammond, Bill President (Texas Association of
Business), Austin, TX
Lehman, Ron Commissioner (Texas Workforce
Commission), Austin, TX
Levy, Rick (Texas AFL-CIO), Austin, TX
Rath, Diane Commissioner (Texas Workforce
Commission), Austin, TX
Simmons, William T. Attorney (Texas Association of
Business), Round Rock, TX

Registering, but not testifying:

On: Temple, Larry Executive Director (Texas Workforce
Commission), Austin, TX