



IN THE BUSINESS OF YOUR SUCCESSSM

Take Control of Unemployment Costs

Learn How to Turn Unemployment Compensation into a Competitive Advantage

**An ADP ® Webcast
February 16, 2012
3 PM Eastern**



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Housekeeping

- This is one of a number of complimentary webinars that ADP offers to finance and HR professionals each year.
- Today's webinar will last for 60 minutes, ending at 4pm Eastern.
- The last 10 minutes of today's program have been reserved for Q&A.
- A PDF copy of today's slides is available right now for download.
- Recertification/education certificates will be emailed to those who qualify within 30 days of today's broadcast.
- Please participate in our brief survey at the conclusion of today's webinar.



About ADP

Over 570,000 clients
worldwide

Pays 1 out of 6 in the U.S.
33M worldwide



Founded in 1949
Went public in 1961

45,000 Associates
In 60+ Countries

▪ Revenues of approximately \$10 Billion

Electronically 'moving'
\$1 Trillion annually

1 of 4 AAA Rated U.S. Industrial Companies
(by Standard & Poor's & Moody's)

**One of the world's leading providers of
technology-based SaaS solutions to employers**

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- A. CPE Credit Only
- B. RCH Credit Only
- C. Both CPE & RCH Credits
- D. No
- E. Not Applicable

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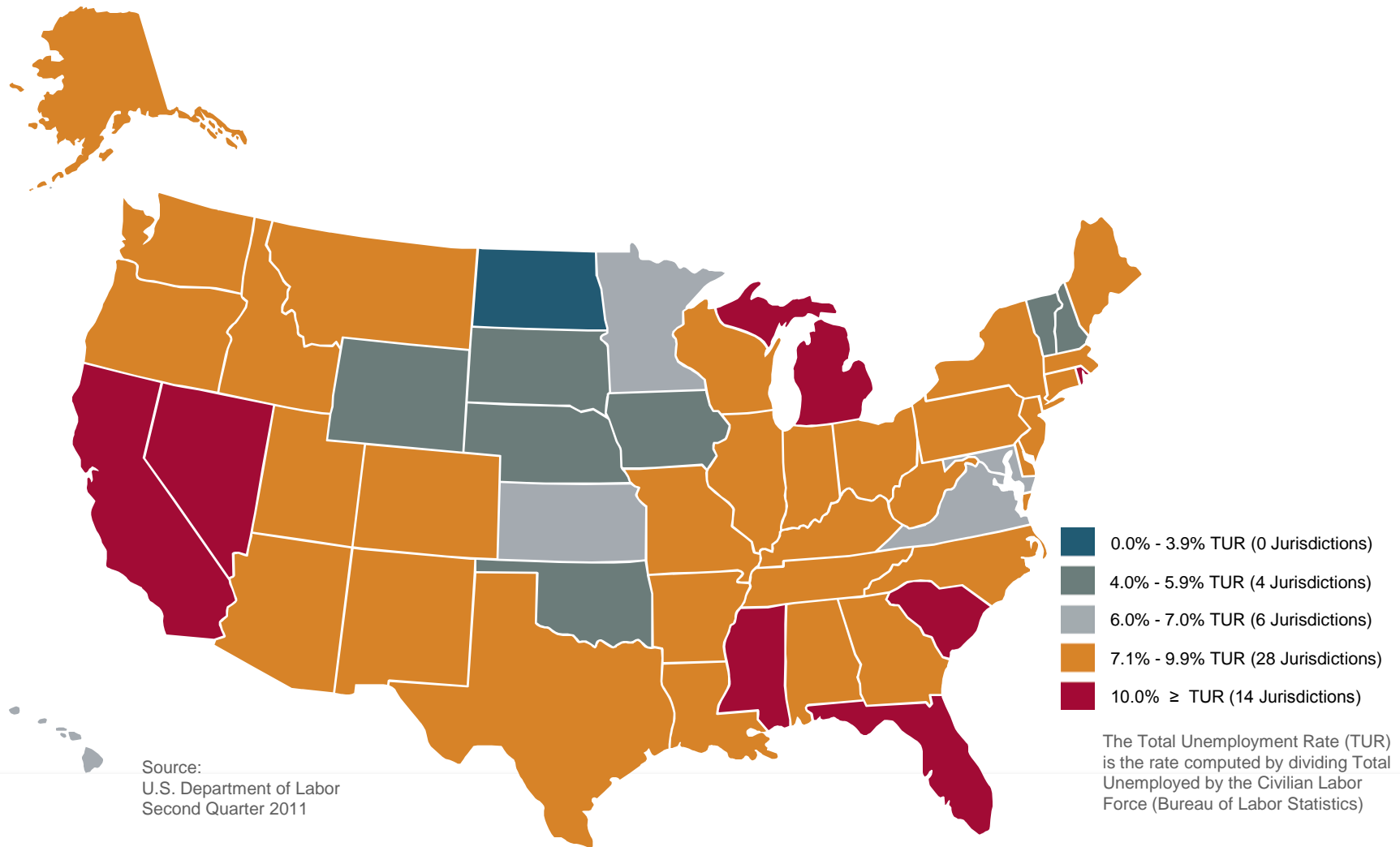
What Are Our Goals For Today?

- **National Unemployment Trend**
- **Effect of Economy on Unemployment Factors**
- **Unemployment Tax Administration**
- **UI Integrity**
- **Understanding Separation Issues**
- **Unemployment Basics**
- **The Unemployment Process**
- **Understanding the Board of Review**

National Unemployment Trend



Total Unemployment Rate Second Quarter 2011



* Jurisdictions include 50 U.S. States, DC (Orange) and PR (Red)

Unemployment Compensation – Weekly Benefit Review

Traditional Unemployment Benefits

26

Maximum Weeks in most states

13 - 20

State Extended Benefits

= 46 weeks

Emergency Unemployment Compensation Program (EUC 08)

26

13

13 - 20

= 59 weeks

EUC 08 Program (Amended) – The Extension Act

26

13

7

Tier I

13

Tier II

TUR >6% 3 consecutive months

13 - 20

= 79 weeks

The Worker Homeownership and Business Assistance Act

26

13

7

14

Tier II
(Modified)

13

Tier III
TUR > 6%

6

Tier IV
TUR > 8.5%

13 - 20

= 99 weeks

Effect of Economy on Unemployment Factors



Polling Question #1

- **How many billions of TITLE XII loans are outstanding as of 2011?**
- A. \$157B
- B. \$15B
- C. \$37.7B
- D. \$85B
- E. Not Applicable/Don't Know

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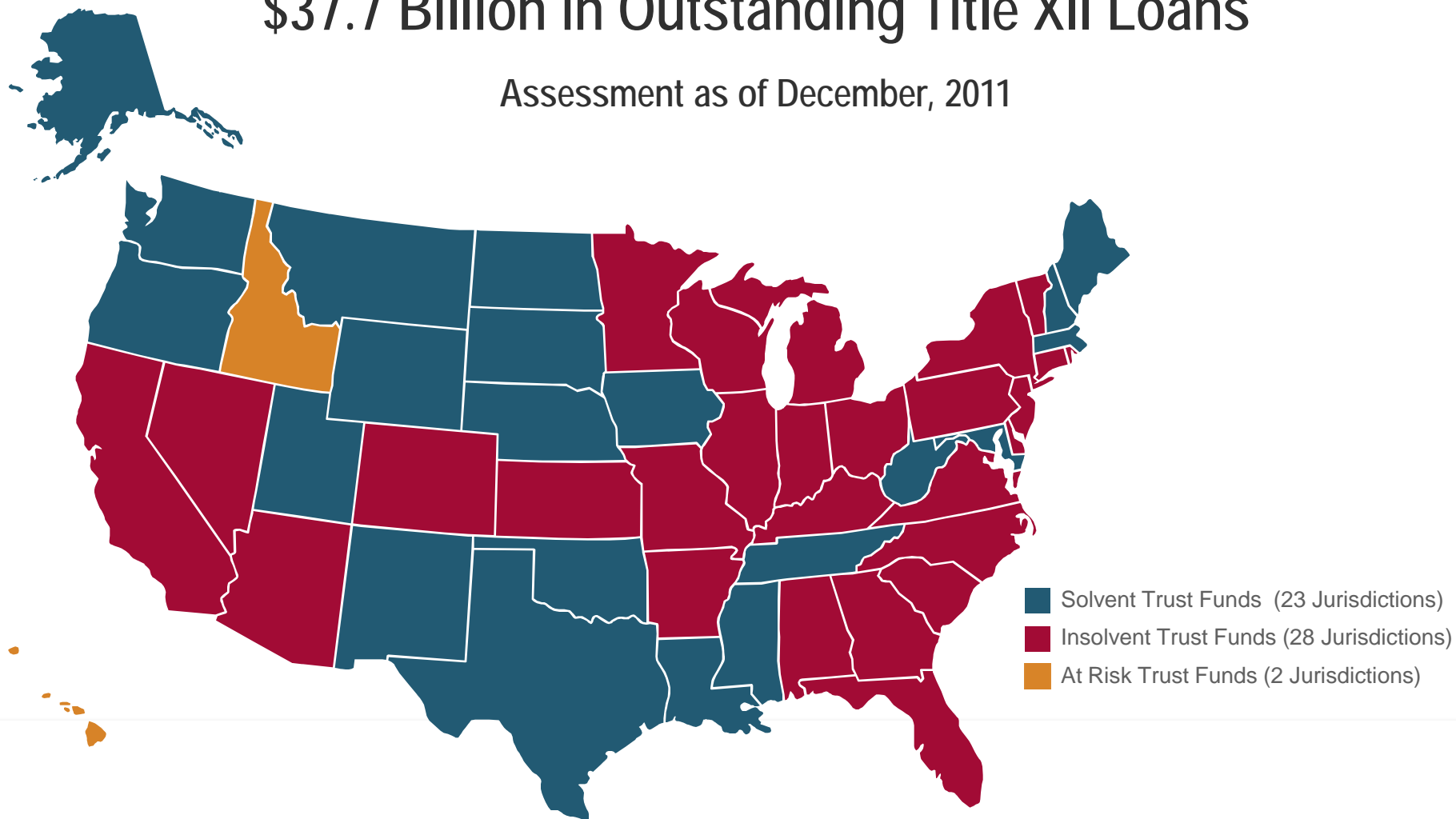
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Unemployment Trust Fund Solvency

\$37.7 Billion in Outstanding Title XII Loans

Assessment as of December, 2011



* Jurisdictions include 50 U.S. States, DC (Solvent), PR (Solvent), and VI (Insolvent)

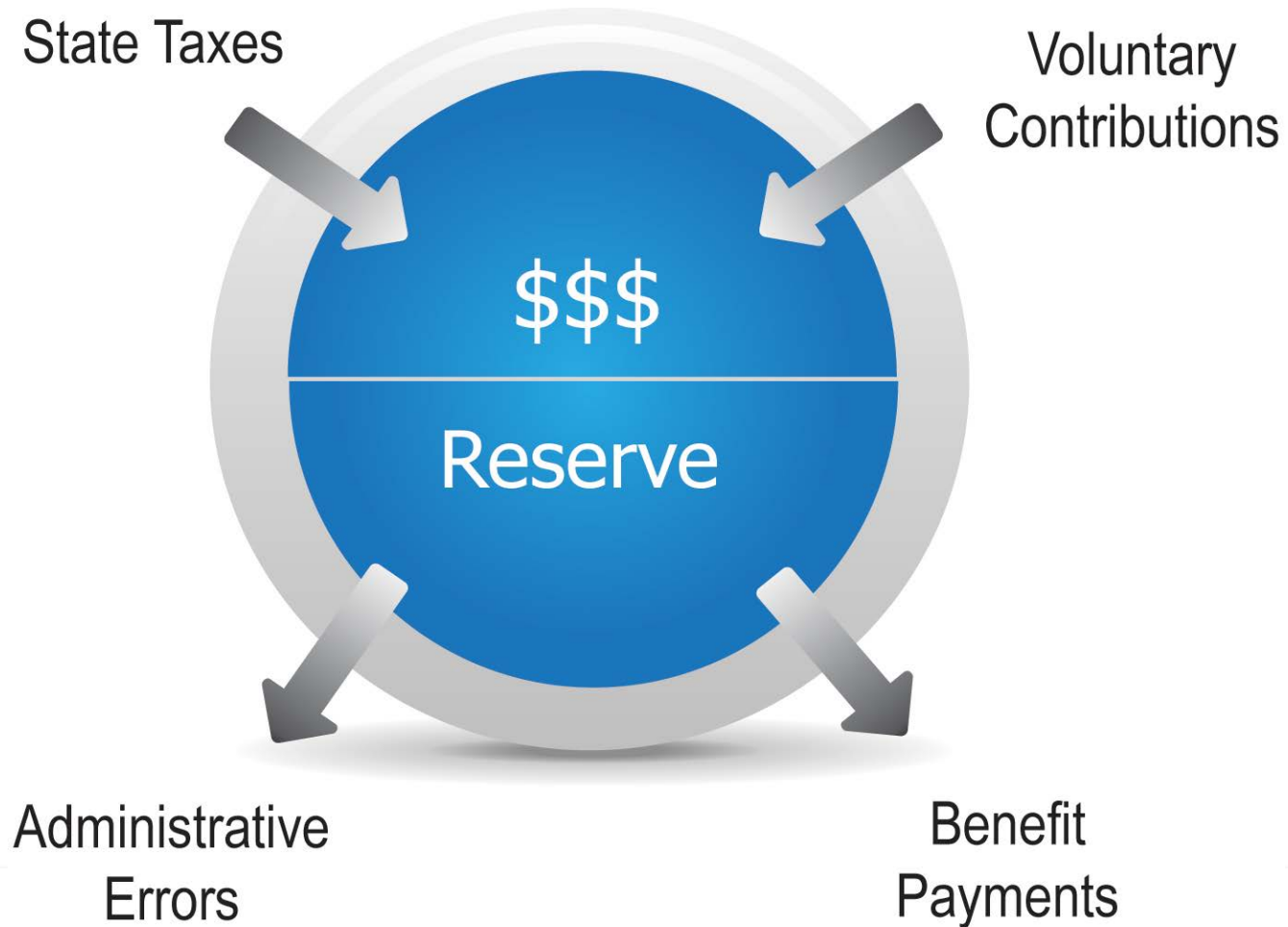
Federal Unemployment (FUTA) Tax Review

- **Federal tax used for administration of state unemployment programs**
- **Since 1976, employers pay 0.8% of the first \$7,000 each employee earns in a calendar year up to \$56 per employee. As of July 1, 2011 employers will now pay 0.6% of the first \$7,000 or \$42 per employee**
- **States with insolvent trust funds borrow monies through Federal Title XII loans to pay for benefits**
- **If the loan remains outstanding for 2 years, employers in that state must pay an additional 0.3% or \$21 in FUTA per employee for a total of \$63**
- **An additional 0.3% is added each year a loan remains outstanding**

Unemployment Tax Administration



Unemployment Tax and Benefit Review



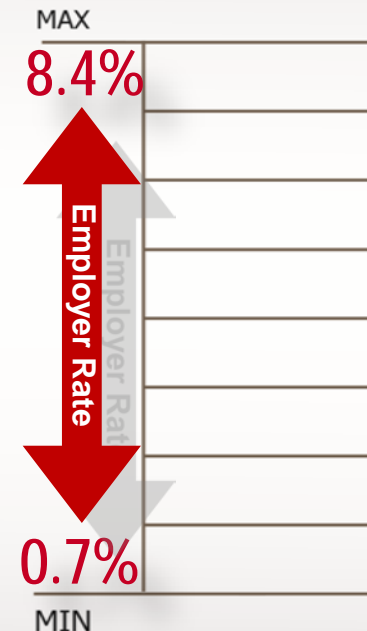
Unemployment Tax Cost – State Example

Illinois 2011 Merit Rating

<u>\$12,740.00</u>	Taxable Wage Base
<u>\$1,070.16</u>	Maximum \$ Per Employee
<u>\$89.18</u>	Minimum \$ Per Employee
<u>\$13,806.00</u>	Maximum Claim Liability

*

***\$17,258 with Extended Benefits**



The Tax Cost of One Rate Bracket

- Taxable Wage Base in Illinois is \$12,740
- XYZ pays taxes only on the first \$12,740 that each employee in Illinois earns in a calendar year
- XYZ has 1000 employees in Illinois for a total of \$12,740,000 in taxable wages
- XYZ's unemployment tax rate in 2011 was 2.4%
- Due to additional charges or the state increasing rate components, XYZ's rate increases one bracket in 2012 to 2.5%
- The unemployment tax rate increase of 0.1% on \$12,740,000 in taxable wages:

\$12,740

UI Integrity



UI Integrity – Purpose

Primary Purpose

- Improve Program Efficiency
- Reduce UI Overpayment Rates
 - Accuracy
 - Compliance

Goals

- Modernize UI Tax and Benefit Systems
- Prevent, Detect, and Recover UI Overpayments

Polling Question #2

- **How much of the nearly \$38B in outstanding TITLE XII loans are projected to have been paid to claimants in error ?**
- A. \$11.2B
- B. \$17.5B
- C. \$9.8B
- D. \$15.1B
- E. Not Applicable/Don't Know

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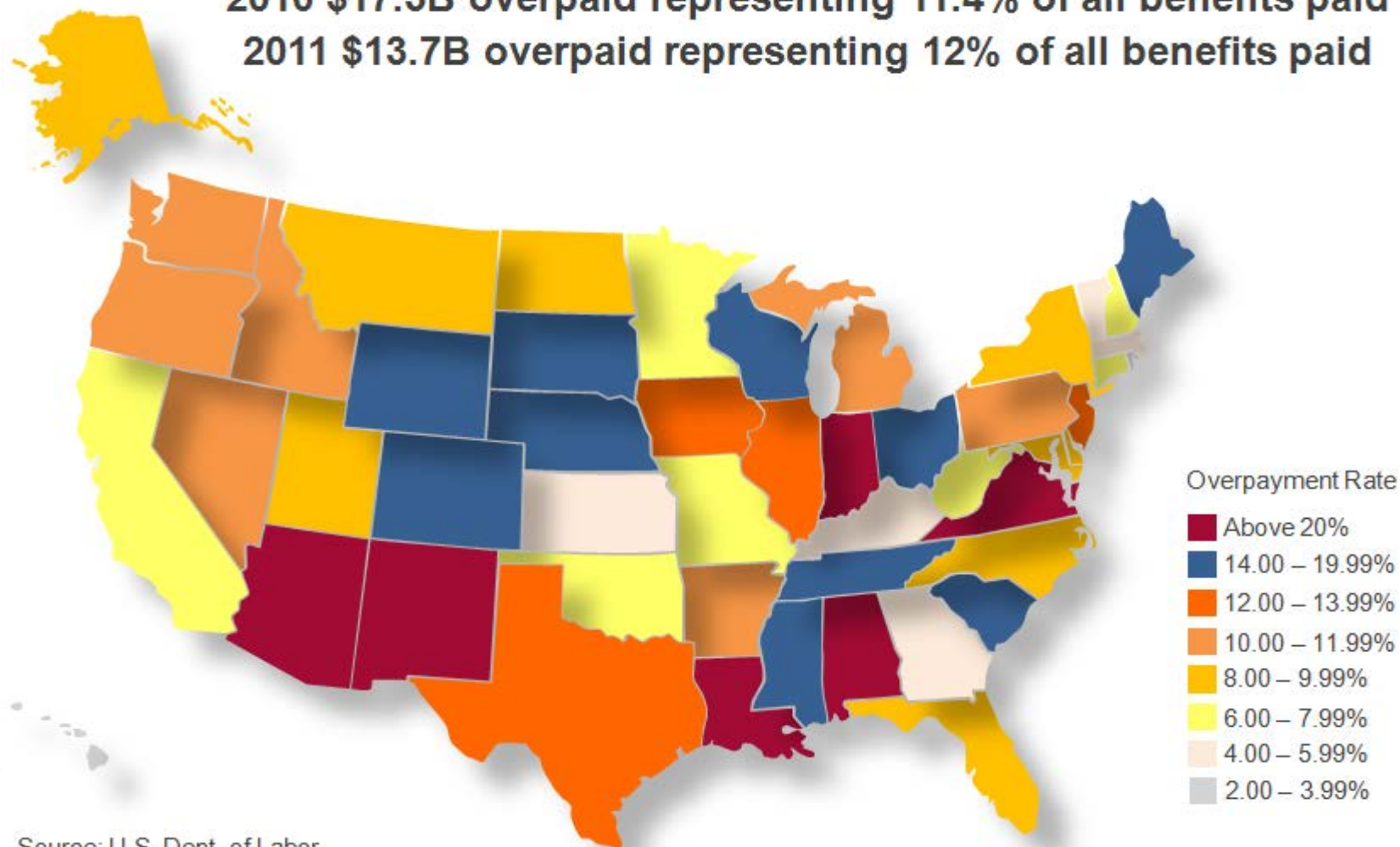
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Overpayments by State FY10

2010 \$17.5B overpaid representing 11.4% of all benefits paid
2011 \$13.7B overpaid representing 12% of all benefits paid



Source: U.S. Dept. of Labor

UI Integrity History

- **Federal UI Integrity provisions continue to be reviewed year over year**
 - 2006 – Federal proposal requiring states to amend UI Law to prohibit non-charging of an employer for overpayments resulting from untimely or insufficient claim responses
 - 2007 – Federal proposal prohibiting states from relieving employers charges due to a benefit overpayment if pattern of insufficiency exists
 - 2008 and 2009 – Federal budget proposals included penalizing employers for repeated inaction leading to overpayments of unemployment benefits
 - 2010 – 2011 Federal budget proposal to make FUTA 0.2% Surtax permanent, provide funding incentives for UI Integrity functions
- **Various legislation has passed at the state level penalizing employers and agents for not providing complete and accurate information in responses at the fact finding level**

Detection of Overpayments is the Focus!

Federal UI Integrity Includes...

- States retain up to 5% of recovered overpayments and contributions collected due to employer fraud & misclassification to use for integrity activities
- 15% penalty required for amounts overpaid due to claimant fraud
- Requires charging employers if overpayment due to employer fault/pattern of behavior
- Expands Treasury Offset Program to permit recovery beyond fraud where there is claimant or employer fault
- Miscellaneous other provisions

HR4783 Passed December 2010 *The Claims Resettlement Act of 2010*

UI Integrity States

- **UI Integrity assists in controlling claimant overpayments caused by insufficient and untimely responses from employers/agents**
 - When claimants are overpaid, those benefits are often socialized & paid from a “general fund” which causes higher tax rates for all employers to replenish that fund in future years
 - Compliant states:

Arizona

Arkansas

Colorado

Connecticut

Georgia

Hawaii

Iowa

Idaho

Indiana

Kansas

Louisiana

Michigan

Minnesota

Nebraska

Nevada

New Mexico

New York

North Carolina

Oklahoma

Tennessee

Utah

Vermont

Washington

Wisconsin

* Added 2011

- **States needed a resolution for some of the challenges they were facing, including:**
 - Lack of resources
 - Increased workloads
 - Staff reduction
 - Legacy systems needed modernization
- **UI SIDES is the Answer!**
- **ADP has been involved with UI SIDES from the beginning**

History of SIDES

■ Initial Eligibility Determinations

- USDOL, States, Employers and Third Party Administrators very interested in improving timeliness and quality of information regarding reasons for job loss information
- National Association of State Workforce Agencies, Unemployment Insurance Committee formed a Work Group
- States, Employers, and TPAs worked together in developing format and concept of operation
- Tested the standard format and approach via a “Low Tech Test”
 - (GA, WI, CO, ADP, TALX, JC Penney, GM & Kelly Services)
- Established the UI SIDES Development Consortium
 - (GA, WI, CO, OH, UT, NJ, ADP, TALX, JC Penney)

What is SIDES

- **State Information Data Exchange System**
 - Web based data exchange between state Unemployment Insurance agencies and employers & third party administrators
- **Computer to computer exchange**
 - Website and Web services Secure exchange
 - Authentication Certificates
 - Encrypted records and files
- **Data Standards and Technical Standards**
 - National Standard Formats with Edits, Validations, Business Rules
 - Open design following industry standards
 - Compliant with W3 standards

SIDES Operational Status – Initial Eligibility

States in Production:

- Arizona
- Colorado
- Georgia
- Michigan
- Mississippi
- New Jersey
- Ohio
- South Carolina
- Texas
- Utah
- Wisconsin

States Pending Production:

- Rhode Island
- New York

States in Development:

- Alabama
- Delaware
- Florida
- Iowa
- Idaho
- Illinois
- Kansas
- Kentucky
- Louisiana
- Maryland
- Maine
- Massachusetts
- Missouri
- New Mexico
- Nevada
- New Hampshire
- North Dakota
- North Carolina
- Virginia
- Oklahoma
- Oregon
- Pennsylvania
- Puerto Rico
- South Dakota
- Tennessee
- Vermont
- Washington DC
- Wyoming

Advantages of SIDES

- **Secure Electronic Exchange**
- **Single point of contact for both states and employers**
- **Standard format for data w/ edits and validations**
- **Error handling / confirmation of receipt**
- **Quality and timely information**
- **Electronic storage and retrieval**
- **Significant % of determinations can be made w/o further contact**
- **Fewer resources needed to gather information**
 - Reduce follow-up phone calls
- **Fewer unnecessary appeal hearings and reduced overpayments**

Polling Question #3

- **Given the current economic situation which factors do you think can be controlled by employers ?**
 - A. FUTA Tax Credit
 - B. State Taxable Wage Base
 - C. SUI Tax Rates
 - D. State Legislation
 - E. Not Applicable/Don't Know

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The Basics of Unemployment



The Unemployment Process

Claimant

- Resignation
- Discharge
- Lay off

Unemployment Office

- Prepare UI Claims
- Make Determination
- Conduct Appeal Hearing

Management

- Provide Separation Details
- Provide Supporting Documentation

Employer's Representative

- Obtain Separation Information / Documentation
- Consult with Managers & Supervisors
- Protest Claims / Prepare Appeals / Represent at the hearing
- Audit Benefit Charges

Protesting a Claim for Discharge

Types of Discharges

- Violation of Policy
- Attendance
- Isolated Incident
- Job Performance

Summation of Final Incident

- Incident(s) that Led to Discharge
- Details of Final Incident

Prior Warnings

- Verbal Warning
- Written Warning
- Final Warning

Documentary Evidence

- Witness Statements
- Investigation Reports
- Video / Audio Recordings
- System Logs

Company Policy

- Page(s) from Handbook
- Signed Acknowledgement
- Stated Consequence
- Uniformity

Protesting a Voluntary Quit

Types of Quits	Evidence of Quit	Identifying Witness(es)	Key Elements to Consider	More Key Elements
<ul style="list-style-type: none">• Resignation without Notice• Job Dissatisfaction• Other Employment• Personal Reasons	<ul style="list-style-type: none">• Copy of Resignation Letter• Exit Interview	<ul style="list-style-type: none">• Discussions Leading to Resignation• Person Informed of Claimant's Intent to Resign	<ul style="list-style-type: none">• Was Continuing Employment Available• Was Claimant Allowed to Work through Notice Period	<ul style="list-style-type: none">• Express Concerns Prior to Quit• Did Claimant Pursue all Available Alternatives

Differences Between Voluntary Quit and Discharge

■ Burden of Proof

- Voluntary Quit – Claimant
- Discharge – Employer

■ Key Elements

— Voluntary Quit

- Claimant must prove good cause attributable to the employer
- Claimant must prove he/she exhausted all available alternatives

— Discharge

- Employer must prove that act(s) leading to separation were willful and deliberate
- Employer must prove that the claimant knew or reasonably should have known that conduct would cause separation
- Employer must prove that the claimant actions caused harm to the employer or employees

Claim Not Protestable

Lack of Work and No Misconduct

- Job Elimination
- Assignment Completed
- No Work Available
- Employer Reduced Hours
- Temporary Lack of Work
- Inability to Perform Job

Savings Opportunities

- Severance Pay
- Vacation Pay
- Wages in Lieu of Notice
- Holiday Pay
- Refusal of Suitable Work

The Claims Process

State Agency

- Issue Claim
- Expecting response compliant with UI Integrity mandates

Employer's Representative

- Access reported separation information
- Request any Required Details/missing information

Employer's Representative

- Responds to State Agency with detailed information
- Provides copy of supporting documentation

Unfavorable Determinations

State Agency

- Determines Claimant Eligible for Benefits
- Mail Determination to Employer

Employer's Representative

- Review Determination and Consult with Managers

File Appeal

- Compose Letter of Appeal
- Send Letter of Appeal to Agency in Compliance with State Law

No Appeal

- Store Permanent Record
- Monitor UI Account and Audit any Charges Assessed for Correctness

Favorable Determinations

State Agency

- Determines Claimant is Ineligible for Benefits
- Issues Determination

Employer's Representative

- Store Permanent Record of Determination
- Results Available on Insight Reports
- Monitor for Claimant Appeal

Employer's Representative

- Recover Pre-Determination/Decision benefit payments
- Recover Fraudulent Payments and Overpayments
- Audit Data for Wages and Benefits errors
- Keep Account Solvent and Avoid Erroneous Rate Increases

Preparation

**When Do
We Start
Preparing?**

Upon Filing an
Appeal Start
Preparing

**Why
Prepare
Early?**

Limited Notice
Minimize Last
Minute
Preparation

**Who
Should
Attend?**

First Hand
Witness
Custodian of
Records

**What
Should We
Present?**

Personnel File
Supporting
Documentation
Company Policy

Hearings – Employer's Representative Role

Hearing Process

Coach
Prepare
Witnesses
Participate

Distribute
Documentation
to All Parties

Submit
Witness
Name(s) and
Phone
Number(s) for
Telephone
Hearings

In-depth
Discussion
Regarding
Merits and
Jurisdictional
Hearing Issues

Provide Expert
Consultation
on Case
Presentation

Provide
Representation

Hearings – Your Role

What Should You Do?

First Hand
Witness
Participation
and Testimony
are Critical

In-person
Hearings Arrive
at least 15
Minutes in
Advance

Telephone
Hearings
Leave Phone
Line Open

Be Prepared to
Answer Basic
Employment
Questions

Be Prepared to
Discuss
Separation In-
Depth

Be Prepared to
Explain
Contents of
Documentation

Hearing Representation

Responsibilities Prior To Hearing

- Prepare and Consult with Witnesses
- Review and Prepare Documentary Evidence

Responsibilities During Hearing

- Appear In-person/Telephone
- Direct and Cross Examine Claimant and witnesses

Employer's Representative

- Submit all necessary copies to Agency and Claimant
- Obtain an attorney if state requires

- Present Factual Arguments in support of Employer's Position
- Present Effective Closing argument

Unemployment Process Review

Board of Review

Consultation

- Factual and Legal Strength of Hearing Decision

Limitations

- Cannot Raise Issues That Were Not Raised At Hearing

Appeal

- Appeal Solely Based on Factual or Legal Errors

Develop Argument

- Opportunity To Present Written or Oral Argument
- Board Hearing

Understanding the Board of Review



What Happens at the BOR?

3 - 5 Member Panel Reviews Transcript

- Typed Transcript
- Tape Recorded Transcript

Legal Question

- Is ALJ's Decision "Clearly Erroneous?"
- Is Legal Conclusion Supported by Findings of Fact

Scope of Review

- Review is limited to the hearing record
- New evidence or testimony is not admissible

State Anomalies

- Hawaii has no Board of Review
- Minnesota Review Completed by Presiding ALJ
- Review Based Solely on Written Argument (MS, IL)

Basis for Argument

At The Hearing

- Take Detailed Notes
 - Testimony
 - Questions From ALJ
 - Possible Procedural Errors

After The Hearing

- Review Notes Against Findings of Fact
- Make Certain All Substantive Testimony Included in Findings of Fact

Procedural Errors

- Did ALJ Fail to Swear Someone In?
- Did ALJ Refuse to Call a Witness You Wanted to Testify?
- Did ALJ Refuse to Admit/Address Documents?
- Any Unprofessional Conduct?

Credibility Determinations v. Judicial Error

Credibility – ALJ

- Most credible witness in “He-said, She-said” Situations
- Tie Goes to the Side that Doesn’t Bear the Burden of Proof
- Board of Review Does not have Discretion to Substitute Own Credibility Determination

Judicial Error

- Error in Fact or Legal Error
- Findings of Fact does not Support Decision
- Law does not Support Decision
- Procedural or Administrative Errors Aggrieved One Party to the Proceedings

Weight and Sufficiency



Re-openings / Postponements

Business Needs

- Generally Not Considered Good Cause
- Weigh Your Options
 - Liability vs. Business Need
 - Strength of Case

Emergencies

- Illness
- Uncontrollable Event/Circumstance
- Obtain Documented Proof for Use in Future Proceeding
 - Medical Statement
 - Police Report

Impossibility

- Traveling on Business, etc.
- Newly Discovered evidence (post-hearing)

Unemployment Insurance is more than just an organizational expense. It is a tax, and like other taxes, it reduces profits.

However, unlike other taxes, it is controllable!

Controllable Areas

- Personnel Practices
- Consultation & Training
- Claims Administration
- Hearing Representation
- Audits & Tax Reviews
- Management Reports

Three Choices...

Passive Participation

Create an In-house Program

**Use a Third Party
Administrator...**

Questions



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