STATEMENT OF

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SECRETARY

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BEFORE THE

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Chairman Grassley, Ranking Member Wyden, and Members of the Committee, thank you for the invitation to testify today.

Although last week's jobs report for May was extremely encouraging, we know that the coronavirus has had an immense impact on American workers. Fortunately, President Trump and this Congress responded swiftly, first with the Families First Coronavirus Response Act (FFCRA) and then—less than two weeks later—with the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act created both a temporary $600 weekly unemployment insurance benefit on top of the benefit provided by the States, and a new unemployment benefit available to independent contractors and the self-employed. FFCRA created a $1 billion fund to assist States with emergency UI program administration.

These two enhancements—the CARES Act benefit, and FFCRA's assistance to the States—have made an immeasurable difference in the lives of countless Americans put out of work by the public health measures necessitated by the virus. Moreover, these enhancements were accompanied by other path-breaking programs passed by Congress and signed into law by President Trump: the first federal paid sick leave benefit for the private sector, the Paycheck Protection Program to help small businesses contend with shutdowns and keep employees on payroll, and direct $1200 Economic Impact Payments for individuals and families. These efforts have helped to sustain American workers and position the country for a vibrant economic recovery.

I am proud of the efforts of the staff at the U.S. Department of Labor to implement the UI provisions of FFCRA and the CARES Act, and welcome the opportunity to speak to the Committee about the steps we have taken and the path ahead.

Overview of the Unemployment Insurance System

The nation's unemployment system is a federal-state partnership designed to provide benefits to wage-earning workers who face unemployment through no fault of their own. The system provides direct benefits to cover workers' basic financial needs, and requires that the recipients be able and available for work, and seeking work, during the period of unemployment.

Ordinarily the benefits are funded almost entirely by state taxes on employers, and are tied to workers' previous wages and attachment to the labor force.

Each party to this federal-state partnership has distinct and complementary responsibilities. States are responsible for ensuring that their unemployment compensation laws conform to the requirements of federal law; state laws vary widely within those federal parameters. It is the States that administer the program, on a State-by-State basis, and States are responsible for maintaining the solvency of their UI trust funds. The federal government is responsible for verifying that state laws and operations conform to federal law, for calculating and providing funding for state program administration, and for maintaining the federal UI trust fund.

One of the greatest challenges in the UI system is the information technology infrastructure used by States to administer their programs. Fifty-one different systems are used by the States; the average age of these systems is 28 years. Many States' systems are more than 40 years old. These cumbersome, outdated systems inhibit the collaboration and data-sharing associated with sophisticated program management. Although some States have made the investment needed to maintain their systems, few have been able to implement much-needed overhauls, and even fewer have installed new and more nimble systems.

As members of this Committee are aware, the rigidity of these systems was a principal reason that in the CARES Act, the $600 "plus-up" was set at a flat rate, without regard to a worker's prior income. The computer systems' age and rigidity are also a principal reason many States were delayed in beginning to deliver all the CARES Act benefits.

The Labor Department's Assistance with Unemployment Insurance During the Pandemic

In late February of this year—less than four months ago—few of us were focused on the unemployment insurance system. The unemployment rate was tied with a 50-year low, and more than 450,000 jobs had been created in the first two months of the year. More than seven million jobs had been created since President Trump took office. But in February, the Labor Department's Employment Training Administration (ETA) was already in discussions with the States of Washington and Maine on measures those States could take to address challenges presented by COVID-19. In the ensuing weeks, ETA (and other components within the Department) were intensely engaged on a range of tasks to help American workers obtain unemployment benefits:

- On March 12, the Department issued Unemployment Insurance Program Letter (UIPL) No. 10-20, outlining flexibilities the States had to respond to COVID-19 impacts. This document—which was issued before the paid leave provisions in FFCRA were enacted—outlined ways that UI benefits could legitimately be paid to workers kept out of work by their illness or the illness of a family member. For example, the Department clarified how States could interpret the "able to work" requirement in a manner that allowed workers affected by COVID-19 to remain eligible for benefits. Five days after issuing this innovative guidance document, the Department held an explanatory webinar for state agencies—800 state workforce leaders participated.

- On March 22, UIPL No. 13-20 provided guidance on the additional flexibilities granted in FFCRA. Among other things, States were provided the option to "non-charge" employers for unemployment related to COVID-19, since the pandemic had not been caused by individual employers. To date, all 53 States and Territories have taken advantage of at least one of the flexibilities in this document.

FFCRA implementation. With the passage of FFCRA on March 18, the Department received new resources to support States' unemployment response. The same day the law was enacted, the Department relaxed some reporting requirements. Four days later, the Department published a UIPL guidance document telling States how to access FFCRA's emergency administrative funding. As soon as States certified that they had met the conditions established by Congress in FFCRA, the Department quickly provided the States' respective allotments from the $1 billion in UI administrative funding provided by the Act.

Satisfying the statutory conditions in FFCRA was not always an easy process for States—for some, it required special legislation—but by April 23, all States had received their first emergency grant allotment, and by May 15, all States had received both allotments. These FFCRA funds have been instrumental in enabling States to add staff quickly and to address technology problems exacerbated by the immense surge in COVID-19-related claims.

CARES Act implementation. President Trump signed the CARES Act on Friday, March 27. By the next day, the Department had obtained signed agreements to participate in the Act's programs from all States and Territories with UI programs. Because the effective date of certain CARES benefits hinges on the date of the State's agreement, this quick coordination with the States helped ensure maximum coverage for eligible workers.

In the weeks following, ETA continued to work as swiftly as possible to position States to make UI payments to the millions of workers displaced by COVID-19:

- On April 4, the Department issued the first guidance document on implementation of the $600 "plus-up" payment.
- The first States began issuing the $600 benefit payments on April 5 and 6.
- By April 7, the Department and the U.S. Treasury had established all the proper funding channels for States to draw down funds to provide CARES benefits.
- As of April 28, all States were paying the CARES Act $600 increase in unemployment benefits. And as of June 5, all but one State is paying benefits under the Pandemic Unemployment Assistance (PUA) programs for independent contractors and the self-employed. The program for those who have exhausted other benefits—Pandemic Emergency Unemployment Compensation (PEUC)—has been implemented by 38 States.

Labor Department staff have worked tirelessly since mid-March to assist States in understanding the CARES Act programs and in making benefit payments to eligible recipients. In nine weeks between mid-March and mid-May, the Department issued 19 separate UIPL guidance documents directly related to COVID-19. By comparison, in 2019 the Department issued a grand total of 19 UIPLs the *entire year*—and of course, the 2020 UIPLs to date concerned novel and often complex issues.

The Office of Unemployment Insurance has hosted fourteen webinars to provide direct implementation support to state unemployment insurance directors. Often, hundreds of state officials participated. On these calls, Department staff provided guidance on needed adjustments to state laws, best practices for implementing COVID flexibilities, and measures to protect program integrity. We will continue to host webinars as new guidance is published.

In addition to the webinars, Assistant Secretary for Employment and Training John Pallasch has convened state workforce agency leadership and UI directors multiple times to discuss program integrity, innovations in identifying and stopping fraud, and to respond to questions raised by state officials. I have joined the Assistant Secretary's calls with state UI directors twice, in addition to arranging calls with more than 20 Governors since mid-March to discuss challenges and questions they were confronting, and to let them know of the resources the Department was providing. Last week I sent a letter to all Governors reminding them of our shared, federal-state responsibility for program integrity. And last month, the Department Inspector General and I sent a joint message to all Labor Department personnel underscoring the importance of ethical and responsible conduct, particularly in connection with the large new CARES programs.

Altogether, Labor Department staff and I have addressed state, territory, local and tribal workforce leaders, the National Governors Association, the National Association of Counties, chambers of commerce, employers, trade associations, mayors, city and municipal employees, state legislators, and county commissioners among others. Department staff have also spent countless hours collaborating and problem-solving with the Department's Office of the Inspector General, U.S. Treasury, Small Business Administration, the Office of Management and Budget, and other federal agencies. And of course, my staff and I have spoken periodically with members of this Committee and your staff regarding CARES and FFCRA implementation.

Payments by the States. We have also done what we can to assist States with their dated computer technology, enlisting the Department's Chief Information Officer and the U.S. Digital Service to provide IT support to individual States. (The USDS is a team of technologists in the Executive Office of the President that provides targeted support across the federal government.) To date, more than ten States have followed up with the Department and USDS on this offer of assistance. Projects have included updating public-facing website design, resolving technical database configuration problems, and identifying ways to use automation to handle massive claims volume.

The Department also swiftly addressed an IT challenge that arose on the federal side, when the gigantic surge in claims caused difficulties with the Interstate Connection (ICON) network, a national data system used by States to process claims. The Department funded and executed the necessary system upgrades over the weekend of April 4 and 5, just days after the system difficulties were identified. Since the upgrades, ICON has handled the increased traffic with no system performance problems.

For all the efforts of staff at the Department and in state UI offices across the country, we are acutely aware that the States' difficulty in timely processing claims and providing CARES Act benefits has caused frustration and hardship for countless Americans unexpectedly forced to rely

on the UI system. No system could have been fully prepared for unemployment filings that for two weeks in a row, were nearly ten times higher than the previous all-time high. State unemployment offices were lightly-staffed, as befitted a period that had been characterized by record *low* unemployment, yet suddenly had to respond to simultaneous challenges: unprecedented volume and implementation of entirely new programs. The information available to the Department does indicate that by the end of May, States had turned the corner in addressing their backlog of claims. We will continue to do everything within our capacity to assist this. The experience of the last few weeks has also confirmed beyond doubt the need to modernize the information technology systems States use to pay unemployment benefits.

Ensuring Program Integrity

Guarding against fraud is essential to the unemployment insurance system. UI fraud takes many forms. Employers sometimes establish fictitious accounts to enable fraudulent claims against the accounts, or take actions to avoid tax liability. Claimants sometimes falsely certify their availability or ability to work under state law, refuse offers of suitable employment while continuing to certify eligibility, or collect full benefits without accurately reporting wages or other income. And we are seeing networks (including domestic and foreign transnational organizations) engage in systematic fraud using false and stolen information and unwitting and witting third parties.

Fraud in the UI system has been of concern to the Department and to Congress for many years. Both the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and its successor, the Payment Integrity Information Act of 2019, require that covered agencies and programs maintain an annual improper payment rate of 10 percent or less. Lowering the improper payment rate has required ongoing commitment and partnership between the Department and the States, with particular attention to eleven States that have had especially high rates of improper payments. For the first time in nine years, the national improper payment rate was under 10 percent for the four quarters ending December 31, 2019.

The circumstances since March of this year, however, have presented a substantially heightened risk of fraud and improper payments. The Labor Department, States, employers, and claimants will all have important roles in ensuring that billions of American taxpayer dollars are not now lost through fraud, waste, or mismanagement.

State implementation. As the CARES Act has been implemented, the Department has become aware of practices in some States that are virtually certain to result in substantial improper payments. One State had omitted any requirement that PUA recipients attest how they meet the COVID-19 eligibility requirements, and had set a flat rate for PUA weekly payments without regard to previous earnings.

Several States asked to waive, and one did briefly waive, the requirement that claimants provide weekly or bi-weekly certification of their eligibility for unemployment; this makes it highly likely that as some claimants returned to work, they would continue receiving state UI benefits and the $600 federal “plus-up” without reporting their reemployment and weekly earnings.

As these changes, proposed or implemented, became known to the Department, we promptly contacted the States and engaged them in vigorous discussions to ensure adherence to the laws' requirements. Where appropriate, we have required corrective action plans, including retroactive correction, and have provided ongoing technical assistance to state UI staff. The OIG's advisory report— "CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions"—has also been useful in highlighting to the States some of these programmatic concerns.

Third party fraud. A number of States are facing challenges from sophisticated domestic and international fraud rings that attack States' online systems to illegally claim benefits using stolen or synthetic identities and using technology, including "bots," to rapidly file hundreds of claims. The Department is working with the States, the Department's Inspector General's Office, and the States through the UI Integrity Center of Excellence to repel these attacks. We have provided the OIG access to critical state UI data, including fraud alerts from States through the Integrity Center's Integrity Data Hub, and are working to identify and share best practices with the States. New functionality has been added to ICON to enable States to do the same cross-matching for the CARES Act UI programs that is done for regular UI programs. The Department has also launched a UI fraud page on its website to encourage the public to report fraud.

Work search requirements. Some observers, and some members of this Committee, have expressed concern that the generous $600 CARES Act benefit may deter recipients' return to work as businesses re-open. Recent analyses, including by the University of Chicago and by this Administration, found that more than two thirds of workers will receive unemployment benefits greater than their prior weekly wages, and that approximately 20% of unemployed workers will receive benefits double their pre-layoff wages. This is consistent with data in the Congressional Budget Office report sent to Chairman Grassley last week.

Federal and state unemployment laws contain numerous requirements, including some described above, squarely calculated to ensure that claimants choose work over unemployment benefits. It is a cornerstone of the system that workers who refuse offers of suitable employment without good cause are ineligible to receive unemployment compensation—and an offer to return to a job that a worker left weeks ago would typically be an offer of suitable employment. Throughout its administration of the CARES Act programs, the Department has underscored these requirements in its discussions and communications with the States, including in a letter I sent the Governors last week.

Of course, the very reason for these firm legal requirements is that, while most workers prefer work, there will always be some who will not energetically seek employment when unemployment benefits are available. The greater the unemployment benefit, the greater the incentive for that handful of workers to remain out of the workforce. For these reasons, and as our economy re-opens, it will be critical for States to use all tools at their disposal to help workers make the transition from unemployment back into the workplace. This includes making clear to employers how to submit documentation if they believe a UI claimant has refused an offer of suitable work, and how to verify each week that PUA recipients continue to be unemployed due to at least one statutory COVID-19 criterion.

The CARES Act unemployment benefit was an extraordinary benefit for the extraordinary situation that American workers began to confront in March. Through shut-down and stay-at-home orders, governments across the country were temporarily closing businesses and barring millions of workers from gainful employment. The $600 CARES plus-up was intended to make these workers whole, as near as was possible given the very substantial limitations of the State UI systems described above. (During the "Great Recession," a federal plus-up was provided of $25 per week.) The CARES benefits were intended to be temporary, and will expire at the end of next month, by which point we expect the economy to be deep into the process of re-opening, with shut-down orders ended and—Friday's jobs report confirms—millions of Americans freed to return to work. Unemployment benefits will still be needed past that date, of course. But the circumstances that originally called for the $600 plus-up will have changed; policy will need to change as well.

Supporting Workers in Their Return to Work

The subject of this hearing is unemployment insurance, but of course, unemployment insurance is never the most preferred outcome. Our first goal for workers is work—good jobs. And the first prerequisite for that is a thriving business base.

Our economy was achieving both those goals at a spectacular pace before the coronavirus. Unemployment was at a 50-year low, jobs were being created at a far higher rate than projected, and wages were rising, particularly for lower-wage workers. As businesses thrived and the stock market soared in 2019 and earlier this year, the benefits to workers grew deeper and broader, with ever-lower unemployment and increased opportunities for populations that historically have difficulty in the job market, including Americans with disabilities and those without a high school degree.

Our recent strong economy means that now, unlike any other economic downturn in the country's history, we have the good fortune of not having to re-consider or jettison the economic policies that preceded the downturn. The policies were working—phenomenally. The problem was a virus, not economic policy.

Accordingly, as we consider now how to help workers, we should pursue the measures the Trump Administration already was using successfully to lift Americans out of unemployment. Chief among these are tax relief and eliminating unnecessary regulatory burdens. These were the cornerstones of an economic program that, while disputed at the time it was adopted, led to the undeniably exceptional job market we enjoyed until March. Similar measures to spur investment and job growth should be part of any stimulus plan going forward. That is why, last month, the President signed his Executive Order on Regulatory Relief to Support Economic Recovery.

As we speak of returning workers to work, job training and state workforce development systems are also naturally part of the discussion. Here again, lessons learned from our recent booming economy should guide us.

One such lesson is the effectiveness of involving business in providing worker training. The men and women running businesses know better than educators or the government what skills will be most needed in the workforce; the more that businesses help guide the training we provide workers, the more likely that training is to lead to valuable, long-term employment. That is the reason for the success of the apprenticeship training model, which enjoys exceptional bipartisan support. Apprenticeships allow employers' anticipated needs to steer the investments made in worker training, with the result that workers acquire skills for which there is immediate demand.

For similar reasons, it makes sense to give businesses a role in determining the shape that apprenticeship programs take. The Department's Registered Apprenticeship Program has been effective at supporting apprenticeships in certain industries, such as construction. But workers in other sectors —like advanced manufacturing and cybersecurity— can also benefit from alternative apprenticeship models that provide high quality work-based training. That is the purpose of the rule the Labor Department adopted in March for "Industry Recognized Apprenticeship Programs," which gives businesses and business groups, educators, labor unions, and others the ability to recognize apprenticeship programs that do not necessarily conform to all the criteria of the Department's registered program, but which effectively equip workers with the skills in demand at the growing edge of our economy. These programs can be an attractive option for unemployed workers reentering the workforce; they warrant congressional support alongside DOL's Registered Apprenticeship Program.

Another lesson of recent years that should guide investment in worker training is the convergence of the roles played by our workforce and educational systems in preparing Americans for productive careers. In helping unemployed Americans return to work, the different components of the public workforce system should act in coordination and partnership—as One Workforce. The entire lifecycle of an American worker's needs—from career search to unemployment insurance to training in new skills—should be supported by an integrated service delivery system. The need now is great for States to think about how to consolidate, integrate, and mobilize the disparate pieces of their workforce investments into a coherent workforce continuum. Any new federal funding should recognize the value of this approach.

Conclusion

One of the hallmarks of our nation's experience with the coronavirus has been rapid change. Initially, that meant rapid deterioration—in a single month we went from record-low unemployment to record-high unemployment filings. But now, as the May jobs reports illustrates, the rapidity of that change can be change for good. The Department of Labor remains focused on helping deliver CARES benefits to eligible workers. At the same time, we will work intensely with States to help workers make the transition from unemployment back to the workforce and toward the vibrant economy we enjoyed just weeks ago.