STATE OF WISCONSIN DWD
Department of Workforce Development

Unemployment Insurance Advisory Council

Meeting Agenda

June 13, 2024, 10 a.m. – 4 p.m.

The public may attend by teleconference.

Phone: 415-655-0003 or 855-282-6330 (toll free) or WebEx
Meeting number (access code): 2662 825 5661 Password: DWD1

Materials: https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

1. Call to order and introductions
2. Approval of minutes of the March 21, 2024 UIAC meeting
3. Correspondence
4. Department update
5. Research requests
6. Quarterly report on UI information technology systems (1/1/2024 – 3/31/2024)
7. Trust Fund update – Shashank Partha
8. 2024 Financial Outlook
9. Proposed scope statement for UI hearings – DWD 140
10. Judicial update:
    - *Amazon Logistics v. LIRC*
    - *Morgan v. LIRC*
11. Future meeting dates: September 19, October 17, November 21
12. Adjourn

Notice

- The Council may take up action items at a time other than that listed.
- The Council may not address all agenda items or follow the agenda order.
- The Council members may attend the meeting by teleconference or videoconference.
- The employee or employer representative members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items listed in this agenda, under Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- This location is accessible to people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 or dial 7-1-1 for Wisconsin Relay Service.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

201 E. Washington Avenue, GEF 1, Madison, WI

March 21, 2024

Held In-person and Via Teleconference

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members: Janell Knutson (Chair), David Bohl, Sally Feistel, Di Ann Fechter, Corey Gall, Mike Gotzler, Shane Griesbach, Christopher Harris, Scott Manley, and Susan Quam

Department Staff: Secretary Amy Pechacek, Jim Chiolino (UI Division Administrator), Andy Rubsam, Jim Moe, Jason Schunk, Shashank Partha, Melissa Montey, Jeff Laesch, Mike Myszewski, Robert Usarek, Ashley Gruttke, Jennifer Wakerhauser (General Counsel), Arielle Exner (Legislative Liaison), and Joe Brockman

Members of the Public: Ethan Kenney (Wisconsin Legislative Audit Bureau), Victor Forberger (Attorney, Wisconsin UI Clinic), and Erica Sweitzer-Beckman (Legal Action of Wisconsin)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:05 a.m. under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged Sec. Pechacek and the department staff in attendance.

2. Approval of Minutes of the January 4, 2024, UIAC Meeting

Motion by Mr. Manley, second by Ms. Feistel, to approve the minutes of the January 4, 2024, meeting without correction. The vote was taken by voice vote and passed unanimously.

3. Department Update

Mr. Chiolino introduced the new UI Dashboard featuring claims by county and stated that the dashboard is now live. Mr. Chiolino described the key features of the dashboard.

Mr. Chiolino then discussed the Bureau of Legal Affairs' preliminary statistics for appeals for February 2024. This information is found on page 7 of members' packets.

Mr. Manley asked for a comparison of the appeals statistics from 2023 to 2024.

Mr. Chiolino stated that the statistics improved somewhat from 2023 to 2024.

Mr. Chiolino reported that the department is gathering data and will conduct focus groups with employers as part of the Employer Portal modernization project. Information about participation in the focus groups will be provided to the Council.

Mr. Manley asked if claim notifications and employment and wage verification will be part of the new employer portal.

Mr. Chiolino stated that it was anticipated that these features would be part of the new employer portal.

4. Correspondence

Ms. Knutson stated that there was one item of correspondence in members' packets. Ms. Knutson stated that the items listed in the correspondence are outside of the scope of the UI program.

5. Quarterly Report on UI Information Technology Systems (10/1/23 – 12/31/23)

Ms. Knutson stated that the quarterly report can be found in members' packets.

6. Trust Fund Update

Mr. Partha reported that the UI Trust Fund balance is approximately $1.6 billion. Benefits paid so far in 2024 totaled $91.2 million, and tax receipts year-to-date totaled $53.9 million. A copy of the financial statement for the month ended February 29, 2024 can be found in members' packets.

7. 2024 UIAC Activities Report

Ms. Knutson stated that members were sent an electronic copy and provided a printed copy of the report.

8. Update on UIAC Agreed Bill

Ms. Knutson reported that the agreed-upon bills were delivered to the Legislature in early January. The bill drafts have not been introduced or scheduled for a hearing. The department has not received information as to why the bill drafts have not been introduced or scheduled for a hearing. There are two separate bill drafts, the fiscal bill and the policy bill. No further legislative action on the bills is anticipated this session.

Ms. Knutson stated that if the agreed-upon bills are introduced in January of 2025, one or both could be included in the Governor's budget since the Council has approved both bills. Ms. Knutson indicated that the Council might want to discuss this in caucus.

Mr. Griesbach asked when the Council would have to decide whether to request that the fiscal and policy bills be included in the budget bill.

Ms. Exner replied that the sooner the Council decides the better.

Mr. Manley indicated that it would not be preferable to put either the fiscal or policy bill into the budget bill. Mr. Manley stated that both bills would likely be stripped from the budget bill.

9. 2024 Fraud Report

Ms. Knutson stated that the annual Fraud Report has been provided to Council members.

Ms. Knutson highlighted the following information included in the report. The unemployment rate dropped to a historic low in 2023, with 2.4% in April. The department takes a proactive approach to fraud prevention by educating both employers and claimants. The U.S. Department of Labor highlighted two of the department's overpayment prevention strategies as promising practices for other states to consider adopting.

Fraud detection tools and prevention methods are discussed on pages 3-5 of the report. Worker classification investigations are discussed on page 6 of the report.

In October 2023, the department launched a public education campaign on worker classification using a redesigned worker classification website, digital displays, social media ads, and billboards.

Some fraudulent overpayments that occurred in 2020, 2021, and 2022 were discovered in 2023. In 2023, $337.6 million in UI benefit payments were made, of which 0.46% have been determined to be fraudulent as of the date of the report.

The department conducted more than 15,000 work search audits in 2023. Audits identified 6,087 adverse decisions denying benefits.

Ms. Knutson indicated that information on overpayment recoveries is listed on page 12 of the Report, including information from US-DOL for Region 5 states.

Ms. Knutson stated that upcoming fraud prevention projects are discussed on page 14 of the report.

Mr. Griesbach asked for a comparison of Wisconsin to the rest of the United States in fraud prevention.

Ms. Knutson responded that the department will research an answer for him and provide information at the next meeting.

Ms. Feistel asked why the number of adverse work search decisions were so high.

Ms. Knutson stated that one reason was that claimants listed the same work search activities repeatedly on their weekly claims. The department will provide further information at the next meeting.

10. BOLA Integrity and Worker Classification Section Update

Mr. Myszewski stated that 717 worker classification investigations were conducted in 2023, and 117 investigations have been conducted so far in 2024.

Since the program was established in 2013, 4,692 worker classification investigations have been conducted, with 13,623 workers reclassified as employees. A total of $4.4 million in UI taxes and interest have been assessed as a result of worker classification investigations. The average tax and interest assessed per worker is $322.98. Approximately 22% of worker classification investigations have resulted in audits. The Worker Classification Section has referred more than 300 employers to the Worker's Compensation Division for not having worker's compensation insurance.

This year the section will continue to give special attention to the construction industry. The section consists of 11 full-time employees and one part time employee.

The section works with other state and federal agencies on complex cases.

In response to a question from Mr. Griesbach, Mr. Myszewski stated that it is easier to bring businesses that are located in a permanent facility into compliance (as opposed to construction companies that move from job site to job site).

Mr. Manley asked whether there is an educational component to worker classification enforcement.

Mr. Myszewski replied that the investigative staff include an educational component on every field investigation.

Ms. Knutson stated that education does not substitute for enforcement. A referral for an audit is made when misclassification is suspected following a field investigation.

Ms. Knutson stated that the department's public education campaign resulted in an increase in questions about misclassification and in reports of suspected worker misclassification.

11. Proposed Scope Statement for UI Hearings – DWD 140

Ms. Knutson stated that the proposed scope statement can be found in members' packets. Ms. Knutson stated the department is seeking input from the Council on the scope statement.

12. Judicial Update: *Catholic Charities Bureau, Inc. v. LIRC*

Mr. Rubsam reported that the Wisconsin Supreme Court found that the Catholic Charities Bureau, Inc., and four of its sub-entities did not operate primarily for religious purposes and were not exempt from the Unemployment Insurance law under a religious exemption. A copy of the decision can be found in members' packets.

Mr. Rubsam stated that it is possible that this case will be appealed to the U.S. Supreme Court on First Amendment issues.

Mr. Manley asked whether the decision involved a fact-intensive analysis for each entity.

Mr. Rubsam stated the analysis considered what the entities were doing on a day-to-day basis, whether the entities were operated by a church, and whether the entities' activities were primarily religious.

13. Research Requests

There were no research requests from the last meeting.

14. Future Meeting Dates

Ms. Knutson stated that the scheduled future meeting dates are:

- April 18, 2024
- May 16, 2024
- June 20, 2024
- July 18, 2024
- August 15, 2024
- September 19, 2024

Ms. Knutson stated that with the Legislature not in session, it may not be necessary to meet in April. The Financial Outlook Report is not due until May 31, 2024, so it would not be an agenda item for the May meeting.

Ms. Knutson asked the Council if they wanted to meet in April or May and if they would prefer an earlier June meeting date. Ms. Knutson stated that the Council may want to discuss future meeting dates in caucus.

Ms. Knutson stated that research requests from today will be covered at the June meeting.

Motion by Mr. Griesbach, second by Mr. Manley to convene in closed caucus session to deliberate the proposed scope statement and other items on the agenda, and to report back. The vote was taken by voice vote and passed unanimously. The Council went into closed caucus session at 10:55 a.m.

The Council reconvened in open session at 11:56 a.m.

Mr. Manley reported that the Council was in agreement to bring back the agreed upon bill in January of 2025 and communicate with both Labor Committee chairs.

Mr. Manley stated that the Council could not reach agreement on the proposed scope statement.

Mr. Manley stated that the Council requested that the next meeting be scheduled for June 13, 2024.

Mr. Manley stated that the Council does not want meetings in July or August and wants to come back in September (with an online option) to reach a quorum.

The future meeting dates are:

- June 13, 2024
- September 19, 2024

15. Adjourn

Motion by Mr. Griesbach, second by Mr. Gotzler to adjourn. The motion passed by a unanimous voice vote.

The Council adjourned at 12:42 p.m.

April 17, 2024

Unemployment Insurance Advisory Council
c/o Janell Knutson, Chair
Wisconsin Department of Workforce Development Unemployment Insurance Division
201 E. Washington Avenue
P.O. Box 8942
Madison, WI 53708
sent via e-mail: janell.knutson@dwd.wisconsin.gov; UIBOLALEG@dwd.wisconsin.gov

Re: Request from the Governor's Council on Migrant Labor to discuss work search requirements for Migrant and Seasonal Farmworkers

Dear Chair Knutson and Unemployment Insurance Advisory Council Members:

Greetings from the Governor's Council on Migrant Labor.

As you may know, the Governor's Council on Migrant Labor's duties[1] include advising the Department of Workforce Development and other state officials on issues affecting Wisconsin's Migrant and Seasonal Farmworkers (MSFWs). Like the Unemployment Insurance Advisory Council, the Governor's Council on Migrant Labor is comprised of employer and worker representatives.

As employer and worker advocates, we write to raise concerns regarding barriers MSFWs face in interacting with Wisconsin's unemployment insurance system. Migrant Council employer and worker representatives agree that Wisconsin's current work search requirements ignore the needs of Wisconsin's seasonal agricultural employers and do not recognize the needs and contributions of Wisconsin's migrant and seasonal workforce.

I. Unique nature of Wisconsin's migrant and seasonal workforce[2]

Wisconsin's Migrant and Seasonal Farmworkers are among the hardest working members of Wisconsin's workforce. Each year, over five thousand[3] [4] migrant and seasonal farmworkers travel from their home communities to accept seasonal

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[1] Wis. Stat. § 103.967
[2] Wis. Stat. § 103.90(5)(a) provides: " 'Migrant worker' or 'worker' means any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state."
[3] Wisconsin Department of Workforce Development. *2023 Migrant and H-2A Worker Population Report*. *https://dwd.wisconsin.gov/jobservice/msfw/pdf/migrantpoprep2023.pdf*.
[4] Because of factors including length of the season and the exclusions of some agricultural employers from coverage under Wis. Stat. § 108.02(13)(c)1, migrant and seasonal food processing workers are more likely to be eligible for Wisconsin unemployment insurance benefits than other MSFWs in Wisconsin. Accordingly, our concerns regarding the work search barriers are focused primary on the approximately 2500 MSFWs employed in food processing.

employment in Wisconsin. During the harvest season, Wisconsin's MSFWs often work twelve-hour shifts and 6-7 day work weeks. Differently from unemployed workers in other industries, Wisconsin's MSFWs often live in temporary employer provided housing, which closes at the end of the harvest season, and return to their home communities in other states at the end of the harvest season. Many of Wisconsin's MSFWs are residents of South Texas communities such as Eagle Pass, Pharr, and Laredo.

A. A reliable and experienced workforce is essential for a successful harvest in Wisconsin. Accordingly, Wisconsin's food processing employers expend significant resources in recruiting and retaining their MSFW workforce.

Wisconsin employers depend on a flexible and experienced workforce to meet the fluctuating demand of the harvest. Many Migrant and Seasonal Farmworkers have been returning to Wisconsin to work for the same employer or in the same industry for decades and these experienced workers are essential to making the harvest processing operate safely and smoothly. Wisconsin employers of MSFWs recognize that workers are most vulnerable to workplace injury within their first year of employment[5] and consequently, view worker retention as an important part of their health, safety, and injury prevention planning.

To retain their ties with MSFW employees, Wisconsin food processing employers invest significant resources in MSFW recruitment and retention through the use of migrant labor contractors,[6] direct communications with employees throughout the off season, and advertisements and recruitment events throughout South Texas.

B. Current job search requirements are burdensome for Wisconsin's MSFWs and may cause Wisconsin to lose valuable members of its workforce to other states.

Migrant and Seasonal Farmworkers come to Wisconsin because of the lack of employment opportunities in their home communities[7]. Many workers from South

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[5] National Safety Council. *Safety+Health* "New workers account for 35% of injuries, analysis of comp claims shows" July 13, 2022. Available at *https://www.safetyandhealthmagazine.com/articles/22780-new-workers-account-for-35-of-injuries-analysis-of-comp-claims-shows*.

[6] Wis. Stat. § 103.90(4).

[7] See, for example, Bureau of Labor Statistics, *Local Area Unemployment Statistics*, indicating a January 2023 unemployment rate of 4.5% (Webb County, TX), 7.1% (Hidalgo County, TX), and 9.3% (Maverick County, TX). Available by download at: *https://texaslmi.com/LMIbyCategory/LAUS*. Compare to a 2.7% unemployment rate in January of 2023 in the State of Wisconsin. Available by download at: *https://jobcenterofwisconsin.com/wisconomy/query*.

Texas travel not only to Wisconsin but to other states, such as Minnesota and Michigan, in the summer and early Fall to accept seasonal work. These workers all return to South Texas at the same time and are thus competing for the same small pool of jobs.

Wisconsin's MSFWs are frustrated that Wisconsin's work search requirements do not recognize their continuing attachment to their Wisconsin employment –particularly when they have a signed contract and have committed to returning to Wisconsin on a definitive date. MSFWs report that many South Texas employers will not take applications from workers who will be leaving the state in a few months. Some MSFWs have become so frustrated with Wisconsin's UI system that they have chosen to accept seasonal employment in Minnesota instead.

Like Wisconsin, Minnesota's UI system requires workers to be actively seeking work but acknowledges that a work search can include maintaining ties with a worker's current occupational field and industry.[8]

II. Potential solutions to recognize and strengthen Migrant and Seasonal Farmworker ties to Wisconsin's agricultural industry.

A. Provide a work search waiver for MSFWs who are out of work and who have returned to their home states for the off-season.

Wis. Stat. § 108.04(2)(b) could include narrowly tailored language that specifically provides a work search waiver for individuals who are migrant farmworkers within the meaning of Wis. Stat. § 103.90(5) and who, through their demonstrated work history, have a reasonable expectation of returning to seasonal agricultural employment when seasonal work resumes. This change would take a significant burden from MSFWs, who are otherwise required to conduct work searches in their home communities from late fall through June, despite agreements or plans to return to Wisconsin seasonally for work.

B. Provide a work search waiver for migrant and seasonal farmworkers with a confirmed offer to return to Wisconsin for employment.

Alternatively, Wis. Stat. § 108.04(2)(b)2, could include a narrowly tailored provision that extends the waiver for workers with a confirmed offer to return for employment from four weeks to up to sixteen weeks. Wisconsin food processing employers typically recruit workers in March or April for seasons scheduled to begin in late June or early July. Wis. Stat. § 103.915 requires employers and recruiters to provide workers with written disclosures at the time of recruitment.

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[8] See, for example Minnesota Unemployment Insurance. "Seeking suitable employment." Available at: https://uimn.org/applicants/getpaid/stay-eligible/seeking.jsp. See also MINN. STAT. §268.035 Subd.23a.

These potential changes are consistent with United States Department of Labor (USDOL) requirements and recommendations. The USDOL specifically recognizes that an individual with a definitive recall date is "job attached" and can meet the work search requirement by maintaining contact with the recalling employer.[9]

Employer representatives on the migrant council note that they are willing to provide the Department of Workforce Development with verification of the end of a worker's seasonal employment and/or eligibility for rehire at the end of the harvest season and to follow-up with any required verification of recruitment and rehire.

III. Next steps

Several of our members are available to answer questions about Wisconsin's MSFWs at the next UI Advisory Council meeting on June 13, 2024, and we would welcome the possibility to speak with you further and to answer any questions that you may have.

Please contact our Council Chair, Jose Martinez at Jose.Martinez@umos.org, with your response and with any questions. Please provide copies of your reply to Kathryn Mueller, Migrant and Seasonal Farmworker Programs Planning and Section Chief, at Kathryn.Mueller@dwd.wisconsin.gov. We look forward to speaking with you.

Sincerely,

The Governor's Council on Migrant Labor

Jose Martinez, Chair

[9] Unemployment Insurance Program Letter 13-20, Change 3. July 1, 2020. Page 5. Available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_13-20_Change_3.pdf

DWD Agency Update & Response to Research Request

Wisconsin Department of Workforce Development

June 13, 2024 | 10am | Unemployment Insurance Advisory Council

2024 Project SEARCH

2024 Project SEARCH

DWD

65.6%

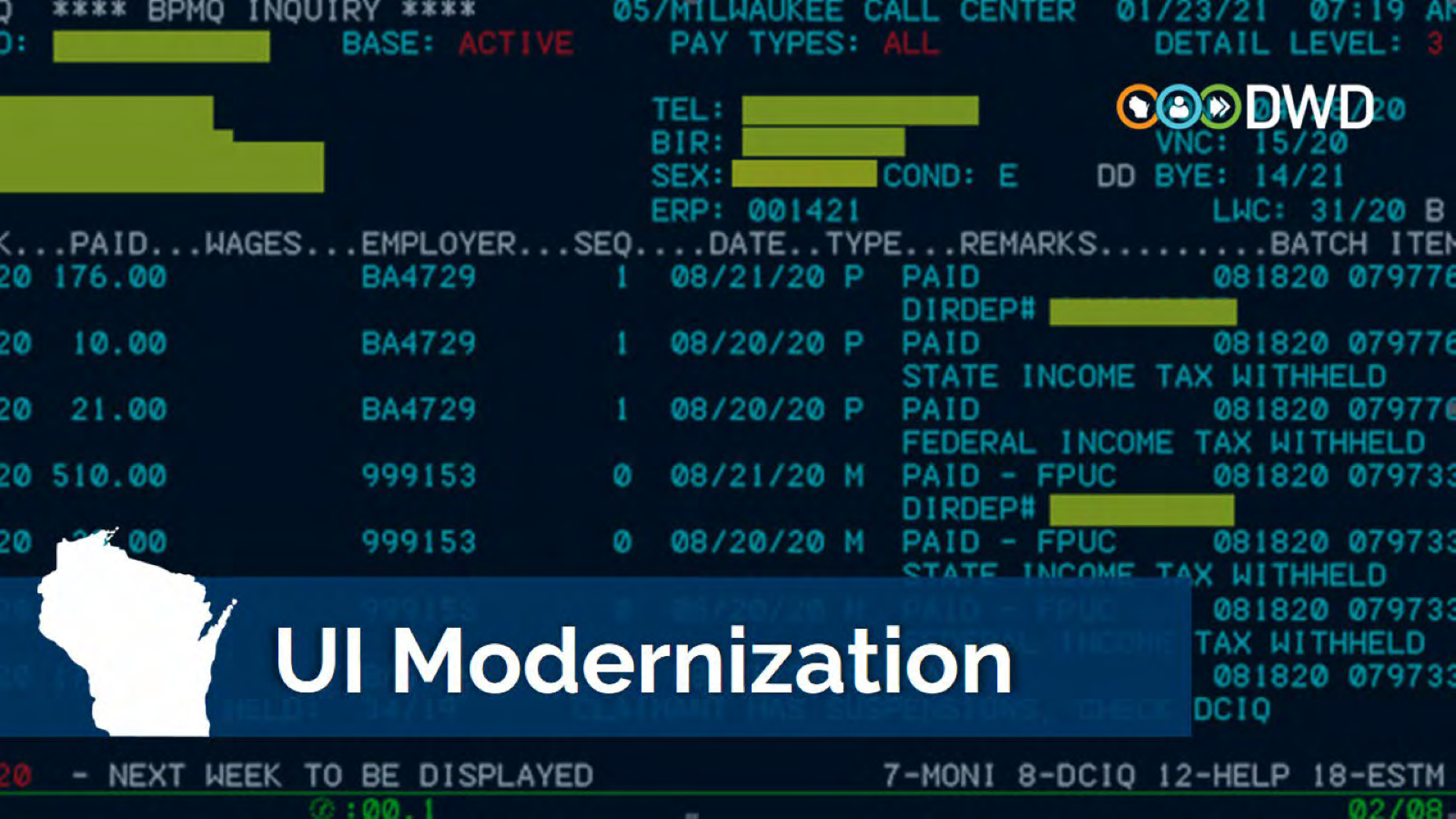
Labor Force Participation

3.1M

Nonfarm Jobs

2.9%

Low Unemployment



UI Modernization

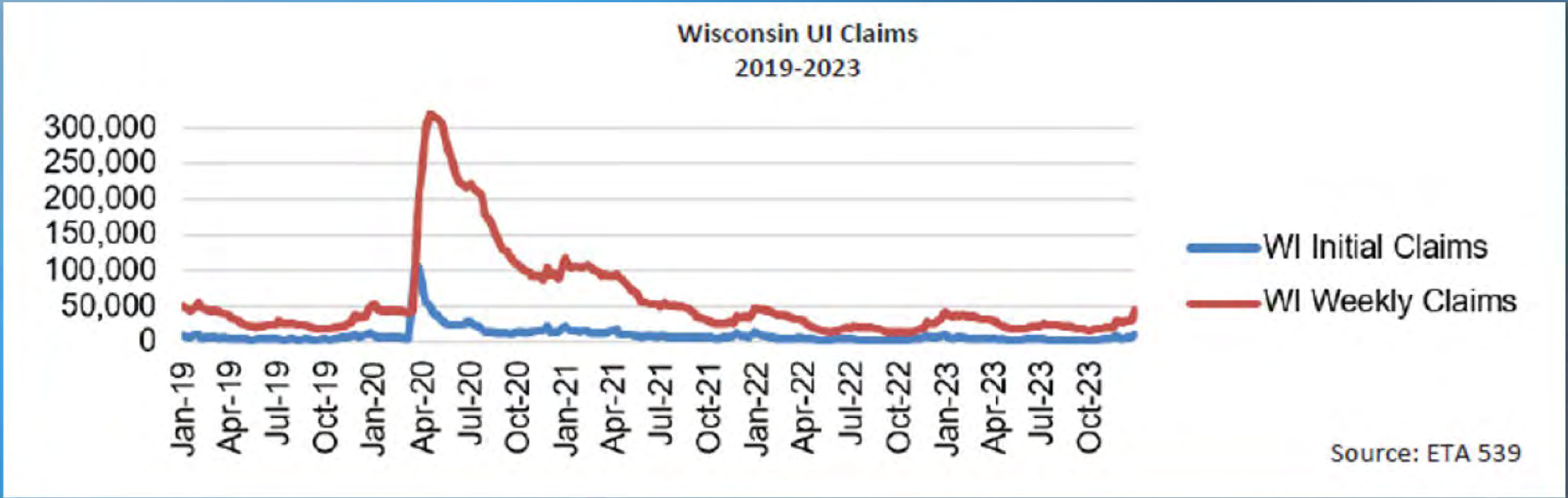

DWD
UI Employer Portal

2024
RESPONSE TO RESEARCH REQUEST

TO THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Historic Importance of UI

Historic Commitment to Program Integrity


Wisconsin UI Claims
2019-2023
300,000
250,000
200,000
150,000
100,000
50,000
0
Jan-19
Apr-19
Jul-19
Oct-19
Jan-20
Apr-20
Jul-20
Oct-20
Jan-21
Apr-21
Jul-21
Oct-21
Jan-22
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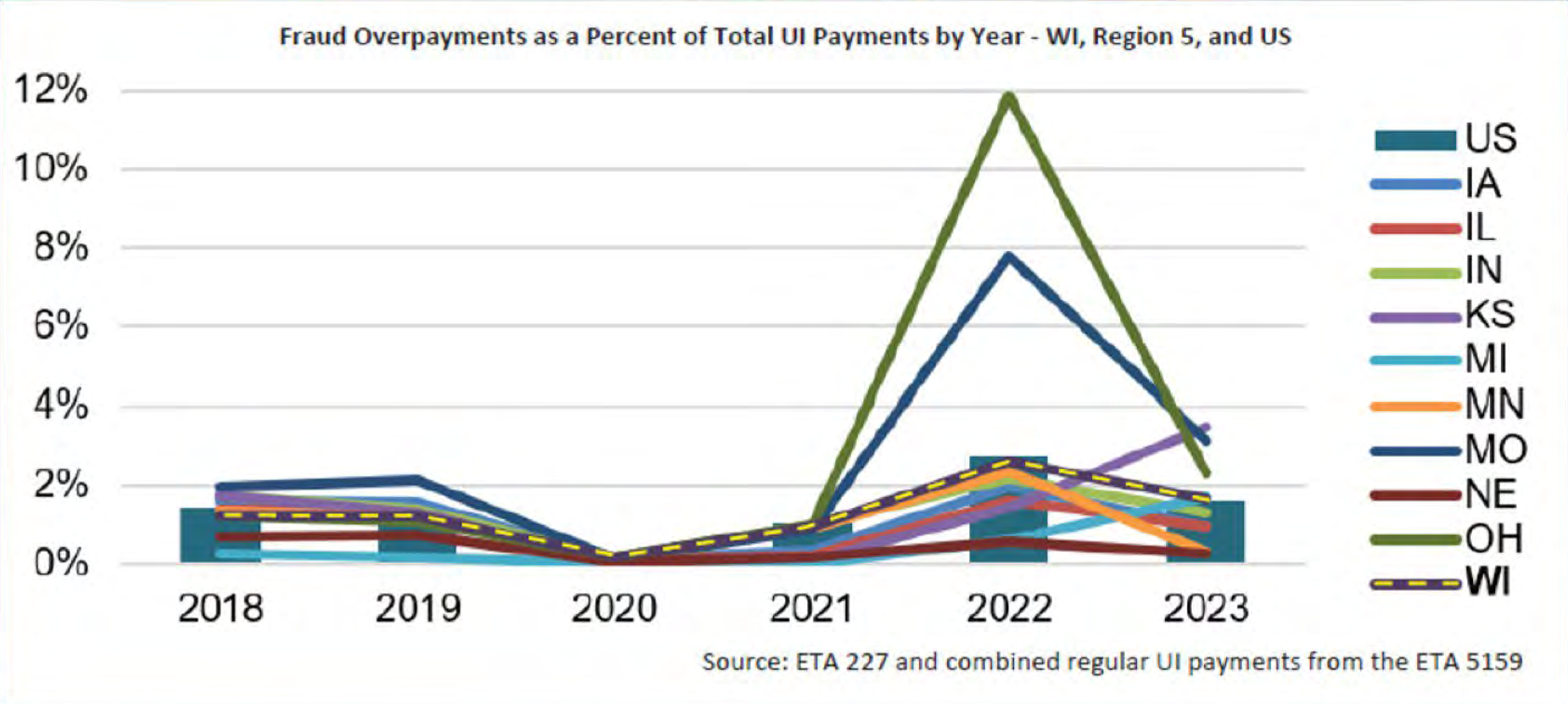
WI Initial Claims
WI Weekly Claims
Source: ETA 539



Fraud Overpayments as a Percent of Total UI Payments by Year - WI, Region 5, and US
12%
10%
8%
6%
4%
2%
0%
2018
2019
2020
2021
2022
2023
US
IA
IL
IN
KS
MI
MN
MO
NE
OH
WI
Source: ETA 227 and combined regular UI payments from the ETA 5159

Work Search Issues

30+ New Initiatives

UI Staffing

Additional Investigations & Outcomes

US DOL Requirements & Best Practices

Staff and Technology Support Security

Thank You

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

UNEMPLOYMENT INSURANCE

2024 RESPONSE TO RESEARCH REQUEST

TO THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

UCD-19829-P (N. 06/2024)

DWD
Department of Workforce Development

June 13, 2024

Dear Members of the Unemployment Insurance Advisory Council:

Wisconsin pioneered the nation's first Unemployment Insurance (UI) system in 1932, and today the Wisconsin Department of Workforce Development's (DWD) UI Division continues to lead the way with a system that promotes economic stability and supports an exemplary workforce.

Unemployment benefits, funded by employer contributions, provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment. By contributing to the UI system, Wisconsin employers protect the pool of highly skilled workers and reduce the likelihood that workers affected by a layoff or temporary downturn will take their skills and talents to other states.

Wisconsin's UI system benefits from strong collaboration among business and labor groups through the Unemployment Insurance Advisory Council (UIAC). DWD appreciates the council's support for its ongoing program integrity initiatives.

The COVID-19 pandemic drove the creation of six federal UI programs and a record volume of claims and benefit payments. From March 15, 2020 through the end of 2021, $7.18 billion in UI benefits was paid to approximately 677,000 claimants. Of those payments, 70% were from federal programs and 30% were from the Wisconsin UI program.

As the impact of the pandemic diminished, Wisconsin's historic economic recovery reduced regular benefit payments to $344.5 million in 2022. The positive economic momentum has continued into 2024, with Wisconsin achieving record highs of 3,047,900 in total employment and 3,036,100 in total nonfarm jobs in February, as well as a near record low unemployment rate of 2.9% in April.

At the March 21, 2024 meeting of the UIAC, council members reviewed the 2024 Fraud Report and expressed interest in learning more about DWD's fraud prevention and detection efforts. DWD welcomes the opportunity to provide additional information regarding its program integrity efforts and has prepared the following report to offer helpful insights and context.

In reviewing metrics regarding UI fraud, it is important to note that these point-in-time measures are lagging indicators that will change over months and years as fraud cases are identified and adjudicated or prosecuted.[1]

While the department takes numerous steps to prevent fraud – more than most states, in fact – there is no way to prevent all fraud. Efforts, therefore, occur on many fronts. In addition to taking steps to prevent fraud, the department has also implemented increasingly sophisticated measures to detect fraudulent activity through crossmatches and audits. Over the past five years, more than 30 program integrity projects and activities have been adopted, expanded, and initiated to strengthen the UI program. The work does not end there. The department's strong collection program also recovers a considerable portion of overpayments when they do occur.

State law requires the department to submit to the council on an annual basis, "a report summarizing the department's activities related to detection and prosecution of unemployment insurance fraud in the preceding year."[2] Consistent with the point-in-time snapshot of these metrics, the reporting is subject to change over time as fraudulent activity is detected.

The 2024 Fraud Report cited the following:

- In 2023, of the $337.6 million UI payments, 0.46% are known Fraud overpayments.
- In 2022, of the $344.5 million UI payments, 0.72% are known Fraud overpayments.
- In 2021, of the $2.5 billion UI payments, 1.1% are known Fraud overpayments.
- In 2020, of the $4.8 billion UI payments, 0.77% are known Fraud overpayments.

In accordance with the department's commitment to transparency, this comprehensive response is also designed to proactively address items that may be raised in the Legislative Audit Bureau's (LAB) fraud audit, which is expected to be published later this year. This proactive response is intended to provide council members with context on any supplemental fraud items that may have been identified in the LAB scope letter[3] but not statutorily required for inclusion in the Annual Fraud Report.

Wisconsin's longstanding commitment to fighting fraud is evidenced by discussions of fraud penalties in materials from the March 17, 1939 council meeting and in this poster from December 1950 as shown in **figure 1**.

Figure 1. 1950 Wisconsin fraud penalties poster

The department looks forward to continuing the important work of protecting program integrity through fraud education, prevention, and detection.

Sincerely,

Amy Pechacek, Secretary-designee
Department of Workforce Development

Jim Chiolino, Administrator
Unemployment Insurance Division

CONTENTS

Unemployment compensation remains one of the finest contributions Wisconsin has made to the nation. Its pioneering UI law provided income benefits to workers when out of work through no fault of their own in response to the Great Depression when more than 25 percent of the adult work-force was unemployed. Wisconsin was the first state to enact a UI law in 1932. The Federal Unemployment Tax Act (FUTA) was passed in 1935 to provide an incentive for all states to enact similar legislation. By mid-1937all states had UI laws...three years after Wisconsin's.

FRAUD PREVENTION
Wisconsin vs. Neighboring States & the Nation

Wisconsin is proactive in its comprehensive approach to combating UI fraud. This section outlines some of the various information technology measures in place to detect and prevent fraud; best practices for fraud prevention; U.S. Department of Labor (US DOL) recognition of two effective prevention strategies in Wisconsin; and Fraud overpayment data comparing Wisconsin with its neighboring states, the Midwest, and nationally.

DWD's UI Division tracks instances where individuals are blocked from the UI Claimant Portal as one method to quantify fraud prevention. In 2023, the division identified 52,154 instances of potential "bad actors." These preventive measures include 15,266 instances of failed address verification, 19,201 instances of failed identity verification, and 17,687 instances of blocks based on other information technology measures.

Wisconsin participates in the National Association of Workforce Agencies' (NASWA) Integrity Data Hub (IDH). The IDH is a multistate data system that crossmatches and analyzes UI data provided by states across the country. The IDH flags claims with potential eligibility or fraud issues in Wisconsin and makes the results available for review by division staff. These issues include claims with suspect identity fraud, suspect IP addresses, suspect bank accounts, or claims filed in multiple states. Potential eligibility or fraud issues identified by the IDH may or may not be duplicative of other detection methods used by the division. The IDH serves as a useful tool in the department's layered approach to fraud detection and prevention.

During the COVID-19 pandemic, the division's detection methods identified over 94,000 claims and attempted claims that were suspected to be those of an imposter.[4] The division's fraud detection methods prevented a large number of payments to potential imposters during the COVID-19 pandemic. As a conservative estimate, the division prevented over $130 million of payments to potential imposters filing Pandemic Unemployment Assistance (PUA), Mixed Earners Unemployment Compensation (MEUC), or regular UI claims.[5]

In 2023, two of the overpayment prevention strategies implemented by the division through Wisconsin's partnership with NASWA garnered recognition by US DOL as "promising practices" for other states to consider adopting. The two overpayment prevention strategies feature prompts for claimants who have a fraud finding on an earlier UI claim and alert claimants to potential issues with unreported earnings.[6]

In addition, the division has implemented other strategies to enhance program integrity. These efforts include creation of the UI Community Partner Toolkit, updates to the initial claims and weekly claims processes, redesigned forms, and other claimant portal updates.

Wisconsin's adoption of fraud prevention and detection methods compares favorably to use of these methods by Minnesota, Iowa, Illinois, and Michigan. Some examples of publicly-available information on neighboring states' fraud prevention methods, which Wisconsin has also adopted, include:

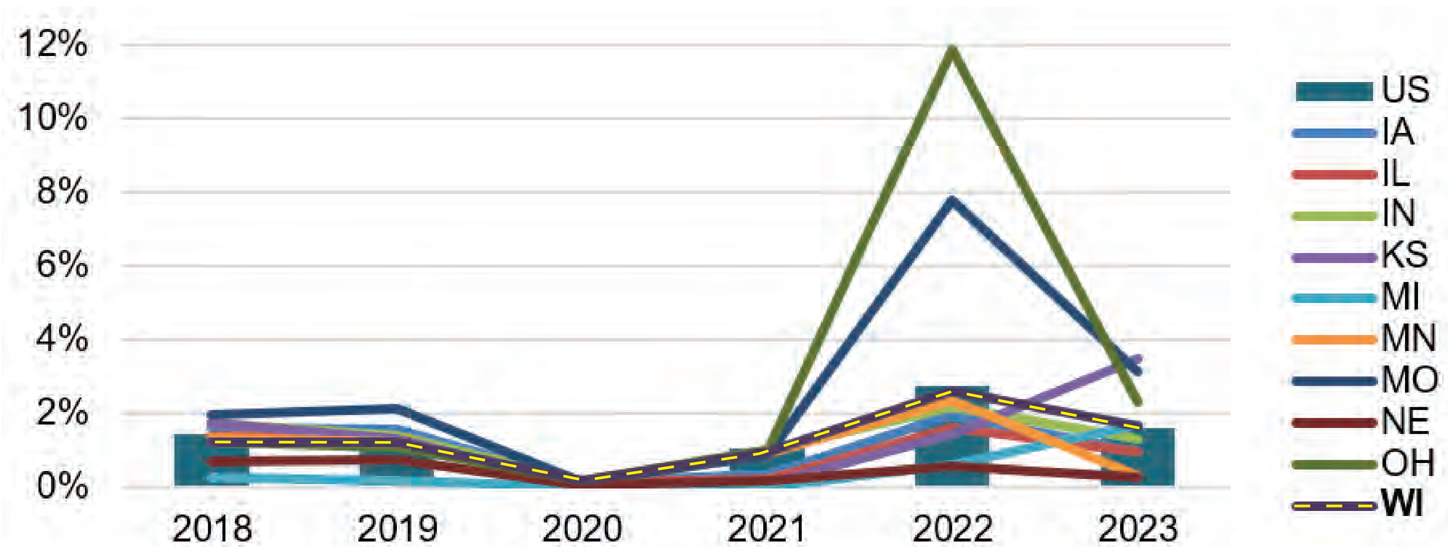
- Various fraud reporting methods (online, phone, mail);
- Education on fraud in claimant and employer handbooks;
- Verification of understanding of fraud penalties in claim filing;
- Random claim audits;
- List of fraud scams published;
- Information on worker misclassification available online; and
- Information on overpayment collections listed online.

The division conducts more than 30 scans and crossmatches to aid in fraud prevention. Wisconsin's comprehensive crossmatch program has been in place for many years. Other states conduct select, but not all, crossmatches. An Illinois audit found that while US DOL introduced the Prisoner Update Processing System and Bank Account Verification as additional crossmatches in October 2021, Illinois had not yet utilized them as of February 2022.[7] An Iowa audit found the state did not perform incarceration crossmatches for the year ended June 30, 2020 and paid eight individuals who were incarcerated $113,813 in benefits. While Iowa performed the Social Security Administration crossmatch in this period, the state did not identify six individuals who were deceased and paid $124,698 in benefits.[8]

Other states across the country had issues with crossmatches, as well. In January 2021, the California State Auditor published its report on its high-risk audit of the Employment Development Department's (EDD) management of federal funds related to the COVID-19 pandemic. The report found, among other things, that EDD was not prepared to prevent inmate fraud that occurred during the federal PUA program because it did not have a system in place to crossmatch incarceration and claims data. EDD estimated $810 million in benefit payments were made to 45,000 claimants who were incarcerated.[9] Additionally, Colorado discontinued its quarterly wage crossmatch after March 31, 2020 and the crossmatch was not implemented again until Jan. 10, 2021.[10]

Data reported to US DOL can be used to calculate Fraud overpayments as a percent of total UI payments to compare Wisconsin's Fraud overpayments to other states. As shown in the graph below, data from 2018 to 2023 shows Wisconsin's Fraud overpayments as a percentage of total UI payments are consistent with states that neighbor Wisconsin, other states within its US DOL region (Region 5 - Chicago), and the national average.

Fraud Overpayments as a Percent of Total UI Payments by Year - WI, Region 5, and US



Source: ETA 227 and combined regular UI payments from the ETA 5159

As detailed in the 2024 Fraud Report, Wisconsin ranked second in total overpayment recoveries among the 10 states in Region 5 during 2023, which included both Fraud and Non-Fraud overpayments. Wisconsin's total overpayment recovery rate in 2023 also stands out nationally; Wisconsin ranks seventh of the 53 state agencies for its recovery rate. The below table depicts the total overpayment recovery rate for calendar year 2023, calculated by US DOL, for each of the 53 US DOL state workforce agencies.

US DOL Overpayments Recovered in 2023

State	Recovery Rate*
CT	278.91%
MS	252.65%
SC	168.27%
KS	154.04%
MT	137.38%
SD	136.36%
★ **WI**	**131.69%**
MO	127.22%
ME	116.03%
NE	114.45%
NC	113.56%
ND	112.67%
OR	98.84%
NJ	97.55%
TX	96.52%
UT	96.13%
HI	94.48%
IA	87.65%

US DOL Overpayments Recovered in 2023

State	Recovery Rate*
WY	83.07%
IL	78.00%
ID	73.15%
AK	71.73%
DC	71.09%
CA	71.01%
OK	66.96%
DE	64.50%
MN	64.31%
NM	63.40%
AR	61.63%
VT	60.57%
OH	56.72%
WA	56.11%
IN	54.59%
GA	46.95%
RI	46.24%
NY	37.26%

US DOL Overpayments Recovered in 2023

State	Recovery Rate*
WV	34.65%
KY	33.29%
PA	28.94%
PR	28.82%
AL	27.90%
TN	27.01%
LA	21.91%
VI	20.02%
CO	11.67%
FL	11.44%
MA	10.54%
NV	8.69%
MD	7.56%
MI	4.43%
VA	-12.15%
NH	-51.48%
AZ	-1037.77%

*The recovery rate is the ratio of reported overpayments recovered to overpayments established in the same time period. However, the amounts recovered for any quarter may be from overpayments established in many previous time periods. In the past few years, states' implementation of the Treasury Offset Program to recover overpayments through federal tax offset has resulted in a high recovery of overpayments previously established. Due to this high recovery of overpayments established in previous quarters, the recovery rate ratio may show result exceeding 100% for a few states.

Source: ETA 227 and ETA 227 EUC reports

Prepared by US DOL Div. of Performance Management on March 5, 2024

Additional Data

Wisconsin has employed best practices in fraud and investigation activities and continues to seek additional ways to protect the integrity of the UI system. As mentioned, fraud activities are difficult to compare among states due to vast differences in state laws regarding fraud, the fact that fraud has varied interpretations, and how fraud is reported.

Wisconsin utilizes monetary and criminal deterrents for fraud – methods that are not universally deployed by other states. Maximum fines on claimants and employers total up to $25,000 (depending on facts of fraud) in Wisconsin. Other states' fines vary depending on whether fraud is committed by a claimant or an employer and some maximum fines are only $200. Additionally, the maximum prison time for both claimants and employers is 10 years in Wisconsin, while the majority of states have shorter maximum sentences of two years or less (some as few as 30 days). Like most other states, Wisconsin provides for a 100% reduction in a claimant's weekly benefit allowance after a fraud finding, without limit (select states allow for a 100% reduction in weekly benefit allowance, though with a limit).

The department is supported in further strengthening protections against imposter fraud with UIAC's efforts to impose penalties to deter fraud. As part of the UIAC agreed bill process, the department proposed, and the council included an imposter penalty provision in one of the two agreed bills for the 2023-24 legislative session. While neither of the UIAC's agreed bills received a legislative hearing during the session, the shared dedication to expanding these deterrents shows Wisconsin's commitment to integrity in the UI system.

Wisconsin's claims applications processing also protects the integrity of the UI system. In Wisconsin, all separations on a claim are investigated. Many other states only investigate the last separation. This additional diligence on a claim can prevent fraud.

Wisconsin has also been a model for worker misclassification investigations and educational outreach. Wisconsin was one of a handful of states that, from 2013 to 2015, won competitive federal grants totaling over $1 million to expand its Worker Classification Section.

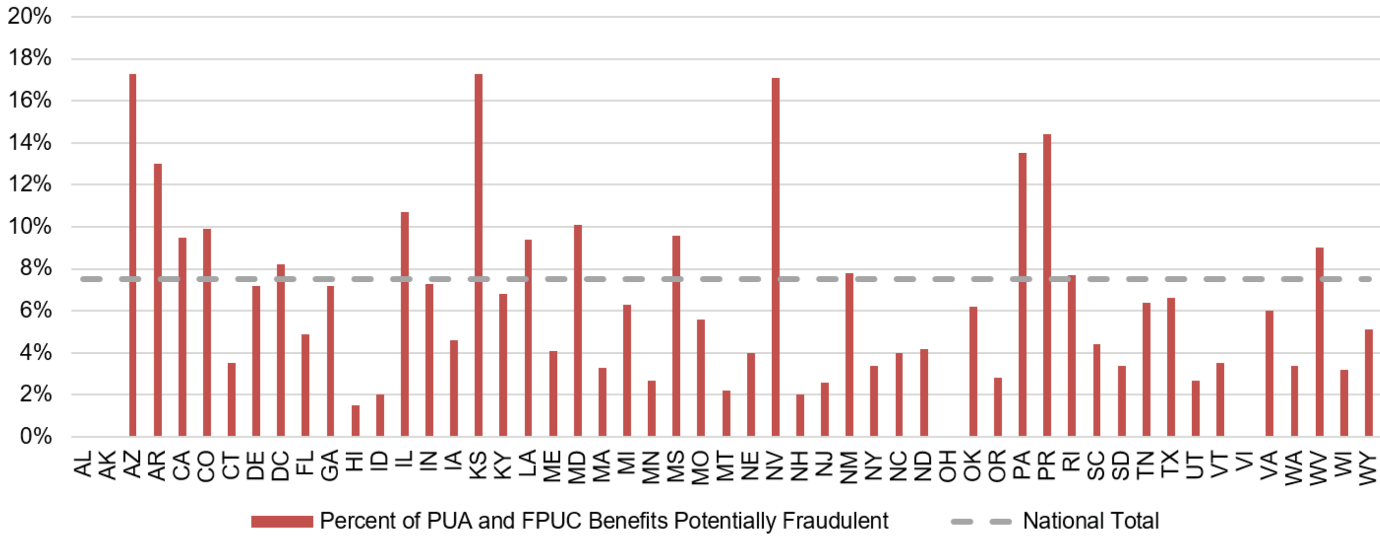
Wisconsin, like the rest of the nation, faced numerous fraud challenges due to the COVID-19 pandemic, but other states fared much worse. A California audit report noted its identity theft reporting process was inundated with complaints in 2020. The state had only one staff person assigned to handle such reports, and this position later became vacant. As a result, from April to October of 2020, less than 2% of California's online complaints were responded to.[11] Written testimony by the Secretary of Labor and Workforce Development in Massachusetts indicated the state was "hit early and also particularly hard" by targeted criminal activity during the COVID-19 pandemic due to its high weekly benefit rate and early implementation of federal benefit programs.[12]

During the pandemic, the federal PUA program was initiated to assist people including self-employed individuals, gig workers, independent contractors, workers with limited work history, and others who would not normally qualify for regular UI benefits. While the federal program helped many of these workers and their families pay for essentials during the economic downturn, the program experienced fraud due to several factors beyond the control of state agencies charged with administering the benefits. First, the PUA program was a new program that allowed new categories of claimants to self-attest to their eligibility. Second, there were limitations to the verifications state programs could require, as compared to regular UI claims, because states were required to follow federal rules in administration and these rules varied throughout the course of the COVID-19 pandemic.

The federal PUA program was established to provide support for gig workers, self-employed individuals, and others whose employment was affected by the COVID-19 pandemic, but who would not normally qualify for regular UI benefits.

OIG conducted various audits on US DOL's guidance over federal pandemic programs. One audit, conducted alongside contractor Key & Associates, P.C., examined potentially fraudulent payments made by states in PUA and Federal Pandemic Unemployment Compensation (FPUC) benefits paid to PUA claimants.[13] Their data[14] is summarized in the graph below:

Submitted Claims Data by State Associated with Fraud Indicators from April 1, 2020 to September 30, 2021



Source: OIG analysis of claims data for pandemic-related UI programs submitted by the 53 state workforce agencies (obtained via OIG Report Number 19-23-014-03-315, Table 7)

A different audit report by OIG examined whether the US DOL agency responsible for guiding state UI programs, the Employment and Training Administration (ETA), initially implemented provisions to mitigate the risk of fraud, waste, and abuse within the CARES Act federal UI programs.[15] One finding from the audit was:

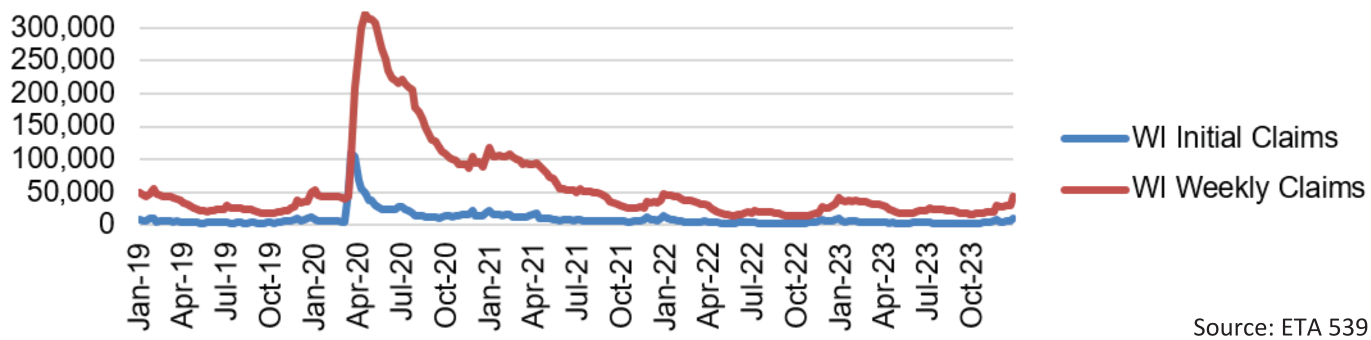
> **"ETA guidance did not sufficiently address the risk of fraud, waste, or abuse."**
> – U.S. Department of Labor Office of Inspector General

In 2021, the Pandemic Response Accountability Committee released a report that analyzed commonalities across 16 state auditor offices concerning the COVID-19 pandemic. The report identified four common issues in UI programs across 16 states: heightened workloads; exploitation of internal control weaknesses; increased fraud schemes; and IT system difficulties.[16]

Over the past five years in Wisconsin, more than 30 program integrity projects and activities have been adopted, expanded and initiated to strengthen the UI program and fight fraud.

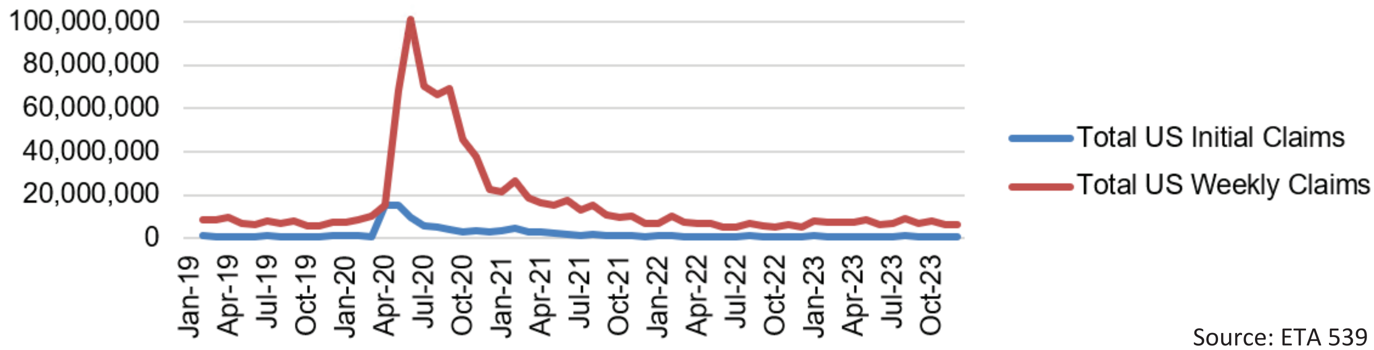
As seen across the nation, Wisconsin also saw a sharp increase in claims at the beginning of the COVID-19 pandemic. The graphs below illustrate Wisconsin's claim trends (top) from January 2019 to October 2023 compared to national claim trends (bottom) for the same period.

Wisconsin UI Claims
2019-2023



Source: ETA 539

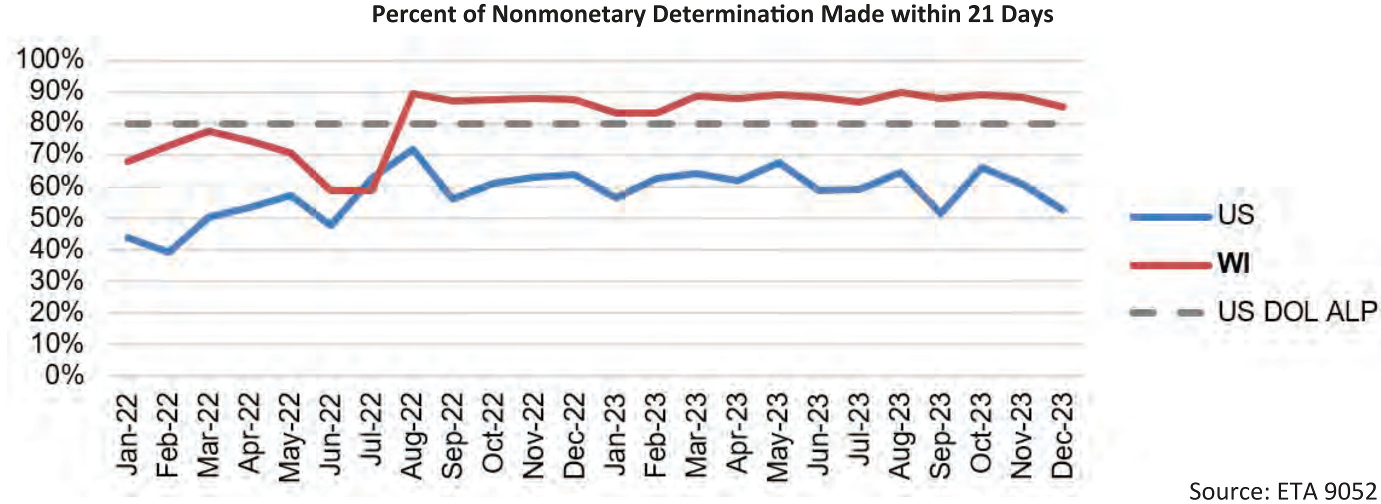
US UI Claims
2019-2023



Source: ETA 539

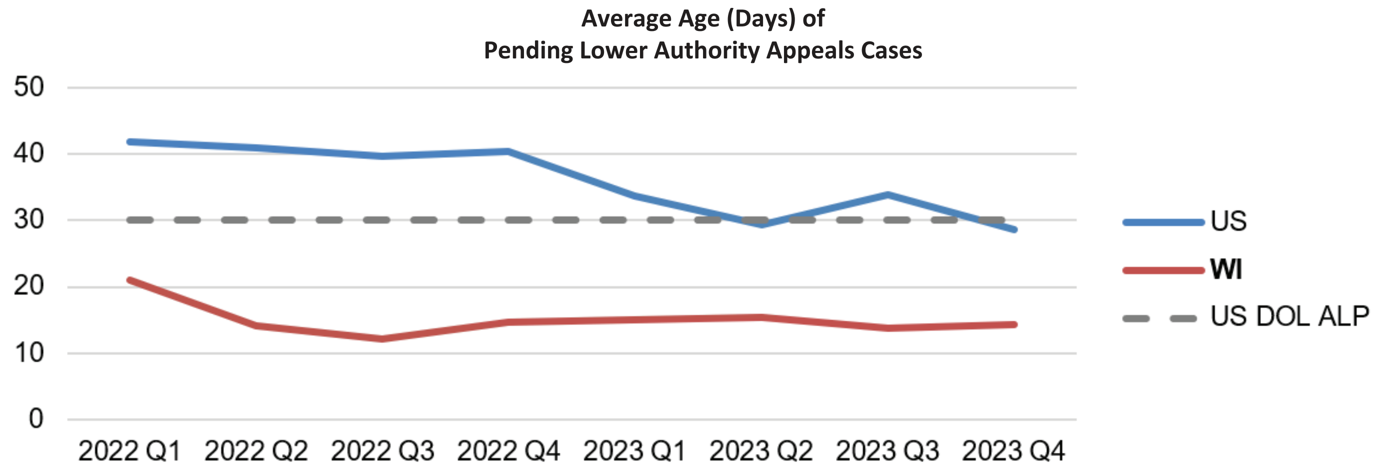
In a number of areas, Wisconsin has performed better than other states and even above the US DOL acceptable levels of performance.[17] The graph below displays the percentage of nonmonetary determinations made within 21 days for Wisconsin (red) from January 2022 through December 2023 and for the nation (blue) during the same period. A nonmonetary determination is a determination for UI benefits based on factors other than whether a claimant has earned enough in wages to qualify for benefits (for example, separation issues).

Percent of Nonmonetary Determination Made within 21 Days



Source: ETA 9052

Wisconsin has also outperformed other states and US DOL's acceptable level of performance[18] in the average age (days) of pending lower authority appeals cases (the number of days cases wait before being decided by division appeals staff). The graph below displays Wisconsin's performance (red) from 2022 Quarter 1 through 2023 Quarter 4 compared with the nation (blue) for the same period. Shorter times for pending lower authority appeals cases are beneficial because it means issues are being processed more quickly.



Source: ETA 9055

Additionally, Wisconsin has consistently maintained a low exhaustion rate, ranking in the bottom quarter of states in terms of the percentage of exhaustions during typical benefit years, meaning the majority of the unemployed population are not receiving UI benefit payments for the entire period they are eligible. During 2023, Wisconsin UI recipients received benefits for an average of 11.8 weeks, compared with the maximum eligibility of 26 weeks, signaling that Wisconsin workers are actively seeking and connecting with employment to return to self-sufficiency.

During 2023, Wisconsin workers who received UI benefits successfully connected with employment and returned to self-sufficiency without exhausting their benefits. Recipients received benefits for an average of 11.8 weeks, compared with maximum eligibility of 26 weeks.

WORK SEARCH COMPLIANCE

Understanding Audit Results

The division has a comprehensive work search audit process, which includes targeted and random audits of claims.

In 2023, a total of 15,488 work search audits were conducted, which identified 4,524 Non-Fraud overpayment decisions and 10 Fraud overpayment decisions. This led to almost $2 million in overpayments being collected in 2023. Additionally, 6,087 adverse decisions resulted in the denial of benefits, and 24,313 claims were not paid due to failure to answer the work search question or provide required information on the weekly claim. As shown above, instances of work search Fraud are uncommon.

The two most common work search issues identified in audits are falsified work search actions (reporting actions not actually completed) and invalid work search actions.[19] Claimants could fail an audit for these reasons or others, such as making duplicative entries or failing to keep work search records. The UI claims system automatically denies claims when claimants fail to enter four work search actions if required. In 2023, the system denied 23,070 claims for this reason.

There are two types of work search audits: random and targeted. Random audits are regularly conducted on a sample of claims to ensure work search requirements are met. Targeted audits are regularly conducted and focus on claims exhibiting suspicious traits.

In 2023, the overall denial rate for work search audits was 39.3%. In 2023, the denial rate for random work search audits was 26.3% and the denial rate for targeted work search audits was 56%. Denial rates for targeted work search audits are typically higher than random work search audits since the claims already exhibit suspicious traits.

Regardless of the type of audit conducted, claimants who had any work search issues identified as part of their audit are educated on what is a valid work search action and acceptable proof of that action. This additional education helps prevent incorrect reporting and assists in re-employment.

The division is revising certain work search items to clarify requirements, making the process clearer and more concise. Some revisions include implementing plain language and behavioral insight principles into the current reporting process and online work search tracking.

Wisconsin detects a higher number of overpayments largely due to the number of required work search actions. In 2023, the average number of required work search actions was three, both nationally and among other Region 5 states. However, neighboring states vary in their weekly work search requirements, with Minnesota requiring claimants search for work but not specifying a minimum number of work search actions, Illinois focusing on quality over quantity, and Iowa and Michigan requiring only two work search actions. Wisconsin's higher work search action requirement contributes to estimated overpayments. The charts below depict the significantly higher percentage of estimated overpayments resulting from work search issues in Wisconsin (left) for the 12-month period ending June 30, 2023, compared to the rest of the nation (right) for the same period.

Source: PIIA 2023

Nationally, the highest root cause of estimated overpayments is benefit year earnings, followed by work search and separation issues. In Wisconsin, the highest root cause of estimated overpayments is work search, followed by benefit year earnings and separation issues.

DWD DIVISION OF UNEMPLOYMENT INSURANCE

Fraud Operations

The division's various approaches to fraud education and prevention, detection, investigation, collection, and penalty/prosecution activities are outlined in the 2024 Fraud Report. Context on how the division conducts specific activities is sensitive and, to protect the integrity of those activities, kept confidential. Over the past five years, more than 30 program integrity projects and activities have been adopted, expanded, and initiated to strengthen the UI program.

The following descriptions provide a high-level overview of recent program integrity efforts:

- **Plain language initiatives.** Multiple forms, web pages, and documents have been updated to incorporate plain language principles to help claimants avoid mistakes;
- **Modernization improvements.** The department has undertaken a multifaceted development strategy to replace outdated computer systems, integrate new technology, and overhaul training to streamline and update services to claimants and employers;
- **Weekly bureau director meetings.** The UI bureau directors from all bureaus now meet weekly (during the COVID-19 pandemic the meetings occurred two to three times per week), which has aided in cross-bureau communications and fraud discussions;
- **Claimant handbook.** In August 2022, the claimant handbook was rewritten to implement plain language principles and help ease administration of benefits. This update should decrease errors when filing claims;
- **Misclassification campaign.** In October 2023, the department developed marketing and collateral materials in English and Spanish (including billboards, social media ads, and digital displays) to build awareness of and help combat worker misclassification; and
- **Prevention strategies.** As further described in the 2024 Fraud Report, two of Wisconsin's overpayment prevention strategies have been named "promising practices" by US DOL.

As detailed below, DWD's vigilant UI staff members continue to serve as the department's strongest defense against fraud. UI staff at multiple levels contribute to, and gain actionable information from, a broad, multi-state ecosystem of UI experts committed to fighting fraud. Beyond DWD's own dedicated fraud investigators who handle the most complex and organized efforts to defraud the UI system, benefits specialists, employer assistance staff, legal affairs staff, and claims processing staff all play a role in the comprehensive program integrity efforts.

These comprehensive efforts have been enhanced by numerous federal grants, totaling more than $7.1 million, for various program integrity enhancement projects and activities that are in process. Below are some examples of projects and activities:

Project Name	Project Description
Authorization Security Questions	Adds additional verification of online user identities.
Banking and Address Change Notification	Prevents fraud by notifying a claimant, via email or text message, when a bank change is initiated through the UI Claimant Portal.
Enhanced Identity Proofing	Integrates an enhanced identity verification product into current online user platforms.
Fictitious Employer Database	Creates a database to review information on fictitious employers.
Financial Investigative Technology	Enhances financial analytical abilities through purchase of a program for rapid evaluation and proofing of banking and financial data.
LexisNexis Fraud Detection and Data Assessment	Analyzes available data to verify identities.
Manual Authorization Enhancement	Will allow staff to verify a claimant's information using data from other government sources or the IDH.
New Fraud Scans	Expands current fraud prevention data scans using nationwide best practices.
Quarterly Crossmatch	Update processes and refine audits to better target proven fraudulent behavior.
ReliaCard Fraud Prevention	Creates queries for debit cards to detect potentially suspicious activity.
Internal System Access Audit and Analysis	Confirm only necessary division staff have access to sensitive information and re-evaluate users with access to sensitive information.
Work Search Audit Enhancement	Prevents benefit payment during a work search audit to prevent potential overpayments.
Worker Compensation Crossmatch	Creates a crossmatch to identify when a worker's compensation claim is paid concurrently with UI claimed weeks.

Staffing

Every member of the division plays a role in supporting the integrity of the UI program, even if fraud or program integrity duties are not explicitly outlined in their position description. Throughout the division, standard procedures and processes are designed to keep staff vigilant against fraud, ensuring they are equipped to detect and, when possible, prevent fraud. For example, staff exercise caution when encountering suspect information or suspicious tactics. Depending on the circumstances, staff are instructed to either place a hold on the claim or follow up with their supervisor who may then refer cases for investigation. Additionally, staff receive updates regarding fraud they may see in their role, such as new fraud schemes, tactics fraudsters may use, and other useful tips for identifying and preventing fraud.

The division's employees dedicate many thousands of hours each year to fraud prevention and detection activities. These include:

- Identifying potential issues;
- Investigating and resolving potential fraud and eligibility issues;
- Investigating instances of employer fraud[20] such as "State Unemployment Tax Act dumping" and fictitious employer matters;
- Investigating and auditing cases of worker misclassification;
- Investigating and referring criminal benefit fraud cases for prosecution;
- Investigating and resolving issues identified by fraud detection methods; and
- Participating in conferences, webinars, and other training to learn about emerging issues and evolving best practices.

In daily operations, staff also prioritize educating claimants and employers on fraud prevention, such as accurate reporting, to mitigate potential fraudulent activity.

The Integrity and Quality Section within the Benefit Operations Bureau plays a pivotal role in the division's fraud investigation and detection efforts, with 38 total staff across three units: Training and Outreach, Program Integrity Wage, and Program Integrity Fraud.

The Training and Outreach unit is responsible for equipping staff with the necessary skills for fraud investigations and assisting in resolving eligibility issues as needed. Advanced adjudicators undergo a training that covers the mechanics of a fraud investigation and application of the statutes related to concealment and fraud.[21] Training and Outreach staff now provide specialized training to the staff in the Program Integrity Wage unit and Program Integrity Fraud unit.

The Program Integrity Wage unit investigates and resolves issues involving unreported and underreported work and wages, including vacation, holiday, dismissal, sick, and other types of pay. Program Integrity Wage staff also investigate and resolve many issues that arise from various crossmatches, including, but not limited to, alien verification, new hire, and quarterly wage.

The Program Integrity Fraud unit investigates and resolves complex fraud, unknown and known imposter issues, conducts work search audits, and investigates and resolves certain crossmatches.

Coordination among the UI work units, department-wide staff, and state enterprise leaders occurs on a daily basis. However, consistent with best practices, access to sensitive information and specific tools is not universally shared. Likewise, rapid technological change and the increasing sophistication of organized fraud rings and rogue actors require staff to rely on evolving guidance and agile professional networks rather than a central "playbook" to deter and detect fraud.

The UI division's employees dedicate many thousands of hours each year to fraud prevention and detection activities. The activities range from the work involved to identify potential fraud issues to training on evolving best practices.

DWD DIVISION OF UNEMPLOYMENT INSURANCE
Additional Investigations and Outcomes

Investigations and Results

In 2023, the division received more than 1,000 total tips across the fraud hotline phone number, online web form, and by mail. Tips received from the various reporting methods are taken seriously and investigated then, when warranted, audited, though not all tips result in audits. Some informing parties contact the division in multiple ways or multiple times.

In 2023, there were over 2,300 identity theft investigations. Of these, the division identified 250 overpayments due to imposter fraud totaling $333,836 in 2023.

As outlined in the 2024 Fraud Report, there were almost 4,700 total (Fraud and Non-Fraud) decisions due to crossmatch hits in 2023 accounting for approximately $6.4 million in overpayments. As mentioned previously in this report, Wisconsin is successful in overpayment recovery and the division expects to recover the majority of this amount.

The division also addresses worker misclassification. Worker classification investigators conduct field investigations and, depending on the outcome, may refer cases to the division's tax auditors. Tax auditors then conduct worker misclassification audits and, if appropriate, assess unpaid UI taxes and interest to the subject employer.

In 2023, worker classification investigators conducted over 700 worker classification field investigations. Such investigations resulted in about 190 audit referrals to the division's tax auditors, which led to the identification of 2,471 misclassified workers and the assessment of approximately $580,000 in UI taxes and interest. In total, in 2023, tax auditors conducted 1,968 worker misclassification audits, which identified 6,660 misclassified workers. As a result, employers were assessed a total of $1.2 million in unpaid UI taxes and $166,780 in interest in 2023.

This joint worker classification investigation and audit system have proven to be extremely successful in protecting the integrity of the UI program. As of Dec. 31, 2023, worker classification investigators have conducted a total of about 4,570 field investigations over the section's lifetime.[22] About 25% of those total investigations have resulted in audits, which have identified a total of over 13,000 misclassified workers. As a result, employers have been assessed a total of approximately $4.2 million in UI taxes and interest over the lifetime of worker classification investigations.

Outcomes and Referrals

In 2023, the division made three referrals to Wisconsin district attorneys for benefit fraud cases. Parties in all three cases have been charged. The division also referred two tax cases to federal agencies, one in 2022 and one in 2023. Both cases have now resulted in convictions. Additionally, the division assisted federal agencies with 103 benefit fraud cases in 2023, of which 29 have resulted in indictments, 14 are pending indictment, and 60 are under investigation.

As described in detail above, Wisconsin successfully recovers overpayments when they do occur. In 2023, Wisconsin recovered $32.8 million total (Fraud and Non-Fraud) overpayments. Details on additional overpayment recovery tools, such as the Treasury Offset Program (TOP), are included in the 2024 Fraud Report.

Comparatively, other states have recently faced challenges in overpayment collections or do not attempt to recover overpayments. A Michigan fraud audit published in 2023 found the Department of Labor and Economic Opportunity failed to attempt to recover overpayments or assess fraud penalties in its sampled claims.[23] A Colorado audit published in 2021 explained Colorado suspended its TOP program in 2018 and was anticipated to implement the program again in December 2021.[24] Additionally, an OIG audit found 19 states (38%) did not perform required overpayment recovery activities from March 27, 2020 to July 31, 2020.[25]

Wisconsin's fraud investigation and fund recovery work has produced favorable outcomes. In 2023, the UI division referred two tax cases to federal agencies and both cases resulted in convictions. Also during 2023, the state recovered $32.8 million in total Fraud and Non-Fraud overpayments.

U.S. DEPARTMENT OF LABOR
Requirements and Best Practices

US DOL has requirements for states including: maintaining a Quality Control program; adhering to required data reporting and shared data requests; participation in various US DOL-sponsored research programs; participation in US DOL audits and audits of US DOL; and required data validation. Additionally, US DOL updates states on budget proposals which, if implemented, states must adhere to.

Federal regulations[26] require that each state maintain a Quality Control program, which must manage programs for Benefits Accuracy Measurement (BAM), Tax Performance System, and Benefits Operations Self-Assessment.[27] Wisconsin's Quality Control program ensures UI money moves as it should, verifies transactions are being conducted correctly and that policies and procedures are being adhered to. Wisconsin's Quality Control program has nine staff who review UI transactions, identify potential process improvements, and provide UI reporting to US DOL. Staff manage programs for paid and denied benefits claims, revenue operations and benefits operations self-assessment.

In addition to required Quality Control reporting, US DOL requires states provide various data across over 25 routine reports. There may also be additional data sharing requests or requirements to participate in US DOL-sponsored research programs. There are also various audits conducted by US DOL and audits of US DOL the division must take part in. Additionally, the division must validate its data reported to US DOL annually or every third year, depending on the type of data.

An example of required US DOL reporting is to report significant fraud claims to the Office of Inspector General (OIG). Wisconsin complies with this requirement, outlined in UIPL 4-17 Change 1. The division continues to refer cases to and work cooperatively with the OIG and the FBI.

The President's FY 2025 budget proposal outlines various program integrity improvements. For example, the proposal requires states to use NASWA's Integrity Data Hub, use the State Information Data Exchange System, implement various data crossmatches, disclose information to OIG, and other administrative improvements. Wisconsin has already implemented the improvements outlined in the President's FY 2025 budget proposal.

Wisconsin's Quality Control program ensures UI money moves as it should, verifies transactions are being conducted correctly and that policies and procedures are being adhered to. Wisconsin's Quality Control program has nine staff who review UI transactions, identify potential process improvements, and provide UI reporting to US DOL.

DEPARTMENT OF WORKFORCE DEVELOPMENT
Conclusion

The COVID-19 pandemic highlighted the importance of the UI program in providing economic stability in Wisconsin. While the overnight increase in UI claims coupled with the implementation of new, untested federal pandemic benefit programs put severe strain on the UI program, the department identified potential solutions for addressing future challenges. Many of those solutions are now in place; others will be implemented as part of UI modernization efforts.

Other improvements include processes for efficiently increasing staffing. From reassignments of department staff from other divisions and staff from other state agencies to adding staff from outside vendors, the department has processes in place for adjusting staffing in any future times of need. Additionally, the division has updated its recruiting methods. The division began to offer remote work (within the state of Wisconsin) during the COVID-19 pandemic, which has assisted with staff retention and offers the division more flexibility in filling positions. The total number of applications and number of qualified applicants for UI positions has increased since updating recruiting methods. There have also been numerous improvements in systems, processes, forms, and administrative matters, which were implemented in connection with the COVID-19 pandemic.

Additionally, the department is looking ahead to innovative solutions and strategies to protect the integrity of the UI program. The department has already put in place or started work on the various methods described in this report.[28]

DWD's engaged and vigilant staff serve as the department's most valuable asset in fraud prevention and detection. The department conducts an annual survey on employee engagement and, in 2024, had great results and participation. Employee engagement is the level of satisfaction and commitment that employees feel for their job and their organization. The more employees are engaged in their organization and the work it does, the more likely they are to perform at a higher level than they otherwise would perform.[29]

The UI Division had an 85.7% response rate to the employee engagement survey, while response rates to employee engagement surveys in large agencies are typically much lower, ranging from 31% to more than 77%.[30]

Across the division, survey responses to, "I know what I need to do to be successful in my role," and "I have access to the materials, tools, and equipment I need to do my work well," ranked at a weighted 4.3 and 4.2 out of 5, respectively. Overall, survey results showed overwhelmingly positive outcomes with increases in multiple categories compared to 2023. The survey showed, among other things, that division staff are engaged, and that they feel safe and supported in their work.

Governor Philip LaFollette signing Wisconsin's pioneering Unemployment Compensation Act, January 28, 1932. Left to right: Henry Ohl, Jr., Elizabeth Brandeis, Paul A. Raushenbush, John R. Commons, LaFollette, Henry A. Huber, Harold M. Groves, and Robert A. Nixon.

NOTES

[1] The Fraud Report's descriptions and reporting on fraud conform to US DOL definitions of "Fraud" and "Non-Fraud". As used herein, capitalized "Fraud" has the meaning of "Fraud Overpayment," as defined by US DOL in the Unemployment Insurance Report Handbook No. 401, 5th edition, as "[a]n overpayment for which material facts to the determination or payment of a claim are found to be knowingly misrepresented or concealed (i.e., willful misrepresentation) by the claimant in order to obtain benefits to which the individual is not legally entitled. . . [,]" p. 163, and "Non-Fraud" means a "Non-Fraud Overpayment" defined as "[a]n overpayment which the state agency determines is not due to willful misrepresentation . . . [,]" p. 165. When lowercase "fraud" is used, it shall be interpreted broadly so such terms could relate to claimant fraud, employer fraud, identity/imposter fraud, or any other examples of false, inaccurate, or withheld information.

[2] Wis. Stat. § 108.14(19)

[3] The LAB scope letter can be found online: https://legis.wisconsin.gov/LAB/media/3654/110223_jac_ui-fraud-scope.pdf

[4] Data from May 18, 2020 to January 3, 2023.

[5] Data from June 1, 2020 to September 27, 2021

[6] Specific information regarding these overpayment prevention strategies can be found in the 2024 Fraud Report.

[7] State of Illinois Office of the Auditor General. "Performance Audit of the IDES Unemployment Insurance Programs." 26 July 2023.

[8] Office of Auditor of State, State of Iowa. "Report of Recommendations to the Iowa Department of Workforce Development." 30 June 2020. Report Number: 2160-3090-BR00.

[9] California State Auditor. "Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments." January 2021. Report Number: 2020-628.2.

[10] Colorado Office of the State Auditor. "Statewide Single Audit Fiscal Year Ended June 30, 2020." June 2021.

[11] California State Auditor. "Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments." January 2021. Report Number: 2020-628.2.

[12] Acosta, Rosalin. "Senate Committee on Post Audit and Oversight Executive Session." Testimony presented to the Massachusetts Senate Committee on Post Audit and Oversight, December 10, 2021.

[13] U.S. Department of Labor, Office of Inspector General - Office of Audit. "COVID-19: Pandemic Unemployment Assistance for Non-Traditional Claimants Weakened by Billions in Overpayments, Including Fraud." 27 September 2023. Report Number: 19-23-014-03-315

[14] OIG notes data for Alabama, Alaska, Ohio, and the U.S. Virgin Islands was not processed in time to be published in its audit report.

[15] U.S. Department of Labor, Office of Inspector General - Office of Audit. "COVID-19: More Can be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act." 7 August 2020. Report Number: 19-23-008-03-315

[16] Pandemic Response Accountability Committee. "Key Insights: State Pandemic Unemployment Insurance Programs." 16 December 2021.

[17] The US DOL acceptable level of performance for nonmonetary determinations made within 21 days is greater than or equal to 80%.

[18] The US DOL acceptable level of performance for average age of pending lower authority appeals is less than or equal to 30 days.

[19] Invalid work search actions include actions such as, but are not limited to, viewing job leads but not applying, contacting an employer to learn no openings exist or applications are not being taken, submitting an application to the same employer within a 4-week period when there is not a new job available, re-posting the same résumé on job search websites unless applying for a specific job, or applying for work that is unreasonable considering the claimant's training and experience.

[20] Examples of employer fraud can be found in the 2024 Fraud Report.

[21] Wis. Stat. § 108.04(11)

[22] Worker classification field investigations began in May 2013.

[23] State of Michigan Auditor General. "Fraud and Investigation Activities." December 2023. Report Number: 186-0320-22

[24] Colorado Office of the State Auditor. "Statewide Single Audit Fiscal Year Ended June 30, 2020." June 2021.

[25] U.S. Department of Labor, Office of Inspector General - Office of Audit. "COVID-19: States Struggled to Implement Cares Act Unemployment Insurance Programs." 28 May 2021. Report Number: 19-21-004-03-315.

[26] 20 C.F.R. § 602

[27] Specific guidelines for each of these programs are set by US DOL. For example, BAM operations are outlined in the ET Handbook No. 395.

[28] While not enacted into law, AB152 was passed by the Legislature. The bill, among other things, included required identity verification, education materials, call center operations, and crossmatches for the UI program. The department already requires identity verification, provides various methods for claimant and employer education on the UI system, extends call center hours during high-volume call times, and runs extensive crossmatches beyond those proposed in AB152.

[29] Lavigna, B. (2013). So What Is Employee Engagement, Exactly? In Engaging Government Employees: Motivate and Inspire Your People to Achieve Superior Performance (pp. 11–21). AMACOM.

[30] Based on HR Monthly Position Report, the total number of UI employees as recorded on 03/01/24 was 558. A total of 478 UI employees responded to the employee engagement survey. The survey results have a margin of error of plus or minus 2 percentage points. Margin of Error Calculator. SurveyMonkey. (n.d.). Retrieved May 13, 2024, from https://www.surveymonkey.com/mp/margin-of-error-calculator/

STATE OF WISCONSIN
DWD
Department of Workforce Development

201 E. Washington Ave.
Madison, WI 53703
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State of Wisconsin

Date: April 29, 2024

To: Members of the Joint Committee on Finance and Joint Committee on Information Policy and Technology

From: Department of Administration Secretary-designee Kathy Blumenfeld Kathy Blumenfeld

From: Department of Workforce Development Secretary-designee Amy Pechacek

Subject: 2021 Wisconsin Act 4 Quarterly Report – First Quarter 2024

Pursuant to 2021 Wisconsin Act 4, under Wis. Stat. s. 108.14(27)(e), this report serves to update you on the progress the Department of Workforce Development (DWD) has made on its project to improve the information technology (IT) systems used for processing and paying claims for unemployment insurance (UI) benefits from Jan. 1 to March 31, 2024. We are pleased to share in this report that DWD has continued to make good progress in its UI modernization efforts.

Unemployment Insurance System Modernization

The Unemployment Insurance (UI) Modernization project is the effort to modernize the UI IT systems from a COBOL-based mainframe system to a cloud-based flexible system able to nimbly adapt to changes in the demands on the agency and changes in the program requirements. The goal of this project is to create a more modern, maintainable, sustainable, and adaptable system to meet current and evolving UI needs. Over time, the project will entirely replace the existing, antiquated mainframe, which has limitations in the availability of the system and directly impacts staffing and recruiting resources.

The future UI system will provide end-to-end services to DWD customers (claimants and employers) in a timely manner. DWD staff will be able to administer programs inclusively and efficiently with modern online tools.

Employer Portal

In the last report, DWD announced that it was beginning a new phase of the modernization effort to improve how employers communicate with DWD through an enhanced employer portal. Technological enhancements through this portal will continue to reduce DWD's reliance on outdated methods, such as email, physical correspondence, and phone calls, by creating a modern, streamlined online experience for employers that addresses all their needs in one place.

DWD has an existing employer portal with limited functionality around the submission of tax and wage reports to DWD's UI Division. DWD is enhancing and modernizing its existing portal functionality so the new portal can serve as employers' primary communication platform for all UI operations. For example, the new portal will include the option for employers to securely message UI staff, and upload documentation related to verification requests for previously filed claims and appeals.

During Quarter 4, DWD engaged Google Cloud Professional Services, through Carahsoft Technology Corporation, for this portion of the modernization project. The goal is to create a state-of-the-art web-based and mobile solution that modernizes the current employer portal with the added functionality that improves communication between DWD and its customers for tax and wage reporting, employer information and support, responding to submitted unemployment insurance claims verification, and appeal activities. Some of the most critical items for consideration are secure communication and document sharing to increase efficient collaboration between employers and DWD in the UI program.

During this quarter, DWD and its vendor identified the tasks required to replace the existing portal, enhance its features, and expand its functionality. Technical discovery has been ongoing to ensure that the new product integrates with all the technical solutions employed that result in the processing and payment of unemployment benefits. The planning, discovery, and analysis that has occurred is informing the department's roadmap to the final product.

Claims by County Dashboard

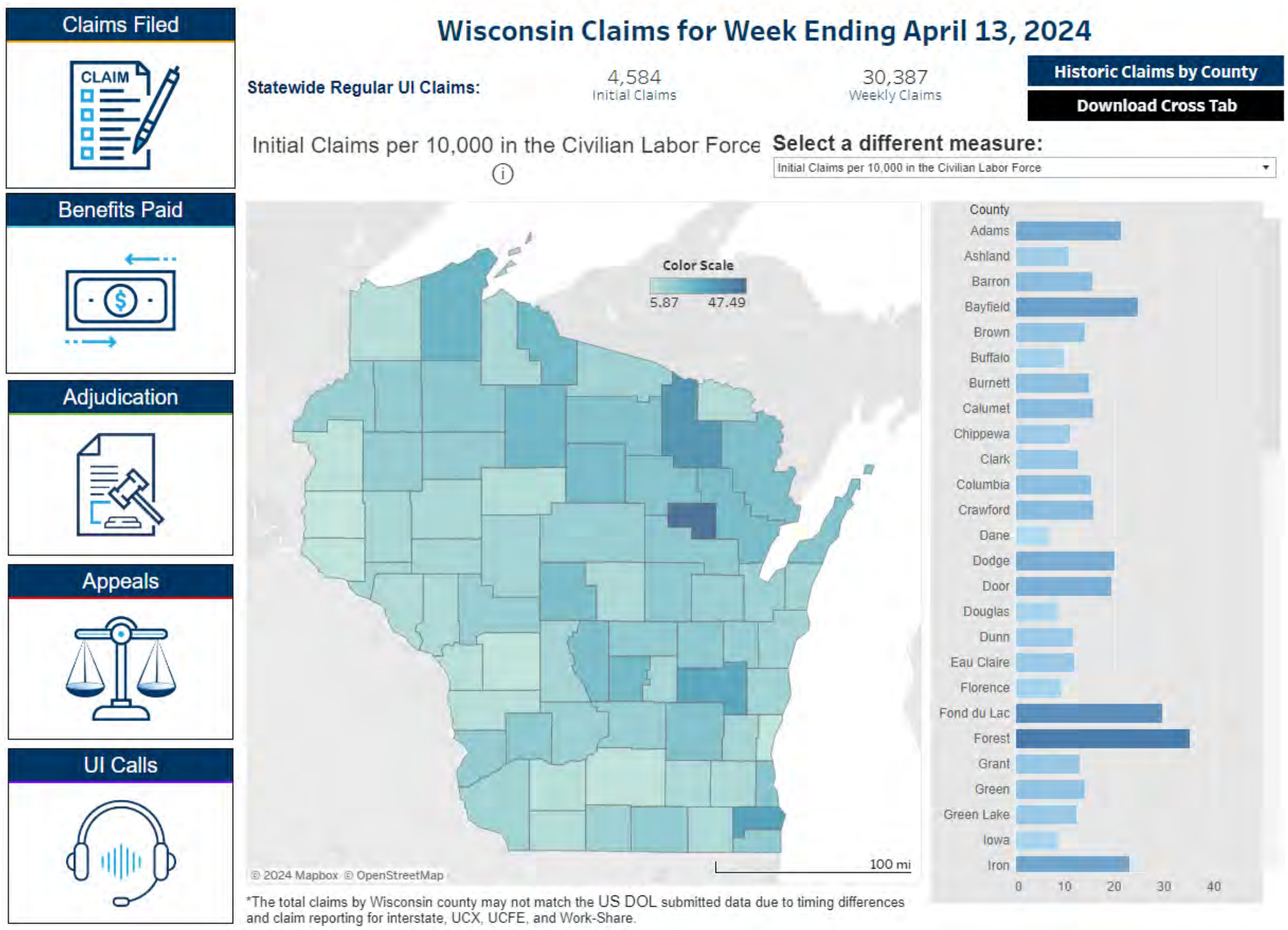
Initially released in May 2022, the UI statistics dashboard provides information on UI claims filed, benefits paid, adjudication, appeals, and help center call metrics. Metrics are updated each Thursday, making up-to-date current and historical UI data available to the public.

By adding the county claims feature to the existing UI statistics dashboard, DWD aims to empower decisionmakers with the data they need to better analyze trends and develop policies tailored to the unique needs of communities across Wisconsin.

Key features of the expanded dashboard include the following measures for both initial claims and weekly claims, summarized by county:

- Total claims;
- Claims per 10,000 in the civilian labor force;
- Claims per the unemployed labor force (as a percentage); and
- Weekly percentage change in claims.

To access the new claims by county statistics, visit the UI Statistics page. Below is a screenshot of the dashboard.



Benefit Calculation and Liability Engine

The benefit calculation and liability engine calculates benefits and pays claimants. As previously reported, DWD is working with the Wisconsin-based company Flexion to develop components of the benefits side of the modernized system. In Quarter 4, system development work with Flexion progressed using the "vertical slice" approach described in the 2021 Wisconsin Act 4 Quarterly Report – Third Quarter 2023. This approach identified the components that need to be developed to accept and process a claim in the modern system. Under this approach, coding work begins for more basic outcomes and that work is then expanded upon to produce code for more complex outcomes over time.

As a reminder, last quarter's work focused on processing straightforward claims and answering the most common questions posed by UI claimants for limited circumstances, such as:

- The status of a claim,
- The amount of the claim,
- Identification and flagging of missing wages, one of the most common issues on a claim, as well as properly holding the payment until that resolution has been cleared, and
- Resolution of that issue on the claim and clearing the payment.

This quarter has focused on the following:

- Centralizing complicated charging information in one location in a more digestible format to enhance the ability for accurate information to be readily available to employers and staff,
- Expanding the toolsets used to provide greater flexibility in the user experience for how information

is displayed on the screen, while still maintaining the accessibility requirements of the system, and
- Continuing work to resolve issues that may appear on a claim.

Infrastructure & Application Security
During Quarter 1, work focused on data security both in the infrastructure and in the application. In particular, the work focused on enhancements to the security posture and to ensure compliance with guidelines. Through these efforts, the amount of data available in the modern system continues to increase, which is improving the system's overall functionality.

Additional work will continue throughout the duration of this UI system to incrementally improve upon the security and reliability of the system's cloud environment on an ongoing basis.

We hope you find this information helpful. We will provide the next quarterly update on the UI modernization project to you in July 2024. In the meantime, please do not hesitate to contact us with questions.

UI Reserve Fund Highlights

June 13, 2024

1. Benefit payments through April 2024 increased by $11.5 million or 7.6% when compared to benefits paid through April 2023.

Benefits Paid	**2024 YTD*** *(in millions)*	**2023 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Regular UI Paid	$163.0	$151.5	$11.5	7.6%

2. Tax receipts through April 2024 declined by $3.4 million or 1.0% when compared to taxes receipts through April 2023.

Tax Receipts	**2024 YTD*** *(in millions)*	**2023 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Tax Receipts	$347.7	$351.1	($3.4)	(1.0%)

3. The April 2024 Trust Fund ending balance was over $1.8 billion, an increase of 22.5% when compared to the same time last year.

UI Trust Fund Balance	**April 2024** (in millions)	**April 2023** (in millions)	**Change** *(in millions)*	**Change** *(in percent)*
Trust Fund Balance	$1,814.1	$1,481.4	$332.7	22.5%

4. Interest earned on the Trust Fund is received quarterly. Interest for the first quarter of 2024 was $11.1 million compared to $5.9 million for the same period last year.

UI Trust Fund Interest	**2024 YTD*** *(in millions)*	**2023 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Interest Earned	$11.1	$5.9	$5.2	88.1%

*All calendar year-to-date (YTD) numbers are based on the April 30, 2024 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended April 30, 2024

WISCONSIN DWD

Department of Workforce Development

Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED April 30, 2024

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	5,788,490.68	112,209,965.91
U.I. BENEFIT ACCOUNTS	(466,384.29)	(2,172,689.65)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	1,872,733,710.85	1,445,670,995.61
TOTAL CASH	1,878,055,817.24	1,555,708,271.87
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	182,433,612.68	200,312,067.26
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(60,985,448.78)	(58,371,477.64)
NET BENEFIT OVERPAYMENT RECEIVABLES	121,448,163.90	141,940,589.62
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	38,891,890.03	37,677,991.25
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(16,064,639.91)	(15,347,844.19)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	22,827,250.12	22,330,147.06
OTHER EMPLOYER RECEIVABLES	23,237,597.01	22,323,236.15
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(7,042,326.67)	(7,576,447.16)
NET OTHER EMPLOYER RECEIVABLES	16,195,270.34	14,746,788.99
TOTAL ACCOUNTS RECEIVABLE	160,470,684.36	179,017,525.67
TOTAL ASSETS	2,038,526,501.60	1,734,725,797.54
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	100,726,484.05	114,429,471.78
OTHER LIABILITIES	49,436,261.73	51,137,557.46
FEDERAL BENEFIT PROGRAMS	1,396,240.37	1,081,771.95
CHILD SUPPORT HOLDING ACCOUNT	14,959.00	53,748.00
FEDERAL WITHHOLDING TAXES DUE	108,126.00	124,769.00
STATE WITHHOLDING TAXES DUE	877,401.00	695,895.04
DUE TO OTHER GOVERNMENTS (8)	3,010,865.72	3,017,307.32
TOTAL LIABILITIES	155,570,337.87	170,540,520.55
EQUITY:		
RESERVE FUND BALANCE	2,941,111,022.72	2,821,029,681.33
BALANCING ACCOUNT	(1,058,154,858.99)	(1,256,844,404.34)
TOTAL EQUITY	1,882,956,163.73	1,564,185,276.99
TOTAL LIABILITIES AND EQUITY	2,038,526,501.60	1,734,725,797.54

1. $284,585 of this balance is for administration purposes and is not available to pay benefits.

2. $1,304,629 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. $11,854,904 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

4. The allowance for uncollectible benefit overpayments is 33.5%. The allowance for uncollectible delinquent employer taxes is 43.2%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.

5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is $2,211,585. Deferrals for the prior year were $2,844,227.

6. $16,387,705, or 42.1%, of this balance is estimated.

7. $78,599,864 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $22,126,620 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

8. This balance includes SAFI Payable of $672. The 04/30/2024 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $100,007. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were $9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED April 30, 2024

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,220,078,699.88	3,290,285,224.79	3,152,504,720.62
BALANCING ACCOUNT	(1,602,247,015.72)	(1,608,925,132.26)	(1,792,807,841.51)
TOTAL BALANCE	1,617,831,684.16	1,681,360,092.53	1,359,696,879.11
INCREASES:			
TAX RECEIPTS/RFB PAID	201,937,957.57	242,790,757.28	244,360,075.39
ACCRUED REVENUES	3,786,197.90	4,771,722.48	7,285,810.50
SOLVENCY PAID	90,097,917.57	104,883,137.54	106,775,450.24
BENEFIT CONCEALMENT INCOME	196,876.23	813,264.34	1,156,970.09
INTEREST EARNED ON TRUST FUND	0.00	11,077,299.74	5,855,606.03
FUTA TAX CREDITS	(8.67)	(3,137.30)	0.00
OTHER CHANGES	52,311.77	192,859.88	232,786.61
TOTAL INCREASES	296,071,252.37	364,525,903.96	365,666,698.86
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	26,396,175.63	138,354,392.22	126,393,383.63
QUIT NONCHARGE BENEFITS	3,316,221.23	17,772,370.80	17,970,578.19
OTHER DECREASES	(12,275.50)	231,619.47	9,950,163.84
OTHER NONCHARGE BENEFITS	1,246,651.44	6,571,450.27	6,864,175.32
TOTAL DECREASES	30,946,772.80	162,929,832.76	161,178,300.98
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,941,111,022.72	2,941,111,022.72	2,821,029,681.33
BALANCING ACCOUNT	(1,058,154,858.99)	(1,058,154,858.99)	(1,256,844,404.34)
TOTAL BALANCE (9) (10) (11) (12)	1,882,956,163.73	1,882,956,163.73	1,564,185,276.99

9. This balance differs from the cash balance related to taxable employers of $1,826,226,884 because of non-cash accrual items.

10. $284,585 of this balance is set up in the Trust Fund in one subaccount to be used for administration purposes and is not available to pay benefits.

11. $1,304,629 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. $11,854,904 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 04/30/2024

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$201,937,957.57	$242,790,757.28	$244,360,075.39
SOLVENCY	90,097,917.57	104,883,137.54	106,775,450.24
ADMINISTRATIVE FEE	17.95	61.10	141.82
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	2,145,161.79	2,469,103.06	2,493,661.04
UNUSED CREDITS	12,565,998.24	13,139,660.15	5,402,704.65
GOVERNMENTAL UNITS	740,554.61	3,125,437.95	3,085,414.48
NONPROFITS	939,139.24	3,264,632.28	2,624,595.95
INTERSTATE CLAIMS (CWC)	304,925.62	1,127,482.90	833,467.92
ERROR SUSPENSE	93,037.51	98,404.85	240,622.69
FEDERAL PROGRAMS RECEIPTS	(1,439,286.73)	(5,422,283.02)	(8,544,974.44)
OVERPAYMENT COLLECTIONS	2,860,229.06	12,600,204.21	14,373,254.73
BENEFIT CONCEALMENT INCOME	196,876.23	813,264.34	1,156,970.09
EMPLOYER REFUNDS	(843,264.00)	(3,937,657.59)	(5,929,120.32)
COURT COSTS	71,604.79	266,497.10	270,697.00
INTEREST & PENALTY	404,854.89	1,284,604.76	1,108,602.30
CARD PAYMENT SERVICE FEE	6,158.49	18,555.42	11,398.56
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	349,896.86	1,426,531.15	1,718,511.56
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	13,686.66	16,809.90	28,732.15
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	0.00	17,157.15	10,008.39
SPECIAL ASSESSMENT FOR INTEREST	672.06	4,990.37	3,667.86
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	11,077,299.74	5,855,606.03
MISCELLANEOUS	15,325.45	54,664.69	81,877.31
TOTAL RECEIPTS	$310,461,463.86	$389,119,315.33	$375,961,365.40
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$29,383,022.36	$149,228,453.18	$139,389,012.88
NONPROFIT CLAIMANTS	769,681.84	3,194,424.01	2,287,624.80
GOVERNMENTAL CLAIMANTS	617,125.34	3,075,829.24	2,867,986.96
INTERSTATE CLAIMS (CWC)	324,855.32	1,570,246.41	1,594,664.52
QUITS	3,316,221.23	17,772,370.80	17,970,578.19
OTHER NON-CHARGE BENEFITS	1,238,395.12	6,544,633.81	6,827,756.17
CLOSED EMPLOYERS	(1,843.80)	(1,662.26)	535.56
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	58,845.23	369,468.30	551,025.19
EX-MILITARY (UCX)	16,980.95	92,409.44	79,843.25
TRADE ALLOWANCE (TRA/TRA-NAFTA)	16,084.00	52,040.00	234,546.68
WORK-SHARE (STC)	(1,473.76)	(7,360.47)	(2,481,268.87)
FEDERAL PANDEMIC UC (FPUC)	(1,062,318.78)	(4,141,099.88)	(4,181,782.45)
LOST WAGES ASSISTANCE $300 ADD-ON (LWA)	(80,064.59)	(212,529.37)	(298,511.88)
MIXED EARNERS UC (MEUC)	0.00	0.00	800.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(222,708.65)	(697,082.45)	(750,644.02)
PANDEMIC EMERGENCY UC (PEUC)	(224,851.93)	(862,146.24)	(1,136,733.97)
PANDEMIC FIRST WEEK (PFW)	(5,198.81)	(19,774.37)	79,059.82
EMER UC RELIEF REIMB EMPL (EUR)	(28,568.24)	(117,282.44)	(65,819.82)
2003 TEMPORARY EMERGENCY UI (TEUC)	(119.90)	(882.39)	(7,041.15)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(11,610.09)	(50,224.08)	(59,105.94)
FEDERAL EMERGENCY UI (EUC)	(103,824.59)	(355,382.51)	(474,246.93)
FEDERAL EXTENDED BENEFITS (EB)	(9,004.73)	(30,037.86)	(29,350.30)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(550.00)	(1,375.00)	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(87.93)	(87.93)	0.00
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(0.18)	(87.29)	(2,090.41)
INTEREST & PENALTY	252,714.10	1,132,978.79	982,680.40
CARD PAYMENT SERVICE FEE TRANSFER	4,020.90	16,113.63	9,381.54
PROGRAM INTEGRITY	391,364.55	1,605,813.93	1,893,927.05
SPECIAL ASSESSMENT FOR INTEREST	4,318.31	10,392.83	7,600.77
COURT COSTS	65,028.88	234,206.47	249,861.30
ADMINISTRATIVE FEE TRANSFER	17.68	56.96	173.64
FEDERAL WITHHOLDING	44,096.00	(127,235.00)	(124,454.82)
STATE WITHHOLDING	2,363,681.31	886,755.17	770,578.52
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	9,704,822.76
FEDERAL LOAN REPAYMENTS	8.67	3,137.30	0.00
TOTAL DISBURSEMENTS	$37,114,235.81	$179,165,080.73	$175,891,409.44
NET INCREASE(DECREASE)	273,347,228.05	209,954,234.60	200,069,955.96
BALANCE AT BEGINNING OF MONTH/YEAR	$1,604,708,589.19	$1,668,101,582.64	$1,355,638,315.91
BALANCE AT END OF MONTH/YEAR	$1,878,055,817.24	$1,878,055,817.24	$1,555,708,271.87

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED April 30, 2024

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,564,962,485.73	$1,627,466,340.60	$1,303,839,732.39
INCREASES:			
TAX RECEIPTS/RFB PAID	201,937,957.57	242,790,757.28	244,360,075.39
U.I. PAYMENTS CREDITED TO SURPLUS	90,273,222.33	107,825,456.60	109,632,095.85
INTEREST EARNED ON TRUST FUND	0.00	11,077,299.74	5,855,606.03
FUTA TAX CREDITS	(8.67)	(3,137.30)	0.00
TOTAL INCREASE IN CASH	292,211,171.23	361,690,376.32	359,847,777.27
TOTAL CASH AVAILABLE	1,857,173,656.96	1,989,156,716.92	1,663,687,509.66
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	26,396,175.63	138,354,392.22	126,393,383.63
BENEFITS CHARGED TO SURPLUS	4,579,165.41	24,692,722.98	25,145,914.41
TOTAL BENEFITS PAID DURING PERIOD	30,975,341.04	163,047,115.20	151,539,298.04
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	9,704,822.76
EMER UC RELIEF REIMB EMPL EXPENDITURES	(28,568.24)	(117,282.44)	(65,819.82)
ENDING U.I. CASH BALANCE (13) (14) (15)	1,826,226,884.16	1,826,226,884.16	1,502,509,208.68

13. $284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

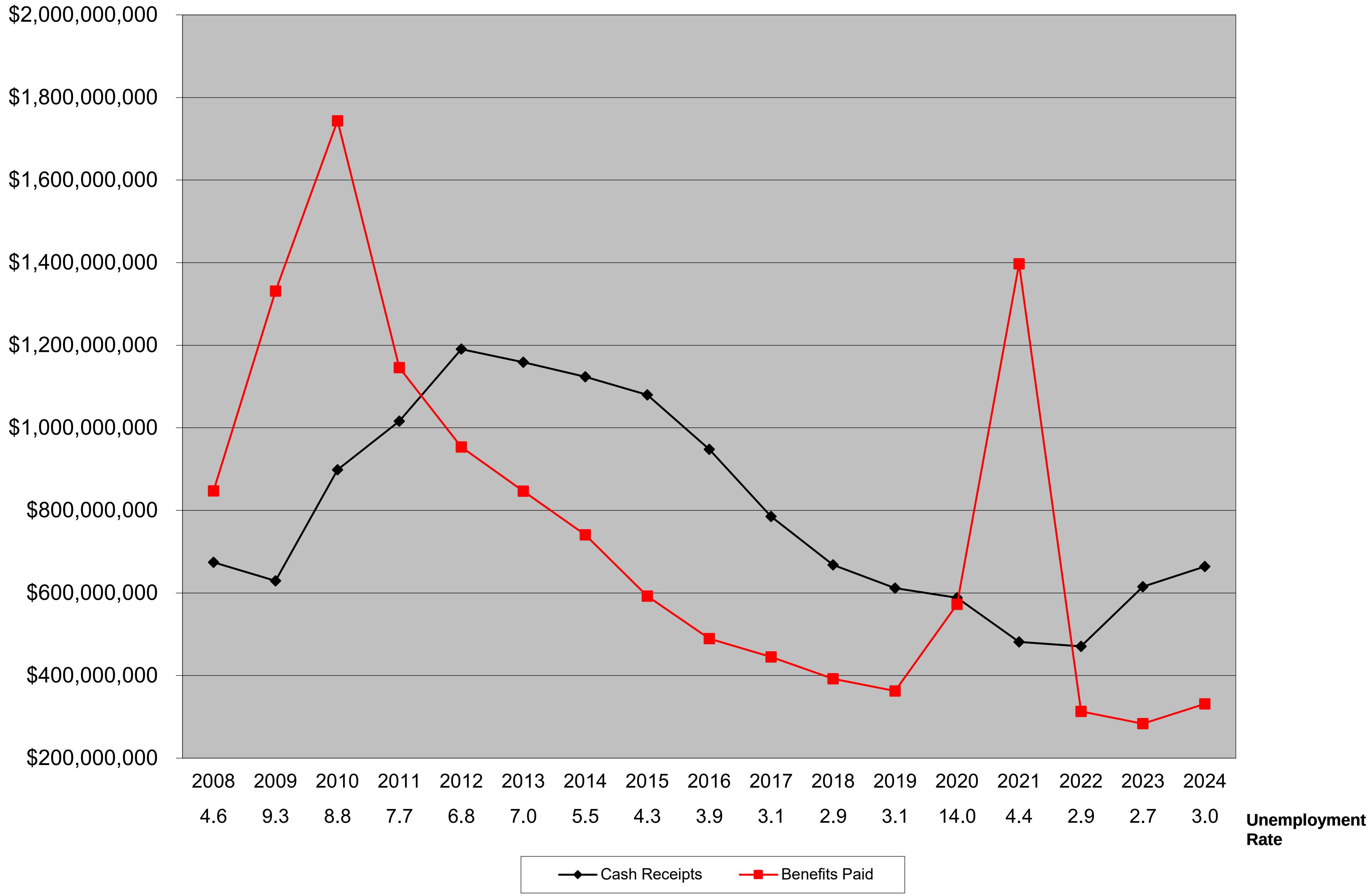
14. $1,304,629 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

15. $11,854,904 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

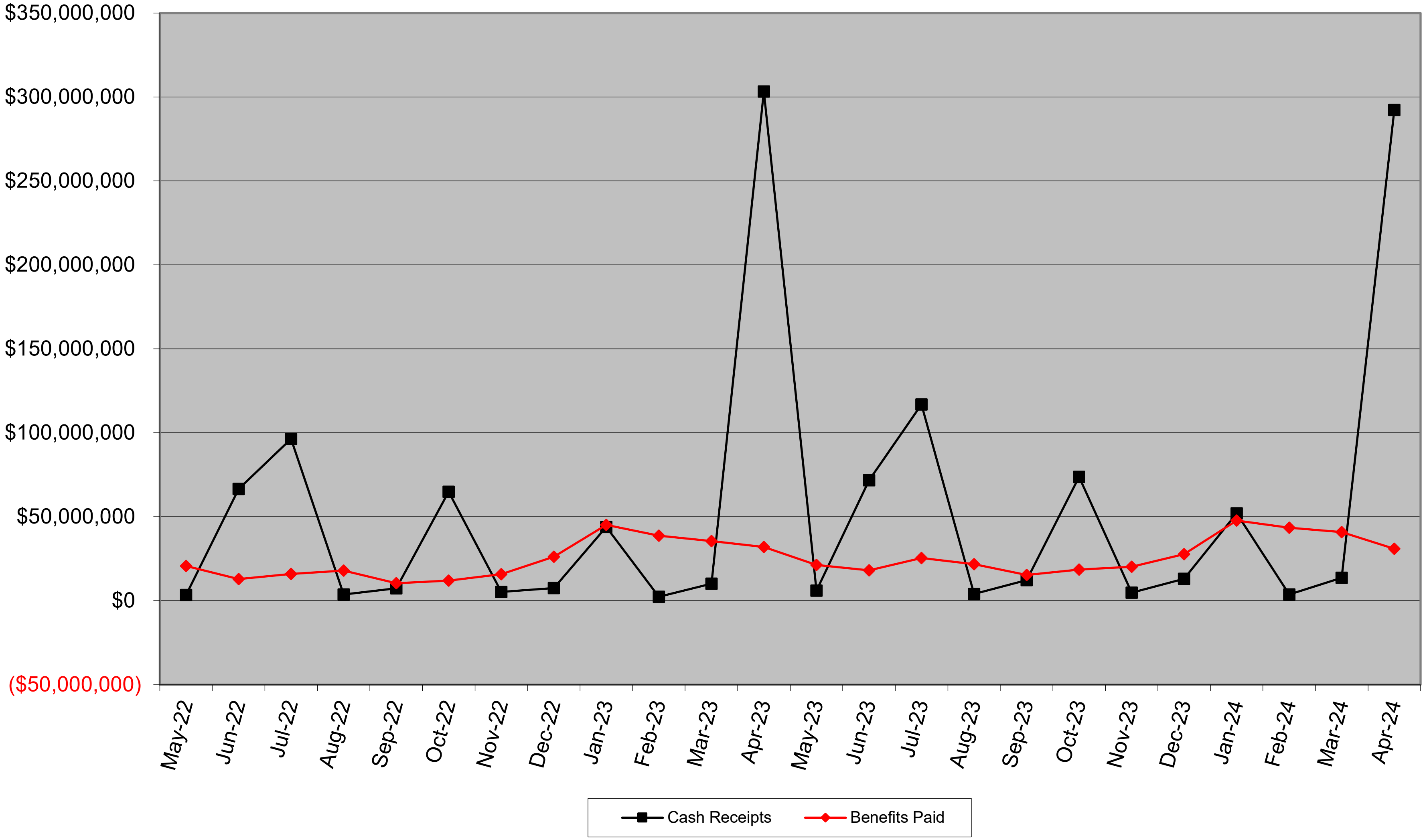
BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED April 30, 2024

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($1,200,658,693.30)	($1,209,257,177.64)	($1,399,163,452.19)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	90,097,917.57	104,883,137.54	106,775,450.24
OTHER INCREASES	175,304.76	2,942,319.06	2,856,645.61
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	90,273,222.33	107,825,456.60	109,632,095.85
TRANSFERS BETWEEN SURPLUS ACCTS	51,938.25	48,860.58	(59,804.99)
INTEREST EARNED ON TRUST FUND	0.00	11,077,299.74	5,855,606.03
FUTA TAX CREDITS	(8.67)	(3,137.30)	0.00
TOTAL INCREASES	90,325,151.91	118,948,479.62	115,427,896.89
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	3,316,221.23	17,772,370.80	17,970,578.19
OTHER NON-CHARGE BENEFITS	1,262,944.18	6,920,352.18	7,175,336.22
BENEFITS CHARGED TO SURPLUS SUBTOTAL	4,579,165.41	24,692,722.98	25,145,914.41
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	9,704,822.76
EMER UC RELIEF REIMB EMPL EXPENDITURES	(28,568.24)	(117,282.44)	(65,819.82)
BALANCE AT THE END OF THE MONTH/YEAR	(1,114,884,138.56)	(1,114,884,138.56)	(1,318,520,472.65)

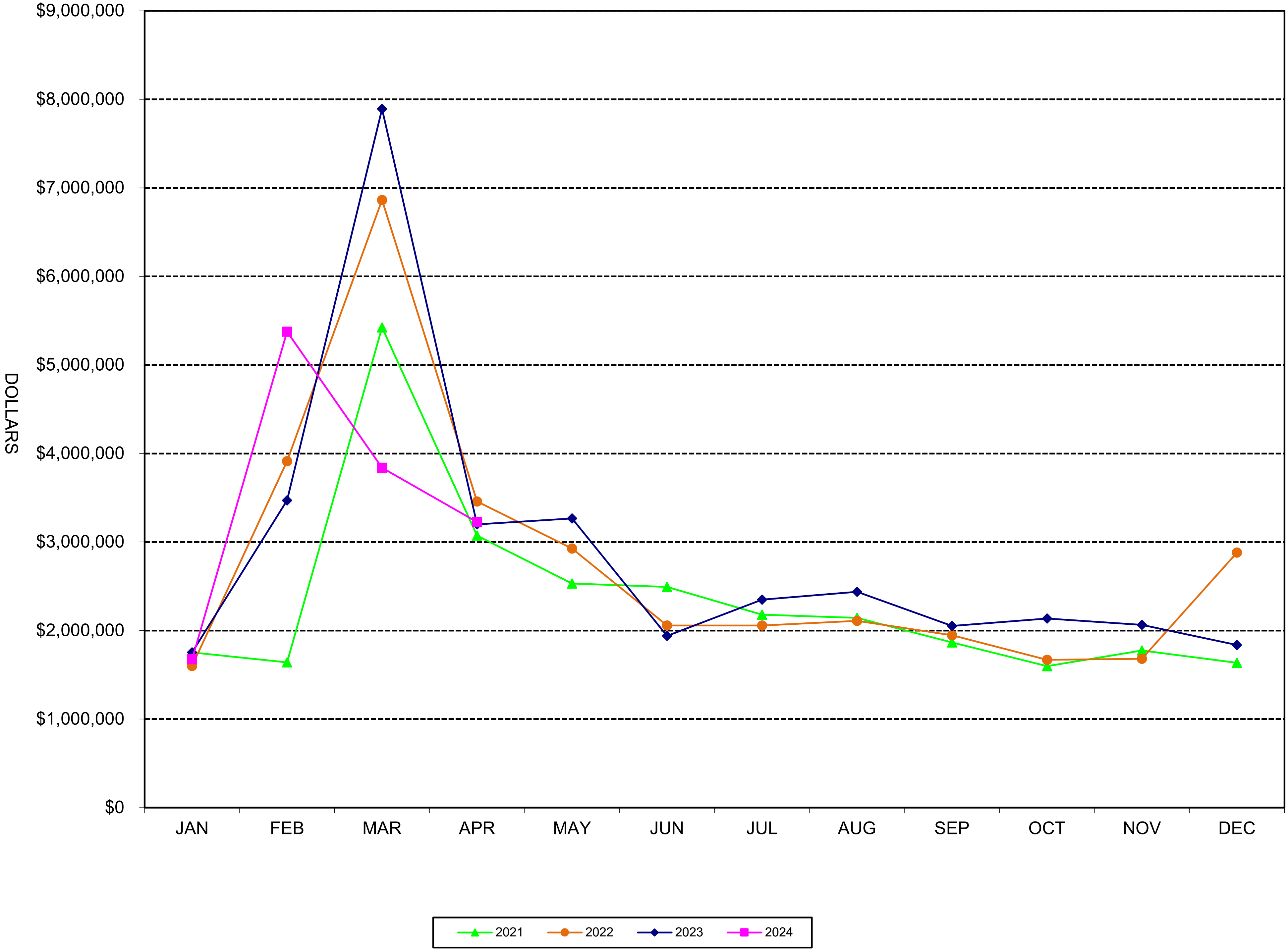
Cash Activity Related to Taxable Employers with WI Unemployment Rate
(for all years from May to April)

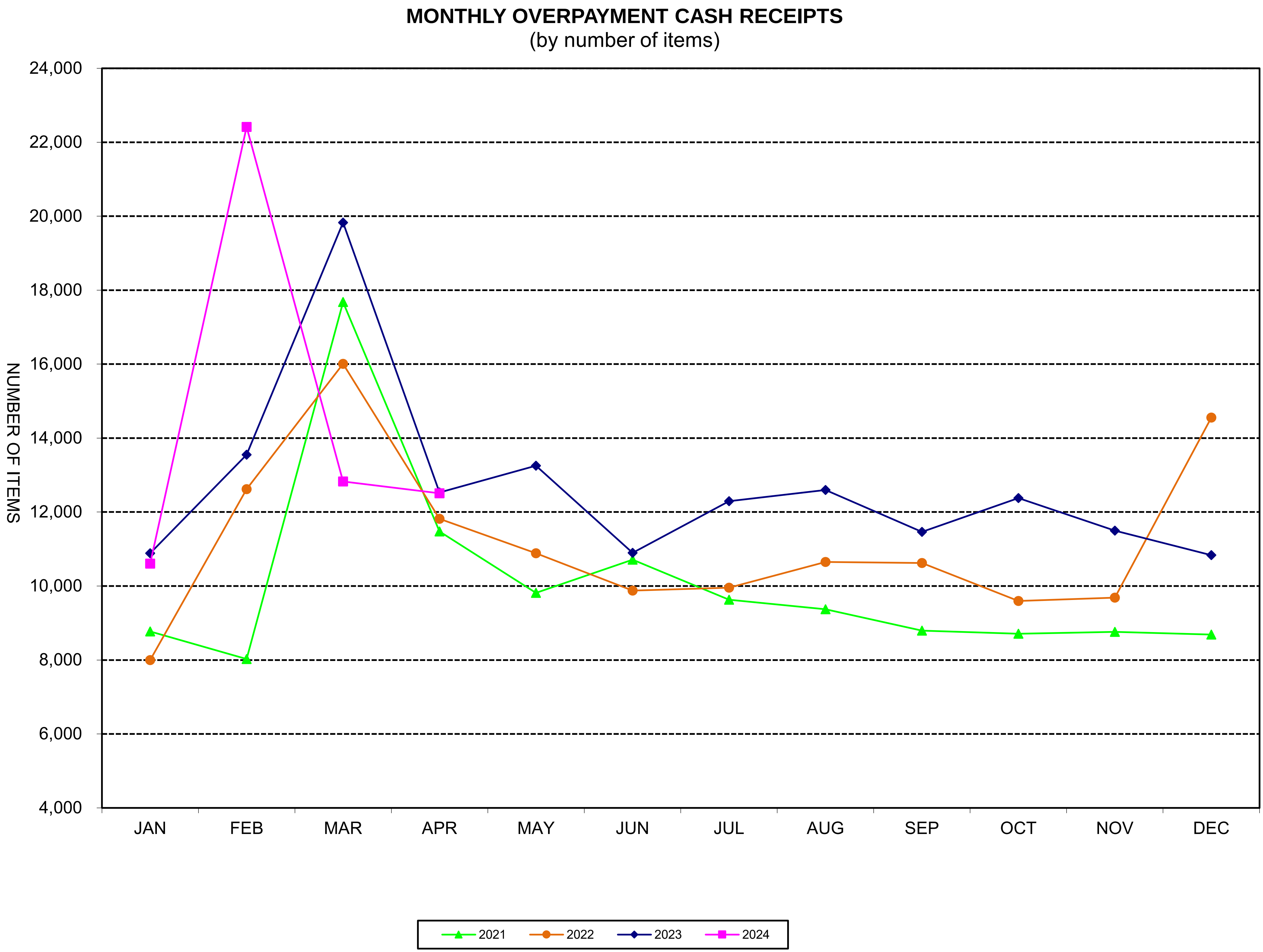


Cash Activity Related to Taxable Employers - Most Recent 24 Months
Excluding FUTA Tax Credits

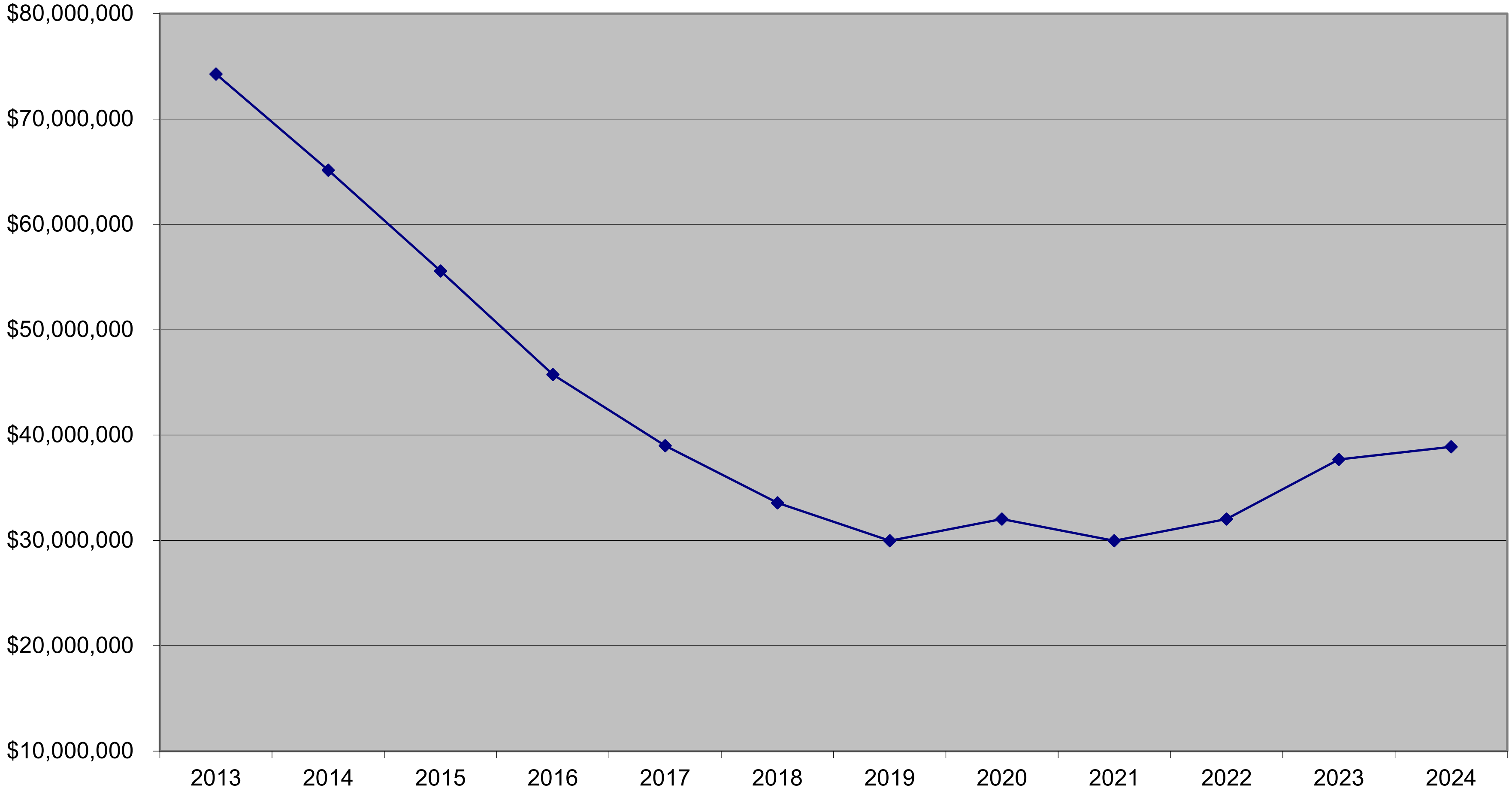


MONTHLY OVERPAYMENT CASH RECEIPTS
(by dollar amount)



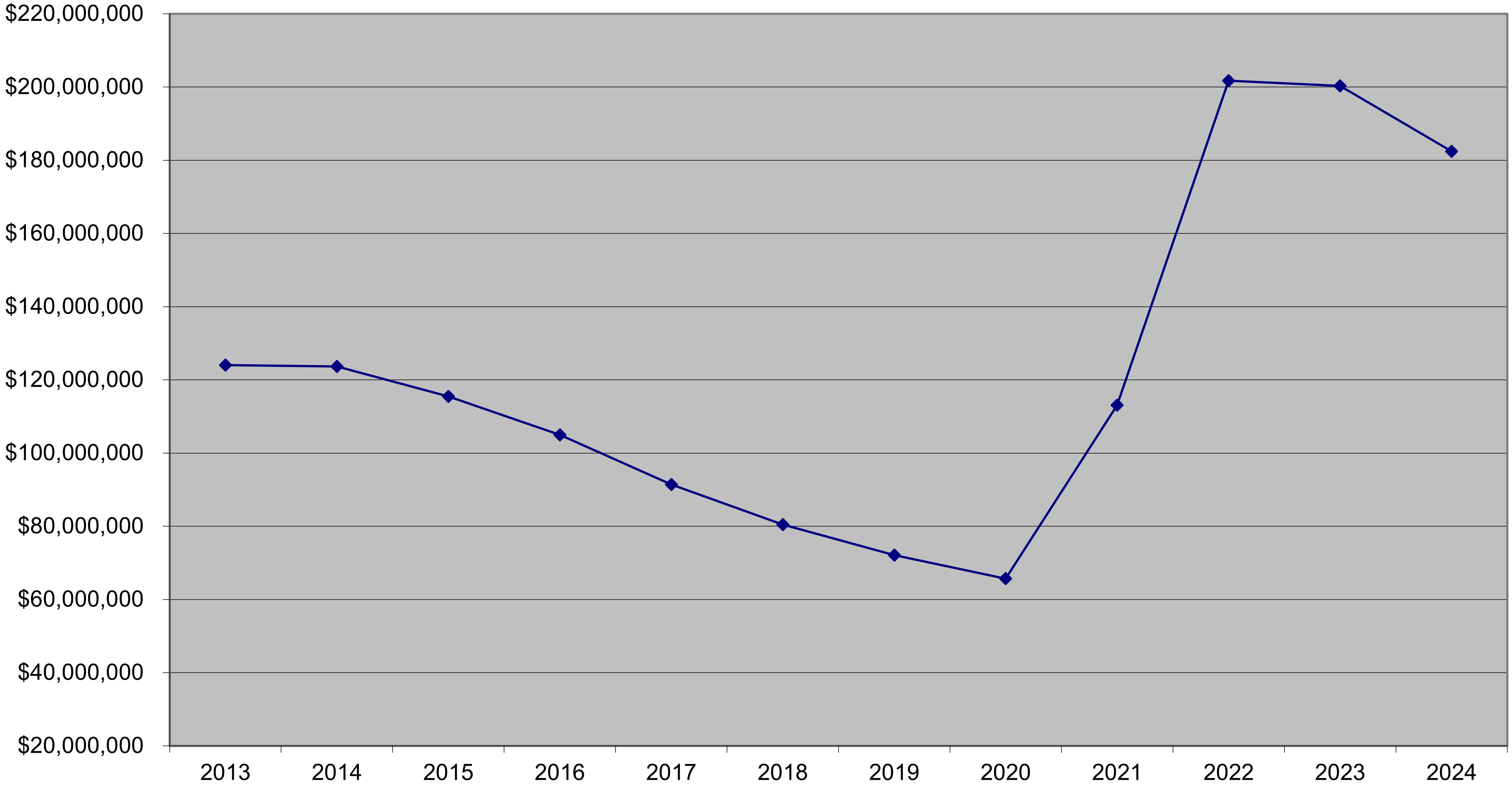

MONTHLY OVERPAYMENT CASH RECEIPTS
(by number of items)
NUMBER OF ITEMS
24,000
22,000
20,000
18,000
16,000
14,000
12,000
10,000
8,000
6,000
4,000
JAN
FEB
MAR
APR
MAY
JUN
JUL
AUG
SEP
OCT
NOV
DEC
2021
2022
2023
2024

TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of April)



Source: Monthly Balance Sheet

TOTAL BENEFIT OVERPAYMENT RECEIVABLES
(for all years as of April)



Source: Monthly Balance Sheet

Financial Outlook

Wisconsin
Unemployment
Insurance
Program

Report prepared for the Governor, Legislature and Unemployment Insurance Advisory Council

(Wis. Stat. § 16.48)

Amy Pechacek, Secretary-designee
Department of Workforce Development
May 2024
UCD-8967-P (R. 05/2024)

Executive Summary

Wisconsin's record-setting economic performance during 2023 contributed to year-over-year strengthening of the Unemployment Insurance (UI) Trust Fund, while total claimant payments increased over the year as workers saw their wages increase. The Wisconsin Department of Workforce Development (DWD) recognizes the critical role the UI Trust Fund plays in providing benefits to workers who lose jobs through no fault of their own and each biennium delivers this Financial Outlook Report for the Governor, Legislature and Unemployment Insurance Advisory Council (UIAC) in accordance with Wis. Stat. § 16.48.

During 2023, Wisconsin achieved a record low unemployment rate of 2.6% and reached a record high number of jobs. The UI Trust Fund balance grew over the year, climbing to $1.6 billion at the end of 2023, up from $1.3 billion at the end of 2022. This growth was achieved while the tax schedule in effect was Schedule D, the schedule with the lowest contribution rate for employers.

Over the year, improving wages for workers contributed to an increase in benefits paid out of the UI Trust Fund to claimants. In 2023, DWD's Unemployment Insurance Division paid approximately $320 million in regular UI benefit payments, up from $271 million in 2022.

Wisconsin's maximum weekly benefit, set in 2013, remains at $370 while the average weekly benefit has held at 29% of average weekly wages since 2020, which is an all-time low. Historically, the benefit replacement rate varied between 32% to 46% of average weekly wages, with a 40% average since 1973. The lower the benefit replacement rate, the greater the financial impact is on UI claimants due to a greater loss of income. Wisconsin's maximum weekly benefit lags the national average of $525.

While the UI Trust Fund has grown from about $1 billion at the end of 2021, it remains below the level that the U.S. Department of Labor (US DOL) recommends. The US DOL calculates an Average High Cost Multiple (AHCM) of 1.0 where a trust fund would be expected to pay UI benefits at a historically high rate for a year without being completely exhausted. For Wisconsin to meet that standard, the UI Trust Fund would need a balance of about $2.61 billion. Nineteen states meet the minimum solvency standard set by the US DOL. Even with continued economic growth and historically low unemployment rates, Wisconsin's UI Trust Fund is not expected to reach an AHCM level of 1.0 by 2026.

Employers are paying the lowest rate, Schedule D, into the UI Trust Fund because the balance was above $1.2 billion on June 30, 2023. Provided that the UI Trust Fund balance remains above $1.2 billion on June 30, 2024, Schedule D will remain in effect for 2025.

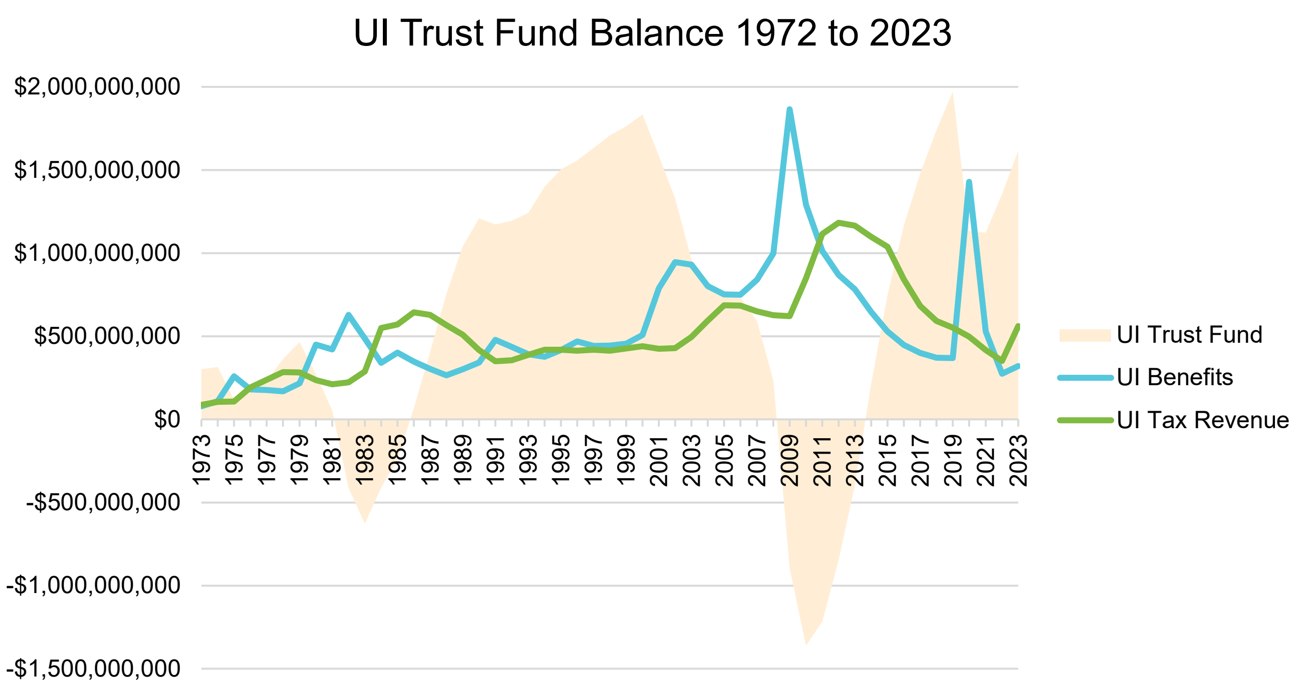
Table of Contents

Introduction

The Department of Workforce Development is pleased to present this report on the financial outlook of the State of Wisconsin UI program.

This Financial Outlook provides a summary of the UI program to measure the adequacy of the UI Trust Fund and the UI financing system. It provides background on UI financing as well as projections for the near-term future of the UI program.

Unemployment benefits, funded by employer contributions, provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment.



ET Financial Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

The COVID-19 pandemic caused a rapid increase in UI benefit payments when UI benefit payments had been historically low. As Wisconsin's economy recovered from the effects of the COVID-19 pandemic, UI benefit payments have decreased. At the end of 2023, the UI Trust Fund had a balance of $1.6 billion. This is an increase of $300 million from the 2022 ending balance of $1.3 billion.

Section 1 of this Financial Outlook provides background on the Wisconsin UI Benefits and Financing System. Section 2 provides a recent history of the UI Trust Fund.[1] Section 3 summarizes any recent UI law changes and their impacts on UI financing, which may affect current and future UI benefits and tax revenues. Section 4 provides UI Trust Fund projections through calendar-year end 2026. Finally, Section 5 examines recent trends in the benefit replacement rate.

[1] For a full history of the modern UI financing system, see Appendix A.

Section 1: Background on the Wisconsin UI Benefits and Financing System

Unemployment Insurance Benefits

UI benefits are paid to claimants who have lost employment through no fault of their own and have a work history with one or more employers that participate in the UI program. To continue to qualify for UI benefit payments, a claimant must be able and available for full-time work and, unless granted a waiver, must be actively searching for work. A person's UI benefit amount is based on their past wages, up to a maximum weekly benefit rate of $370. Wisconsin's maximum weekly benefit rate is below the national average of $525 weekly and below the average of $587 weekly in bordering states.[2] In Wisconsin, a claimant may receive up to 26 weeks of regular UI benefits, which is the same maximum duration in all but 10 states.

Covered Employers in the Unemployment Insurance System

Most employers in Wisconsin are "covered employers" who must participate in the UI program. Covered employers fall into two groups:

Taxable Employers

The vast majority of employers in Wisconsin are taxable employers, also known as contributory employers. These employers fund UI benefit payments and partially fund UI program operations through quarterly state and federal taxes. Unemployment benefit risk is spread across all employers through taxes based on the employer's unemployment experience, instead of employers self-financing unemployment benefits.

Reimbursable Employers

Reimbursable employers self-finance unemployment benefits for their workers. By statute, state and local government units are classified as reimbursable employers.[3] Nonprofit organizations and Native American tribes are initially classified as taxable employers but can elect to be reimbursable employers. UI administers benefit payments to individuals who worked for reimbursable employers and then bills those employers directly to reimburse the UI Trust Fund for the UI benefits paid.

Unemployment Insurance Taxes (Contributions)

UI benefits are financed by employer taxes paid to the Wisconsin UI Trust Fund. The federal government also collects unemployment taxes to fund state administration of the UI program.

State Taxes

State UI taxes finance Wisconsin UI benefits. Employers are assessed UI taxes on each employee's wages up to the taxable wage base. Since 2013, an employer is assessed UI taxes on the first $14,000 in annual wages paid to each employee, the "taxable wage base." The tax rate an employer pays on wages up to the taxable wage base is determined by two separate factors. The first factor is the UI tax schedule in effect for a given rate year. The UI tax schedule in effect for a calendar year is determined

[2] Averages provided exclude benefit allowances for dependents. Complete data is provided in Appendix B.
[3] Under Wis. Stat. §108.15 (3), government units other than the state may elect contribution financing.

by the UI Trust Fund balance on June 30 of the previous year. The higher the UI Trust Fund balance, the lower the tax rate schedule in effect. State legislation (2021 Wis. Act 59) set the rate schedule for 2022 and 2023 to Schedule D, the lowest rate schedule. The UI Trust Fund balance on June 30, 2023 determined the rate schedule for 2024 to be Schedule D. If the UI Trust Fund balance remains above $1.2 billion on June 30, 2024, Schedule D will be in effect for 2025.

The following table outlines the four tax schedules:

Tax Schedule	UI Trust Fund Balance (as of June 30 of the previous year)	Employer Contribution Rate
Schedule A	Less than $300,000,000	Highest
Schedule B	Greater than or equal to $300,000,000 but less than $900,000,000	
Schedule C	Greater than or equal to $900,000,000 but less than $1,200,000,000	
Schedule D	Greater than or equal to $1,200,000,000	Lowest

The second factor impacting the employer's tax rate is the employer’s experience with the UI system known as their "experience rating." The more UI benefits paid to current or former employees of an employer, the higher the tax rate that employer will pay, assuming the employer's payroll remains constant. Wisconsin employers not previously covered by the Wisconsin UI system are assigned a new employer tax rate for their first three years of contributions. This rate varies depending on the industry and size of the employer. After three years, an employer's taxes are then based on their unemployment experience.

Once the tax schedule and employer rates are determined, the total tax rate is composed of the basic tax and the solvency tax.

Basic Taxes

The basic tax is generally the larger portion of the state tax. The basic tax is the portion of the employer-paid tax credited to the employer's UI account. The amount an employer pays in basic taxes is tied to the employer’s experience with the UI system.

Solvency Taxes

The solvency tax is generally smaller than the basic tax amount. Solvency taxes are deposited in the UI Trust Fund and credited to the UI Balancing Account. UI benefit payments not charged to specific employers are charged to the UI Balancing Account. The solvency tax is paid by taxable employers and covers risk sharing among employers participating in the UI system.

Allocation of State Taxes

Administrative and Program Integrity Assessment

Since 2017, a separate administrative assessment, used for program integrity purposes, has been collected as part of the UI state tax. The administrative assessment amount is a flat 0.01% rate with a corresponding reduction in the solvency tax rate for all employers subject to a solvency tax. The administrative assessment does not change the total amount of tax an employer is required to pay.

UI Employer Account

Each employer has its own employer account that measures the employer's experience with the UI system. It is not a savings account for the employer to pay future benefits. The basic tax an employer pays is entered as a credit on the account. UI benefit payments paid to former (or in some cases, current) workers are charged against the account. The balance of the employer's account is the net difference between all basic taxes collected and the benefit payments charged over the employer's history, also known as the Reserve Fund Balance. If an employer's account balance falls below zero, benefits will still be paid to the employer's eligible former workers.

An employer's account balance on June 30 determines its tax rate.[4][5]

UI Balancing Account

The UI Balancing Account is a shared risk account within the UI Trust Fund. This account insulates employers from certain charges against their employer account to prevent those charges from impacting their experience rating. These charges are for benefits that by statute, are not charged to employers' accounts, such as employees quitting to take another job and then becoming unemployed afterwards. The UI Balancing Account is primarily funded by two sources.[6] The first source is the employer-paid solvency tax, which totaled $158.2 million in 2023. The second source is interest earned on the UI Trust Fund, which was $34.8 million in 2023. If the UI Balancing Account balance falls below zero, benefits will still be paid to eligible claimants.

Certain UI benefit payments are, by statute, not charged to a specific employer's account but are instead charged to the UI Balancing Account.[7] There are seven basic categories of UI benefit payments charged to the UI Balancing Account: write-offs, quits, misconduct, substantial fault, continued employment, approved training, and second benefit year. Full descriptions of these charges can be found in Appendix C. There were $53.4 million in direct charges to the UI Balancing Account in 2023.

The UI Balancing Account balance represents the history of revenues credited and benefits charged to the account. The balance was negative $1.16 billion as of Dec. 31, 2023.

[4] While the payroll used is for the fiscal year ending June 30, employers' 2nd quarter contribution and wage reports and payments due July 31 are reflected in this calculation if made on a timely basis. Additional details on employer tax rates, including the current rate table, can be found on our website: https://dwd.wisconsin.gov/ui/employers/taxrates.htm

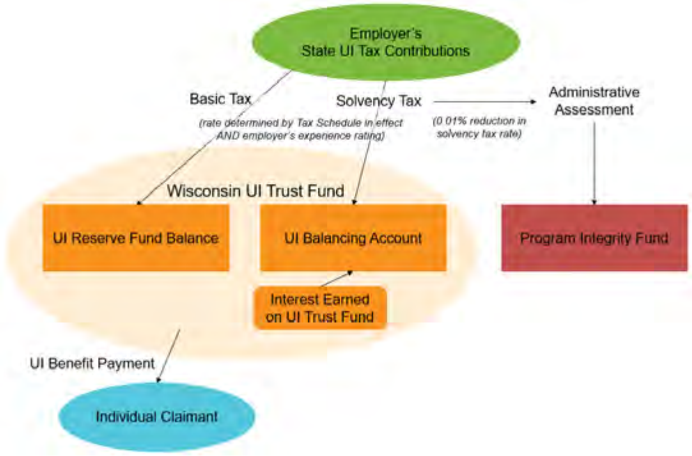
[5] During the COVID-19 pandemic, many state and federal laws relieved employers of the burden of future tax rate increases due to heightened payments made during the pandemic.

[6] Other federally distributed funds are also credited to the UI Balancing Account. One example is the FUTA credit reduction revenue, which occurs when the UI system is borrowing.

[7] Wis. Stat. § 108.07

Composition of UI Trust Fund

In summary, the UI Trust Fund balance is the sum of employers' reserve funds and the UI Balancing Account. The below diagram is an example of the UI process for a taxable employer:



Federal Unemployment Taxes (FUTA) [8]

The FUTA tax is distinguishable from state UI taxes in two important ways. First, it is a flat wage tax, meaning the tax rate is not experience-rated. Employers are taxed at the same rate no matter how much or how little they have used the UI system in the past. Second, the FUTA tax does not affect future tax rates. FUTA taxes pay for the following:

Unemployment Insurance Administration

The administration of state UI programs is funded by FUTA tax revenue. The US DOL determines the amount of administrative grant funding available to each state. Receipt of federal grant funds requires states' administration of unemployment programs to substantially comply with federal requirements and states' unemployment laws to conform to federal UI laws.

Emergency Unemployment Compensation (EUC) and Extended Benefits (EB)

EUC programs are temporary federal programs that provide additional benefits to claimants who have exhausted state UI benefits. Funding for EUC programs is solely by FUTA tax revenue. Congress typically authorizes EUC payments during severe recessions. During the COVID-19 pandemic, Congress authorized Pandemic Emergency Unemployment Compensation (PEUC) and other emergency programs.

The EB program extends benefits up to 20 additional weeks for claimants who have exhausted state UI benefits and EUC benefits. Funding for the EB program is shared equally by the state and federal government. The state portion is funded by the state's UI trust fund and the federal portion is funded by FUTA tax revenue. During periods of high employment, the federal government may provide additional funding for the EB program to cover the state's share.

UI Trust Fund Borrowing

When states have exhausted their state trust fund and need to borrow to pay benefits, the FUTA tax creates a revenue source for borrowing. In Wisconsin, this means the overall UI Trust Fund balance would need to be negative. Individual employer reserve fund balances may be negative

[8] Federal Unemployment Tax Act, 26 U.S.C. § 3301.

or the UI Balancing Account may be negative, but as long as the sum of the UI Trust Fund is positive, Wisconsin would not need to borrow to pay benefits. After the UI Trust Fund was depleted in 2009, Wisconsin borrowed from the federal government to pay benefits and finished repaying all federal loans with interest in 2014. Unlike many other states, Wisconsin did not need to borrow funds during the COVID-19 pandemic.

Costs of Borrowing Federal Funds to Pay UI Benefits

FUTA Credit Reductions

The tax rate for FUTA is 6.0% on the first $7,000 of an employee's wages; however, up to 5.4% can be credited back to employers if certain requirements are met. These requirements include the state maintaining a positive trust fund balance; the employer timely paying their state UI tax; and the employer paying the state tax on all the same wages that are subject to FUTA. If a state's trust fund remains negative on January 1 for two consecutive years, the FUTA tax credit is reduced by 0.3 percentage points each year the state's loan against the trust fund is outstanding. From 2011 through 2013, Wisconsin employers were subject to FUTA tax credit reductions for a total cost to employers of $291 million. The additional federal taxes paid by Wisconsin employers were used to repay the federal loans. When the UI Trust Fund balance became positive, employers were again eligible for the full FUTA tax credit.

Special Assessment for Interest (SAFI)

Federal law prohibits using regular state UI taxes to pay interest on a federal loan to a state trust fund, so a separate funding source is needed. Wisconsin initially paid the interest charges on its federal loans through a special assessment on employers in 2011 and 2012. Although liability for the interest payments remained, the SAFI was not assessed after 2012. Starting in 2013, the Wisconsin Legislature allocated state General Purpose Revenue (GPR) to cover interest due on the UI loan. In total, $103 million in interest costs were assessed on UI Trust Fund loans due to the Great Recession; employers paid $78 million through SAFI and the remaining $25 million was paid with Wisconsin GPR.

There is a significant cost to employers associated with borrowing from the federal government.[9] During the Great Recession of 2008, the total cost to employers was $369 million ($291 million in increased FUTA taxes and $78 million through SAFI).[10] This cost was paid by employers who remained in business during the Great Recession, even though employers who went out of business caused more layoffs and, accordingly, more UI claims.

[9] See Appendix A for details on the cost of borrowing.
[10] The Great Recession of 2008 caused an increase in regular UI benefit payments and federal extensions beginning in 2008 and continuing through 2012.

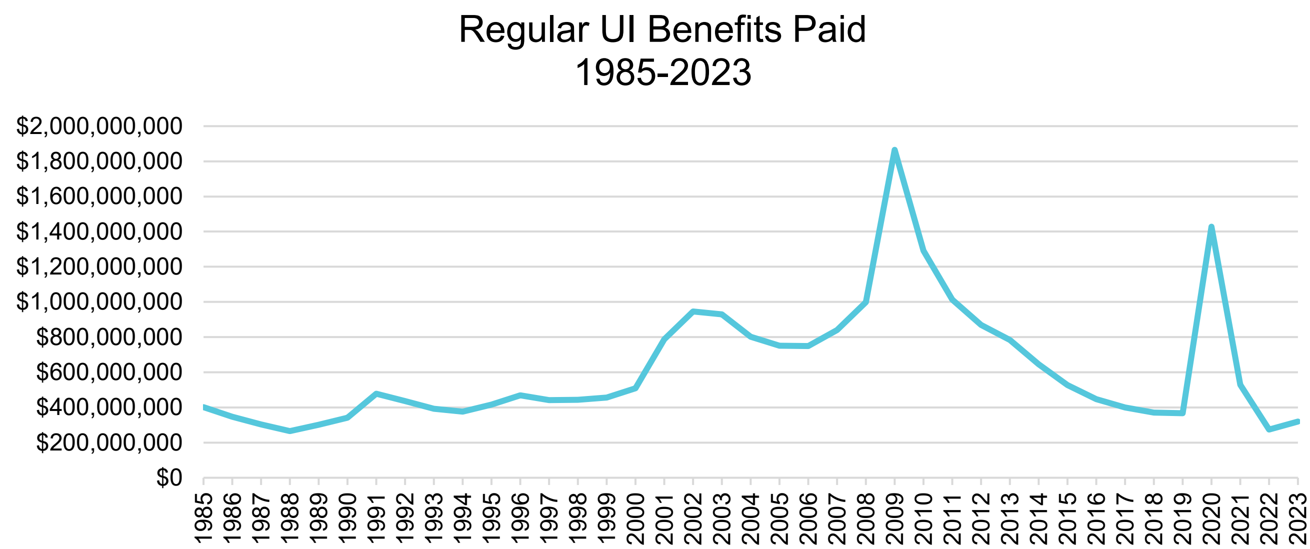
Section 2: Recent History of the Wisconsin Unemployment Insurance Trust Fund

The modern history of the current UI financing system begins in 1981.[11] This section focuses on the recent experience of the Wisconsin UI Trust Fund, beginning in 2022.

January 2022 through December 2023

By the end of 2021, the UI Trust Fund balance was $1.0 billion and it grew steadily in 2022 and 2023. The UI Trust Fund balance at the end of 2022 was $1.3 billion and at the end of 2023, $1.6 billion. The tax schedule in effect during this time was Schedule D, the schedule with the lowest contribution rate for employers.

During 2022 and 2023, UI benefit payments fell below pre-pandemic levels to levels not seen since the late 1980s. In 2023, UI benefit payments totaled $320 million, up from $271 million in 2022. By comparison, in 2018 and 2019, UI benefit payments were $376 million and $372 million, respectively.



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

As of May 11, 2023, the federal government ended the federal COVID-19 Public Health Emergency declaration. By then, federal pandemic UI programs had long ended. Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC) ended on Sept. 4, 2021. In 2021 $1.8 billion, and in 2022 $43.7 million in benefits were paid through these federal benefit programs.

Since the COVID-19 pandemic, the total number of employers with active unemployment accounts has increased by 20,000 (roughly 15%). Accordingly, solvency taxes increased and the UI Balancing Account grew during the reporting period. Approximately $135 million in solvency taxes were collected in 2022 and in 2023, $158 million in solvency taxes were collected. The UI Balancing Account balance at the end of 2021 was negative $1.47 billion.[12] By the end of 2022, the balance of the UI Balancing Account was negative $1.34 billion and at the end of 2023, negative $1.16 billion. This is an increase of approximately 8.8% and 13.4% from year to year, respectively. The negative balance in the UI

[11] See Appendix A for details on the modern history of the UI Trust Fund.

[12] Laws passed related to the COVID-19 pandemic, 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, allowed for regular UI benefits related to the COVID-19 pandemic to be charged to the UI Balancing Account rather than individual employers.

Balancing Account reflects an overall imbalance in the structure of the UI financing system. Employers' experience with the UI system is not reflecting actual charges incurred and, by benefits instead being charged against the UI Balancing Account, all employers are paying for those charges rather than the employers actually incurring the charges. This imbalance strains the fundamental public policy, stated by statute, that "[e]ach employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers." Wis. Stat. § 108.01(1).

Despite the net growth of the UI Trust Fund, its solvency rating has not yet reached levels recommended by US DOL. US DOL's recommended **minimum level** for trust fund solvency is 1.0.[13] At that level, the UI Trust Fund should be able to pay UI benefits at historically high benefit rates for a year without being completely exhausted. By the end of 2023, the AHCM had climbed to 0.64, up from 0.55 in 2022. Though improving, Wisconsin has not seen a 1.0 AHCM value since 2000. To meet the minimum level AHCM, Wisconsin's UI Trust Fund would need a balance of about $2.61 billion. As of Jan. 1, 2024, 19 states met the 1.0 AHCM minimum solvency standard set by US DOL.

[13] Additional details on the AHCM can be found in the 2024 Solvency Report, published by US DOL.

Section 3: Recent UI Law Changes and Impacts on UI Financing

At the Jan. 4, 2024 meeting, the UIAC agreed to the statutory changes described in the 2024 UIAC Activities Report but the Legislature did not act on those proposed changes.

Federal law changes

There have been no federal law changes that impact UI benefits, UI taxes, or the UI Trust Fund enacted during the reporting period.

State law changes

There have been no state law changes that impact UI benefits, UI taxes, or the UI Trust Fund enacted during the reporting period.

Section 4: UI Trust Fund Projection

UI Trust Fund Projection Methodology

The UI Trust Fund projection is the result of many estimates including future projections of the economy, unemployment insurance benefit recipiency, and estimated UI tax revenue.

Economic projections are from S&P Connect (S&P). The projections include the Wisconsin unemployment rate, labor force growth, and wage growth. The unemployment rate is used to project future UI benefits. The labor force growth and wage growth estimates are used in projections of UI benefit payments and UI tax revenue.

The S&P economic projection assumes a slightly higher unemployment rate in 2024 than in 2023. The unemployment rate is also expected to increase slightly in 2025 and 2026. Economic growth is expected to be strong in Wisconsin throughout the projection period. The slight increases in the unemployment rate combined with increases in the labor force and wages leads to slightly higher UI benefit projections over the projection period.

UI tax revenue is based upon the projections of covered payroll as well as UI benefits charged to employer accounts. Compared to recent years, the labor force is expected to grow much more slowly, which leads to slower increases in UI tax revenue.

UI Trust Fund Projections

Unemployment Reserve Fund Activity
(Millions $)

	CY 2023	CY 2024	CY 2025	CY 2026
Opening Unemployment Reserve Fund Balance	$1,274	$1,616	$1,896	$2,160
Revenues:				
State Unemployment Revenues (employer taxes)	$567	$580	$582	$583
Interest Income	$35	$44	$51	$57
Federal Reimbursement for UI Benefits				
State General Purpose Revenue	$60			
Total Revenue	$663	$624	$633	$640
Expenses:				
Unemployment Benefits	$320	$344	$369	$393
Ending Reserve Fund Balance[14]	**$1,616**	**$1,896**	**$2,160**	**$2,407**

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and S&P Wisconsin projections March 2024.

The UI Trust Fund is expected to grow over the projection period due to UI benefits continuing to be low and UI tax revenue growing. The UI Trust Fund is not expected to meet the $2.61 billion balance to obtain a 1.0 AHCM value in the projection period.

[14] This UI Trust Fund balance only includes funds available to pay state UI benefits. There are currently other funds in the Wisconsin UI Trust fund that are not available to pay state UI benefits. Such funds include holding funds for reimbursable employer benefits as part of the CARES Act and the Continued Assistance Act and an emergency administration grant . These accounts are included with other UI Trust Fund balances so they may not match the balances presented here.

Section 5: UI Benefit Replacement Rate

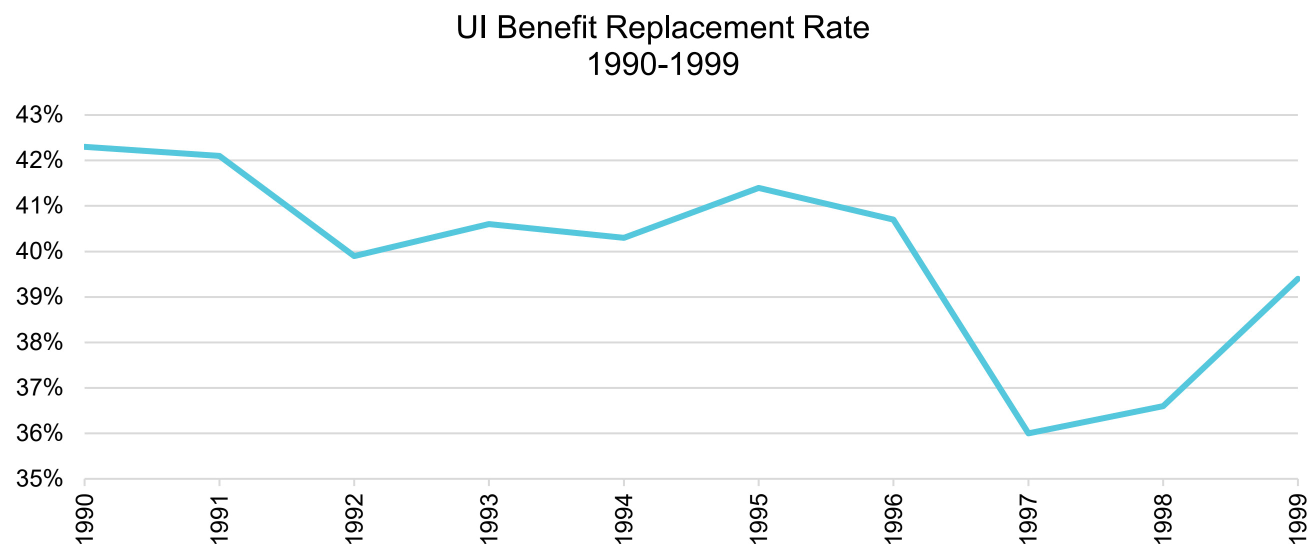
This section examines recent trends in the benefit replacement rate. The benefit replacement rate is the percentage in which the average weekly UI benefits paid to claimants compare to their average weekly wages. For example, a benefit replacement rate of 33% would mean average UI payments account for approximately one-third of average weekly wages.

The current maximum weekly benefit rate of $370 was set by 2013 Wisconsin Act 20 and became effective over 10 years ago on Jan. 5, 2014. Prior to 2013, the legislature historically increased the maximum weekly benefit rate regularly, either annually or every few years.

The current benefit replacement rate hit an all-time low of 29% in 2020 and stayed the same in 2021, 2022, and 2023. Previously, the benefit replacement rate varied between 32% and 46% of average weekly wages, with the average 40% since 1973. The lower the benefit replacement rate, the greater the financial impact on UI claimants because of a greater loss of income. The lower the replacement rate, the more people stand to fall below the poverty line during an economic downturn. Nationally, UI benefits paid during the COVID-19 pandemic helped keep 5.5 million people above the poverty line.[15]

1990s

There was a yearly deficit between UI benefit payments and tax revenue in the 1990s; however, this deficit was not due to increases in the maximum benefit rate. In fact, the real value of UI benefits to the unemployed fell during this time. The UI benefit replacement rate declined over the 1990s. The average weekly benefit amount was 42.3% of the average weekly wage in 1990 and fell to 39.4% in 1999. Although the benefit replacement rate was declining, the value of individual UI benefits paid increased in the late 1990s as the average wage increased over the period. The higher an individual's wages, the higher the amount of a person's benefit entitlement. UI benefit payments are expected to increase over time due to increases in wages earned and increases in the number of people employed and eligible for benefits.



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

[15] Fox, Liana E., and Kalee Burns. *The Supplemental Poverty Measure: 2020, Current Population Reports*. U.S. Census Bureau, September 2021.

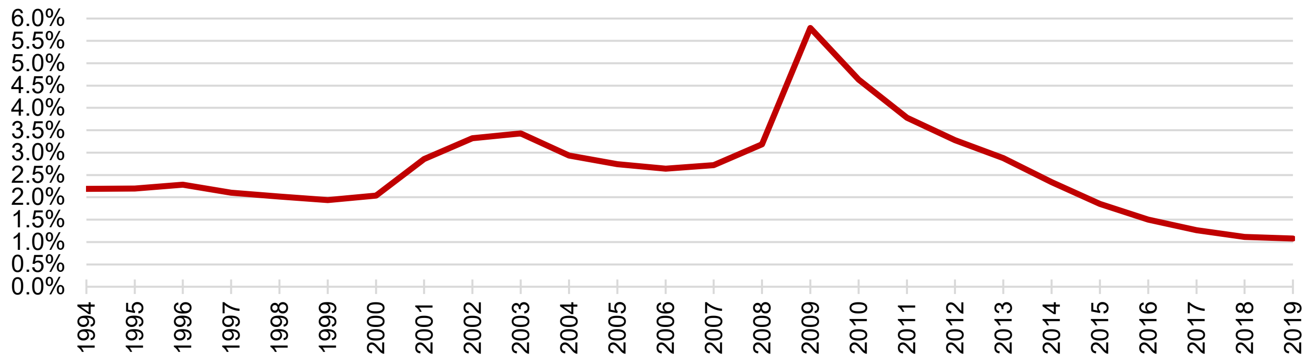
2000s and the Great Recession

There was a decline in UI benefit payments after the Great Recession due to a decline in unemployment claims and the value of UI benefits not keeping pace with the growth in wages over the last few decades, as shown by the declining replacement rate.

UI benefit payments continued at historically low levels from the end of the Great Recession through March 2020. There are two complementary reasons for this decline in UI benefit payments: a decline in unemployment claims, and the value of unemployment benefits relative to wages.

The decline in unemployment claims is illustrated by the insured unemployment rate declining to levels not experienced in the modern UI system. The insured unemployment rate is the ratio of UI claims to covered employment, so it represents the percent of covered employment collecting UI benefits.

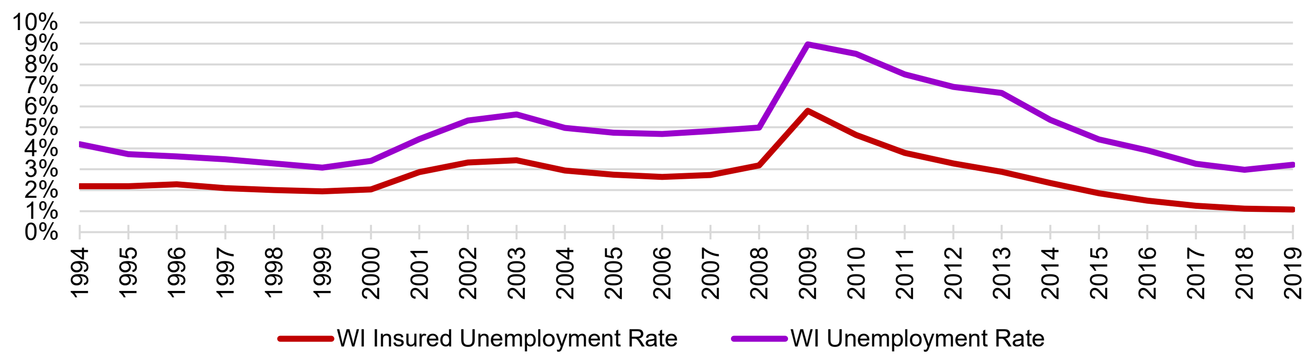
WI Insured Unemployment Rate
1994-2019



U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/WIINSUREDUR

This decline in claim activity is even more pronounced when compared to the overall unemployment rate during the same period. Unemployment rates for the years immediately before the COVID-19 pandemic were very similar to rates reported in the late 1990s, but the rate of unemployment claims was approximately half of what occurred during that period.

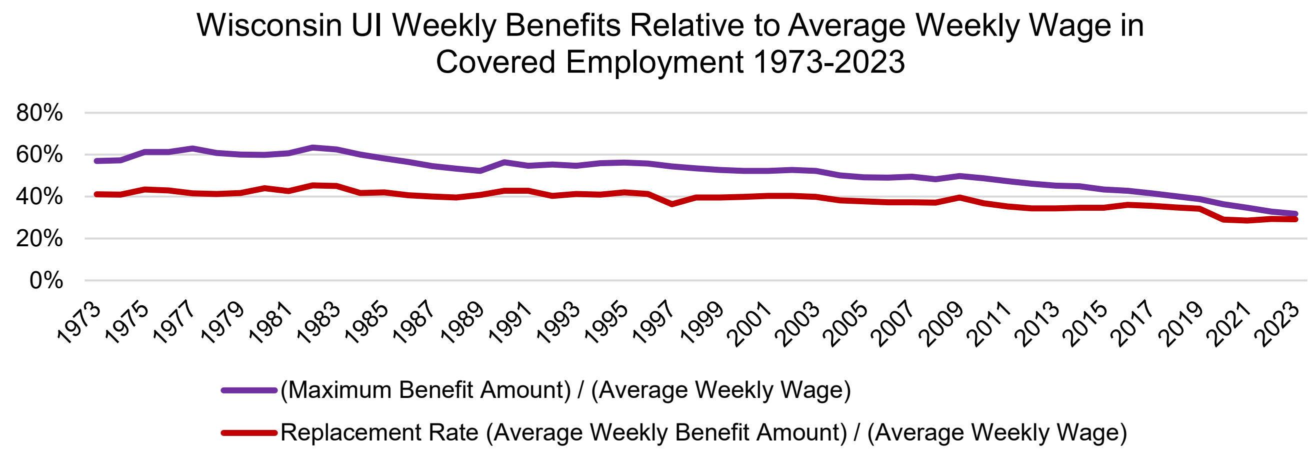
WI Insured Unemployment Rate and
WI Unemployment Rate 1994-2019



U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], U.S. Bureau of Labor Statistics, Unemployment Rate in Wisconsin [WIUR], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/

Before the COVID-19 pandemic, there had been a break in the historic relationship between the unemployment rate and unemployment claims. If UI benefit claims following the Great Recession had returned to normal claim levels, even with the lower unemployment rate, UI benefit payments would be expected to be $175 million to $250 million more per year. This equates to an increase of about $550 million to $790 million in the UI Trust Fund balance between 2015 and 2019.

The second reason for a decline in UI benefit payments is due to the value of UI benefits not keeping pace with the growth in wages over the last few decades.



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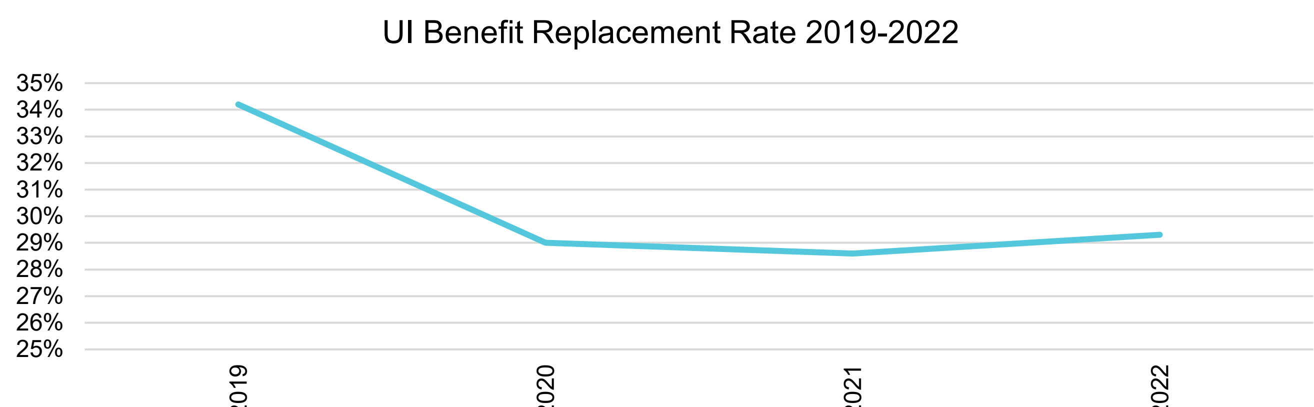
As the chart above illustrates, there has been a constant decrease in the maximum benefit rate relative to the average weekly wage. From the end of the Great Recession forward, there has been a sharp decline in the replacement rate of the UI weekly benefit rate. As this ratio falls, the value of the UI benefit, both in supporting worker households and supporting the economy during downturns declines.

From 1992 to 2003, the maximum weekly benefit rate increased each year. Starting in 2003, the rate of increase slowed but there were still regular increases until 2009. Starting in 2009, the maximum weekly benefit rate stalled at $363 for five years. In 2014 the maximum weekly benefit rate increased to $370, where it has remained. Maximum weekly benefit amounts since 1993 are listed in Appendix D.

COVID-19 Pandemic

The benefit replacement rate dropped from 34% in 2019 to 29% in 2020. The 29% benefit replacement



rate stayed the same in 2021 and 2022, as well.

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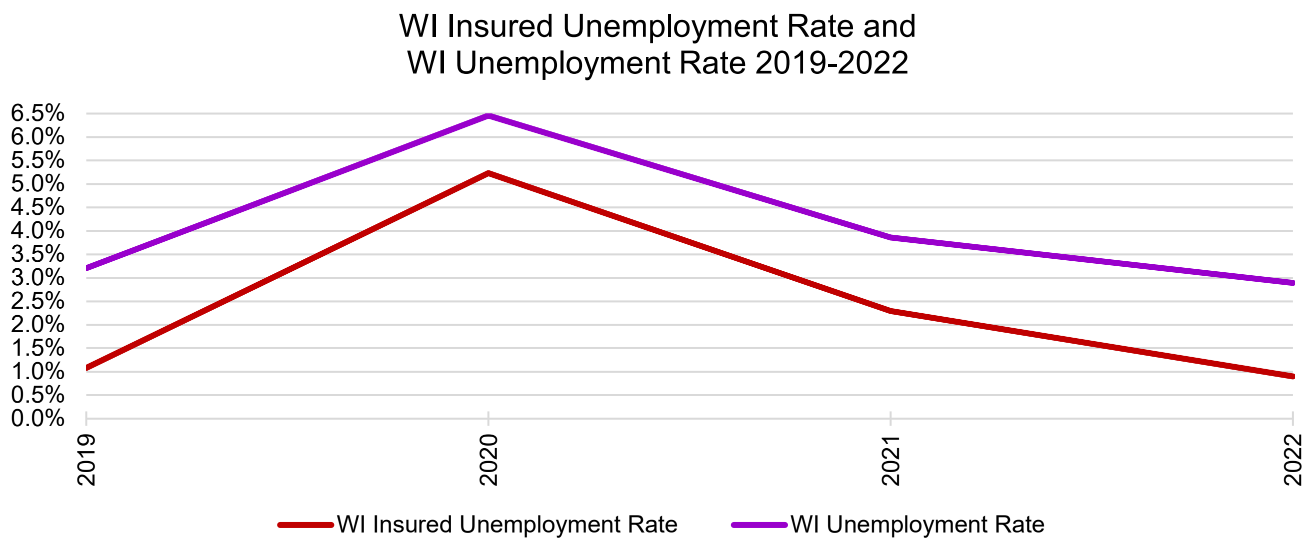
Despite the flat-line of the benefit replacement rate, the difference between Wisconsin's insured unemployment rate and unemployment rate widens.

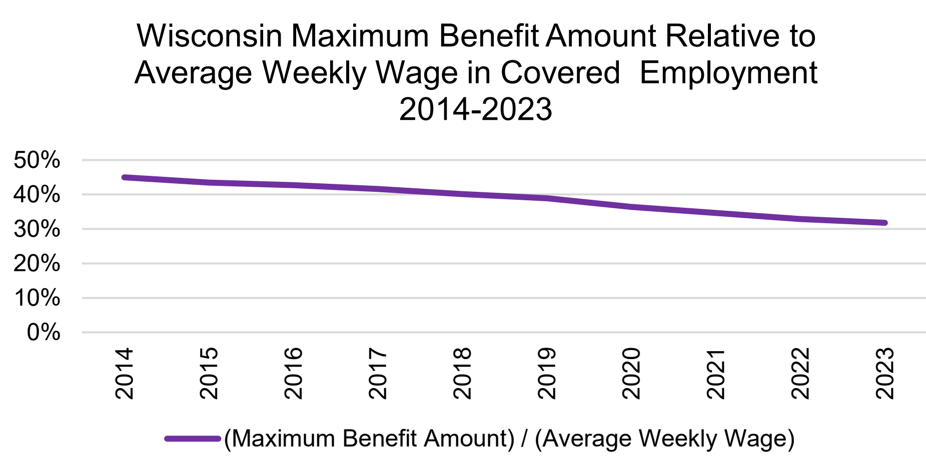


U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], U.S. Bureau of Labor Statistics, Unemployment Rate in Wisconsin [WIUR], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/

Current

The benefit replacement rate in 2023 was 29%. This is the same benefit replacement rate as during the COVID-19 pandemic.

Currently, the maximum benefit amount is only 32% of the average weekly wage. Historically, the maximum benefit amount equated to approximately 50% of the average weekly wage. Since the last change to the maximum weekly benefit rate went into effect in 2014, the percentage of the maximum benefit amount compared to the average weekly wage has consistently declined.



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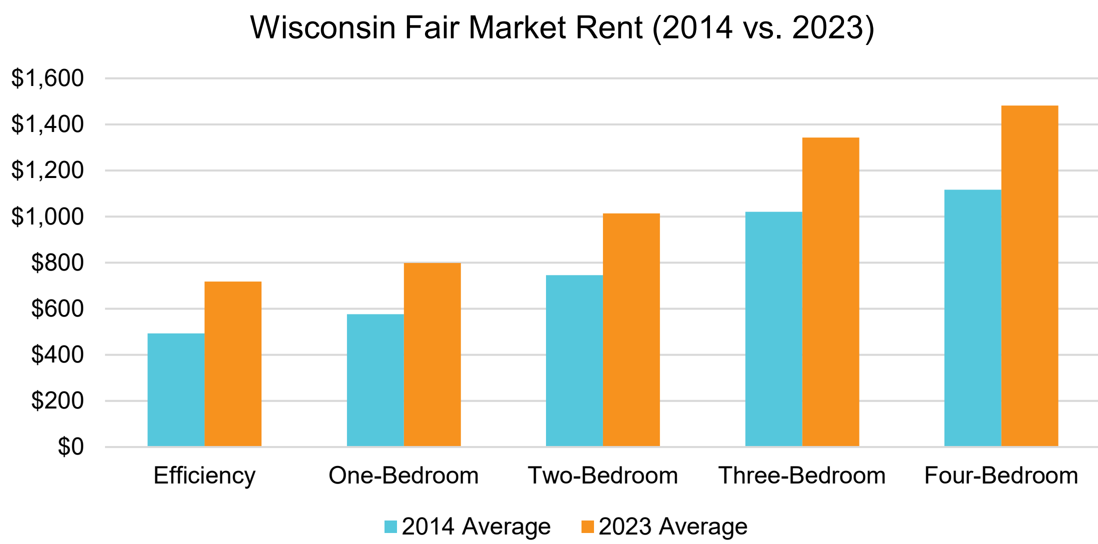
The cost of living has increased substantially since the last increase in the maximum weekly benefit rate became effective in 2014. For example, in 2014, the average fair market rent in Wisconsin ranged from $493 for an efficiency unit to $1,117 for a four-bedroom. In 2023, the average fair market rent in Wisconsin for an efficiency unit was $718 and four-bedroom was $1,482. As the graph below shows, fair market rent for a two-bedroom in 2014 would allow individuals to rent an efficiency unit in 2023.



Housing and Urban Development Fair Market Rents (40th Percentile Rents) https://www.huduser.gov/portal/datasets/fmr.html#year

Summary

Record low UI benefit payments are not only due to the record low unemployment rate. In fact, the recipiency rate for UI benefits is much lower than the average. In 2023, approximately 29% of individuals who were unemployed received UI benefits compared to approximately 50% historically. In 2013, before the last raise to the maximum weekly benefit rate, the recipiency rate was approximately 43%. The current low recipiency rate shows the unemployed population is not receiving benefits.

Conclusion and Recommendations

The current conditions of stable, low unemployment and economic growth provide a valuable opportunity to examine the UI Trust Fund and how UI benefits are being administered.

After weathering the COVID-19 pandemic, the Wisconsin UI Trust Fund stood at about $1.6 billion at the end of 2023. While employers are paying the lowest contribution rate, or Schedule D, into the UI Trust Fund, it is forecast to grow and reach about $2.4 billion by 2026. The US DOL standard for states is a trust fund that would be able to pay historically high benefit rates for a year without being completely exhausted. For Wisconsin, that benchmark would be $2.6 billion.

Wisconsin last adjusted its maximum weekly benefit to $370 in 2013. The national average is $525 per week, with bordering states averaging $587 per week. The current benefit replacement rate hit an all-time low of 29% in 2020 and stayed the same in 2021, 2022, and 2023. Historically, the benefit replacement rate varied between 32% and 46% of average weekly wages, with an average of 40% since 1973. The lower the replacement rate, the more people stand to fall below the poverty line during an economic downturn. Nationally, UI benefits helped keep 5.5 million people who lost their jobs through no fault of their own above the poverty line during the COVID-19 pandemic.

The Secretary recommends that the UIAC review opportunities to bring Wisconsin's UI benefits in line with neighboring states. UI benefit payments to workers who lose their jobs through no fault of their own are vital to keep families from falling into poverty during their job searches.

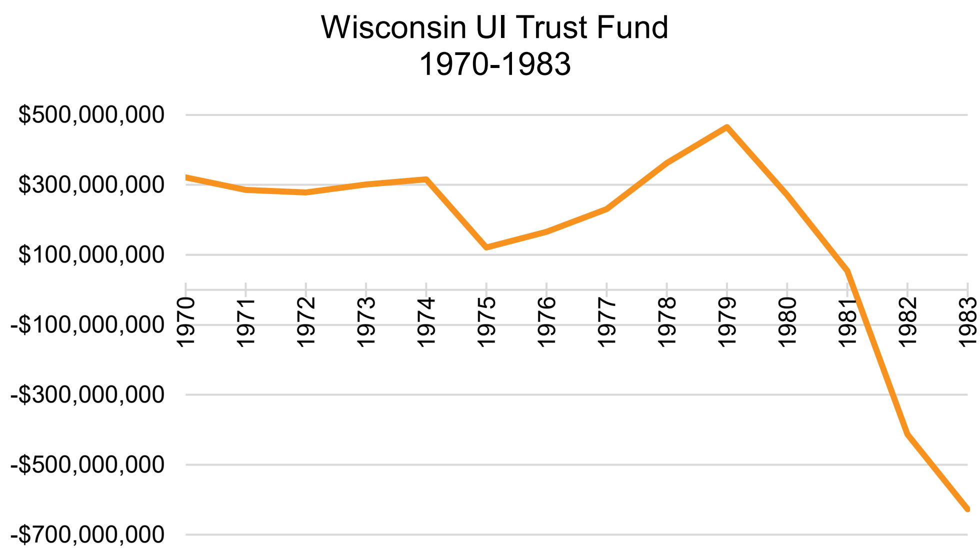
The Secretary further recommends a complete review of the UI Trust Fund and its funding mechanisms, including the UI Balancing Account, the experience rating system for employers, and rate schedule triggers. The current triggers are too slow to react to economic change, and a recession could significantly deplete the UI Trust Fund before these triggers adjust rate schedules. Adjusting the triggers in a period of growth and low unemployment would allow the changes to be made without impacting employers' tax rates.

Any changes to UI should seek to protect displaced workers and strengthen the UI Trust Fund while distributing the tax burden equitably and fairly. The rating system, the independent contractor test, and the UI Balancing Account are all areas that may benefit from legislative updates and the Secretary recommends that the UIAC look at these issues closely to make effective recommendations.

Appendix A
Modern History of UI Financing System Since 1981

Creation of Our Current UI Financing System: 1981-1982 Recession and Aftermath

Much of the current Wisconsin UI financing system was developed as a response to the difficulties experienced by the UI Trust Fund during the recession of the early 1980s. The recession rapidly depleted the UI Trust Fund and Wisconsin had to borrow from the federal government to pay UI benefits.



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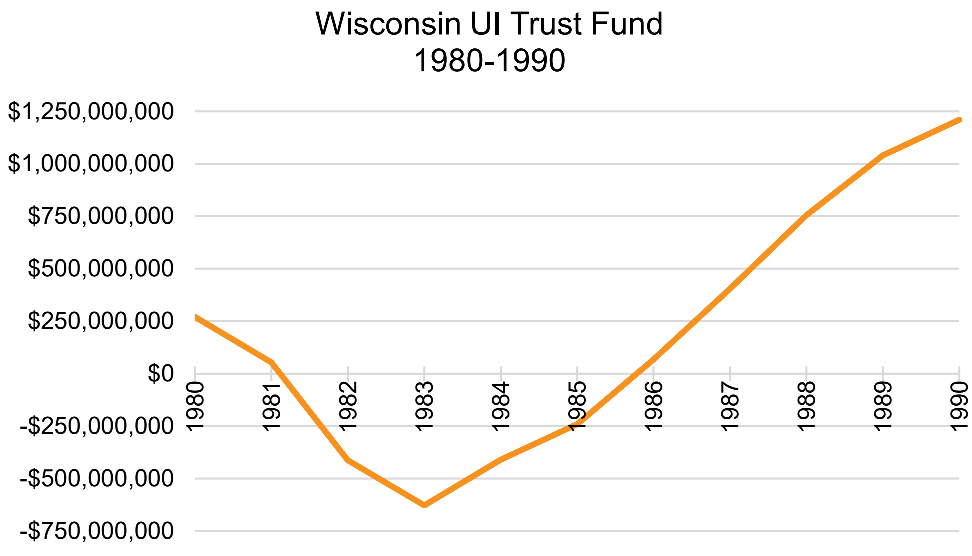
Wisconsin borrowed $988 million between 1982 and 1986. To provide context, this was about 4.1% of total covered payroll in the mid-1980s. The same 4.1% of total covered payroll of taxable employers in 2020 would be about $4.6 billion. Wisconsin's employers paid $124 million in interest due to this federal borrowing.

To eliminate the large UI Trust Fund debt, Wisconsin enacted legislation that made changes to the UI financing system. These changes included:

- Increasing the taxable wage base from $6,000 to $10,500;
- Creating new tax rate schedules that are dependent on the UI Trust Fund balance;
- Increasing the rate an employer's tax rate may increase, known as the rate limiter, to 2%;
- Temporarily discontinuing the 10% write-off provision, reducing tax liability for employers whose reserve fund account was very negative;
- Limiting the effect of voluntary contributions;
- Charging the state's portion of EB to employers instead of the UI Balancing Account;
- Reducing the maximum benefit duration from 34 weeks to 26 weeks;
- Increasing the requirements to qualify for benefits;
- Increasing the requalification requirements; and
- Eliminating the indexing of the weekly maximum benefit amount.

These changes allowed Wisconsin to rapidly repay the UI Trust Fund loan and build up a sizable UI Trust Fund balance by the end of the 1980s.



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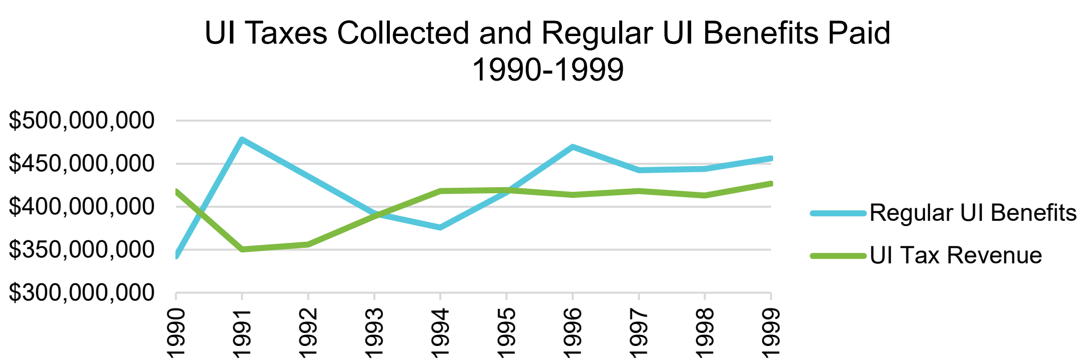
The Static UI Financing System in the 1990s

The UI Trust Fund accumulated a large balance before the onset of the 1991 recession. When the recession hit, total UI benefits paid exceeded UI tax revenue collected; however, the UI Trust Fund remained solvent. As the recession wound down, tax revenue rebounded, and UI benefit payments fell as expected.

During periods of economic growth, the UI financing system is designed to build up the UI Trust Fund balance to pay UI benefits during an economic downturn and avoid federal borrowing. This happened following the 1991 recession. After the UI Trust Fund reaches a balance large enough to finance a recession, year-to-year UI benefits paid and UI tax revenue collected should be roughly equal to maintain the UI Trust Fund balance, ensuring it will be large enough for the next recession.

Beginning in 1996, annual UI benefits paid began to exceed annual UI tax revenue collected. Interest rates in the mid-1990s were high, so the large interest returns allowed the UI Trust Fund to continue to grow despite the UI program running a yearly deficit.



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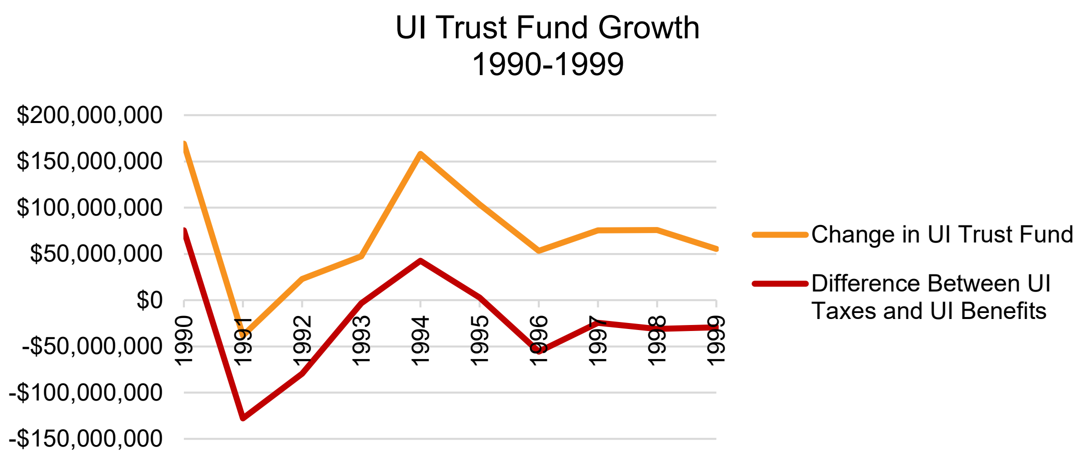

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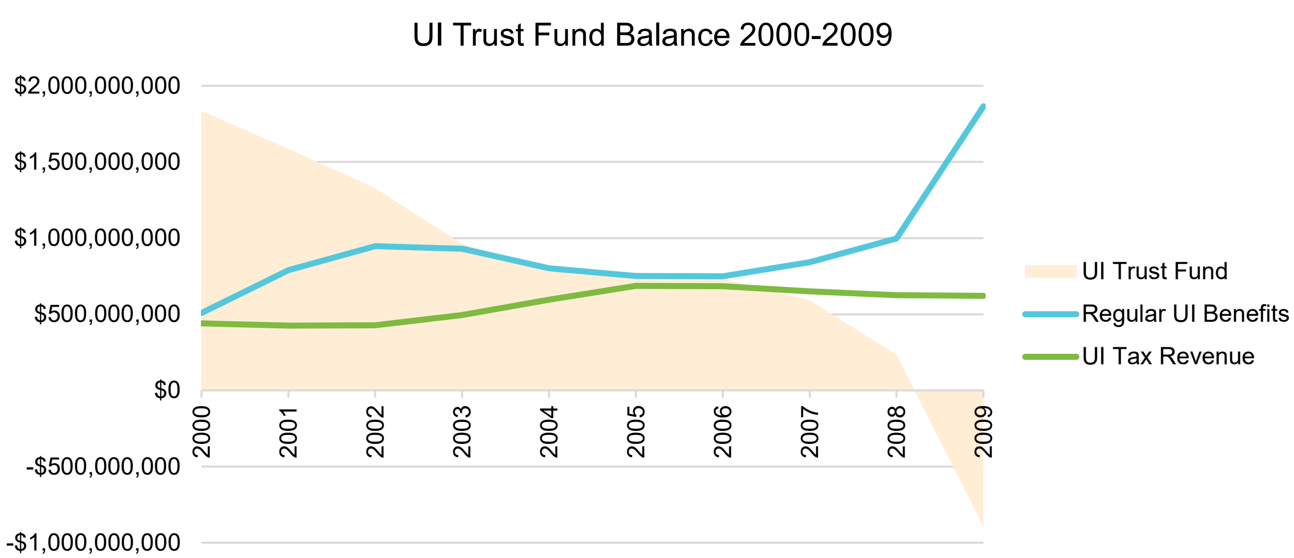
The UI Trust Fund balance at the end of 1999 was $1.7 billion.

The Shrinking of the UI Trust Fund in the 2000s

The 2001-2002 recession began to expose the structural deficiencies of the 1990s' UI financing system. After the recession ended, the UI Trust Fund continued to dwindle, and taxes collected never exceeded benefits paid. Nationally, growth was tepid during the early part of the decade and growth was slightly slower in Wisconsin than in the rest of the nation.

The level of unemployment claims in the 2000s had increased over levels typical in the late 1990s. Interest earnings were no longer covering the gap between UI benefit payments and taxes. The financing system did not respond to either the recession or the shrinking UI Trust Fund. Taxes collected never exceeded benefits paid, and tax revenue started to fall despite tax schedules with higher contribution rates being triggered. As a result, the UI Trust Fund balance continued to decline.



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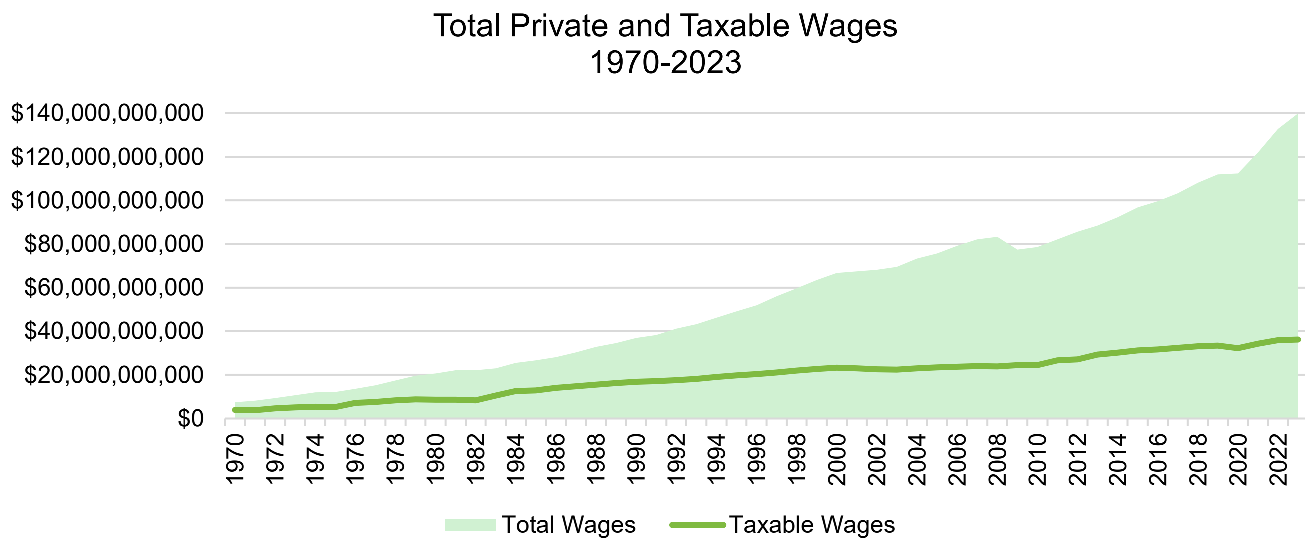
There are two main reasons why the financing system was non-responsive.

1. UI Taxable Wage Base Not Reflective of Wage Growth

The taxable wage base remained at $10,500, the level set in 1986. As a result, the ratio of taxable wages to total wages fell throughout the 1990s and 2000s.

Increasing wages caused UI benefit payments to increase faster than tax revenue, even without a change in benefit policy. When the economy started to recover in 2003, employment did not rise as quickly as wages. Because the wage base was set in 1986, the increase in wages was not subject to taxes even though it was still increasing the risk to the financing system through higher UI benefit payments.

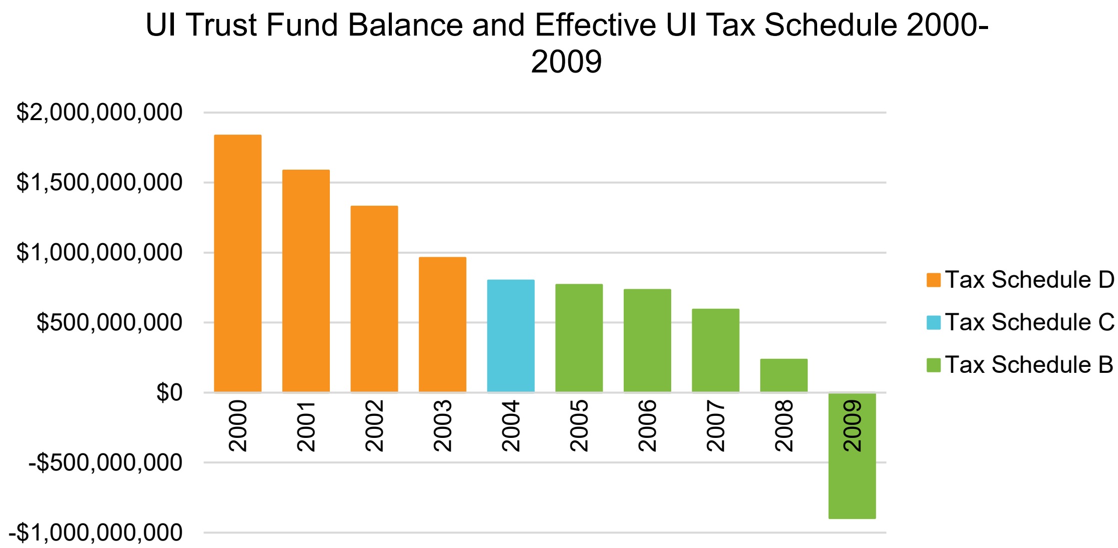


ET Financial Data Handbook 394[16], https://oui.doleta.gov/unemploy/hb394.asp

2. The UI Tax Rate Schedule Change Triggers Reflect the 1980s Economy

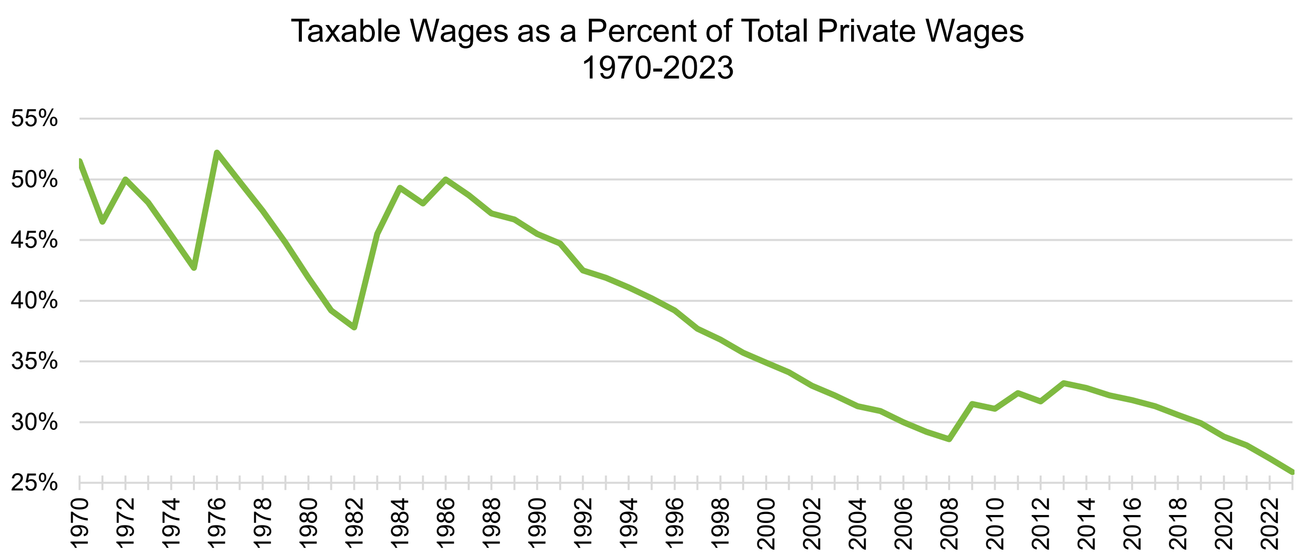
The UI tax system consists of four tax rate schedules. The balance of the UI Trust Fund as of June 30 determines which schedule is in effect for the next tax year, and that dollar amount triggers a corresponding tax schedule. When the schedule triggers were first established, they reflected the Wisconsin economy of the late 1980s. However, as the Wisconsin economy grew, the triggers did not. When the triggers were adjusted in 1997, the threshold values were not updated to reflect any economic growth between 1989 and 1997. Therefore, the fixed trigger amounts did not reflect the economy of the early 2000s. Even with the UI Trust Fund shrinking rapidly, the balance never fell below the $300 million threshold required to trigger the highest tax rate schedule (Schedule A). Without the implementation of the higher tax rates in Schedule A, the UI Trust Fund continued to shrink.

[16] 2023 figures are estimates which are subject to change.



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

Between 2003 and the onset of the Great Recession, UI benefits paid remained above UI taxes collected. Unlike in the 1990s, interest earnings were not large enough to cover the gap and the UI Trust Fund continued to shrink. Any type of economic downturn would have inevitably caused the depletion of the UI Trust Fund.

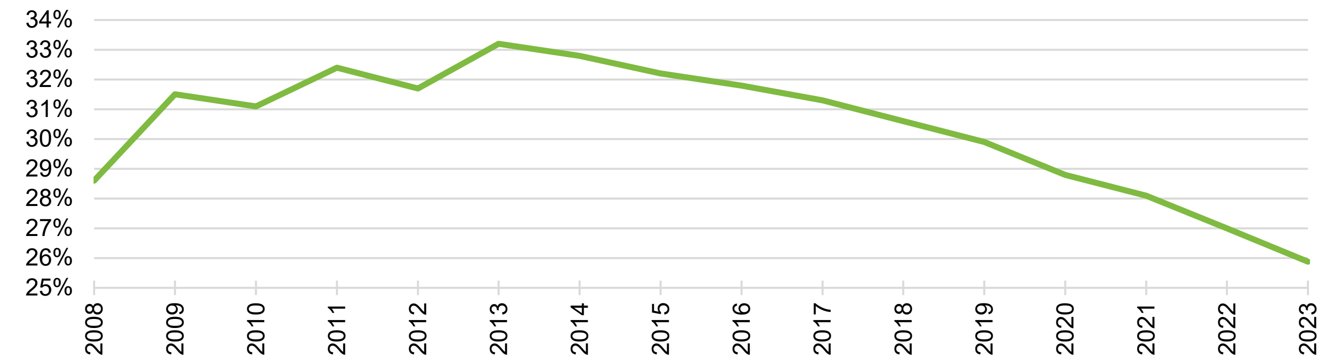


Financial Data Handbook 394[17], https://oui.doleta.gov/unemploy/hb394.asp

Legislation enacted in 2008 increased the taxable wage base to $12,000 in 2009, $13,000 in 2011, and $14,000 in 2013 where it was set to remain. This assisted in reducing a portion of the decline of the ratio of UI taxable wages to overall wages; however, by the time the wage base increased to $14,000 in 2013, the wage base had begun to lose value relative to total wages, and its value has continued to decline.

[17] 2023 figures are estimates which are subject to change.

Taxable Wages as a Percent of Total Private Wages
2008-2023



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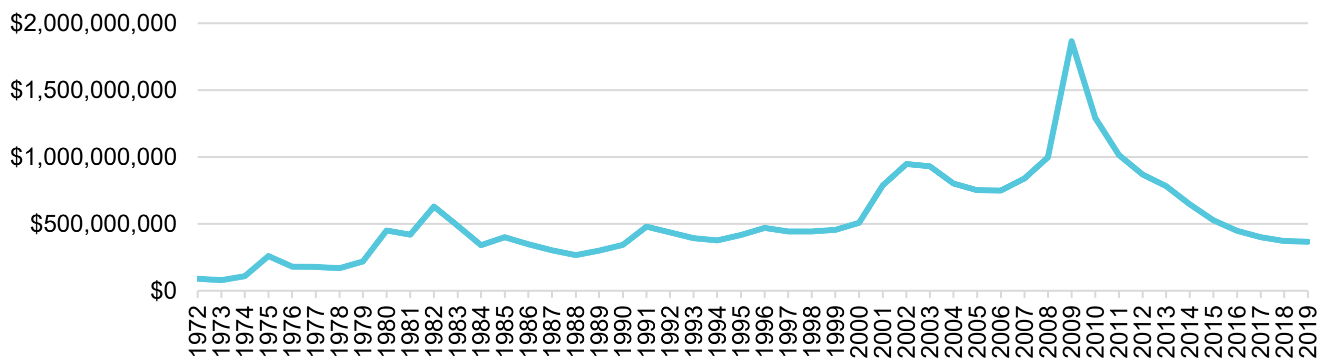
The Great Recession

Regular UI Benefits Paid
1972-2019



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

The Great Recession strained the entire nation’s Unemployment Insurance system. The Great Recession's initial impact on the Wisconsin UI system started in 2007, but it was not until 2008 and 2009 that UI benefit payments increased dramatically while overall employment fell. Prior to 2020, Wisconsin paid the four largest benefit outlays in its history from 2008 to 2011, with the largest amount so far, $1.8 billion, paid in 2009.

A better way to measure benefit expenditures is by comparing it to wages in the economy. Payroll can be viewed in terms of how many dollars are at risk. An analogy can be made to homeowner's insurance. The more expensive the home, the more money that needs to be paid if there is a fire. For Unemployment Insurance, higher wages in the economy result in higher benefits paid during a recession.

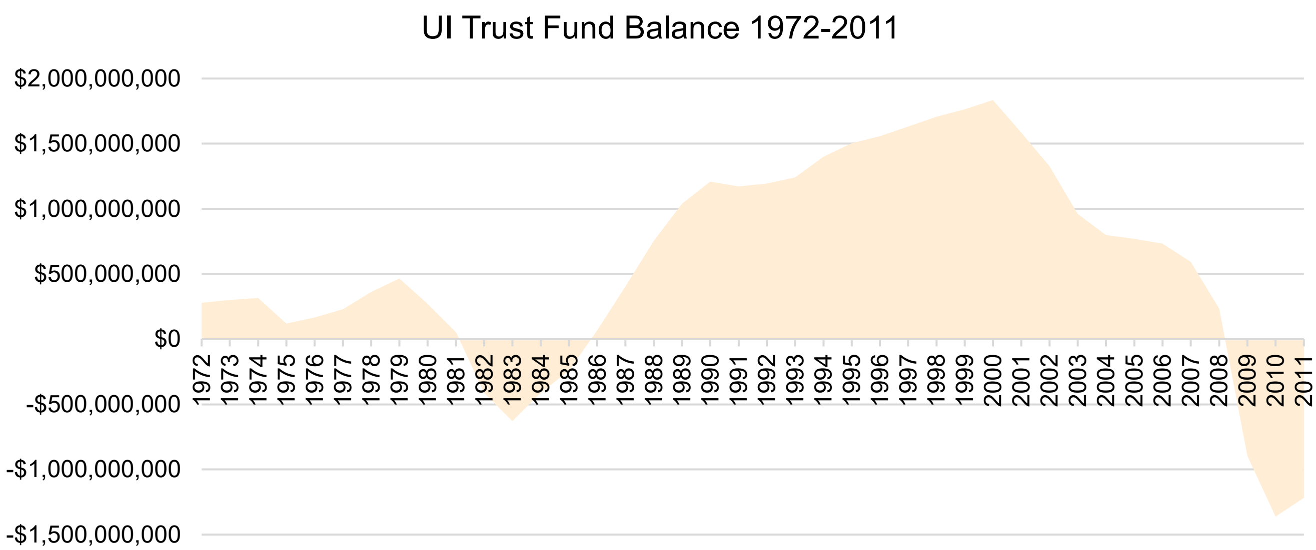
[18] 2023 figures are estimates which are subject to change.

5 Highest Benefit Years based on Benefits Paid as a Percent of Total Payroll 1972-2019

Year	Benefits as a Percent of Total Payroll
1982	2.84%
2009	2.41%
1980	2.17%
1975	2.13%
1983	2.11%

ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

When looking at UI benefit payments as a percentage of total payroll, 2009 is the only year of the Great Recession among the highest benefit years since 1972. The level of benefits paid during the Great Recession was in line with other recessions and reflected the growth of the economy and the increase in total payroll over four decades.



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

As illustrated above, the Wisconsin UI Trust Fund balance decreased throughout the 2000s; the Great Recession was the catalyst that caused the UI Trust Fund to become insolvent and necessitated Wisconsin borrowing from the federal government to pay UI benefits. These events led to policy responses, including:

- A reduction in the FUTA tax credit for employers. Revenue from the tax credit reduction was used to pay off UI Trust Fund loans.
- Trigger to the highest Wisconsin UI tax schedule, Schedule A. When the UI Trust Fund balance fell below $300 million in June 2009, Schedule A went into effect for 2010. This schedule raised approximately $90-$100 million more per year in tax revenue than Schedule B.

  Schedule A was not in effect until the UI Trust Fund was already insolvent; a strong indicator that the dollar value assigned to the trigger amounts was too low to maintain solvency and avoid borrowing from the federal government. To put it in perspective, quarterly benefit payments exceeded $300 million in eight of the 16 quarters between 2009 and 2012.

Wisconsin enacted three main legislative changes aimed to address the structural deficit in the UI Trust Fund during and following the Great Recession by reducing UI benefit payments for claimants:

- Defining full-time work to be 32 hours or more;
- Eliminating partial benefits for individuals earning over $500 per week; and
- Establishing a waiting week for UI benefit payments.

Of those legislative changes, the waiting week caused the largest reduction in UI benefit payments, approximately 5% per year. The waiting week causes the first week of benefits to be withheld from eligible claimants. While the waiting week does not reduce the total amount of UI benefit payments a claimant is eligible to receive, it does reduce benefits paid for those claimants who do not exhaust their claim. The fewer weeks an individual claims, the larger the percentage reduction in UI benefit payments the waiting week represents. For example, a claimant claiming benefits for 6 weeks will see a 16.67% reduction in benefits under a waiting week versus no waiting week in place.

During the Great Recession, UI benefit payments were reduced by approximately $50 million per year. Because of the multiplier effect[19] of UI benefit payments during a recession, this reduced the economic activity in Wisconsin by $80 to $100 million per year. After the recession, the waiting week continued to reduce UI benefit payments.

Recovery and Paying Off the UI Trust Fund Loan

The nation experienced a slow recovery following the end of the Great Recession where many people received UI benefits for long periods of time.[20] During this time, a low level of total UI benefits was paid as a result of both an improving economy and diminished base period wages for many people who no longer qualified for UI benefits due to long-term unemployment.

Despite the extended period of higher UI benefit payments, at the end of 2014, the UI Trust Fund balance was $215 million and the UI Trust Fund loan was satisfied.[21] There are three significant factors that contributed to obtaining a positive UI Trust Fund balance and repaying the federal loan:

1. The low level of UI benefits paid due to a reduction in filing activity;
2. The increase in UI tax revenue due to the highest tax rate schedule (Schedule A) in effect and a decline in employers' experience rating due to high UI benefit payments; and
3. The FUTA tax credit reduction.

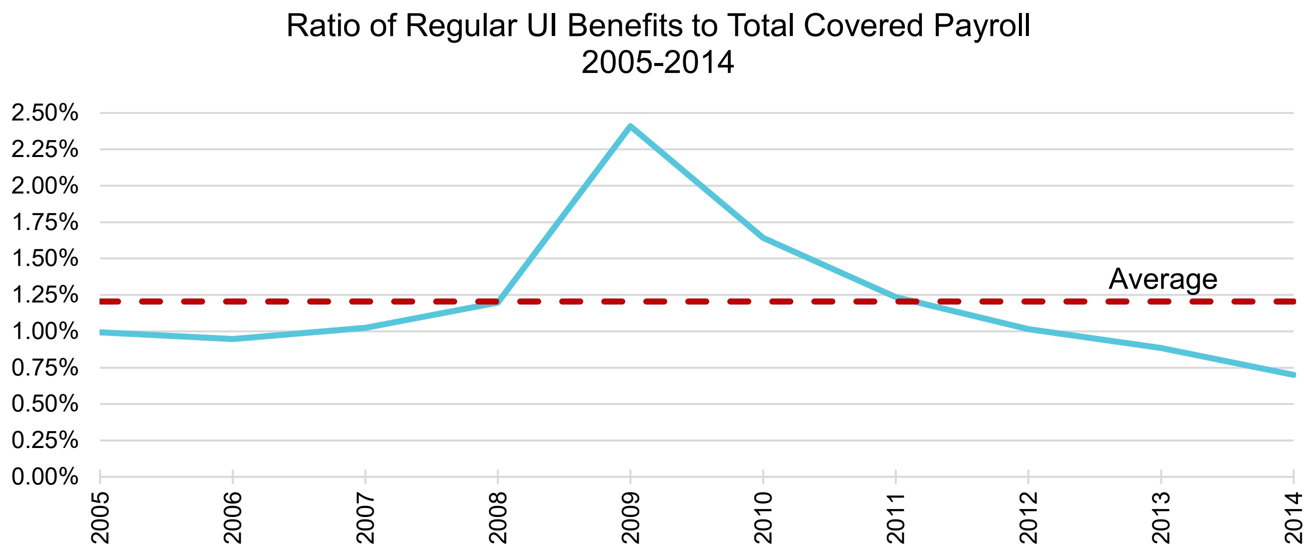
[19] Estimates of the multiplier for UI benefits during the Great Recession range from 1.6 (Zandi, Mark. *Testimony of Mark Zandi Chief Economist, Moody's Analytics before the House Budget Committee "Perspectives on the Economy"* 1 July 2010.) to 2.0 (Vroman, Wayne. "The Role of Unemployment Insurance as an Automatic Stabilizer during a Recession" *IMPAQ International*, 2010).

[20] Additional weeks of these benefits were paid under Emergency Unemployment Compensation (EUC) pursuant to federal legislation and were funded with federal taxes.

[21] The Legislature allocated GPR funds to pay a portion of the interest on the UI Trust Fund loan which, in turn, avoided a further SAFI assessment on employers.

Wisconsin UI Benefit Payments

UI benefit payments were elevated through 2011 and fell to a more normal level in 2012. In 2013, UI benefit payments fell to an amount below average and were substantially below average by 2014. The low level of UI benefit payments reduced expenditures from the UI Trust Fund.

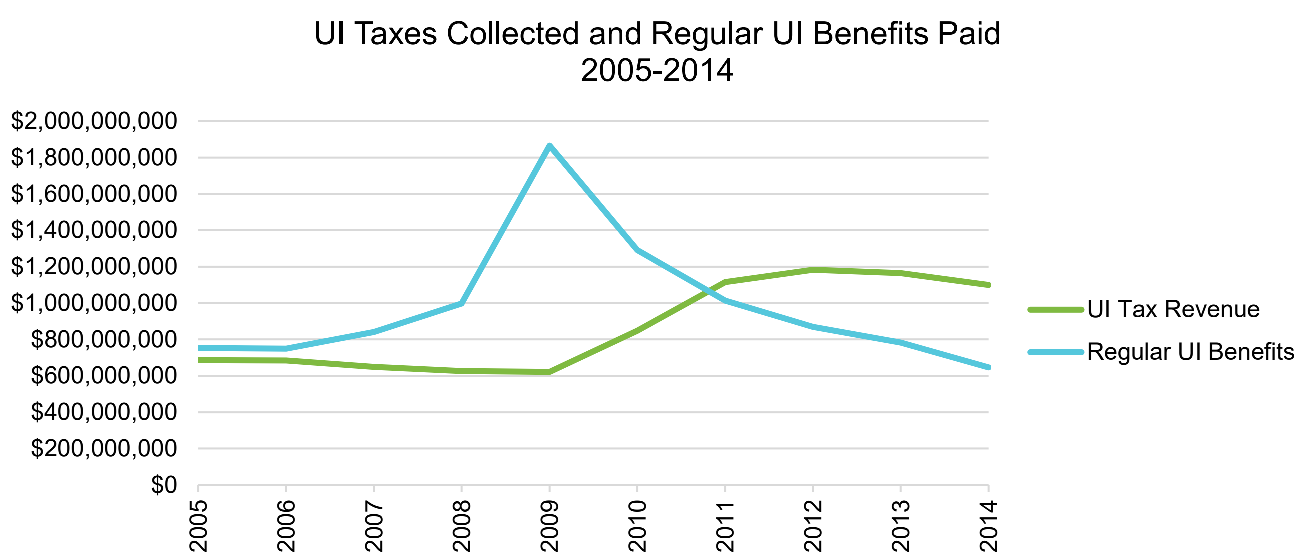


ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

Additionally, the legislature implemented various benefit changes in 2013 Wisconsin Act 20. Some of the various changes included eliminating eight of 17 previous quit exceptions, changing substantial fault guidelines so claimants may be ineligible for benefits if discharged due to substantial fault, increasing required work search actions from two to four, and increasing the maximum weekly benefit amount from $363 to $370.

UI Tax Revenue

While UI benefit payments declined rapidly, UI tax revenue also declined but at a slower rate.



ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

Difference Between UI Taxes and UI Benefits
2005-2014

ET Financial Data Handbook 394, https://oui.doleta.gov/unemploy/hb394.asp

FUTA Tax Credit Reduction

As described in Section 1, the FUTA credit is reduced for employers in states that borrow from the U.S. Treasury, at a rate based on the number of years a state has borrowed. After the Great Recession, employers in Wisconsin received a reduced FUTA credit, leading to higher federal unemployment taxes.[22]

Cost of Wisconsin UI Borrowing during and after the Great Recession

Costs associated with borrowing federal funds to pay UI benefits are borne by covered employers and other Wisconsin taxpayers. The reduction in employers' FUTA credit increased employers' federal UI taxes by $291 million from 2012 to 2014.

Interest payments on federal loans increase the cost of borrowing. In total, the 2009 UI Trust Fund borrowing accumulated $103 million in interest costs. Of that total, $78 million was paid by employers through SAFI. The remaining $25 million was paid with GPR funds. Interest rates during the Great Recession were low, but historically that has not been the case for every recession. For example, interest rates during the 1982 recession were very high. In the future, the interest costs could be much higher if interest rates are higher.

Direct Costs of Wisconsin UI Borrowing during and after the Great Recession (Millions of $)

	2011	2012	2013	2014	**Total**
FUTA Credit Reduction		$47	$96	$148	**$291**
UI Trust Fund Loan Interest Paid Via SAFI	$42	$36			**$78**
UI Trust Fund Loan Interest Paid Via GPR			$19	$6	**$25**
Total Borrowing Costs					**$394**
Total Costs Paid by Employers					**$369**

Wisconsin UI Tax Data

[22] The funds the federal government collected were used to reduce the state's debt. The additional federal taxes paid by Wisconsin employers added approximately $291 million to the UI Trust Fund. Without the revenue from reducing the FUTA credit reduction, the UI Trust Fund would have remained negative until first quarter receipts at the end of April 2015.

The COVID-19 Pandemic

The UI Trust Fund ended 2018 with a balance of over $1.7 billion. In 2019, the UI Trust Fund continued to grow, with taxes continuing to exceed historically low UI benefit payments, even with the lowest UI tax schedule in effect (Schedule D). The UI Trust Fund reached a high balance of over $1.9 billion in October 2019. At the time, the UI Trust Fund was approaching an AHCM of 1.0, the US DOL-recommended minimum level for trust fund solvency. At that level, the UI Trust Fund should be able to pay benefits at historically high benefit rates for a year without exhausting. Early in 2020, with the onset of the COVID-19 pandemic, Wisconsin was able to pay UI benefits without borrowing.

Since March 15, 2020, Wisconsin faced not only an historic public health crisis with the emergence of COVID-19, but a resulting workforce and economic crisis as well. By December 26, 2020, the UI division had paid approximately $4.67 billion to approximately 590,000 claimants due to the pandemic. Of those UI benefit payments, $3.18 billion were for PUA, PEUC, Lost Wages Assistance (LWA), and FPUC, which were federally funded. In 2021, $2.51 billion was paid in total (state and federal) UI benefits. From the beginning of the COVID-19 pandemic through the end of 2021, $7.18 billion in UI benefits had been paid to approximately 677,000 claimants. Of those payments, 30% were from the Wisconsin UI program and 70% were from federal programs.

During this time, many businesses were closed due to the public health emergency, reducing payrolls and, in turn, UI tax revenue. Overall, the UI Trust Fund ended 2020 with a balance of $1.049 billion[23] and 2021 with a balance of $1.016 billion.[24]

Even though a large percentage of benefits paid were federally funded, the UI Trust Fund declined during the COVID-19 pandemic due to a large increase in regular state UI benefit payments and a reduction in UI tax revenue received because of employers' reduced payrolls. With an ending balance of $1.016 billion, the UI Trust Fund had an AHCM value of approximately 0.5 at the end of 2021.

In 2020 and 2021, 23 states borrowed federal funds to pay unemployment benefits, and 10 states were still repaying their federal loans as of the end of February 2022.

Under 2019 Wisconsin Act 185, DWD was required to charge unemployment benefits for initial claims related to the public health emergency declared by Executive Order 72 to the UI Balancing Account of the UI Trust Fund for taxable employers. For reimbursable employers, DWD charged non-federally funded benefits to the interest and penalty (I&P) appropriation. This treatment of claims charging applied to weeks of benefits beginning the week of March 15, 2020. Under 2021 Wisconsin Act 4, the relief of benefit charges for employers ended March 13, 2021.

Under Acts 185 and 4, claimants were eligible for unemployment benefits for the first week of unemployment, if the first week of unemployment falls between March 15, 2020 and March 13, 2021.

[23] This amount will differ from the DWD financial statement, which reflected a balance of $1.137 billion. This difference is due to the fact that $18,914,772 of this balance was set up in 2020 in the UI Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits, and $68,776,989 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per § 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

[24] This amount will differ from the DWD financial statement, which reflected a balance of $1.048 billion. This difference is due to the fact that $18,914,772 of this balance was set up in 2020 in the UI Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits, and $13,629,290 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per § 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

Claimants were previously ineligible for benefits during the first otherwise compensable week of unemployment benefits. This is known as the waiting week.

The I&P appropriation was charged $69.9 million to relieve reimbursable employers of their benefit charges. This resulted in the I&P appropriation having a negative cash balance, as of March 2024, of about negative $45.6 million. DWD collects about $3 million annually in interest and penalties for this appropriation, so DWD expects the I&P appropriation to have a positive balance in 16 years.

Appendix B
Maximum Weekly Benefit Rate by State

US DOL Comparison of State Unemployment Laws (2023)

State	Maximum Weekly Benefit Rate	Maximum Weekly Benefit Rate with Dependent Allowance
AL	$275	$275
AK	$370	$442
AZ	$320	$320
AR	$451	$451
CA	$450	$450
CO	$742	$742
CT	$703	$778
DE	$400	$400
DC	$444	$444
FL	$275	$275
GA	$365	$365
HI	$763	$763
ID	$532	$532
IL	$578	$787
IN	$390	$390
IA	$551	$676
KS	$560	$560
KY	$626	$626
LA	$275	$284
ME	$538	$941
MD	$430	$430
MA	$1,015	$1,522
MI	$362	$362
MN	$857	$857
MS	$235	$235
MO	$320	$320
MT	$657	$657
NE	$514	$514
NV	$562	$562
NH	$427	$427
NJ	$830	$830
NM	$542	$592
NY	$504	$504
NC	$350	$350
ND	$673	$673
OH	$561	$757
OK	$493	$493
OR	$783	$783
PA	$605	$613
PR	$240	$240
RI	$680	$850
SC	$326	$326
SD	$487	$487
TN	$275	$275
TX	$563	$563
UT	$712	$712
VT	$668	$668
VA	$378	$378
VI	$629	$629
WA	$999	$999
WV	$630	$630
WI	$370	$370
WY	$560	$560
National Average	**$525**	**$560**

Wisconsin does not have a dependents' allowance, but 11 states do. A dependents' allowance increases the UI benefits payable to a claimant with a dependent; the amount of additional UI benefits and definitions of who is covered as a "dependent" vary based on state law.

Appendix C
Explanation of UI Benefit Charges to the UI Balancing Account

Standard Charges to the UI Balancing Account

Write-Offs

When the UI division calculates the Reserve Fund Percentage for basic tax purposes, the Reserve Fund Percentage is limited to negative 10% and charged benefits, that would decrease the Reserve Fund Percentage below that level, are written-off. When write-offs occur, the employer is relieved of these benefit charges and charges are made against the UI Balancing Account.

Quits

When an employee quits work but is still eligible for benefits, the benefits are charged to the UI Balancing Account instead of the employer's account. This relieves employer accounts of benefit charges when a claimant collects UI benefits due to no fault of the employer. A quit can occur if the claimant falls under one of the quit exceptions enumerated in statute[25] or, more likely, if the claimant quits a job to take a new one and then is subsequently laid off.

Misconduct

Prorated benefit charges paid to claimants who were terminated for misconduct are charged to the UI Balancing Account. If an employee who is terminated for misconduct finds work with another employer and is then laid off, he or she may requalify for benefits. If the employee qualifies for benefits, their work history from both employers is considered and their wages from both employers are used to calculate the weekly benefit amount. However, wages from the employer who terminated them for misconduct are not used in calculating the maximum benefit amount. Any portion of the prorated benefit amount assigned to the employer who terminated them for misconduct is instead charged to the UI Balancing Account.

Substantial Fault

Substantial fault provides a disqualification based on certain terminations for cause. If an employee who is terminated with justifiable cause under substantial fault finds work with another employer and is then laid off, he or she may requalify for benefits. If the employee qualifies for benefits, wages from the terminated with-cause employer are used both in calculating the maximum benefit amount and the weekly benefit rate. The prorated portion of benefits assigned to the terminated with-cause employer is instead charged to the UI Balancing Account.

Continued Employment

Continued employment cases typically occur when a claimant is working for two employers, either both part-time, or one full-time and one part-time. The claimant is laid off from one employer but continues working at the second employer. The claimant files a claim based upon the reduction in wages earned. These benefits will be based upon the claimant's entire earnings but the current employer, who did not reduce the claimant's wages, will not be charged for their benefit share; instead, such amount is charged to the UI Balancing Account.

[25] See Wis. Stat. §108.04(7).

Second Benefit Year

Second benefit year cases occur when an employer was charged for a claimant's benefits in the first benefit year, and wages paid by the employer are part of a second benefit year for a claimant, but the employer has not employed the claimant for over a year. This can occur because benefits are based upon the first 4 of the previous 5 quarters. The fifth quarter could be part of a future benefit claim. That employer would not be charged for the fifth quarter, but those benefits would instead be charged to the UI Balancing Account.

Training Benefits

UI benefits paid to claimants participating in certain DWD-approved training programs are charged to the UI Balancing Account. The Training Benefits category includes Approved Training programs and also included benefits paid to claimants who were enrolled in the Extended Training program. The Extended Training program was ended by the Wisconsin Legislature in 2013, so there are not expected to be future charges for that program, though other Approved Training programs continue to be charged to the UI Balancing Account.

Non-standard Charges to the UI Balancing Account

Temporary Supplemental Benefits

In 2002, special state Temporary Benefits were charged to the UI Balancing Account and similar programs could also be charged to the UI Balancing Account in the future.

COVID-19: Wisconsin Act 185 Pandemic Benefit Non-Charging

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, DWD was required to charge UI benefits for initial claims related to the public health emergency declared by Executive Order 72 to the UI Balancing Account of the UI Trust Fund for taxable employers.

Appendix D
Total Covered Employment, Average Weekly Wage, Average Weekly Benefit Amounts and Maximum Weekly Benefit Amount

Wisconsin Unemployment Statistics 1993-2023
ET Financial Data Handbook 394

Year	Covered Employment	Average Weekly Wage	Average Weekly Benefit	Maximum Weekly Benefit Amount
1993	2,308,361	$452	$183	$243
1994	2,384,509	$465	$188	$256
1995	2,449,029	$481	$199	$266
1996	2,493,484	$498	$202	$274
1997	2,550,955	$523	$188	$282
1998	2,602,559	$547	$215	$290
1999	2,661,710	$567	$223	$297
2000	2,703,542	$588	$233	$305
2001	2,686,548	$604	$242	$313
2002	2,660,922	$622	$248	$324
2003	2,657,571	$640	$252	$329
2004	2,684,896	$665	$251	$329
2005	2,714,477	$679	$253	$329
2006	2,737,431	$705	$259	$341
2007	2,751,715	$728	$267	$355
2008	2,743,267	$749	$273	$355
2009	2,614,062	$749	$288	$363
2010	2,600,206	$765	$275	$363
2011	2,634,447	$785	$270	$363
2012	2,664,283	$804	$271	$363
2013	2,692,053	$819	$276	$363
2014	2,729,876	$839	$285	$370
2015	2,765,376	$869	$296	$370
2016	2,799,146	$881	$312	$370
2017	2,821,131	$905	$317	$370
2018	2,847,429	$936	$321	$370
2019	2,857,063	$966	$325	$370
2020	2,698,767	$1,032	$295	$370
2021	2,666,922	$1,065	$305	$370
2022	2,845,446	$1,136	$330	$370
2023[26]	2,869,500	$1,164	$340	$370

[26] 2023 covered employment, average weekly wage, and average weekly benefit are estimates, which are subject to change.

Appendix E
Wisconsin Unemployment Reserve Fund[27]

Wisconsin Unemployment Statistics 1993-2023
Wisconsin Unemployment Insurance Division Data
(Amounts in Millions of $)

	Revenue						Expense			Balance
Year	UI Revenues	Interest and Other	Reed Act	Federal Distri-butions	FUTA Credit Reduction	**Total Receipts**	Benefit Expenses	Reed Act Expenses	**Total Expenses**	**Ending Balance**
1993	391	85				476	394		394	1,267
1994	418	87				505	377		377	1,395
1995	421	98				519	418		418	1,496
1996	415	102				517	471		471	1,542
1997	419	105				524	445		445	1,621
1998	414	110				524	452		452	1,693
1999	431	113				544	466		466	1,771
2000	442	117				559	515		515	1,815
2001	432	110				542	791		791	1,566
2002	430	88	166			684	949		949	1,301
2003	497	65				562	932		932	931
2004	596	48				644	795	3	798	777
2005	687	42				729	752	4	756	750
2006	684	39				723	753	3	756	717
2007	649	37				686	845	4	849	554
2008	628	21				649	997	23	1,020	183
2009	634	1		144		779	1,874	3	1,877	(915)
2010	850					850	1,288	(5)	1,283	(1,348)
2011	1,115					1,115	1,012	(6)	1,006	(1,239)
2012	1,187				47	1,234	876	(5)	871	(876)
2013	1,172				96	1,268	793		793	(401)
2014	1,107	2			148	1,257	642		642	214
2015	1,048	13			1	1,062	535		535	741
2016	852	22				874	458		458	1,157
2017	691	30				721	408		408	1,470
2018	598	37				635	376		376	1,729
2019	557	45				602	372		372	1,959
2020	501	37		69		607	1,450		1,450	1,116
2021	448	20		33		501	589		589	1,028
2022	450	80				530	273		273	1,285
2023	567	95				662	320		320	1,627

[27] Ending reserve fund balances exclude monies set aside under the American Recovery and Reinvestment Act (ARRA) and Short-Time Compensation (STC) and Emergency Administration Grant (EUISAA).

Appendix F
Usage of Wisconsin Unemployment Insurance

Wisconsin Unemployment Statistics 1993-2023
ET Financial Data Handbook 394

Year	Number of First Payments	Weeks Compensated	Duration (weeks)	Insured Unemployment Rate (percentage)	Maximum Weekly Benefit Amount
1993	197,203	2,608,193	13.2	2.3	$243
1994	191,952	2,443,988	12.7	2.1	$256
1995	213,327	2,518,458	11.8	2.1	$266
1996	234,291	2,791,774	11.9	2.3	$274
1997	210,504	2,857,991	13.6	2.1	$282
1998	219,771	2,726,008	11.5	2.0	$290
1999	209,497	2,473,569	11.8	1.9	$297
2000	230,458	2,582,328	11.2	2.0	$305
2001	327,155	3,762,208	11.5	2.9	$313
2002	328,083	4,363,674	13.3	3.4	$324
2003	315,409	4,346,562	13.8	3.4	$329
2004	269,306	3,759,400	14.0	2.9	$329
2005	262,724	3,500,388	13.3	2.7	$329
2006	258,845	3,421,577	13.2	2.6	$341
2007	279,814	3,678,462	13.1	2.8	$355
2008	321,164	4,225,212	13.2	3.2	$355
2009	447,970	7,605,705	17.0	6.1	$363
2010	324,879	5,770,210	17.8	4.7	$363
2011	283,624	4,588,323	16.2	3.7	$363
2012	232,949	3,926,156	16.9	3.3	$363
2013	214,125	3,407,788	15.9	2.9	$363
2014	175,853	2,698,223	15.3	2.3	$370
2015	152,641	2,152,899	14.1	1.8	$370
2016	133,083	1,716,415	12.9	1.5	$370
2017	115,199	1,494,556	13.0	1.3	$370
2018	106,770	1,352,076	12.7	1.1	$370
2019	108,010	1,305,850	12.1	1.1	$370
2020	396,187	6,007,541	15.2	5.5	$370
2021	83,920	2,421,448	28.9	2.2	$370
2022	83,206	973,079	11.7	0.9	$370
2023[28]	87,548	1,033,993	11.8	0.9	$370

[28] 2023 number of first payments, weeks compensated, duration, and insured unemployment rate are estimates, which are subject to change.

Appendix G
Taxable UI Benefits and UI Taxes as a Percentage of Total Wages in Taxable Covered Employment

Wisconsin Unemployment Statistics 1993-2023
ET Financial Data Handbook 394
(Amounts in Millions of $)

Year	Total Wages in Taxable Covered Employment	Taxable Benefits as a Percent of Total Wages	Taxes as a Percent of Total Wages
1993	$43,218	0.91%	0.90%
1994	$46,208	0.81%	0.90%
1995	$49,104	0.85%	0.85%
1996	$51,877	0.91%	0.80%
1997	$55,968	0.79%	0.75%
1998	$59,724	0.74%	0.69%
1999	$63,497	0.72%	0.67%
2000	$66,771	0.76%	0.66%
2001	$67,452	1.17%	0.63%
2002	$68,151	1.39%	0.63%
2003	$69,588	1.34%	0.71%
2004	$73,323	1.09%	0.81%
2005	$75,730	0.99%	0.91%
2006	$79,249	0.95%	0.86%
2007	$82,118	1.02%	0.79%
2008	$83,328	1.20%	0.75%
2009	$77,419	2.41%	0.80%
2010	$78,617	1.64%	1.08%
2011	$82,114	1.23%	1.36%
2012	$85,601	1.02%	1.38%
2013	$88,456	0.89%	1.32%
2014	$92,220	0.70%	1.19%
2015	$96,775	0.55%	1.07%
2016	$99,564	0.45%	0.85%
2017	$103,291	0.39%	0.66%
2018	$108,159	0.34%	0.55%
2019	$111,985	0.33%	0.49%
2020	$112,392	1.27%	0.44%
2021	$122,079	0.43%	0.34%
2022	$132,792	0.21%	0.27%
2023[29]	$139,923	0.23%	0.40%

[29] Estimates, which are subject to change.

Appendix H
UI Benefits Directly Charged to the UI Balancing Account

Wisconsin Unemployment Statistics 1993-2023
Wisconsin Unemployment Insurance Division Data
(Amounts in Millions of $)

Year	Quit	Misconduct	Substantial Fault	Suitable Work	PTNC Continued Employment	Waiver Agency Error	2nd Benefit Year	Temporary Supplemental Benefits	Training Benefits	COVID-19	Subtotal Bal. Acct. Direct Charges	Total UI Benefit Charges
1993	47.7	1.1		0.2	0.9						49.9	393.9
1994	50.4	1.1		0.2	1.0	0.1					52.8	377.1
1995	61.0	1.4		0.2	1.1	0.2					63.9	418.2
1996	69.1	1.6		0.2	2.3	0.3	3.0				76.5	471.2
1997	67.6	1.8		0.3	3.7	0.3	12.1				85.8	444.9
1998	68.7	1.9		0.3	3.7	0.2	10.4				85.2	452.0
1999	73.4	2.0		0.3	3.6	0.2	10.4				89.9	466.2
2000	81.2	2.3		0.3	3.6	0.2	11.6				99.2	515.6
2001	116.7	3.4		0.5	4.8	0.2	16.6				142.2	790.7
2002	111.8	3.8		0.5	5.9	0.6	27.7	10.8			161.1	949.3
2003	98.8	3.6		0.5	6.8	0.3	30.8	(0.2)			140.6	931.8
2004	84.7	2.8		0.5	6.3	0.4	24.7				119.4	795.2
2005	89.4	2.9		0.5	5.2	0.4	19.8				118.2	752.4
2006	94.0	3.2		0.4	5.2	0.3	18.5				121.6	752.6
2007	104.4	3.9		0.5	5.3	0.3	19.3				133.7	845.2
2008	112.4	4.2		0.4	6.1	0.4	24.9				148.4	996.8
2009	167.7	7.2		0.5	10.5	0.5	49.7				236.1	1,873.6
2010	85.7	4.6		0.3	11.9	0.6	54.5				157.6	1,288.5
2011	82.7	4.1		0.3	9.1	0.5	33.4		16.3		146.4	1,011.7
2012	85.9	3.0		0.4	7.2	0.5	24.2		18.5		139.7	875.8
2013	82.0	3.4		0.3	5.4	0.4	21.7		15.0		128.2	792.8
2014	69.4	3.1	0.4	0.3	4.7	0.1	17.1		8.1		103.2	642.5
2015	64.3	2.8	1.0	0.3	3.8	0.4	12.1		6.2		90.9	535.3

Year	Quit	Misconduct	Substantial Fault	Suitable Work	PTNC Continued Employment	Waiver Agency Error	2nd Benefit Year	Temporary Supplemental Benefits	Training Benefits	COVID-19	Subtotal Bal. Acct. Direct Charges	Total UI Benefit Charges
2016	51.8	2.4	0.8	0.2	3.3	0.1	9.7		5.1		73.4	457.4
2017	46.7	2.3	0.5	0.1	3.1	0.1	8.1		3.9		64.8	408.0
2018	44.9	2.2	0.2	0.1	2.8	0.1	6.8		3.0		60.1	375.9
2019	45.5	2.4	0.4	0.1	2.4	0.1	6.8		4.4		62.0	372.3
2020	202.4	5.5	4.8	0.1	9.5	0.3	15.8		5.3		243.7	1,450.1
2021	(102.3)	(1.4)	2.7	0.0	(3.4)	4.0	2.5		(2.0)	1,247.3	1,147.4	502.2
2022	27.3	1.1	1.3	0.0	1.3	1.4	2.8		2.8	24.6	62.6	271.3
2023	40.2	2.3	0.3	0.0	1.7	0.3	3.4		4.1	1.1	53.4	320.0

Appendix I
Additional Charges to the UI Balancing Account

Wisconsin Unemployment Statistics 2004[30]-2023
Wisconsin Unemployment Insurance Division Data
(Amounts in Millions of $)

Year	Balancing Account Direct Charges	-10% Write-Off "Indirect" Charges[31]	Total Balancing Account Charges	% of Write-Off over Total Charges
2004	119.4	197.9	317.3	62.4%
2005	118.2	151.4	269.6	56.2%
2006	121.6	150.7	272.3	55.3%
2007	133.7	167.9	301.6	55.7%
2008	148.4	194.7	343.1	56.7%
2009	236.1	407.0	643.1	63.3%
2010	157.6	497.8	655.4	76.0%
2011	146.4	293.7	440.1	66.7%
2012	139.7	199.1	338.8	58.8%
2013	128.2	171.9	300.1	57.3%
2014	103.2	113.9	217.1	52.5%
2015	90.9	83.1	174.0	47.8%
2016	73.4	63.2	136.6	46.3%
2017	64.8	54.2	119.0	45.5%
2018	60.1	46.9	107.0	43.8%
2019	62.0	37.5	99.5	37.7%
2020	243.7	21.4	265.1	8.1%
2021	1,147.4	4.7	1,152.1	0.4%
2022	62.6	45.6	108.2	42.1%
2023	53.4	33.6	87.0	38.6%

[30] The Negative 10% write-off dates to 1963, however data from 1963-2003 is not available. See Wis. Stat. §108.16(7)(c) for details on Negative 10% Write-off RFB.
[31] The Negative 10% Write-off RFB transactions reduce the Surplus Funds balance and increase the Taxable Employer's Fund balance.

STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance

2024 Financial Outlook: Wisconsin Unemployment Insurance Program

Robert Usarek, UI Research Analyst

June 13, 2024 | Unemployment Insurance Advisory Council

2024 UI Financial Outlook

Overview

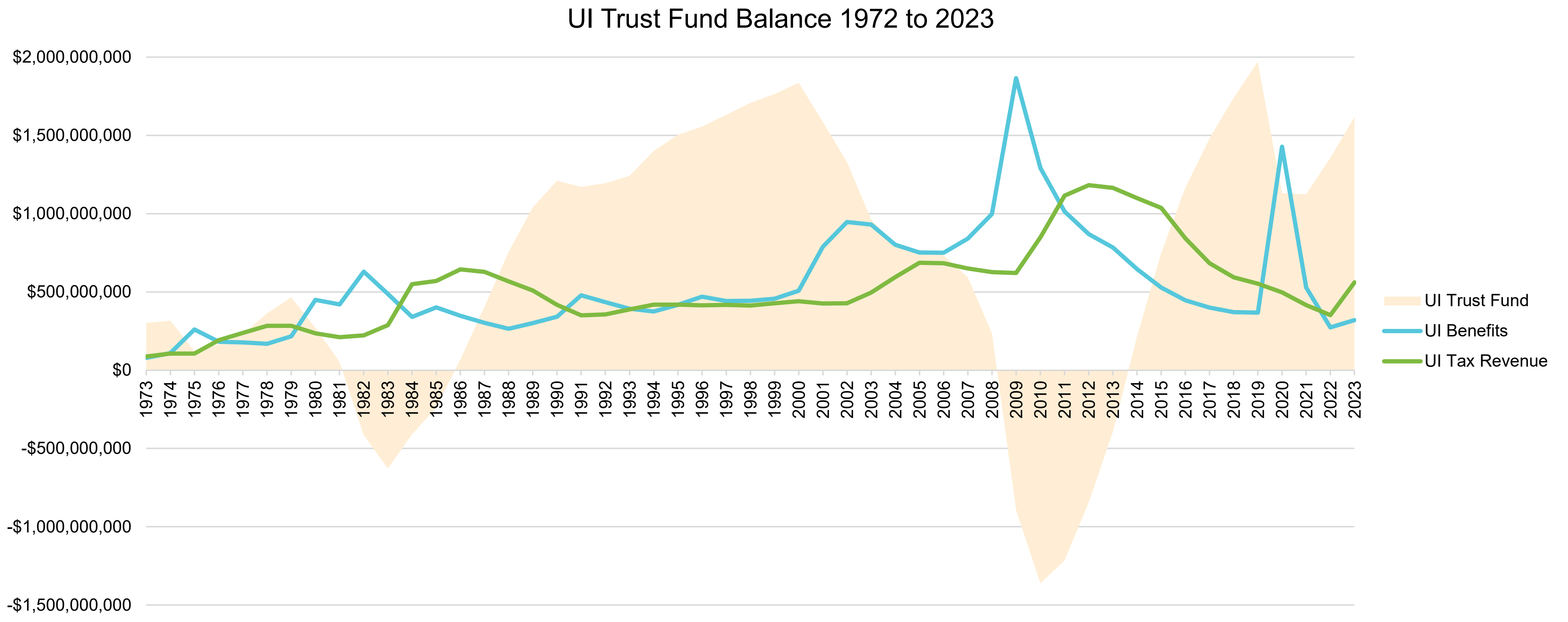
- Introduction
- Review of recent UI Trust Fund activity
- UI Trust Fund projections
- Secretary’s recommendations

Introduction

- The 2024 *Financial Outlook* of the Wisconsin Unemployment Insurance (UI) program was submitted to the Governor's Office on May 31, 2024 pursuant to Wis. Stat §16.48.

- The *Financial Outlook* provides background on the Wisconsin UI financing system and projections of the UI Trust Fund.

Review of Recent UI Trust Fund Activity



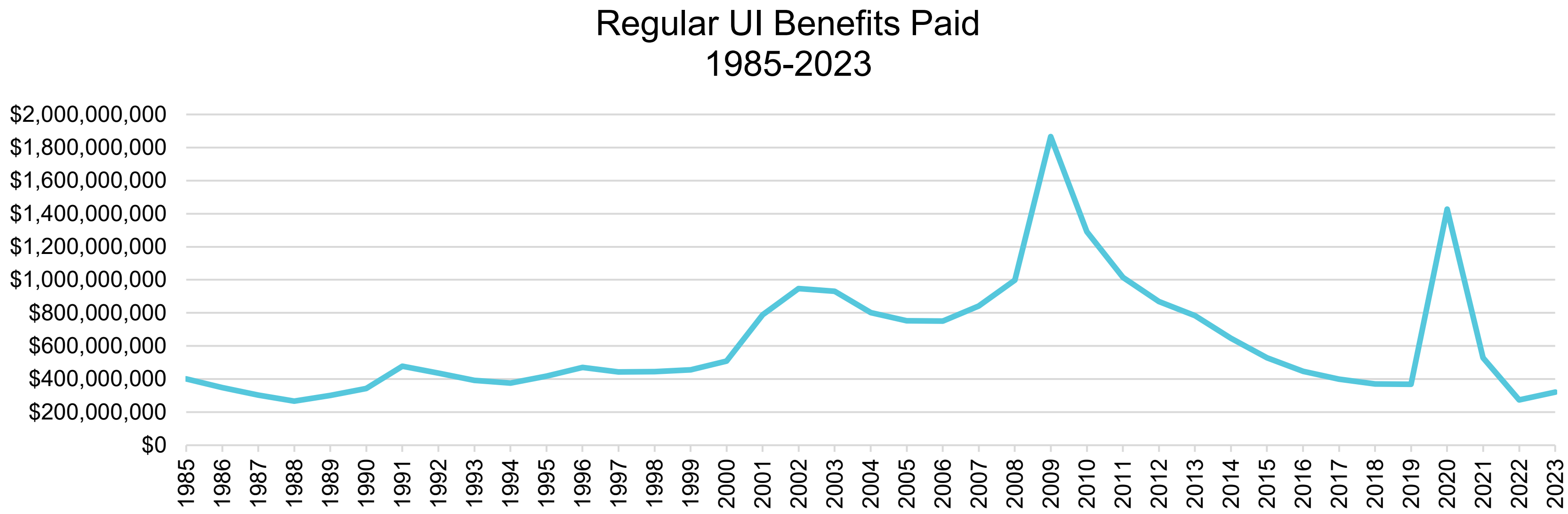
Review of Recent UI Trust Fund Activity

- The UI Trust Fund has increased slightly over the past year:
  - At the end of 2022 the UI Trust Fund balance was $1.3 billion
  - At the end of 2023 the UI Trust Fund balance was $1.6 billion

- The increase in the UI Trust Fund balance led to an increased in measured solvency of the UI Trust Fund.
  - At the end of 2023 the Average High Cost Multiple (AHCM) was 0.65, an increase from 0.55 at the end of 2022.

Review of Recent UI Trust Fund Activity

- During 2022 and 2023, UI benefit payments reached lows not seen since the late 1980s:
  - In 2022, $271 million in UI benefit payments
  - In 2023, $320 million in UI benefit payments



UI Trust Fund Projections

Unemployment Reserve Fund Activity ($ Millions)

	CY 2023	CY 2024	CY 2025	CY 2026
Opening Unemployment Reserve Fund Balance	$1,274	$1,616	$1,896	$2,160
Revenues				
-State Unemployment Revenues (employer taxes)	$567	$580	$582	$583
-Interest Income	$35	$44	$51	$57
-Federal Reimbursement for UI Benefits				
-State General Purpose Revenue	$60			
Total Revenue	**$663**	**$624**	**$633**	**$640**
Expenses				
-Unemployment Benefits	$320	$344	$369	$393
Ending Reserve Fund Balance	**$1,616**	**$1,896**	**$2,160**	**$2,407**

UI Trust Fund Projections

- Trust Fund Projection Highlights:
  - Revenues from contributions are expected to increase slightly over the projection period.
  - Benefits are expected to increase slightly over the projection period due to increases in wages and level of employment.
  - The UI Trust Fund Balance is expected to increase over the projection period.

Secretary's Recommendations

The current conditions of stable, low unemployment and economic growth provide a valuable opportunity to examine the UI Trust Fund and how UI benefits are being administered.

After weathering the COVID-19 pandemic, the Wisconsin UI Trust Fund stood at about $1.6 billion at the end of 2023. While employers are paying the lowest contribution rate, or Schedule D, into the UI Trust Fund, it is forecast to grow and reach about $2.4 billion by 2026. The US DOL standard for states is a trust fund that would be able to pay historically high benefit rates for a year without being completely exhausted. For Wisconsin, that benchmark would be $2.6 billion.

Secretary's Recommendations

Wisconsin last adjusted its maximum weekly benefit to $370 in 2013. The national average is $525 per week, with bordering states averaging $587 per week. The current benefit replacement rate hit an all-time low of 29% in 2020 and stayed the same in 2021, 2022, and 2023. Historically, the benefit replacement rate varied between 32% and 46% of average weekly wages, with an average of 40% since 1973. The lower the replacement rate, the more people stand to fall below the poverty line during an economic downturn. Nationally, UI benefits helped keep 5.5 million people who lost their jobs through no fault of their own above the poverty line during the COVID-19 pandemic.

The Secretary recommends that the UIAC review opportunities to bring Wisconsin's UI benefits in line with neighboring states. UI benefit payments to workers who lose their jobs through no fault of their own are vital to keep families from falling into poverty during their job searches.

Secretary’s Recommendations

The Secretary further recommends a complete review of the UI Trust Fund and its funding mechanisms, including the UI Balancing Account, the experience rating system for employers, and rate schedule triggers. The current triggers are too slow to react to economic change, and a recession could significantly deplete the UI Trust Fund before these triggers adjust rate schedules. Adjusting the triggers in a period of growth and low unemployment would allow the changes to be made without impacting employers' tax rates.

Any changes to UI should seek to protect displaced workers and strengthen the UI Trust Fund while distributing the tax burden equitably and fairly. The rating system, the independent contractor test, and the UI Balancing Account are all areas that may benefit from legislative updates and the Secretary recommends that the UIAC look at these issues closely to make effective recommendations.

Thank You

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI RULE CHANGE
Amend Administrative Rules Regarding UI Hearings

1. Description of Proposed Change

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing "when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location." That section also provides that a party may appear in person at the appeal tribunal's location if the hearing is scheduled by telephone or videoconference. However, the Department's limited hearing office space and ALJ scheduling make it impractical for a party scheduled for a telephone or video conference hearing to appear in person without advance notice.

Since March 2020, Wisconsin unemployment insurance benefit appeal hearings have virtually all been held by telephone. The Department will continue to hold telephone hearings and will increase videoconferencing capabilities. In the months before the pandemic, about 99.6% of hearings were held by telephone. Even before the pandemic, other states held nearly all their unemployment hearings by telephone:

State	Percent of UI hearings by phone (2019)
Illinois	99.9%
Minnesota	99.9%
Michigan	94%
Iowa	98%
Indiana	96%
Nebraska	99% (2 in-person/year)

Ohio	98%
Kansas	99%

The Department proposes to amend chapter DWD 140 to provide that, while either party to a matter may continue to request in-person hearings, it is the hearing office's discretion, within standards set by the Department, whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding the following: inspection of hearing records under DWD § 140.09; Departmental assistance for people with disabilities at hearings under DWD § 140.19; and postponement requests when the hearing exhibits are not sent timely under DWD § 140.08. Further, the Department seeks to correct minor and technical language in DWD chapter 140.

2. Proposed Rule Changes

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 and will present that draft to the Council for review before the rule is finalized.

3. Effects of Proposed Change

a. **Policy:** The proposed change will amend Wisconsin's unemployment insurance administrative rules to ensure that parties have access to hearings, whether in person or by telephone or videoconferencing, while recognizing the limitations on physical space availability for hearings. It will also ensure parties receive records timely in advance of the hearing. Finally, it seeks to comport the language under DWD 140.09 to the confidentiality provisions under ch. DWD 149.

b. **Administrative:** This proposal will require training of Department staff.

c. **Fiscal:** This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective when the Legislature approves the amended rule.

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: DWD 140

Relating to: Unemployment insurance hearings.

Rule Type: Permanent

Detailed description of the objective of the proposed rule.

The proposed rule will amend sections of ch. DWD 140, Wis. Admin. Code, related to hearing notices; in-person, telephone, and videoconference unemployment insurance hearings procedures; hearing records; and accessibility for attending hearings. The rule will specify the procedure by which a party or witness may request to attend a hearing in-person. The rule will also permit postponement of a hearing if the Department does not send the proposed hearing exhibits in advance of a benefit hearing. The rule will also clarify what unemployment insurance records may be released to a person who is not a party or a party's representative.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, ch. DWD 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and the requirements for the Department to provide assistance to people with disabilities at hearings. Chapter DWD 140 also provides for postponement of hearings in certain circumstances. Furthermore, ch. DWD 140 outlines when parties, parties' representatives, and other persons may access and inspect enumerated types of hearing records.

The Department proposes to amend ch. DWD 140 to require that the hearing notice provide the method of the hearing (in person, telephone, or videoconference). The rule will also identify the process by which a party can request an in-person hearing or a hearing by video-conference. Also, the Department proposes to amend ch. DWD 140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which the hearing office shall make such determinations, such as technological constraints and the need to accommodate individuals with disabilities. Further, the rule will allow a party to request an in-person hearing, subject to the guidelines. Chapter DWD 140 will also be amended to ensure that the Department is timely and efficiently responding to requests for reasonable accommodations and to describe the process by which a party will make such a request.

The Department also proposes to amend ch. DWD 140 to permit a party to request a postponement of benefit hearings when the Department does not timely send the hearing exhibits to a party.

Finally, consistent with ch. DWD 149, the rule will update ch. DWD 140 to provide that certain hearing records are confidential unemployment information and not subject to release to individuals who are not parties or representatives of the parties.

The policy alternative is to do nothing. If the Department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

The Department has statutory authority for the proposed rule.

"The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter." Wis. Stat. § 108.14(2).

"Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties." Wis. Stat. § 108.09(5)(a).

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The estimated time is 80 hours.

List with description of all entities that may be affected by the proposed rule.

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference. The proposed rule will also standardize the process for requesting an accommodation for hearings for individuals with disabilities who are parties or witnesses for the hearing. The rule changes will better allow parties to prepare for hearing. Finally, the proposed rule will clarify which hearing records, subject to redaction, may be released to non-parties.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Federal law requires that state law conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses).

The proposed rule is not expected to have an adverse economic impact on any business or small business.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

2024 WI 15

SUPREME COURT OF WISCONSIN

CASE NO.:	2022AP13

COMPLETE TITLE:

Amazon Logistics, Inc.,
Plaintiff-Respondent-Petitioner,
v.
Labor and Industry Review Commission,
Defendant-Appellant,
Department of Workforce Development UI
Div. Bureau of Legal Affairs,
Defendant-Co-Appellant.

REVIEW OF DECISION OF THE COURT OF APPEALS
Reported at 407 Wis. 2d 807, 992 N.W.2d 168
(2023 – published)

OPINION FILED:	March 26, 2024
SUBMITTED ON BRIEFS:	
ORAL ARGUMENT:	December 19, 2023

SOURCE OF APPEAL:

COURT:	Circuit
COUNTY:	Waukesha
JUDGE:	Michael O. Bohren

JUSTICES:
PER CURIAM.
NOT PARTICIPATING:
BRIAN HAGEDORN, J.

ATTORNEYS:

For the plaintiff-respondent-petitioner, there were briefs filed by *Erik K. Eisenmann, Emily Logan Stedman, and Husch Blackwell LLP, Milwaukee; Michael E. Kenneally* (pro hac vice), *Stephanie Schuster* (pro hac vice), *Brendan J. Anderson* (pro hac vice), and *Morgan, Lewis & Bockius LLP, Washington, DC; Christopher Ramsey* (pro hac vice), and *Morgan, Lewis & Bockius LLP, Pittsburgh, PA.* There was an oral argument by *Michael E. Kenneally*

For the defendant-appellant, there was a brief filed by *Jennifer P. Carter,* and *Wisconsin Labor and Industry Review Commission, Madison*. There was an oral argument by *Jennifer P. Carter*.

For the defendant-co-appellant, there was a brief filed by *Christin L. Galinat, Ryan X. Farrell*, and *Department of Workforce Development, Madison*. There was an oral argument by *Ryan X. Farrell*.

An amicus curiae brief was filed by *Nathan J. Kane, Scott E. Rosenow, and WMC Litigation Center, Madison,* on behalf of Wisconsin Manufacturers & Commerce, Inc.

An amicus curiae brief was filed by *Brenda Lewison,* and *Legal Action of Wisconsin Inc., Milwaukee,* on behalf of Legal Action of Wisconsin, Inc.

2024 WI 15

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2022AP13
(L.C. No. 2020CV579)

STATE OF WISCONSIN : IN SUPREME COURT

Amazon Logistics, Inc.,

Plaintiff-Respondent-Petitioner,

v.

Labor and Industry Review Commission,

Defendant-Appellant,

Department of Workforce Development UI Div. Bureau of Legal Affairs,

Defendant-Co-Appellant.

FILED

MAR 26, 2024

Samuel A. Christensen
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Dismissed as improvidently granted.*

¶1 PER CURIAM. Amazon Logistics petitioned for review of the decision of the court of appeals, Amazon Logistics, Inc. v. LIRC, 2023 WI App 26, 407 Wis. 2d 807, 992 N.W.2d 168, affirming LIRC's decision that Amazon Logistics' Flex delivery drivers do not qualify as independent contractors under Wis. Stat. § 108.02(12). After reviewing the record and briefs from all of the parties, and after hearing oral arguments on December

19, 2023, we conclude that this matter should be dismissed as improvidently granted.

By the Court.—The review of the decision of the court of appeals is dismissed as improvidently granted.

¶2 BRIAN HAGEDORN, J., did not participate.

¶3 ANN WALSH BRADLEY, J. *(concurring).* As I have done in the past, I write separately because I believe that this court should explain to the litigants and the public the reason for its dismissal. It is the least we can do when the litigants have expended substantial effort and resources arguing the case before us.

¶4 We granted review in order to address what we then thought was an issue that would result in the development of the law. And now, without explanation, the court disposes of the case in a two-sentence per curiam decision, dismissing the case as improvidently granted. Such a dearth of explanation has been the court's pattern for the past seven years. But this was not always so. A wider examination of such dismissals reveals a largely inconsistent practice with regard to whether this court provides any explanation for its decision when it dismisses a case as improvidently granted.[1]

[1] For examples of dismissals without explanation, see State v. Jackson, 2023 WI 37, 407 Wis. 2d 73, 989 N.W.2d 555; Slamka v. Gen. Heating and Air Conditioning Inc., 2022 WI 68, 404 Wis. 2d 586, 980 N.W.2d 957; Cobb v. King, 2022 WI 59, 403 Wis. 2d 198, 976 N.W.2d 410; Fond du Lac County v. S.N.W., 2021 WI 41, 396 Wis. 2d 773, 958 N.W.2d 530; State v. Kloss, 2020 WI 26, 390 Wis. 2d 685, 939 N.W.2d 564; Waukesha County v. J.J.H., 2020 WI 22, 390 Wis. 2d 531, 939 N.W.2d 49; Halbman v. Barrock, 2017 WI 91, 378 Wis. 2d 17, 902 N.W.2d 248.

¶5 The result of the court's inconsistent practice is a lack of guidance for potential litigants and the public, as well as an effective negation of the numerous hours of work and sums of money spent seeking a decision on the merits. Because there is a strong public policy rationale behind providing reasons for a dismissal as improvidently granted, the court's general practice should be to provide an explanation for such a dismissal, and as such it should have provided an explanation in this case.

¶6 After reviewing the court of appeals opinion, together with the record and the briefs, and after hearing oral arguments, I agree with the per curiam that this review should be deemed improvidently granted because the issues for which we took this fact-dependent case will not lead to any further development of the law. See Wis. Stat. § (Rule) 809.62(1r). Thus, further review by this court and publication of an opinion would not serve any meaningful purpose.

¶7 Accordingly, I respectfully concur.

¶8 I am authorized to state that Justices REBECCA FRANK DALLET and JANET C. PROTASIEWICZ join this concurrence.

In contrast, for examples of explanations provided by the court for a dismissal as improvidently granted, see Smith v. Anderson, 2017 WI 43, 374 Wis. 2d 715, 893 N.W.2d 790; Michael J. Waldvogel Trucking, LLC v. LIRC, 2012 WI 28, 339 Wis. 2d 248, 810 N.W.2d 811; Nedvidek v. Kuipers, 2009 WI 44, 317 Wis. 2d 340, 766 N.W.2d 205; State v. Welda, 2009 WI 35, 317 Wis. 2d 87, 765 N.W.2d 555; State v. Gajewski, 2009 WI 22, 316 Wis. 2d 1, 762 N.W.2d 104; State v. Townsend, 2007 WI 31, 299 Wis. 2d 672, 728 N.W.2d 342.

¶9 REBECCA GRASSL BRADLEY, J. *(concurring)*. When this court decides to dismiss a case as improvidently granted, customarily it does not offer an explanation for the dismissal. Justice Ann Walsh Bradley's concurrence renews her arguments made in her dissent in State v. Jackson, 2023 WI 37, 407 Wis. 2d 72, 989 N.W.2d 555, urging the court to change this practice and provide the reasons for dismissal. She again argues there is a "strong public policy rationale" to do so. Justice Ann Walsh Bradley's Concurrence, ¶5. Just as in Jackson, her concurrence does not grapple with the countervailing reasons to withhold an explanation and exemplifies why changing this practice would result in more confusion for litigants.

¶10 In her concurrence, Justice Ann Walsh Bradley reiterates her claim that this court's practice of dismissing cases as improvidently granted is inconsistent "with regard to whether this court provides any explanation for its decision[.]" Id., ¶4. This claim was rebutted in Jackson, 407 Wis. 2d 73, ¶¶4-5 (Rebecca Grassl Bradley, J., concurring), and Justice Ann Walsh Bradley has provided no new information to establish an inconsistency in this court's practice.[1] As I have previously documented, Justice Ann Walsh Bradley "may lament the no-explanation trend, but calling the court's practice 'inconsistent' flies in the face of the facts." Id., ¶5.

[1] In this concurrence, Justice Ann Walsh Bradley lists a nearly identical collection of cases as referenced in her Jackson dissent. State v. Jackson, 2023 WI 37, ¶15 n.2, 407 Wis. 2d 73, 989 N.W.2d 555 (Ann Walsh Bradley, J., dissenting).

¶11 This court's custom of issuing per curiam decisions dismissing cases as improvidently granted is standard practice. "When courts of last resort dismiss a petition, they customarily do not explain why, although courts have at times exercised their discretion to make exceptions to this practice on a case by case basis." Id., ¶6 (citing 5 Am. Jur. 2d Appellate Review § 347 (updated Feb. 2023)). The United States Supreme Court will dismiss a case as improvidently granted without explanation, typically in a one-sentence order.[2] Justice Ann Walsh Bradley "does not suggest this case warrants an exception to our [customary] practice; [she] argues explanations should accompany all dismissals." Id. She therefore "bears the burden of examining why the practice exists and then explaining why it should be rejected[.]" Id., ¶7 (quoting G.K. Chesterton, The Thing: Why I am Catholic 27 (Dodd, Mead and Co. 1930)). Just as in Jackson, Justice Ann Walsh Bradley fails to do so.

¶12 Justice Ann Walsh Bradley suggests a per curiam opinion dismissing a case without an accompanying explanation is a "negation of the numerous hours of work and sums of money spent seeking a decision on the merits." Justice Ann Walsh Bradley's Concurrence, ¶5. The conclusory explanation Justice

[2] E.g., Arizona v. City & Cnty. of San Francisco, 596 U.S. 763 (2022) (per curiam); Henry Schein, Inc. v. Archer & White Sales, Inc., 592 U.S. 168 (2021) (per curiam); Dalmazzi v. United States, 585 U.S. 527 (2018) (per curiam); Duncan v. Owens, 577 U.S. 189 (2016) (per curiam); Unite Here Local 355 v. Mulhall, 571 U.S. 83 (2013) (per curiam); Vasquez v. United States, 566 U.S. 376 (2012) (per curiam); Sullivan v. Florida, 560 U.S. 181 (2010) (per curiam); Bell v. Kelly, 555 U.S. 55 (2008) (per curiam); Maryland v. Blake, 546 U.S. 72 (2005) (per curiam).

Ann Walsh Bradley offers does not, however, restore the hours worked or money spent on this case by the parties. Providing an illusory explanation might make some justices feel better about dismissing cases as improvidently granted, but such an explanation does not help litigants or vindicate their efforts. A shallow explanation of the court's reason for dismissing a case as improvidently granted amounts to nothing more than a hollow victory for one party and provides nothing for future litigants.

¶13 Justice Ann Walsh Bradley asserts "this fact-dependent case will not lead to any further development of the law." Justice Ann Walsh Bradley's Concurrence, ¶6. But her attempt to provide clarity to the parties will only sow additional confusion. "Without some explanation as to why the court's review of the case would not develop any law, the conclusory order recommended by [Justice Ann Walsh Bradley] would not promote transparency." Jackson, 407 Wis. 2d 73, ¶11 (Rebecca Grassl Bradley, J., concurring). Parties may be left scratching their heads, believing their case would lead to law development. Justice Ann Walsh Bradley "does not recognize that merely declaring a petition lacks law-developing potential is itself a holding with law-developing potential. Even if not binding, it hints this court would not distinguish or overrule an existing precedent." Id., ¶10 (citations omitted). Instead of injecting needless confusion into the process, this court should stay the traditional course.

¶14 There are several reasons courts of last resort typically do not supply a reason for dismissing a case. For one thing, this tradition preserves limited judicial resources. "For example, if this court determines the lower court reached the correct outcome, further review can be a waste of time." Id., ¶8 (citation omitted). Additionally, providing litigants an explanation for dismissal "presupposes a majority of this court in a particular case would agree on why a petition should be dismissed. Often, no such majority exists." Id., ¶9. If a justice disagrees with the reasoning for dismissal, the justice may write separately, possibly leading other justices to write separately in response. On the other hand, "[a] broadly-worded order without a specific reason for dismissal facilitates joinder," avoiding any waste of judicial resources. Id. The traditional route also avoids "undermining the very decision not to decide" a case: "If this court declines to decide an issue, explaining the avoidance could inadvertently create persuasive authority on the issue . . . ." Id., ¶8.

¶15 When this court issues a per curiam opinion dismissing a case as improvidently granted, the opinion should be short and formulaic without unnecessary explanations that could mislead litigants. This directive mirrors the practice of the United States Supreme Court and maintains the status quo of this court's recent practice. Justice Ann Walsh Bradley offers no convincing reason to depart from this court's custom.

¶16 I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this concurrence.

COURT OF APPEALS
DECISION
DATED AND FILED

June 5, 2024

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2023AP1010 **Cir. Ct. No. 2022CV1456**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

KATHRYN M. MORGAN,

PLAINTIFF-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND DEPARTMENT OF WORKFORCE DEVELOPMENT,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Waukesha County: MICHAEL J. APRAHAMIAN, Judge. *Affirmed*.

Before Gundrum, P.J., Neubauer and Lazar, JJ.

¶1 NEBUAUER, J. Katherine M. Morgan appeals from an order affirming the Labor and Industry Review Commission's[1] determination that she underreported her self-employment income when seeking federal Pandemic Unemployment Assistance (PUA) benefits and denying her request to waive repayment. Under the PUA program, a self-employed individual's weekly benefit is "reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment." 20 C.F.R. § 625.6(f)(2) (2024). The regulation states further that "the term 'any income' … means gross income." ***Id.*** LIRC affirmed an administrative law judge's conclusion that the weekly gross receipts of a sewing business of which Morgan was a part owner should be used to reduce her weekly benefits. The Commission also determined that repayment of benefits could not be waived because Morgan, who disclosed only the distributions she had received from the business, was at fault for the overpayments.

¶2 Morgan challenges these determinations on appeal, arguing that the correct measure of her gross income from the sewing business is the distributions that were periodically paid to her. The Commission disagrees and contends that its decision is consistent with the definition of gross income in a Wisconsin income tax statute, WIS. STAT. § 71.03(1) (2021-22),[2] which defines "'[g]ross income' from a business [to be] the total gross receipts without reduction for cost of goods sold, expenses or any other amounts." As explained below, we agree

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[1] We refer to the Labor and Industry Review Commission in this opinion as LIRC or the Commission.

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

with LIRC that § 71.03(1) provides the applicable definition of "gross income." We also conclude that the Commission did not erroneously exercise its discretion in denying Morgan's request to waive repayment because it reasonably concluded that she was at fault for the overpayments. Based upon these conclusions, we affirm the circuit court's order.

BACKGROUND

¶3 The following facts are drawn principally from LIRC's findings of fact. Morgan filed a claim for PUA benefits in May 2020. She claimed that her in-home daycare business, a sole proprietorship, had shut down due to the COVID-19 pandemic in March 2020. Morgan received benefits for various weeks between the twelfth week of 2020 (ending March 21, 2020) through the thirty-fifth week of 2021 (ending August 28, 2021).

¶4 During that period, Morgan was also a partner in a custom sewing business, for which she held a forty percent ownership interest and performed sales, marketing, and occasional sewing services. The business received income almost every week of the period Morgan received PUA benefits. But Morgan and her business partner only paid themselves distributions "when they felt the business ha[d] enough money" to justify it.

¶5 In connection with her PUA benefits claim, Morgan was unsure whether she should answer questions on weekly certifications regarding self-employment relative to her daycare business or her sewing business. A claims specialist advised her to answer the questions as they related to her daycare business. As a result, Morgan answered "no" to the question, "did you work in your self-employment?" To report the income she received from the sewing business, Morgan answered "yes" to the question, "did you receive another type of income you haven't reported?" She then was prompted to call the Department of Workforce Development (DWD), to which she reported the distributions she received from the sewing business.

¶6 In September 2021, the DWD issued two determinations in which it concluded that Morgan had underreported her income from the sewing business, resulting in overpayments of PUA benefits. For the period from the week ending March 21, 2020, through the week ending January 2, 2021, the DWD calculated a total overpayment of $2,577. For the period from the week ending January 9, 2021, through the week ending August 28, 2021, it calculated an overpayment of $260.

¶7 Morgan appealed these determinations. An administrative law judge (ALJ), acting as an appeal tribunal, conducted a hearing and affirmed the DWD's determinations that Morgan had underreported her self-employment income and was required to repay the PUA benefits she should not have received. Of note, the ALJ stated that Morgan had to report "*gross income from self-employment* on … her weekly certifications and such income may reduce the PUA benefits paid." Because Morgan held a forty percent ownership interest in the sewing business, the ALJ determined that "her gross income each week was 40% of the business's gross income received each week." The ALJ disagreed with the DWD's calculation of the overpayment for the period from the week ending March 21, 2020, through the week ending January 2, 2021, and determined that the overpayment was $1,671.

¶8 In September 2022, LIRC modified and affirmed the ALJ's decisions. The Commission adopted the ALJ's findings of fact and conclusions of law, except that it reduced the $1,671 overpayment back to $260. The

Commission also concluded that repayment could not be waived because the overpayment was the result of Morgan's failure to "provide full information regarding her wages earned during" the relevant time periods. The circuit court affirmed LIRC's decision. Morgan appeals.

DISCUSSION[3]

I. Applicable Law and Standard of Review

¶9 The federal PUA program is administered by state agencies. *See* 15 U.S.C. § 9021(f) (2024). State statutes providing for judicial review of regular unemployment insurance claims govern appeals of decisions involving PUA benefits. *See* § 9021(c)(5)(B). Thus, our review is limited by Wisconsin's statute governing judicial review of LIRC's decisions, WIS. STAT. § 108.09(7)(c). *See* ***Catholic Charities Bureau, Inc. v. LIRC***, 2024 WI 13, ¶22, 411 Wis. 2d 1, 3 N.W.3d 666.

¶10 "In an appeal from a LIRC determination, we review LIRC's decision rather than that of the circuit court." ***Id.***, ¶22. "We may either confirm the [C]ommission's order or set it aside on one of three grounds: (1) if the [C]ommission acted without or in excess of its powers; (2) if the order was procured by fraud; or (3) if the [C]ommission's findings of fact do not support the order." ***Id.***; *see also* WIS. STAT. § 108.09(7)(c)6. "LIRC acts outside of its power when it incorrectly interprets a statute." ***Catholic Charities***, 411 Wis. 2d 1, ¶22.

[3] In addition to the parties' briefs, we have received and reviewed an amicus brief from Legal Action of Wisconsin, Inc.

¶11 LIRC's factual findings are conclusive as long as they are supported by credible and substantial evidence. ***Id.***, ¶23. "Credible and substantial evidence is that which is 'sufficient to exclude speculation or conjecture.'" ***Xcel Energy Servs., Inc. v. LIRC***, 2013 WI 64, ¶48, 349 Wis. 2d 234, 833 N.W.2d 665 (citation omitted). Here, Morgan concedes that "[t]here are no substantive factual disputes between the parties." We review LIRC's conclusions of law de novo. ***Catholic Charities***, 411 Wis. 2d 1, ¶23.

II. LIRC Did Not Incorrectly Interpret the Applicable Law.

¶12 The Coronavirus Aid, Relief, and Economic Security (CARES) Act makes certain "covered individual[s]" eligible for PUA benefits. 15 U.S.C. § 9021(a)(3), (b). The regulations that govern these benefits provide in relevant part that PUA benefits payable to "an unemployed self-employed individual for a week of unemployment shall be … reduced (but not below zero) by the full amount of any income received during the week for the performance of services in self-employment." 20 C.F.R. § 625.6(f)(2); *see also* 15 U.S.C. § 9021(h). Paragraph 625.6(f)(2) states further that "the term 'any income' … means gross income." The regulation does not indicate how "gross income" is to be determined, but guidance issued by the United States Department of Labor provides that "state law will determine the definition of 'gross income' for purposes of a self-employed individual." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020);[4] *see also* ***Pickering v. LIRC***, 156 Wis. 2d 361, 369, 456 N.W.2d 874 (Ct. App. 1990) ("The

[4] A copy of this letter is available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_16-20_Change_2.pdf.

Department of Labor's interpretation of unemployment compensation laws provides indicia of legislative intent.").

¶13 LIRC agrees that Morgan is a "covered individual" and thus was eligible for PUA benefits. The parties also agree that it is appropriate to look to Wisconsin law for a definition of "gross income" for the purpose of interpreting and applying 20 C.F.R. § 625.6(f)(2). The crux of their dispute concerns how gross income is to be determined under Wisconsin law.

¶14 As the parties acknowledge, Wisconsin's unemployment insurance statutes and administrative rules do not define "gross income."[5] Morgan argues that the definition that we should apply is found in a provision in Wisconsin's unemployment insurance law, WIS. STAT. § 108.02(26)(a), which defines the term "[w]ages" to mean "every form of remuneration payable, directly or indirectly, for a given period, … by an employing unit to an individual for personal services." Applying that definition to her case, she argues that the periodic distributions she received from the sewing business should be considered her gross income for the purpose of 20 C.F.R. § 625.6(f)(2) "because they were the total business income she was receiving" for the work she did for the business.

¶15 LIRC disagrees and points to the definition of gross income in a provision of Wisconsin's tax code, WIS. STAT. § 71.03(1). That provision states in relevant part that "'[g]ross income' from a business or farm consists of the total

[5] LIRC suggests that the reason for this is "because an individual who claims *regular* unemployment insurance benefits is not required to report self-employment income to the department, nor is self-employment income taken into account in determining that individual's weekly *regular* unemployment insurance benefit amount under WIS. STAT. § 108.05(3)." The reason is not relevant to this opinion.

gross receipts without reduction for cost of goods sold, expenses or any other amounts." As applied here, this definition accords with LIRC's determination that Morgan received excessive benefits because only her distributions from the sewing business, rather than forty percent of its gross receipts, were considered in calculating her benefits. LIRC maintains that there is no other applicable definition of gross income in Wisconsin statutes or case law. It also argues that treating the periodic distributions Morgan received as her "wages" under WIS. STAT. § 108.02(26) and using those amounts to reduce her PUA benefits is contrary to the text of the applicable regulation, which specifically distinguishes "wages" from "any income." *See* 20 C.F.R. § 625.6(f)(2) ("Notwithstanding the definition of 'wages' for a self-employed individual under [20 C.F.R.] § 625.2(u) [(2024)], the term 'any income' for purposes of this paragraph (f)(2) means gross income.").[6]

¶16 We agree with LIRC that it is appropriate to look to WIS. STAT. § 71.03(1) for the definition of "gross income" that applies under 20 C.F.R. § 625.6(f)(2). Morgan does not identify another definition of that term in Wisconsin law for us to consider, and her suggestion that we rely on WIS. STAT. § 108.02(26)'s definition of "wages" is at odds with the distinction drawn in § 625.6(f)(2) between wages and a self-employed individual's gross income. Morgan fails to supply a persuasive justification for treating wages as gross income when the regulation specifically directs us *not* to do so.

[6] That inapplicable code provision, 20 C.F.R. § 625.2(u), states: "Wages means remuneration for services performed for another, and, with respect to a self-employed individual, net income from services performed in self-employment."

¶17 Morgan purports to identify several "major problems" with LIRC's position, but her arguments do not persuade us that the Commission erred. First, she argues that gross income for a self-employed individual "is typically understood" to be that person's earnings less the costs he or she incurs to produce a product. She cites a former Wisconsin Department of Industry, Labor and Human Relations regulation stating that "'income' from self-employment means the amount of gross income, gross profits or total income earned from the self-employment activity for a given period of time minus total allowable deductions." WIS. ADMIN. CODE § ILHR 131.03 (Nov. 1989).[7] As LIRC notes, however, this regulation was repealed more than thirty years ago after its authorizing statute, WIS. STAT. § 108.05(8) (1989-90), was itself repealed. *See* 1991 Wis. Act 89, § 39. Morgan offers no citation to current Wisconsin law in support of her argument, which diminishes its persuasive force significantly because the Department of Labor guidance instructs us to consult state law to determine what "gross income" means in 20 C.F.R. § 625.6(2)(f). Morgan's argument is untethered to such authority and thus furnishes no basis to set aside the Commission's decision.

¶18 Morgan also argues that by failing to consider a business's "basic costs, the Commission is creating additional, phantom income" for self-employed individuals like her. She contends that the Commission's approach to determining her gross income "magnif[ied] her income five-fold from what she actually received" from the sewing business. This, in her view, undermines "the purpose of economic stimulus behind unemployment benefits, and particularly PUA

[7] The regulation is accessible online at https://docs.legis.wisconsin.gov/code/register/1989/407b/insert/ilhr131.pdf.

benefits." While these policy-oriented arguments might have some persuasive force in recommending a different definition of gross income grounded in Wisconsin law, Morgan does not direct us to an alternate definition. We are bound to apply the federal regulations regarding PUA benefits as they are written. Paragraph 625.6(f)(2) of Title 20 of the Code of Federal Regulations requires an offset based on gross income. WISCONSIN STAT. § 71.03(1) is the only state-law definition of that term that either party has urged us to adopt.[8] Morgan has not convinced us that use of that definition with respect to PUA benefits determinations is inappropriate.

III. LIRC Did Not Erroneously Exercise its Discretion In Denying Waiver of Repayment.

¶19 The other issue Morgan raises on appeal concerns LIRC's determination that it was not appropriate to waive her obligation to repay the PUA benefits she should not have received. The CARES Act requires repayment of PUA benefits to which an individual is not entitled but provides that a state "may waive such repayment if it determines that (A) the payment of such pandemic employment assistance was without fault on the part of any such individual; and (B) such repayment would be contrary to equity and good conscience." 15 U.S.C. § 9021(d)(4)(A)-(B). Consistent with the statute's use of the word "may," Department of Labor guidance regarding such waivers states that "[i]t is a matter of state discretion whether to exercise this waiver authority." U.S. Dep't of Labor,

[8] In a footnote of its brief, LIRC acknowledges an alternative definition of "gross income" in WIS. STAT. § 49.686(1), a statute that concerns a Wisconsin program to reimburse the costs of two drugs, azidothymidine and pentamidine. Section 49.686(1) defines "gross income" as "all income, from whatever source derived and in whatever form realized, whether in money, property or services." Neither LIRC nor Morgan argues that we should adopt this definition as the definition of "gross income" for the purpose of 20 C.F.R. § 625.6(f)(2).

Unemployment Insurance Program Letter No. 20-21 at 6 (May 5, 2021).[9] Accordingly, we review LIRC's decision for an erroneous exercise of discretion. That is to say, we look to see if the Commission considered the relevant facts, applied the proper legal standards, and reached a decision "that a reasonable person could reach." *See* ***Verhaagh v. LIRC***, 204 Wis. 2d 154, 160, 554 N.W.2d 678 (Ct. App. 1996).

¶20 LIRC determined that a waiver was not appropriate in Morgan's case because she was at fault for the overpayment. The Department of Labor guidance specifies that "[s]tate law determines when an individual is considered to not be at fault for the overpayment." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21 at 6 (May 5, 2021). The parties agree that the relevant state law on this point is WIS. STAT. § 108.04(13)(f), which provides in part that an employee is at fault for erroneously paid benefits if the employee "fails to provide correct and complete information to the department."

¶21 LIRC could reasonably conclude that Morgan did not provide correct and complete information regarding her gross income from the sewing business to the DWD, and thus that she was at fault for the overpayments. LIRC found as a fact that Morgan listed the amounts of her periodic distributions from the sewing business in her weekly benefit certifications. Though neither the ALJ nor the Commission found it as a fact, the parties appear to agree that at some point after Morgan had been reporting the distributions, she was contacted by a DWD adjudicator and asked for invoices that would show sales made by the

[9] A copy of this letter is available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_20-21.pdf.

sewing business, which she provided in August 2021. After that information was provided, the DWD determined that Morgan had underreported her income, resulting in overpayments of PUA benefits. Because the DWD (and later LIRC) concluded that the business's gross receipts should have been factored into her benefit calculations, rather than the distributions she received, the Commission's determination that the overpayments resulted from Morgan's failure to provide correct and complete information was reasonable.

¶22 Morgan argues that LIRC "provided no rational explanation" for its decision to deny her a waiver. She emphasizes that the Commission adopted the ALJ's findings that she was initially confused about what information to report about her self-employment and that, after seeking clarification on this point, she reported the distributions she received from the sewing business to DWD. The ALJ further found that Morgan "did not intend to deceive the department with her answers." Morgan argues that it was not until November 2022—three months after LIRC issued the decisions under review here—that the Commission first publicized, in a separate unemployment insurance decision, its analysis adopting the definition of "gross income" in WIS. STAT. § 71.03(1) for the purpose of 20 C.F.R. § 625.6(f)(2). *See* Roberto R. Islas, Hearing Nos. 21615743MD, 21615744MD & 21615745MD (Lab. & Indus. Rev. Comm'n Nov. 29, 2022).[10] In essence, she contends that the Commission changed its position as to the meaning of "gross income" between the weeks in 2020 and 2021 when she submitted her distribution amounts without complaint or pushback by the DWD and LIRC's November 2022 decision in the matter involving Islas. This, in her view,

[10] A copy of this decision is available at https://lirc.wisconsin.gov/ucdecsns/4356.pdf.

precludes a determination of fault on her part. *See* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21, Change 1 at 10 (Feb. 7, 2022) (stating that "the state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state").[11]

¶23 Morgan's arguments do not convince us that the Commission erroneously exercised its discretion. Though LIRC found that she was initially confused about what information to report regarding her self-employment, the confusion was *not* about whether she should report the sewing business's total sales receipts or her weekly distributions—rather, it concerned whether she should report self-employment income from the sewing business or her daycare business. In addition, neither LIRC nor the ALJ found that DWD initially instructed Morgan to report only her distributions, and Morgan directs us to no evidence in the record that she received such an instruction. At most, the evidence shows that she submitted her distribution amounts and then at a later date was asked for, and provided, the sewing business's gross sales figures. That later request is not sufficient to show that the DWD had given her conflicting, changing, or confusing information or instructions such that she should not be deemed at fault for the overpayments.

¶24 Because we conclude that Morgan has not shown that it was unreasonable for LIRC to conclude that she was at fault for the overpayments of her PUA benefits, it is not necessary for us to address the second element of the

[11] A copy of this letter is available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2022/UIPL_20-21_Change_1.pdf.

waiver analysis—whether "repayment would be contrary to equity and good conscience." *See* 15 U.S.C. § 9021(d)(4)(B).

CONCLUSION

¶25 For the reasons stated above, we conclude that Morgan's arguments do not furnish a basis to set aside LIRC's decisions. We agree with the Commission that WIS. STAT. § 71.03(1) provides the applicable definition of "gross income" as that term is used in the relevant PUA regulation, 20 C.F.R. § 625.6(f)(2). In addition, Morgan has not carried her burden to show that LIRC's failure to waive her repayment obligation was an erroneous exercise of discretion. Thus, the circuit court's order is affirmed.

By the Court.—Order affirmed.

Recommended for publication in the official reports.