IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

MELISSA WILSON, et al., individually and
on behalf of all others similarly situated,

       Plaintiffs,

v.

WENDY LONG, et al.,

       Defendants.

Civil Action No. 3:14-CV-01492

Judge Collier
Magistrate Judge Newbern

EXPERT REPORT OF MICHAEL WARNER

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1.   Based on my education, experience, and qualifications, I am an expert in "big data" analysis, meaning I am qualified to analyze, and present quantified visualizations of, large amounts of data. This Report summarizes data produced by the State to Plaintiffs to show: (1) how "delay appeals"—*i.e.*, appeals filed pursuant to the Court's September 2014 Preliminary Injunction Order—are processed and (2) how many TennCare applicants are using the delay appeal process because their underlying applications are delayed. As summarized below, over the last three months for which complete data are available—September, October, and November 2016—356, 307, and 295 applicants, respectively, had delayed TennCare applications and received relief through the State's delay appeal process.

I.   **QUALIFICATIONS**

  A.   **Education and Professional Experience**

2.   Based on my education, experience, and qualifications, I am an expert in big data analysis and am qualified to analyze, and present quantified visualizations of, large amounts of data. I have worked as a Senior Data Analyst at the Southern Poverty Law Center ("SPLC") for the last two years, where I lead a team of subject matter experts and engineers in the creation of paradigm shifting "big data" systems to drive program results and new revenue. Before joining SPLC, I architected and managed the development of big data systems as the Chief Strategist at Motus Consulting for approximately three years. From 2008 to 2013, I was the Lead Business Intelligence and Technology Analyst, where I led the design and implementation of technology systems for the Juvenile Welfare Board of Pinellas County in Clearwater, Florida. I also served as a programmer at Pinson Communications from 2001 to 2002, where I was responsible for programming data and inventory management systems, among other duties.

3. I possess expert technical skills in Excel and Tableau and other big data programming such as Hadoops and SSIS and SSRS. I gained these skills by attending professional formal training on these programs as part of my current and previous employment as well as through consistent use of these programs on a near daily basis to perform the above job functions. Over the last 4 years, I have been featured in several information technology magazines, including *Computerworld* and *Wired,* for my innovative business intelligence in information technology.

4. I received a Masters of Business Administration from Keller Graduate School of Management and a Bachelor of Liberal Studies from the University of Montana.

5. My resume, attached as Exhibit A, further details the above educational and professional experiences that qualify me as an expert of analyses of large amounts of data in this case.

B. Prior Testimony and Publications

6. I have not testified as an expert at trial or by deposition in any litigation within the last four years, and I have not published any articles, comments, or notes.

C. Compensation

7. Beyond the annual salary I receive as an employee of SPLC, which also employs several of Plaintiffs' attorneys, I am not being compensated for preparing this Report or rendering the opinions herein. Nor do I expect to be compensated for other expert witness services I may provide in this case, including testifying at a deposition or at trial. I do expect to be reimbursed for any costs I incur as an expert.

II.   OVERVIEW OF CASE AND THE EXPERT ASSIGNMENT

A. Plaintiffs' Case

8.   I understand that in 2014 Plaintiffs filed a class-action lawsuit to challenge the State of Tennessee's failure to timely process applications for Medicaid coverage under Tennessee's Medicaid program, "TennCare," and to provide hearings to applicants whose applications were delayed. On behalf of themselves and a class of similarly situated TennCare applicants, Plaintiffs claimed they had not received an eligibility decision on their TennCare applications within 45 days of applying (or for applications based on disability, within 90 days), and that they had not been granted an opportunity for a fair hearing on their application delays.[1] I also understand that several weeks after Plaintiffs filed suit, the Court entered a preliminary injunction that required Defendants (the "State") to provide an appeal process to determine whether TennCare applications were delayed.[2]

9.   In response to the preliminary injunction, the State has implemented a process to accept appeals—which I refer to in this Report as "delay appeals" or "delayed application appeals"—and to conduct hearings on delayed applications. Included within this system is a process to resolve the underlying applications for Medicaid eligibility within 45 days of the State's receipt of the delay appeal.[3] If the underlying application is resolved before the hearing, I understand there is no need for a hearing and that it generally does not occur.[4]

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[1] Compl., Dkt. Entry No. 1.
[2] Prelim. Inj. Order, Dkt. Entry No. 91.
[3] *See generally* TennCare Members Services, *Delayed Application Appeals Desk Guide* (hereinafter "DG") (eff. May 5, 2015) (updated Sept. 16, 2016), Bates TCWIL00003283 to TCWIL00003378.
[4] Declaration of Kim Hagan, Dkt. Entry No. 166 (Sept. 16, 2016) (the "Hagan Decl."), ¶¶ 6(f), 7(i).

B. Implementation of the Preliminary Injunction

10.   I understand that the steps for processing delay appeals that were received after May 1, 2015, are generally as follows. First, the State determines whether the appellant-applicant (the "appellant") is already enrolled at the highest level of eligibility for TennCare.[5] If that person is already enrolled at the highest level, the appeal is denied and a notice is sent to the appellant.[6] If the person is not enrolled at the highest eligibility level, the State searches for proof that the appellant previously applied for TennCare.[7] If proof is not found, the State sends a request to the appellant to provide proof of a delayed application.[8] If proof is not timely provided by the appellant, the State denies the appeal, with notice to the appellant.[9]

11.   If proof of the application is found or is returned by the appellant, the State next determines whether the proof shows the application has been delayed for more than 45 days since the appellant applied, or 90 days if the application is based on a disability.[10] If the application is not delayed, the appeal is denied with notice to the appellant.[11]

12.   If the State determines the application is delayed, it next verifies whether it has all eligibility information—including income, Tennessee residency, and immigration or citizenship status—that is necessary to determine whether the appellant is eligible for coverage.[12] It if can locate the eligibility information, it processes the application and either approves or denies the

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[5] DG at 18; Hagan Decl. ¶ 6(b).
[6] DG at 18; Hagan Decl. ¶ 6(b).
[7] DG at 18-19, 29-32; Hagan Decl. ¶ 6(c).
[8] DG at 29-30, 33; Hagan Decl. ¶ 6(c).
[9] DG at 30; Hagan Decl. ¶ 6(d).
[10] DG at 29, 32; Hagan Decl. ¶ 6(e).
[11] DG at 29, 31; Hagan Decl. ¶ 6(e).
[12] DG at 33, 35-45; Hagan Decl. ¶ 6(e)-(f).

application.[13] If it is approved, the State sends a notice of approval to the appellant and enrolls the appellant;[14] if it is denied, the State sends a notice of denial.[15]

13.   If the State cannot locate or verify all necessary eligibility information, it requests that the appellant provide the required proof, or any other eligibility information, within a time frame set by the State.[16] If the verification is not timely returned or is returned but is not satisfactory to the State, the State denies the appeal.[17] If, however, the information is returned and is satisfactory to the State, the State processes the underlying application and sends the appellant the appropriate notice of an approval or denial of benefits.[18]

14.   Appellants' applications may be assessed for three general types of eligibility. First, they may be evaluated for a "MAGI" category of eligibility for TennCare, which refers to Medicaid programs whose eligibility is based in part on a calculation of the applicant's modified adjusted gross income—or "MAGI."[19] Examples include children, pregnant women, and parents of dependent children.[20] Second, appellants may be evaluated for non-MAGI categories of Medicaid eligibility, which are evaluated using a methodology unrelated to the MAGI calculation. Examples include coverage categories based on age, blindness, or disability.[21] Third, some applications will be evaluated for Tennessee's Children's Health Insurance Program

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[13] DG at 35-45, 42; Hagan Decl. ¶ 6(e)-(f).
[14] DG at 36, 40, 57-58; Hagan Decl. ¶ 6(f).
[15] DG at 36, 43, 44, 58; Hagan Decl. ¶ 6(f).
[16] DG at 37, 38-39.
[17] DG at 37-38, 39, 42. When the appellant returns a verification late, the State will refer the application to the Eligibility Operations Group to process the application to determine eligibility. DG at 42.
[18] DG at 43-46, 57-58.
[19] DG at 5.
[20] DG at 46-52.
[21] DG at 46-52.

("CHIP"), known as CoverKids, which extends coverage to children and pregnant women who are not otherwise eligible for TennCare.[22]

C. Expert Assignment

15. I understand the State has operated its delay appeals system in the above manner since May 2015,[23] and it has tracked these delay appeals in a spreadsheet called the Daily ELG Cumulative Inventory Report (the "ELG CIR"). The most current ELG CIR report produced by the State to Plaintiffs' counsel is dated December 23, 2016; contains data from May 1, 2015, to December 23, 2016; and has Bates number TCWIL00005347. I understand that before May 2015, when a slightly different process was used to process delay appeals, the appeals were tracked in a report titled the Application Process Delay Appeal Cumulative Inventory Report (the "APDA CIR"). Both the ELG CIR and APDA CIR generally note unique information about the appellant; the date of receipt of the delay appeal; the date and types of notices sent; and the date and resolution of the appeal.

16. Plaintiffs have asked me to calculate the following categories of data based on the most recent version of the ELG CIR (dated December 23, 2016).[24] Unless otherwise indicated below, the data from the ELG CIR are from May 1, 2015, to November 30, 2016—the last month for which Plaintiffs' counsel provided me complete monthly data.[25]

   a. The total and monthly number of delay appeals that are related to an underlying application that has been delayed beyond 45 days (or 90 if based on a

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[22] DG at 4, 46, 47, 51.

[23] *See generally* DG at 1; Hagan Decl., Dkt. Entry No. 166, ¶¶ 6-7; Hagan Dep. 128:8-129:20.

[24] The ELG CIR contains over 90 columns and over 25,000 rows, and would require several thousand pages to print. Thus, the spreadsheet is not attached to this Report but can be electronically or physically produced upon request.

[25] Although the ELG CIR includes data from December 2016, the data ends on December 23, 2016, and does not include the final eight days of December 2016.

disability). This calculation tracks delay requests that the State found involved a delayed

application and that it either approved, denied after fully processing the underlying

application, or denied for failing to respond to a request for verification of information.

17.   To calculate these figures and prepare my opinions in this Report, I have reviewed

several documents from this litigation provided by Plaintiffs' counsel, including the Complaint;

the Preliminary Injunction Order; the Rule 30(b)(6) deposition of the State's corporate designee,

Kim Hagan (the "Hagan Deposition" or "Hagan Dep."); the Declaration of Kim Hagan, Dkt.

Entry No. 166 (Sept. 16, 2016) ("Hagan Decl."); the State's Members Services' *Delayed

Application Appeals Desk Guide* (updated Sept. 16, 2016; eff. May 5, 2015) (the "Desk Guide"

or "DG"); the State's February 3, 2016 letter to Plaintiffs regarding Ms. Hagan's deposition

testimony on the ELG CIR (the "February 2017 Letter" or "Defs.' Feb. 3, 2017 Ltr."); and the

ELG CIR (dated December 23, 2016), Bates TCWIL00005347. I understand the State may

produce updated reports and data that may change my analysis; thus, my analysis is ongoing. I

will review any additional materials that become available, and I may supplement or amend my

opinions based on my ongoing research or additional testimony, information, or documents.

III.   OPINIONS AND BASES FOR OPINIONS

18.   If called upon, I am prepared to testify to the following opinions, analyses, and

conclusions.

19.   To reach my opinions in this Report, I assumed the following column

designations and titles in the ELG CIR spreadsheet had the following meanings based on

citations to the pages of the Hagan deposition, the DG, and Defendants' February 2017 Letter,

which Plaintiffs' counsel provided me:

Column designation and title	Meaning	Source of Definition
W - Issue Received Date	Issue Received Date starts the 45-day processing clock. For appeals received on or after 11/1/2014, the IRD is generally five business days after the date on the first page of the appeal request form.	DG at 5, Hagan Dep. 90:14-17.
AB - AIR Approved.	An appellant-applicant (the appellant") was approved.	DG at 40, 57; Hagan Dep. 134:2-5, 144:6-11.
AE - AIR CHIP Approved.	An appellant was approved for CoverKids.	DG at 51; Hagan Dep. 136:3-8.
AX - non MAGI Approval.	An appellant was approved for a non-MAGI category of coverage.	DG at 57; Hagan Dep. 133:15-134:1, 141:19.
AY - Non MAGI Denial JC.	An appellant-applicant was denied for a non-MAGI category of coverage.	Hagan Dep. 141:19-142:2; DG at 58.
BT - AP Denial Citizenship.	An appellant was denied coverage because the AIR specialist determined, after requesting verification of income or citizenship status, that the appellant does not have the proper citizenship or immigration status.	DG at 41, 58, 67.
BU - AP Denial Pre Verif of Citiz.	An appellant was denied coverage because the appellant does not have the proper citizenship or immigration status.	DG at 36, 67.
BW - AP Denial Inc Too High	An appellant was denied coverage because the appellant's income was too high.	DG at 42, 58, 67.
BX - AP Denial non-group.	An appellant was denied coverage because the appellant does not fit into any of the approved "groups" that are eligible for Medicaid coverage—i.e., children, pregnant women, a caregiver of a minor, persons with certain types of cancer, etc.	DG at 58, 67.
BY - AP Denial non res.	An appellant was denied coverage because the appellant is not a Tennessee resident.	DG at 44.
BL - AP Additional Info Income	The State requested verification of income from the appellant-applicant.	DG at 37, 67

Column designation and title	Meaning	Source of Definition
BM -AP Addtl Info MAGI App	The State requested verification of additional information from the appellant to evaluate the appellant's eligibility for MAGI categories because the State does not possess any information about the underlying application.	DG at 33, 67.
BP - AP Additional Info Combo Inc Cit	The State requested verification of income and citizenship from the appellant-applicant.	DG at 37, 67.
BQ - AP Addtl Info 10 day for Citiz	The State requested verification of citizenship from the appellant-applicant.	DG at 37, 67.
BV – AP Denial Failure to Provide.	The appeal was denied because the appellant did not provide requested verification information.	Defs.' Feb. 3, 2017 Ltr.; DG at 37, 67

20.   Based on my analysis of the AIR CIR (hereinafter, the "spreadsheet"), I have reached the following opinions about the number of delay appeals the State has processed that involved underlying applications that were delayed more than 45 or 90 days from the date of the initial TennCare application and thus, resulted in a delay appeal:

A. Opinion on the Number of Delay Appeals that Involved Underlying Delayed Applications that Were Approved, Denied on the Merits After Being Fully Processed, or Denied for Failure to Respond to a Verification Request from May 2015 to November 2016.

21.   From May 1, 2015,[26] to December 23, 2016, the State received a total of 14,759 delay appeals that involved an underlying application that was delayed beyond 45 days (or 90 if based on a disability) from the date of the initial TennCare application (hereinafter "delayed application") and that was either approved, denied because the appellant was found to not be eligible on substantive grounds, or denied because the applicant did not timely respond to a

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[26] The data I used to reach this opinion derive from the ELG AIR chart only and do not account for data from any additional unique delay appeals in the APDA CIR with an "Issue Received Date" in May 2015. Thus, this opinion does not account for all delay appeals with delayed applications with an "Issue Received Date" in May 2015.

verification request. During this period, the State received a monthly average of 738 of these delay appeals related to underlying delayed applications, and in the last three months for which complete data was available—September, October, and November 2016—they received 356, 307, and 295 of these delay appeals related to underlying delayed applications, respectively.

22.　For this opinion, I created a chart and table, entitled Delay Appeals that Involved Delayed Applications that Were Approved, Denied on Substantive Grounds, or Denied for Failure to Verify Eligibility (May 2015 to Nov. 2016), which shows the total and monthly numbers of these delay appeals. The chart and table, which is attached here as Exhibit B, show the following:

　　a.　In 2015, the State received the following numbers of delay appeals involving delayed applications that were ultimately approved, denied on the merits, or denied for failure to verify eligibility: 1,231 in May; 1,473 in June; in July; 1,460 in August; 710 in September; 552 in October; 445 in November; and 461 in December; and

　　b.　In 2016, the State received the following numbers of delay appeals involving delayed applications that were ultimately approved, denied on the merits, or denied for failure to verify eligibility: 1,318 in January; 1,443 in February; 1,045 in March; 648 in April; 548 in May; 478 in June; 353 in July; 408 in August; 356 in September; 307 in October; 295 in November; and 185 in December, from December 1 to December 23, 2016.

23.　I base this opinion on the following: As noted above, the spreadsheets track and report whether an underlying application related to a delay appeal is approved, denied after being fully processed, or denied after the appellant does not respond to a request for verification within the time constraints set by the State. Moreover, when processing delay appeals, the State first

must confirm that the appellant is not already enrolled at the highest possible level of eligibility and that the appellant has an underlying application that has been delayed for 45 days, or 90 if based on a disability. Only then will the State process the delay appeal.[27] Thus, if a delay appeal is processed and results in the underlying application being granted and the appellant being enrolled in TennCare or CoverKids; the underlying application being denied because the appellant was found ineligible; or the underlying application being denied because additional verifications had been requested of the individual and the individual did not respond, the delay appeal necessarily involves a delayed application.

24.   To calculate these figures, I worked from the ELG CIR spreadsheet. I first filtered the delay appeals by month, utilizing the "Issue Received Date" column. I then counted every *unique* row that contained a date in the following columns: (i) AIR Approved, (ii) AIR CHIP Approved, (iii) Non MAGI Approval; (iv) AP Denial Citizenship; (v) AP Denial Pre Verif of Citiz; (vi) AP Denial Inc Too High; (vii) AP Denial Non-group; (viii) AP Denial Non Res; (ix) Non MAGI Denial JC; and (x) AP Denial Failure to Provide. I limited my count to every *unique* row because certain rows had date entries in more than one of the listed columns, presumably because the appellant received more than one outcome of the delay appeal. I then plotted and charted the total number of unique applications per month resulting in either an approval, a denial on the merits after full processing, or a denial because the appellant did not timely respond to a request for verification, as well as the sub-total number of delayed applications per month resulting in all of these outcomes.

25.   I used the analysis and calculations described in the prior two paragraphs to create the above-referenced table and chart and to reach the above opinion.

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[27] *See* discussion *supra* at ¶¶ 10-14.

DATED this February 13, 2017.   Respectfully submitted,

Michael Warner
Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104
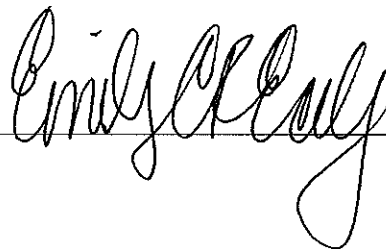(334) 956-8380 (office)
michael.warner@splcenter.org

CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing Expert Report by

Michael Warner was served electronically and by U.S. Mail to all counsel of record, including:

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OFFICE OF THE ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202

Dated February 13, 2017.

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EXHIBIT A

Resume of Michael Warner

Michael Warner

334-956-8200 | michael.warner@splcenter.org

Technology Strategy and Business Intelligence Leader

Employment

Senior Data Analyst
Southern Poverty Law Center | 2015 - Current

Lead a team of subject matter experts and engineers in the creation of paradigm shifting big data systems to drive program results and new revenue.

Chief Strategist
Motus Consulting | 2012- 2015

Architected and guided the development of big data and related systems that built strategic insights and process efficiencies.

Lead Business Intelligence and Technology Analyst
Juvenile Welfare Board | 2008-2013

Led the design and implementation of business intelligence and technology systems that improved agency outcomes while reducing costs

Program Director
Eckerd Youth Alternatives| 2002-2008

Led an early intervention and mentoring program for youth .

Programmer
Pinson Communications| 2001-2002

Programmed innovative data and inventory management systems, web sites and related properties for a financial advice and publishing firm

Managing Partner
Peacock Five | 1999-2001

Guided the strategic vision and operations from ground zero that led to READI, a computerized reading assessment program for elementary age children, using speech recognition

Operations Director
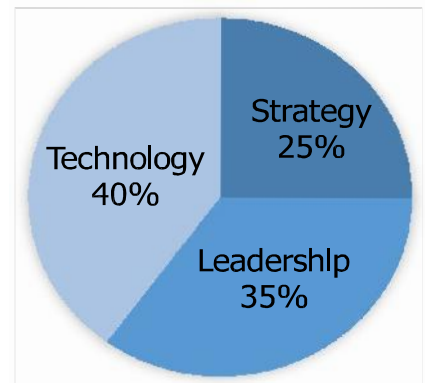Digi-Net Technologies | 1997-1999

Oversaw the operations, project management and budgets of this web software startup and creator of the world's first Java chat software, Digichat
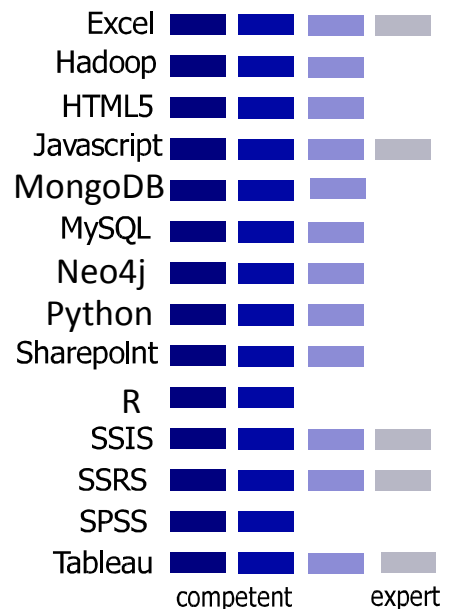
Education

Masters of Business Administration
Keller Graduate School of Management
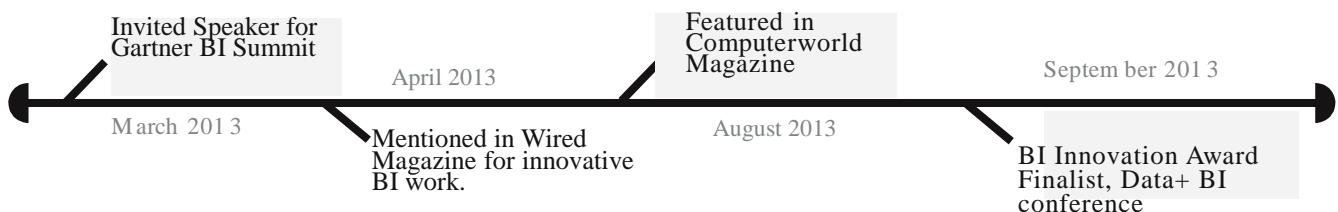
Bachelor of Liberal Studies
University of Montana, WMC

Work Experience

Pie chart: Technology 40%, Leadership 35%, Strategy 25%

Technical Skills

Skills bar chart (scale: competent — expert): Excel, Hadoop, HTML5, Javascript, MongoDB, MySQL, Neo4j, Python, Sharepoint, R, SSIS, SSRS, SPSS, Tableau

Notables

Invited Speaker for Gartner BI Summit — March 2013

Mentioned in Wired Magazine for innovative BI work. — April 2013

Featured in Computerworld Magazine — August 2013
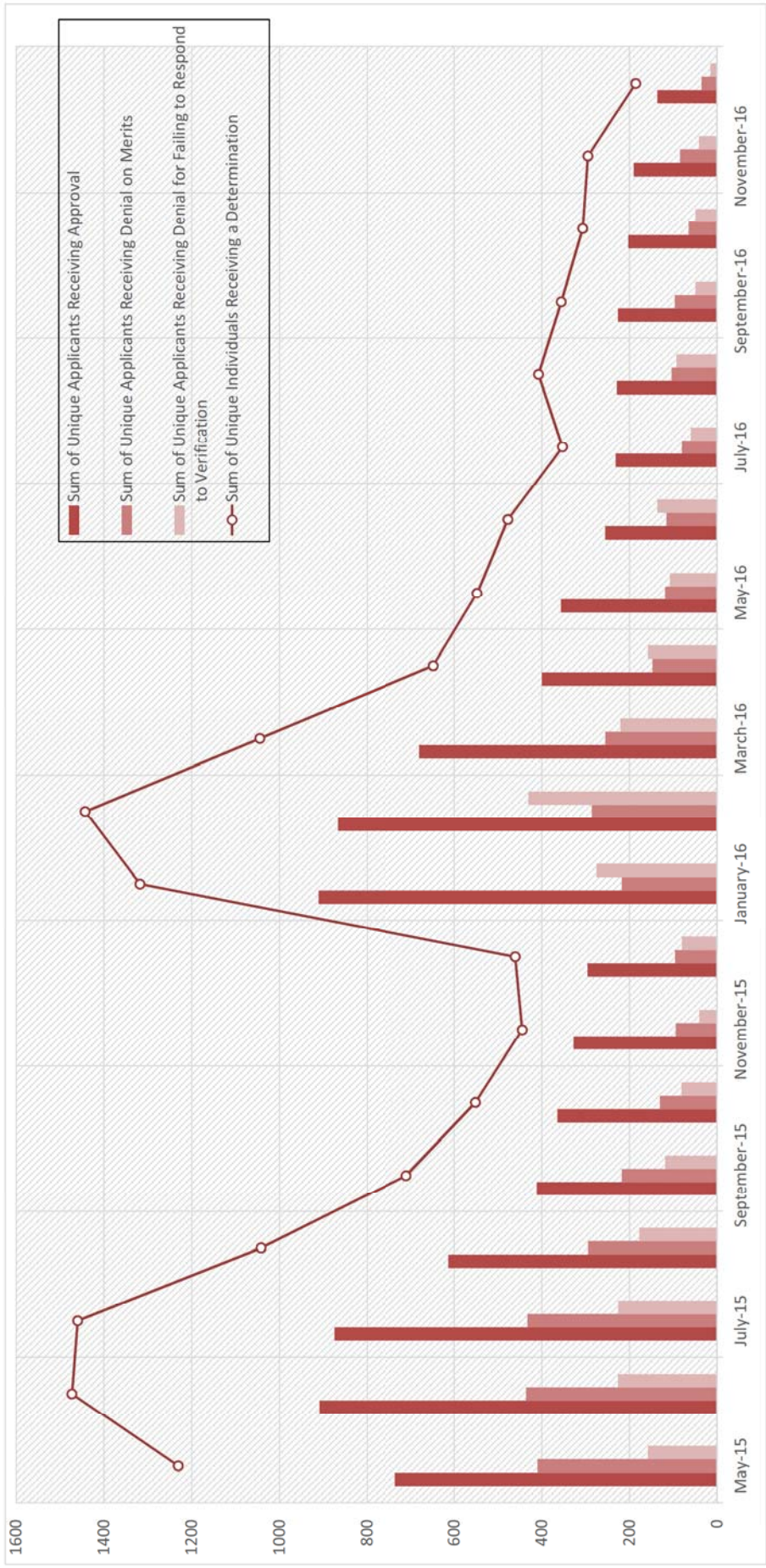
BI Innovation Award Finalist, Data+ BI conference — September 2013

EXHIBIT B

Delay Appeals that Involved
Delayed Applications that Were
Approved, Denied on the Merits, or
Denied for Failure to Verify
Eligibility
(May 2015 to November 2016)

	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Grand Total
Individuals Receiving a Determination	1231	1473	1460	1042	710	552	445	461	1318	1443	1045	648	548	478	353	408	356	307	295	186	14759
Applicants Receiving Approval	736	909	875	614	412	365	328	296	911	867	680	400	357	256	232	229	227	203	191	137	9225
Applicants Receiving Denial on Merits	410	436	433	295	218	131	95	96	218	286	255	148	119	116	81	104	97	65	85	36	3724
Applicants Receiving Denial for Failing to Respond to Verification	158	227	226	178	119	82	41	81	276	431	221	158	108	137	60	93	50	50	42	16	2754