

Excluded Worker Programs

This brief is part of the Unemployment Insurance Policy Hub created by the National Employment Law Project as a reference guide for state advocates to support efforts that will strengthen the economic security of workers and their families. For other Policy Hub resources, see www.uipolicyhub.org.

Excluded Worker Programs Definitions

Average Weekly Benefit Amount (WBA): The average amount of money that workers receive each week in UI benefits.

Base Period: The period (generally a year) used to determine whether workers have earned sufficient wages or worked enough hours (or both) to qualify for UI benefits and what amount of UI benefits they receive. A worker's base period is usually the first four of the last five completed quarters before the worker applied for UI benefits.

Excluded Worker: A worker who would typically not be eligible to receive unemployment insurance benefits.

Monetary Eligibility: A requirement that a worker has earned a certain number of wages or worked a certain amount of time (or both) within a specified time period to be eligible for UI benefits.

Workers Without Documentation (also known as Undocumented Workers or Undocumented Immigrants): Immigrants who reside in the United States without legal status. We use the term workers without documentation as opposed to undocumented workers. The California Immigrant Policy Center explains, "First and foremost, it is important to remember that we are talking about people, so that is why we say "people who are undocumented" rather than simply "undocumented" or "immigrant" as much as possible. Second, the term "undocumented" focuses on the specificity of a person's situation now; namely that the person does not have all of the necessary documentation for lawful presence in the U.S., either because they do not have proper permission from the government or because their visa is not current, expired, or under review. Other terms may include "people without status" or "citizens without status" to signify that the person does not have another official immigration status, such as lawful permanent resident, refugee, or asylum status."¹

Workers Without Work Authorization: A worker who is permitted to reside in the United States but has not received authorization to work.

Overview

Unemployment Insurance (UI) benefits are an essential lifeline, providing vital economic support for workers and their families when the crisis of job loss occurs. But since UI's inception, far too many workers have been excluded from UI entirely. These exclusions continue today, and the COVID-19 pandemic only highlighted and exacerbated the disastrous impact excluding certain types of workers from the UI system has on these workers, their families, and their communities. As the COVID-19 pandemic began to unfold, many workers, disproportionately workers of color, were forced out of work and discovered they were shut out of receiving vital UI benefits. While some workers did not qualify for UI due to overly restrictive state eligibility requirements, others like independent contractors, self-employed workers, and immigrant workers without documentation were shut out of the UI system entirely by federal law.

Responding to workers' demands, Congress quickly created several temporary new pandemic UI programs to fill in some of the long-standing gaps in the UI system, including enacting the Pandemic Unemployment Assistance (PUA) program that extended UI benefits to some classes of excluded workers such as self-employed workers and independent contractors. However, workers without documentation were not included and continued to be locked out of both regular UI and the expanded pandemic programs.

As the federal government failed to support workers without documentation, worker organizing opened yet another door: In several places around the U.S., state and local governments and private and community-based organizations stepped in to create programs to provide some form of economic support to these workers and their families, which were known as "excluded worker funds." Both the expanded pandemic programs and the excluded worker funds were profoundly impactful, providing unemployment benefits to a record number of workers and their families, keeping workers safe and financially afloat. Yet, as the pandemic receded, Congress terminated federal UI expansions and state officials ended programs aimed at supporting workers without documentation, leaving millions of workers shut out of the UI system again.

Types of Excluded Workers

There are two main types of workers who are excluded from the UI system. The first are workers that federal law explicitly omits. This includes workers who are not considered "employees" under state law such as independent contractors and those who are self-employed. This also includes immigrant workers without work authorization either during their base period or when they are applying for and receiving UI. These explicit exclusions represent both the systemically racist and anti-immigrant biases that underlie the UI system as well as the fact that the federal government has failed to update the UI system to reflect the reality of today's labor market.

The second group of excluded workers are those who are not explicitly excluded, but due to the nature of their work, how they are paid, or their employment history are de facto excluded. This can include a variety of worker categories like domestic workers or day laborers whose employers may pay in cash, or who may work uneven hours, or have erratic

schedules. It can also include formerly incarcerated workers seeking re-entry into the workforce who do not qualify as the pay they received for any work in prison is not counted for the monetary eligibility requirements for UI benefits.

This brief will focus on the first group of excluded workers, particularly workers who are prohibited from receiving unemployment insurance benefits under federal law because of their lack of work authorization. However, for further discussion on policy recommendations that may help the second category of excluded workers, please see NELP's [Monetary Eligibility Policy Advocacy Brief](#).

Pandemic Programs Had Powerful Impacts and Provided Successful Models

The federal pandemic programs and state and local excluded worker funds demonstrated the importance of ensuring all workers have access to UI. They also provided guidance and lessons to keep in mind when trying to make these expansions permanent. The pandemic exacerbated the country's deep inequities and for the first time, in response to workers' demands, the U.S. saw unprecedented expansions of the UI system and other economic supports for jobless workers, to meet the needs of workers and their families. At the federal level, a variety of pandemic programs were created, including Pandemic Unemployment Assistance (PUA), which expanded UI to groups of workers generally excluded, including self-employed workers, independent contractors (including those who are misclassified), caregivers, part-time workers, and many underpaid workers. These expansions made the system more equitable, especially for workers of color, and provided a multitude of benefits, including serving as a powerful anti-poverty tool and sustaining state and local economies.²

Unfortunately, due to long-standing federal restrictions, immigrant workers without documentation were locked out of the federal pandemic programs entirely. As a result, several of what were referred to as "excluded worker campaigns," led by immigrant workers, emerged around the country demanding that the government fulfill its responsibility to provide economic security for all. For example, in New York, workers held an almost three-week hunger strike, camped out in front of Amazon CEO Jeff Bezos apartment, shut down the Brooklyn Bridge, and held several large protests at the state capitol demanding their state leaders act. to provide support to these excluded workers.³

As a result of workers' demands, 12 states (including the District of Columbia) enacted state-level programs that provided temporary funds for excluded workers, predominately workers who were ineligible for UI for reasons related to work authorization.⁴ Those states were California, Colorado, Illinois, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.⁵ Many localities, mutual aid organizations, and other private philanthropy groups also created funds to provide economic support to undocumented immigrant workers and other workers excluded from the UI system. These temporary programs provided a blueprint for how the government can help ensure economic security for these workers and proved these programs can be successfully implemented.

The biggest program, in terms of funding and reach, was New York's Fund for Excluded Workers (FEW). FEW provided 130,000 workers with \$2.1 billion in benefits. Each worker could receive between \$3,200 and \$15,600, depending on the documentation they submitted to verify their eligibility and income. According to research by the Immigration Research Initiative (IRI) and the Urban Institute, most workers used the funds they received from the

FEW to pay for housing and food. The benefits supported economic mobility, improved household wellbeing, increased community engagement, and were a powerful anti-poverty tool. ⁶ The New York State Department of Labor released a report on FEW's implementation, confirming the administrative successes of the program and encouraging other states to replicate it.⁷

Other state programs, while more limited in scope, also provided support to excluded workers. Some programs like California's Coronavirus (COVID-19) Disaster Relief Assistance for Immigrants (DRAI), the first statewide pandemic program for excluded workers to launch, provided one-time payments of \$500 per person or \$1,000 per household to immigrant workers who did not qualify for other pandemic supports.⁸ Washington, D.C.'s Cares program provided one-time payments of \$1,000 to workers without documentation and other categories of workers, such as those re-entering the labor market from either an immigration detention center or incarceration.⁹

Colorado's pandemic-era program, the Left Behind Workers Fund, provided \$38 million to over 26,000 Coloradans and their families who were excluded from other pandemic programs, including over 27,000 children, preventing further hardship, and supporting local and state economies.¹⁰ The case study from the non-profit funder Impact Charitable analyzed the program's initial success and found that workers used the funds to support both themselves and their communities.¹¹ On average, each recipient used the funds to support three other people, typically members of their household. It also found that recipients used the funds to pay for housing (79 percent), food (63 percent), and utilities (57 percent). As was the case with other states' excluded worker funds, workers reported increased connection, engagement, and well-being, with one worker sharing with the fund administrator AidKit that, "receiving this grant made me feel seen, that I mattered. That finally, for the first time, I was recognized in this country."¹²

Pandemic-era programs provided a model for success, both in framework and impact, that states should replicate as they seek to ensure all workers have economic support when they are between jobs. The shortcomings of these programs—such as one-time payments that are insufficient to meet ongoing needs and the need for robust, permanent community outreach—also provide lessons about improving program design to meet the needs of impacted workers.

Current Campaigns

Building off the successful campaigns to win temporary relief during the pandemic, workers across the country have now shifted to fight for permanent excluded worker funds. For the most part, the programs are designed to function similarly to UI, or as they explain, they incorporate the best practices of regular unemployment and the best lessons of implementing the temporary pandemic-era excluded worker funds.¹³

In 2022, Colorado passed the first permanent excluded worker fund, known as "The Benefit Recovery Fund." The Benefit Recovery Fund provides benefits to immigrant workers ineligible for UI due to a lack of work authorization if their employers have been paying into the UI fund on their behalf. The fund is administered by the third-party vendor AidKit and has the same eligibility requirements and provides the same benefit amounts as regular UI. However, unlike regular state UI, workers can only receive up to 13 weeks of benefits (compared to 26 weeks under regular UI). The fund is primarily financed through a UI

“piggyback tax,” an additional tax that is added to an employer’s usual state UI payroll tax. This piggyback tax already existed in Colorado but was being used for a different purpose. As a result, enacting the legislation did not require an additional tax on employers, only a redirection of tax revenue. (For more information on UI taxes, please see the [UI Financing and Solvency](#) policy advocacy brief).

There are important considerations for excluded worker campaigns such as who is eligible, how much and for how long they receive benefits, how the program is administered (including accessibility, outreach, and privacy concerns) and how it is financed. In addition to Colorado, advocates in several other states are pursuing permanent excluded worker programs, including California, New York, and Washington. Each of these campaigns and programs have taken a different approach. Most of them are focused on workers who are undocumented, with the most expansive eligibility being New York’s proposed program. New York’s proposal extends eligibility to four categories of workers: workers ineligible for UI due to work authorization, certain cash economy workers (such as day laborers, domestic workers, construction, and landscaping workers), certain self-employed and independent contractors (special consideration given to street vendors, writers, and photographers), and people experiencing re-entry from either incarceration or immigration detention while seeking employment.

As advocates explore pushing for an excluded worker program in their state, it’s critical to center impacted workers in the campaigns. States like California and New York took significant steps to ensure that impacted workers were not only at the center, but leading and approving the campaign work, from direct actions to policy and program design. In New York, impacted workers were on the coalition leading the campaign’s steering committee. In California, the Safety Net for All coalition, which leads the excluded worker campaign there, took a different approach by having a separate committee of impacted workers, the Delegados (meaning delegates), who hold the decision-making power. Washington’s bill proposes a state advisory committee which consists of voting members representing immigrants’ interests and unions, as well as non-voting parties representing their state commissions on African American Affairs, Hispanic Affairs, and Asian Pacific American Affairs. They must provide comments on department rule making, policies, implementation, utilization of benefits, and other initiatives. Centering impacted workers ensures the campaigns and programs will best reflect the needs of the communities they are intended to serve.

The below chart shows the key differences between the current and proposed excluded worker programs.

Comparison of Current and Proposed Excluded Worker Programs

State and Program Status (as of October 2023)	Who is (or would) administer the program?	Who is covered?	How much do they have to earn to be eligible? How can they demonstrate eligibility?	How much can each worker receive?	How long can workers receive benefits?	What is the funding source for the program?

<p>California Safety Net For All Campaign, SB-227¹⁴- Campaign in Progress</p>	<p>Proposal is to have the program administered by the Employment Development Department (EDD).</p>	<p>Immigrant workers ineligible for UI benefits due to work authorization, who live in California, previously performed work as an employee in California, and experience at least one week of unemployment . Workers need to demonstrate that they live in California, previously performed work as an employee in the state, and that they are ineligible for regular state UI due to their immigration status.</p>	<p>Workers performed at least 93 hours of work or earned at least \$1,300 in gross wages over the course of 3 months (can be non-consecutive) for work performed in California in the year preceding their application for benefits. They must submit documents to verify monetary eligibility. The current bill proposes a system where documents are given a point value, allowing workers who may not have paystubs or tax returns to still verify their prior earnings through more informal documents</p>	<p>A flat rate of \$300 per week.</p>	<p>20 weeks maximum</p>	<p>State General Fund</p>
<p>Colorado Benefit Recovery Fund- Enacted into law May 25, 2022¹⁵, CO ST Section 8-73-116 Anticipated Launch Date: Late</p>	<p>The program is administered by a third-party administrator, AidKit.</p>	<p>Immigrant workers ineligible for UI due to lack of work authorization, who are paid as an employee with a W-2 and are totally unemployed through no fault of their</p>	<p>Workers must have received at least \$2,500 from employment during a qualified base period or alternative base period.</p>	<p>Eligible workers receive 55 percent of their average weekly wage, determined by the earnings data they provide when applying, up to the state's maximum</p>	<p>13 weeks maximum</p>	<p>Primarily funded by employer taxes paid on worker's behalf. The fund can also receive gifts, grants, and donations from any other public or private</p>

2023/Early 2024		<p>own. Each applicant must provide their pay stub or W-2 tax form.</p> <p>Upon separation, employers are required to provide the employee with a notice that contains the employee's wages, as well as other relevant information that the employee can use when applying for benefits.</p>		weekly benefit amount (\$781 per week in 2023)		organization, entity, or individual. The fund is capped at \$30 million. ¹⁶
New York's Unemployment Bridge Program, AB 4821 ¹⁷ / SB 3192 ¹⁸ - Campaign in Progress	The proposal is to have the program administered by the New York DOL.	Immigrant workers ineligible for UI due to a lack of work authorization, certain workers who are paid in cash, certain self-employed and freelance workers, and people experiencing re-entry from incarceration or immigration detention while seeking employment. Workers need to demonstrate that they live in New York,	Applicants must have worked at least 18 weeks in the 12 months before they lost work and must have earned at least \$4,050 (waived for re-entry). They must submit documents to verify monetary eligibility. The current bill proposes a system where documents are given a point value, allowing workers who may not have paystubs or tax returns to still	\$1,200 per month for full-time workers. Workers who are partially unemployed can receive up to \$800 per month. Each year, benefits will increase at a rate equal to the annual percentage change in the state's average weekly wage.	Up to 6 monthly payments per year.	A digital ad tax that functions like a sales tax, which would collect a small portion of annual revenues of digital advertising services from companies with gross annual revenues from those services of \$100 million or more. This would include large corporations like Google or Facebook and not smaller

		<p>previously performed work in the state, and that they are ineligible for regular state UI due to their immigration status. Workers must have earned less than the state's median individual earnings (\$56,000 in 2023)</p>	<p>verify their prior earnings through more informal documents. Applicants who are experiencing re-entry (from incarceration or detention) are excluded from the monetary eligibility requirement. Workers who can't supply sufficient documentation establishing monetary eligibility may establish it through a credibility interview.</p>			<p>advertisers like small businesses or newspapers.</p>
<p>Washington Unemployment for Undocumented Workers Campaign, HB 1095¹⁹/SB 5109²⁰ - Campaign in Progress</p>	<p>The proposal is for the Washington DOL to administer the program. They are proposing applicants must first be screened for regular state UI. Once their eligibility is assessed, they will then be directed to apply for benefits under the excluded worker program.</p>	<p>Immigrant workers who are ineligible for regular state UI due to lack of work authorization, are Washington residents, and lost their job through no fault of their own.</p>	<p>Workers must have worked at least 680 hours in their base period or earned wages during their base period equal to 680 times the minimum wage during the first quarter of their base period. Workers have to provide evidence that they are a Washington resident, and if the agency does not have their wage records,</p>	<p>Calculated the same as Washington's UI benefits; benefits are an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base period in which such total wages were highest.²¹</p> <p>As of June</p>	<p>Up to 26 weeks of benefits.</p>	<p>The current proposal would require an appropriation from the state's general fund.</p>

	Workers must also submit ongoing weekly certifications that they are actively searching for work and report any earned wages.		they need to submit appropriate documents showing they meet the monetary eligibility requirements.	2023, Washington's maximum weekly benefit amount is \$1,019. ²²		
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Federal Requirements and Guidance

Unlike other parts of the UI system where states have broad flexibility to determine eligibility standards, there are strict Federal standards around immigrant workers' UI eligibility. There are two main parts of Federal law that serve to restrict a state's ability to provide UI to workers without work authorization. First, the Federal Unemployment Tax Act (FUTA) provides that UI benefits cannot be paid to immigrant workers unless they were a lawful permanent resident, were lawfully present for purposes of performing the work, or were "permanently residing in the U.S. under color of law" (PRUCOL) when they earned wages that would qualify them for UI benefits.²³ Second, Federal law requires that states only provide UI benefits to workers who are "able and available" for work when they are collecting UI.²⁴ The U.S Department of Labor says that to be "able and available" for work, an immigrant worker must have work authorization at the time they apply and are receiving benefits.²⁵

Based on these federal restrictions, states are not allowed to simply extend regular UI benefits to workers without work authorization. Rather, as explained further below, states must create a separate program that does not utilize the state UI trust fund or other federal funds to provide economic support to jobless undocumented workers. While creating a new program may require more resources and political will, it also means that states are free to design these programs to meet the specific needs of this population and do not need to adopt all regular UI requirements and processes. States can center the needs of these workers and their families to create a successful program.

Federal law similarly restricts states from providing regular UI benefits to workers not considered "employees" under state law. So, states would also have to create a new program to provide economic support to other classes of workers, such as independent contractors or self-employed workers. This does not include workers who are misclassified as independent contractors, and states are free to expand their state law to include a broader definition of "employee" to cover more workers. See NELP's [UI Policy Hub Financing and Solvency Basics policy advocacy brief](#) for more information.

Policy Recommendations

By enacting much-needed immigration reform, the federal government could end the exclusion of workers without documentation from the UI system and other vital supports. However, despite relying on immigrants for essential labor, the U.S. has failed to reform its immigration system. The U.S. hasn't pursued meaningful immigration reforms in over 30 years.²⁶ In the absence of federal action, state governments must step forward to provide support.

States should:

1) Adopt expansive eligibility. There are several factors to consider when deciding eligibility for excluded worker programs.

While an excluded worker program would ideally cover all jobless workers who are not eligible for regular UI benefits, this may not always be realistic. Advocates and worker leaders must decide which workers to cover at the onset and ensure the program is sculpted to their needs. As workers without work authorization are federally prohibited from receiving UI benefits, they are a core group that should be served by an excluded worker program. There are currently essentially two models—a program solely focused on workers who are ineligible for UI due to lack of work authorization and New York's more expansive model. New York currently offers the most expansive proposal extending coverage to four categories of workers: immigrants without work authorization, certain self-employed people and certain independent contractors, domestic workers and day laborers, and people re-entering the work force after a period of incarceration or immigration detention.

Ensuring that underpaid and part-time workers are eligible for excluded worker programs is important. For example, California's proposed program extends eligibility to workers who performed at least 93 hours of work or earned at least \$1,300 in gross wages over the course of 3 months (can be non-consecutive) for work performed in California in the year prior to when workers apply for benefits.²⁷ Excluded worker programs that create a monetary eligibility requirement must consider the type of work performed by the intended beneficiaries. Many excluded workers are typically underpaid and may work irregular or seasonal hours, which is why simply adopting the state's monetary eligibility requirements for regular UI may be insufficient for this population.

Initial and ongoing requirements are another important factor that impacts eligibility. Like UI, the more requirements imposed, the more burdensome—and exclusionary—a program can be for workers and state agencies alike. Program requirements should be tailored to the population they are intended to cover. When creating a program for workers without work authorization, documenting work history and income, reason for unemployment, identity, and residency, can be difficult and risky. Consider a flexible point system for applying to the program, where each document is allotted a set point value to verify this information with a variety of options available and allow applicants to self-attest, as in the California and New York proposals.

To serve the broadest group of workers, excluded workers programs should avoid requiring documents like W-2 forms or pay stubs, as this excludes workers who are paid in cash or, for

a variety of reasons, do not have access to this information or work that would allow them to have these types of documents.

2) Set benefit amounts that meet the needs of workers. Benefit amounts should be sufficient to ensure workers can afford necessities and provide for themselves and their families while they search for work. Unfortunately, many states' regular UI benefit amounts do not even reach this standard. As a result, adopting the state UI benefit amounts may not be the best option. At a minimum, states should ensure workers accessing the excluded worker fund are not worse off than other workers in the state.

States should consider a baseline set benefit amount of at least \$300 a week (or \$1,200 a month) indexed to increase annually at a rate equal to the annual percentage change in the state's average weekly wage. Right now, California's program proposes a \$300 a week benefit amount and New York's is \$1,200 monthly payments for full-time earners. In New York, workers losing partial hours can receive up to \$800 per month. The rationale for these amounts is that they are almost the equivalent of the average UI benefit amount in the state. Washington's proposal offers a higher maximum benefit, but only for workers that meet the income requirements, like in regular UI. Barring full wage replacement, this proposal most benefits higher earners, and may result in exploited workers without documentation, who are notoriously underpaid, receiving insufficient benefit amounts. A set benefit amount is also easier to administer and would not require a worker to prove their entire work history to determine their benefit amount. To learn more about this, as well as other arguments and tools to advance a more generous benefit amount, see NELP's Policy Hub [Benefit Amount](#) brief.

3) Guarantee enough weeks of benefits so workers have time to find good jobs. States should provide a maximum duration of 26 weeks for excluded worker benefits. Workers should be supported throughout their entire period of unemployment. For regular UI benefits, the standard maximum duration is 26 weeks (although NELP advocates a uniform 30 weeks.)²⁸ Currently, New York's proposal offers the longest benefit duration, providing up to 6 months of benefits. A longer duration is particularly important for Black and Latinx workers, who encounter more discrimination in the labor market and thus take longer on average to find new jobs.²⁹ You can learn more about why having a longer duration is important in NELP's Policy Hub [Benefit Duration](#) brief.

4) Establish a permanent funding structure that ensures the excluded worker fund remains solvent and is sufficient to support workers. Each of the proposed and existing programs adopts a different approach to finance their program. There are two main methods to finance these programs: payroll taxes (Colorado) or through general funds. Within general funds, there are a variety of existing proposals, such as a digital ad tax (New York), or an annual state appropriation (California and Washington). The Immigration Research Initiative suggests additional financing options like corporate taxes or a tax on the income from wealth—also known as a mark-to-market tax—which has gained recent popularity and has been previously proposed in both Congress and for New York's Excluded Workers Fund.³⁰ A mark-to-market tax would be a modest tax increase for very high earners, some of whom disproportionately benefit from the exploitation of workers without documentation and other excluded workers.³¹

States must decide which funding mechanisms best fit their needs and political environments. However, states should avoid putting a cap on the fund and instead should set

a minimum threshold. For example, Colorado's fund is capped at \$30 million and in economic downturns, legislators can choose to limit funds at a time when workers may need it the most. States should also have a plan for how to make payments to eligible workers for when the fund is low or depleted.

5) Create an accessible program that centers the needs of immigrant workers with targeted, trusted, culturally competent outreach. It is imperative that states center workers when administering and implementing the excluded worker fund.

States must ensure the online systems, forms, notices, and other communications for the fund are in plain language, user-friendly, and accessible in multiple languages, similar to what New York proposes. The New York proposal requires the department to establish worker-centered application procedures, such as a user-friendly and a language-accessible website (including a mobile version), including translation of the website and all forms in the twelve most common non-English languages spoken in the state. It requires all applications for the program to be processed within twenty-one days of the receipt of a completed application. It also creates a denial and appeal process, including providing all notices in the applicant's primary language.³²

For successful outreach and increased reciprocity, states should partner with trusted community-based organizations and advocates to promote and implement the program. One successful model being proposed by New York's campaign is to hire "navigators" to implement the fund. This means the state would provide funding for community-based organizations and advocates to conduct outreach and assist workers throughout the application process, as well as with reemployment, and finding and applying for other supports like housing and food assistance. Selected navigators should be able to demonstrate existing peer relationships with the program's impacted populations. This doesn't supplant the work done by agency staff, but instead complements it by utilizing organizations that have deep relationships, trust, and expertise with these specific communities.

6) Create strong privacy and anti-retaliation protections for workers. States must ensure all excluded worker fund proposals include strong and robust privacy protections. States must include the strongest language and actions possible to safeguard workers' information. This includes ensuring that any information collected or retained for the program is exempt from disclosure under a state's public records law, and that the agency establishes safeguards that protect the data from unauthorized use. Each of the programs has taken significant steps to ensure workers are protected from immigration authorities and other parties or actions that could cause harm. New York's and Washington's proposals offer good models. Washington includes actions like prohibiting the department from asking from the applicant, orally or in written form, eligibility or ineligibility for a social security number, citizenship, or immigration status. In New York, except where necessary to comply with a lawful court order or judicial warrant signed by a judge, no record or portion of a record shall be disclosed, redisclosed, released, disseminated, or otherwise published or made available. Additionally, states should let workers know these provisions are included to build workers' and communities' trust to apply for and advocate for the program.

Excluded worker funds should also include strong anti-retaliation provisions, to ensure workers feel secure in seeking benefits. New York's proposal makes clear that an employer "deliberately misinforming a person or dissuading a person from applying for benefits" is a

form of retaliation and is subject to the same penalties as other labor law violations in the state. New York’s proposal also mandates that the state allow workers to report other labor law violations, including wage theft, at the same time they file for benefits from the unemployment bridge program. Taken together, these provisions ensure the program not only provides economic support to jobless workers, but also supports workers exercising their power to assert their rights.

Research Findings and Arguments to Support Reform

The U.S. relies on workers without documentation to provide essential services, fill in gaps in the workforce, and utilize their expertise for critical jobs. Excluded Worker Programs protect, invest in, and retain these essential workers.

Immigrants who are undocumented make up roughly 3.2 percent of the U.S. population, but 4.4 percent of the nation’s workforce (more than 7 million workers.)³³ In every state, workers who are undocumented make up a larger share of the workforce than they do the total population.³⁴ This demonstrates the outsized reliance the U.S. has on workers without documentation to fill critical gaps in the workforce, functioning as an engine of the economy.

This reliance became clear during the pandemic when 3 in 4 undocumented workers (roughly 5 million) were employed as frontline workers, keeping the U.S. functioning amidst pandemic shutdowns.³⁵ Working in essential positions during the pandemic placed undocumented workers at even more risk to the dangers of the COVID-19 virus as most frontline positions required workers to be around more people or even directly exposed to people with the virus. Yet, despite being legally declared as an “essential” to the economy—providing critical services like keeping the food supply intact or risking their lives staffing hospitals—the U.S. did not reciprocate with legal status, let alone, vital lifelines like healthcare or unemployment insurance.

To this day, millions of workers are left with no economic support when they lose their jobs, impacting their families, their communities, and the economy. While their peers can access UI to afford essentials as they search for their next job, workers without documents do not have access to similar economic support. Having access to jobless benefits would ensure workers are able to provide for themselves and their families and be able to stay in their communities to continue providing essential services.

Outside of the pandemic, the U.S. has long relied on and exploited the labor of workers who are undocumented. This is clear from a look at industries and occupations where workers who are undocumented are vastly overrepresented. These jobs can be severely underpaid with long hours, harsh working conditions, and few protections for workers. For example, more than 1.4 million immigrants who are undocumented work in construction—a total of 13 percent of all construction workers. Immigrants who are undocumented are overrepresented in six categories of occupations. Nearly 1 in 5 landscaping workers, housekeepers, and construction laborers are undocumented.³⁶ The U.S. Department of Labor’s National Agricultural Workers Survey finds that 49 percent of workers in the field are undocumented, and even that is likely to be an undercount.³⁷

This reliance on immigrants who are undocumented is expected to increase. In 2022, the U.S. Bureau of Labor Statistics (BLS) published a list of the fastest growing occupations and top occupations projected to have the most job-growth over the next decade, and it includes occupations that largely employ workers who are undocumented.³⁸ The highest projected increase in new jobs is home health and personal care aides to care for the aging Baby Boomers. Rural communities with aging workforces will also need workers to provide needed services, including many jobs now filled by undocumented workers.

Yet, despite being the engine of our economy, these frontline workers are completely excluded from the economic security they need. The Federal government should create a path to legal status for immigrant workers the economy relies on. Despite relying on immigrants, the U.S has failed to reform its immigration system. On average, immigrants who are undocumented have lived in this country for 15 years, building lives and families. The U.S hasn't pursued meaningful immigration reforms in over 30 years. Unfortunately, it doesn't seem likely to happen anytime soon. In the absence of federal reform, states should act to create excluded worker programs to protect and retain these essential frontline workers. Otherwise, they may start to look elsewhere, as some already have. The data trends, as of March 2023, have suggested many, especially those of Mexican origin, are returning to their home countries. For those of Mexican origin, some have shared the improvements in Mexico's economy and the grueling work and economic hardship in the United States as reasons for leaving.³⁹

Workers who are undocumented are a vital part of the fabric—revitalizing communities, driving our economy, and making fiscal and economic contributions even though they are often excluded from benefits. Excluded Worker Programs can help drive and stabilize economic growth.

The fight for providing UI benefits to undocumented workers is like the fight for inclusion in this country—the U.S. government and economy are ready to accept their labor and taxes, but will not reciprocate with rightful inclusion. A Center for American Progress analysis (using 2018 and 2019 data) finds that every year, workers who are undocumented and their households pay \$79.7 billion in federal tax contributions and \$41 billion state and local taxes. In addition, they are contributing an estimated \$17 billion to Social Security and \$4 billion to Medicare. The Immigration Research Initiative estimates that half of immigrants who lack work authorization are paying into state unemployment insurance trust funds with estimated contributions of \$1.3 billion per year, or \$13 billion over the course of the past 10 years.⁴⁰ In California alone, employers contribute an estimated \$302 million to the UI trust fund on behalf of undocumented workers each year.⁴¹ Despite paying into these systems, workers without documents will not be able to benefit from them, which is another reason why creating an excluded worker program is the right way to ensure workers can actually benefit from their contributions.

Regardless of status, immigrants are entrepreneurs and job creators; they are twice as likely to start businesses compared to the U.S.-born population, which means hiring locally and spurring economic growth while revitalizing their communities.⁴² In addition to adding needed population and workforce growth, immigrants are also investing and engaging in their communities. In rural communities, population declines can be offset by immigrants.⁴³ Immigrants also bring enormous purchasing power which drives the economy forward. Workers who are undocumented and their households hold \$314.9 billion in spending power.⁴⁴ In California, undocumented workers contribute \$263 billion to the state's GDP,

\$482 billion in economic output, \$125 billion in labor income, and \$82 billion in other income.⁴⁵ Nationally, workers who are undocumented are also paying \$20.6 billion in mortgage payments each year and \$49.1 billion in annual rental payments.⁴⁶

Without an excluded worker program, workers without documentation will lose their purchasing power when they lose their job, hurting themselves and their local economies. As demonstrated by the unemployment insurance system, providing economic support to jobless workers acts to stabilize communities and economies during economic downturns by ensuring they have money to spend.

Studies have shown that UI and excluded worker funds lead to a faster economic recovery by supporting workers and local and state economies. For example, after the Great Recession, economists found that every \$1 of unemployment benefits paid out generated \$1.61 for state and local economies; adjusting for inflation, this impact is higher today. For the temporary pandemic Oregon Worker Relief fund, in one year, the program disbursed more than \$60 million to more than 37,000 individuals in Oregon's immigrant communities statewide.⁴⁷

Enacting an excluded worker program is a step towards ensuring fast and equitable economic recovery after downturns.

Creating an excluded worker program is critically urgent for racial and gender justice, countering poverty, and improving security and health for workers and their families.

Ninety-three percent of undocumented workers are people of color.⁴⁸ During the pandemic, undocumented workers were overrepresented in frontline jobs and were disproportionately harmed by the pandemic-induced recession. Workers of color and immigrant workers had the most job losses,⁴⁹ largely because of occupational segregation and racial discrimination in the U.S. labor market. Latina immigrants had the highest unemployment rate of all racial and ethnic groups at 22 percent⁵⁰ with Latina mothers bearing the brunt of this. Over two-thirds of Latino adults with non-citizen family members reported they experienced unemployment or reduced hours due to the pandemic.⁵¹ The first two rounds of federal pandemic relief left out more than 14 million individuals in mixed-status families (a family whose members include people with different citizenship or immigration statuses), including nearly four million children, many of whom were U.S. citizens.⁵²

Children of immigrants are the fastest growing youth demographic group in the country, with poverty rates more than twice those of children whose parents were born in the U.S.⁵³ More than 40 percent of children forced to live in poverty in the U.S. are children of immigrants.⁵⁴ Low wages, barriers to legal status, and rules that bar immigrant parents from receiving most forms of public assistance are largely to blame. Because wages are so low and workers of color encounter more discrimination, often these workers have little to no saving to shield them from financial hardship after a job loss. The pre-pandemic poverty rate for children of undocumented families was 31.1 percent compared to a pre-pandemic poverty rate of 9.3 percent for children of U.S. citizens.⁵⁵ Most of the children born to immigrant parents are American citizens, although roughly half have an undocumented parent, which prevents them from receiving most aid.⁵⁶ Households with children are even more likely to face food and housing insecurity when a job is lost.⁵⁷ Studies of the long-term effects of

economic support programs for children have been linked to lower rates of health issues, improved education outcomes, and greater economic mobility in adulthood.⁵⁸

Excluded worker programs can be powerful anti-poverty tools. The Immigration Research Initiative and the Urban Institute conducted a study on the impacts of New York's Fund Excluded Worker program, finding housing and food were the top two uses of the fund. It supported economic mobility, improved household wellbeing, increased community engagement, and was a powerful anti-poverty tool.⁵⁹

Excluded worker programs build worker power—empowering workers to report exploitative working conditions, increasing community engagement and belonging, and benefiting unions.

Undocumented workers can often be forced to work in unsafe and exploitative working conditions. Being able to have economic support through excluded worker funds empowers workers to assert their rights to safe and healthy working environments or to leave bad working environments, if necessary.

Having the economic security and connection of an excluded worker fund has also led to increased community engagement and belonging. An analysis of New York's Fund Excluded Workers program shows 20 percent of workers who received benefits from the fund reported applying for an individual taxpayer identification number (ITIN),⁶⁰ 20 percent applied for a local or state government ID card, 44 percent participated in rallies, marches, or other activities to fight for more funding, 45 percent took part in community activities like volunteering, and 36 percent advocated for improvements at their workplace.⁶¹ Some recipients also applied for other forms of public assistance after receiving the Fund Excluded Worker benefits.

The safety, empowerment, and community undocumented workers have experienced with excluded worker relief can also benefit unions. When workers have economic security, they will feel safer to support union organizing. For example, in New York, striking workers can utilize UI benefits, but since workers without work authorization cannot access regular UI benefits, they may not feel as secure in exercising their right to strike for fear of the economic impact this would have on themselves and their families. By having relief available for excluded workers, it also alleviates the pressure to take any job regardless of how low the wages or unsafe the work. This desperation can be exploited by businesses to undercut organizing efforts and labor standards, which in turn can lower standards for all workers. Excluded worker programs can be a powerful tool to ignite worker organizing and raise labor standards for everyone.

Excluded Worker Programs should urgently be adopted as part of a state's climate resiliency and recession preparedness plans.

The pace and intensity of climate change crises are increasing, devastating entire communities, including workers. Immigrant workers and workers without documents are among the most at risk.⁶² Some are forced to work through unsafe working conditions like record heatwaves. Others are increasingly left with little to no work as climate-driven disasters impact their industries. In California, historic winter storms erased entire farmworker communities. Eighty-three percent of households in one of the towns, Planada, lost work, sustained

property damage, or both due to flooding in the area.⁶³ Among households that lost work, 57 percent did not have a single worker in the household eligible for UI.⁶⁴ In addition to not being able to receive Disaster Unemployment Assistance (DUA, a form of UI for disasters), many immigrants who are undocumented are also ineligible for some FEMA programs (although they can apply for their U.S.-born children), forcing them to rely on philanthropic efforts which can be tenuous, unreliable, or unsustainable.⁶⁵ Government can and should support workers when they endure these crises. Like other steps for climate-driven disasters or recession preparedness, enacting an excluded worker fund is imperative.

Data and State Comparison Resources

Calculate costs for an excluded worker program.

Consult the Immigration Research Initiative's analysis, "[*Bridging the Unemployment Insurance Gap in New York State*](#)", and adapt their methodology for calculating the costs for New York's Unemployment Bridge Program. The report lays out how to estimate the number of workers who could potentially benefit from the program if they became unemployed and the proposed overall cost of the program. New York's proposed program includes other categories of workers beyond workers without work authorization, so states with a different program scope will need to adapt the model.

Estimate how many immigrants without work authorization could benefit from your state program and other demographic information.

The Immigration Research Initiative provides a [framework](#) to estimate how many immigrants without work authorization could be living or working in your state. [The Center for Migration Studies](#) has a chart of estimates using data provided from the American Community Survey. It also includes other estimates such as countries of origin, employment status, occupation, poverty status, years in the United States, and age.

Calculate the cost of living in your state.

The Economic Policy Institute's [Family Budget Calculator](#) is a helpful tool for breaking down the average cost of living (including childcare expenses) in a city by household type and size.

View unemployment rates by race and ethnicity. Consult the Economic Policy Institute's quarterly breakdown of [state unemployment rates by race and ethnicity](#). The U.S. Bureau of Labor Statistics also releases national monthly [Employment Situation data](#), including a breakdown of unemployment rates by race and sex.

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