NATIONAL EMPLOYMENT LAW PROJECT

TESTIMONY | SEPTEMBER 2022

Testimony of Rebecca Dixon

National Employment Law Project

Examining the Administration of the Unemployment Insurance System

Hearing before the U.S. House of Representatives

Committee on Education and Labor

Subcommittee on Health, Employment, Labor, and Pensions

September 21, 2022

Rebecca Dixon
Executive Director

National Employment Law Project
90 Broad Street, Suite 1100
New York, NY 10004

202-640-6523

rdixon@nelp.org

Examining the Administration of the Unemployment Insurance System

Good morning, Chairman DeSaulnier, Ranking Member Allen, and Members of the Subcommittee. Thank you for the opportunity to testify today. I am Rebecca Dixon, Executive Director of the National Employment Law Project (NELP).

NELP is a nonprofit research, policy, and capacity building organization that for more than 50 years has sought to strengthen protections and build power for workers in the U.S., including workers who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural racism, and ensure economic security for all.

As the committee considers the administration of the unemployment insurance (UI) system, I will address the ways that UI provided critical support to workers, communities, and the economy during the pandemic and helped to advance racial equity. I will also discuss how the pandemic exacerbated the long-standing weaknesses of the UI system, including underfunded and inadequately staffed state workforce agencies and antiquated technology, which made the system particularly vulnerable to international organized crime.

Learning from both the successes and the shortcomings of the pandemic unemployment insurance programs reveals the need for a permanent overhaul of the UI system to enhance eligibility, duration, adequacy, and access to enable all workers to thrive. Congress must also increase the amount of consistent, reliable funding for state UI staffing and technological modernization to ensure both more equitable access and greater security. To prepare for the next recession, Congress must reform and enhance emergency UI programs that automatically trigger on during periods of high unemployment and remain on for the duration of the crisis.

Pandemic Unemployment Insurance Was Vital for Workers, Communities, and the Economy

As the Subcommittee considers the administration of UI during the pandemic, it is essential to recognize the program's pivotal role as a lifeline not only for unemployed workers and their families, but for entire communities, businesses both small and large, and the nation's economy as a whole.

When the coronavirus pandemic hit the United States in early 2020, much of the economy shut down. By April, 23 million U.S. workers were unemployed—the greatest job loss since the Great Depression.[1] Black, Latino, Native American, and Asian workers, as well as women of all races, disproportionately worked in occupations and locations hit hardest by pandemic shutdowns and faced the highest rates of unemployment.[2]

Working people across the country demanded relief, and Congress stepped up to pass the Coronavirus Aid, Relief, and Economic Security (CARES) Act and additional legislation. These measures established temporary new UI programs that significantly expanded UI eligibility (Pandemic Unemployment Assistance, (PUA)), increased benefit amounts (Federal Pandemic Unemployment Compensation (FPUC)), and extended benefit duration (Pandemic Emergency Unemployment Compensation (PEUC)).[3]

Pandemic UI benefits substantially reduced poverty and hardship and promoted equity.

Unemployment insurance benefits—including both regular UI and temporary pandemic programs—enabled 4.7 million people, including 1.4 million children, to avoid poverty in 2020. [4] Analysis of the Supplemental Poverty Measure shows that UI kept 2.3 million workers and their families out of poverty in 2021.[5]

By covering workers in occupations and situations who would traditionally be disqualified or ineligible for UI benefits, pandemic UI benefits particularly benefitted Black and Latino workers and their families: An estimated 1.1 million Black workers and their families and 1.2 million Latino workers and their families avoided poverty because of UI benefits in 2020.

Beyond curtailing poverty, unemployment benefits substantially reduced hardship and broadly improved the well-being of households, including recipients' financial stability and mental health. The Bureau of Labor Statistics (BLS) compared households that received unemployment benefits at some point in the pandemic with households in which a worker applied for benefits but did not receive them. The BLS found that those who successfully received unemployment benefits were significantly less likely to experience food insecurity, have difficulty with household expenses, fall behind on their mortgage or rent, or report symptoms of anxiety or depression.[6] These disparities remained significant even after controlling for pre-pandemic differences in household income, education, and demographics.

Pandemic UI benefits bolstered small businesses and communities.

The expansion of unemployment insurance benefits under the CARES Act sent $666.5 billion in federal funds to workers and families experiencing unemployment as of August 2022.[7] These well-targeted federal dollars were pumped into slumping state and local economies, where they boosted consumer spending and supported local businesses, preventing business losses and further layoffs.

Unemployment insurance is particularly effective at getting money into the hands of consumers who need it and will spend it quickly, supporting businesses in their communities and stabilizing states' economies. To understand the magnitude of this support, consider the recent study of real-time anonymous banking data in states that prematurely cut off the federal pandemic unemployment programs in 2021: Researchers found that for every $1 of reduced benefits, household spending fell by 52 cents, depriving local businesses of needed revenue, not to mention depriving workers and their families of needed rent, food, and other essentials.[8]

Research also suggests that expanded unemployment benefits like those provided during the pandemic can enhance businesses' ability to find workers with the skills they need. By enabling workers to search for jobs that suit their skills and support their standard of living—rather than taking the first job offered—expanded UI improves the functioning of the labor market overall.[9]

Pandemic UI benefits promoted the nation's economic recovery.

As part of its recent oversight reporting on pandemic unemployment insurance, the Government Accountability Office (GAO) conducted an extensive literature review. After analyzing 30 recent empirical studies, the GAO concluded that expanded UI programs during both the COVID-19 pandemic and other adverse economic times "created overall economic stability" and prevented harmful outcomes from worsening.[10]

The GAO review of research also concluded that pandemic UI benefits had limited to no effect on workers' incentives to return to work.[11] For example, a study by Yale University economists Lucas Finamor and Dana Scott analyzed earnings data for hourly wage restaurant and food industry workers during the pandemic and found no evidence of a relationship between expanded UI benefits and reduced employment.[12]

Another recent study, conducted by economists at Harvard University, Columbia University, and the University of Massachusetts Amherst, compared the employment patterns of unemployed workers in states that curtailed expanded UI benefits before the federal programs expired to workers with the same unemployment duration in states that continued paying these benefits.[13] The study concluded that states cutting expanded UI benefits early did not affect workers' willingness to work.

Finally, a study by economists at the University of Chicago and the JP Morgan Chase Institute concluded that "unemployment supplements are not the key driver of the job-finding rate through April 2021 and that U.S. policy was therefore successful in insuring income losses from unemployment with minimal impacts on employment."[14]

While pandemic UI benefits had little to no effect on finding employment, researchers note that several other factors did contribute to workers not immediately returning to work during the pandemic, including fear of becoming ill with COVID-19 or spreading the disease, loss of childcare, and supply-chain problems disrupting the labor market.[15]

By expanding UI eligibility, duration, and adequacy, pandemic UI benefits enhanced equity—yet challenges remain.

The temporary federal pandemic programs dramatically expanded the reach, duration, and adequacy of UI benefits. Because Black and Latino workers were among those hit hardest by pandemic layoffs,[16] have lower household wealth as a result of decades of exclusion from wealth-building opportunities,[17] and disproportionately live in states with the lowest regular UI benefits and the most exclusionary eligibility rules,[18] the federal expansion of UI had the greatest positive impact on Black and Latino families' financial security. [19]

Using data from the Survey of Consumer Finances, researchers found that only 10 to 14 percent of Black and Latino families had enough savings to cover six months of expenses if they were unemployed in 2020; fewer than half of Black and Latino families could cover expenses using their savings and regular UI benefits.[20] But with the CARES Act expansions of UI and child tax credits, 94 percent of Black families, and 92 percent of Latino families could cover six months of expenses while seeking work. As a result, expanding unemployment insurance during the pandemic significantly enhanced racial equity.

At the same time, UI powerfully assisted white families as well: Just 61 percent of white families could cover six months of expenses using savings and regular UI benefits, and 95 percent could cover six months of expenses with the support of CARES Act programs. The household finances of families of other races and ethnicities were not analyzed in this study.

Expanding eligibility made UI more equitable.

Pandemic Unemployment Assistance (PUA) made the UI system more equitable by temporarily expanding eligibility to many groups of workers often excluded from UI by state and federal law, including low-paid workers, who are disproportionately women and workers of color;[21] workers in app-based jobs, who are frequently misclassified by employers as independent contractors and are disproportionately Black and Latino;[22] and part-time workers, who are disproportionately women, people of color, older workers, and people with disabilities.[23]

In addition, expanded UI eligibility under PUA was most likely to benefit workers in states with large Black populations, where over the years, policymakers have imposed more stringent restrictions on eligibility for unemployment insurance.[24] For example, analysis of UI in Georgia found that while Black workers were significantly less likely to get regular, state-provided UI benefits than white workers, they represented a disproportionate share of workers in the state receiving federal PUA benefits.[25]

By broadening UI eligibility across the nation, and moving towards equalizing coverage across states, PUA brought much-needed UI support to low-paid workers, women, and workers of color who are otherwise frequently excluded from the system by overly restrictive state laws. Congress should enact permanent UI reform that builds on this powerful example.

Increasing the duration of benefits made UI more equitable.

Pandemic Emergency Unemployment Compensation (PEUC) made UI more equitable by providing up to 53 weeks of additional benefits to workers who exhausted their regular UI benefits without finding jobs. PEUC was an especially important extension for workers who confront systemic discrimination in the labor market due to their race or ethnicity, gender or gender expression, age, sexual orientation, or other factors that may prolong the search for suitable work.

As a result of systemic racism, Black men, in particular, experience longer periods of unemployment than white workers and are more likely to exhaust state unemployment benefits. In 2021, Black men were unemployed for 31.7 weeks on average, compared to 28.4 weeks for white men.[26]

PEUC was also vital for workers in states that have cut the duration of regular UI benefits to less than the 26-week standard. While 26 weeks of regular UI benefits used to be the norm nationwide, beginning in 2011 several states reduced the maximum length of time workers could claim benefits—an effort to cut costs on the backs of unemployed workers during and after the Great Recession.[27] As of August 2022, 10 states paid regular UI benefits for less than 26 weeks and three more (Iowa, Kentucky, and Oklahoma) passed laws reducing benefit duration that will go into effect in the coming year.[28]

PEUC ensured that workers who have a more difficult time finding employment, for many reasons including employment discrimination, as well as workers in states with very short UI benefit durations, would receive UI support for more weeks if they needed it. A permanent federal standard for UI benefit duration and reforming the Extended Benefits program intended to help workers during periods of higher unemployment would ensure that these equity gains are restored.

Raising the dollar amount of benefits made UI more equitable.

Federal Pandemic Unemployment Compensation (FPUC) provided a federal supplement of $600 per week to unemployment benefits, later scaled back to $300 a week. FPUC particularly helped low-paid workers in states that typically pay low UI benefits.

States base UI benefit amounts on a worker's previous pay, so women and workers of color, who are over-represented in low-paying jobs due to occupational segregation caused by structural racism and sexism, tend to receive lower benefits.[29] Tipped workers, who are also disproportionately women and people of color, are further disadvantaged when they have low-paying shifts or when employers fail to report full tip amounts.[30] Low-paid workers already struggle to afford necessities, so inadequate unemployment benefits that replace less than half of their prior pay worsen their economic hardship. FPUC ensured weekly benefit amounts were adequate enough to support workers and their families while they searched for work.

FPUC made the greatest difference for workers in states that pay low UI benefits. Southern states, which have the greatest proportion of Black workers, and jurisdictions with a high proportion of Latino workers tend to pay the nation's lowest regular UI benefit amounts.[31] At the same time, low benefits create greater hardship for Black workers and other workers of color because they typically have fewer other financial resources to draw on during unemployment compared to white workers. As discussed above, racial wealth disparities are a result of systematic exclusion from wealth-building opportunities over generations.[32]

FPUC temporarily remedied the harsh reality that average weekly unemployment benefits of $180.67 a week (Louisiana) or $201.22 a week (Mississippi) are far too little for jobseekers to live on.[33] Recognizing FPUC's success in making UI more equitable, Congress should set benefit amount standards so that jobless workers have the support they need as they seek new employment no matter what state they live in.

Disparities persisted for workers accessing pandemic UI benefits.

Despite the substantial advances toward equity in pandemic UI compared to regular UI benefits, troubling racial and ethnic disparities in accessing UI persisted during the pandemic and must be addressed. For example, according to the Census's Household Pulse Survey, a higher percentage of white workers who applied for UI benefits (80.2 percent) than Black UI applicants (73.0 percent) reported receiving UI benefits (including regular UI and PUA) at some time during the pandemic.[34]

The Just Recovery Survey, conducted by the National Employment Law Project and partner organizations, found even greater disparities: Among workers who applied for either regular UI or PUA between March and October 2020, an estimated 34 percent of Black applicants and 26 percent of Latino applicants were denied, a substantially higher share than the 14 percent of white applicants who were denied.[35] The survey also found that women were more likely than men to have UI claims denied (24 percent vs. 16 percent).

In addition, when the GAO closely examined PUA claimant data in four states (Louisiana, New York, North Dakota, and Wisconsin)[36] they found substantial disparities. In North Dakota and Wisconsin through April 2021, the percentage of Black PUA applicants who had received benefits was about half the percentage of white applicants.[37] In Wisconsin, the percentages of Latino and American Indian/Alaskan Native PUA applicants who had received benefits were also substantially lower than for white applicants.[38] The GAO found no significant racial or ethnic disparities in UI access in New York, although advocates have documented shortcomings in making pandemic UI accessible to workers who have limited English proficiency.[39]

The causes of these persistent disparities in programs that nevertheless succeeded in making the UI system fairer and more equitable for workers must be investigated and addressed. The next section of my testimony will discuss how barriers to accessing UI—many of which disproportionately block workers of color and immigrant workers—were dramatically worsened by the pandemic. Eliminating these barriers through improved UI administrative funding and staffing and modernized technology centered on worker- and equity-focused design could do a great deal to reduce disparities in access.

The COVID-19 Pandemic Worsened Long-Standing Deficiencies in UI Access

Economic shutdowns at the beginning of the COVID-19 pandemic threw millions of people out of work and produced an unprecedented volume of unemployment claims. In a single week in March 2020, claims shot up 1,000 percent.[40] Newly laid-off workers confronted jammed phone lines, crashing websites, and long delays to access benefits, contributing to financial hardship for unemployed workers and their families. Overwhelmed state unemployment agencies struggled to handle not only the deluge of new claims but also the intricacies of standing up new federal unemployment programs with constantly evolving standards.

Working with antiquated technology systems, deficient staffing and resources, and outdated administrative practices, state agencies were ill-equipped to respond to the need. The challenges of the pandemic exposed an unemployment insurance infrastructure that NELP has repeatedly warned was in a dangerous state of disrepair.[41] Long before COVID struck, many states were already failing to determine workers' eligibility, pay benefits, or decide administrative appeals in timely manner,[42] leaving recently laid-off workers to navigate extensive backlogs and delays.

Simply put, the nation had not invested the resources needed to pay historically high levels of new claims in a timely manner. As the GAO points out, between 2010 and 2019, annual funding available for state UI administration declined 21 percent, from approximately $3.2 billion to approximately $2.5 billion.[43]

The $2 billion in funding that Congress provided as part of the American Rescue Plan Act for the U.S. Department of Labor (DOL) to assist states in improving the functioning of their UI systems was a critical first step in reversing the chronic underfunding of UI operations. As I will discuss further, DOL has made excellent use of these funds to support updating technology systems, promoting equitable access to UI, assuring the prompt payment of benefits, and detecting and preventing fraud, among other goals. Yet a one-time infusion of funds is not sufficient to support ongoing needs: A reliable, sufficient source of federal administrative funding is necessary to ensure equitable access to UI during both "normal" economic times and periods of crisis.

Workers of color and immigrant workers face additional obstacles to access.

The nation's deficient unemployment insurance infrastructure harms all workers seeking assistance, but workers of color and immigrant workers confront extra barriers. For example, although civil rights laws require translation into commonly spoken languages, many states fail to provide essential unemployment insurance notices, forms, and applications in the languages understood by workers in their states, making it difficult for workers with limited English proficiency to apply for benefits, comply with ongoing eligibility requirements, or contest disputed cases.[44]

At the same time, needlessly complex and confusing websites, forms, and notices can perplex even proficient English speakers. Most states' forms and communications are not in plain language and are written well above the recommended fifth grade reading level.[45] Use of clear and accessible language is vital to ensuring equitable access to UI for all workers.

State unemployment websites that are not optimized for use on mobile devices are an additional barrier to workers claiming benefits. Black and Latino workers are particularly likely to rely on smartphones for internet access, with a quarter of Latino adults connecting to the internet only through their mobile phones in 2021.[46]

With a mandate to use American Rescue Plan Act funds to promote equitable access to UI, DOL is implementing several initiatives to help states address these barriers. For example, DOL is in the midst of issuing $260 million in equity grants to states, targeting a range of underserved populations and funding needs such as translation services, data analysis to better understand equity disparities, and a shift to plain language communication.[47]
As of September 1, 2022, 25 states and the District of Columbia have been awarded equity grants.[48]

In addition, DOL has assembled multi-disciplinary tiger teams, made up of experts with diverse skills, including "fraud specialists, equity and customer service experience specialists, UI program specialists, behavioral insight specialists, business intelligence analysts, computer systems engineers/architects and project managers," which have deployed to 26 states so far to assess the state's needs and provide resources and solutions to improve equitable access to UI benefits and tackle fraud.[49]

Another particularly promising DOL initiative is the launch of new claimant experience pilot programs in New Jersey and Arkansas, which are informing efforts to build out technological solutions that address sources of inequity.[50] In addition, DOL has awarded $18 million in competitive grants to 7 states to implement UI navigator programs, working with community partners in each state to conduct outreach and offer training and resources in communities that have disproportionately lacked access to the UI system.[51]

Worker-centered modernization of UI technology is a key step in addressing barriers to access.

The antiquated technology still used by most state unemployment insurance agencies was a major obstacle for workers trying to access UI benefits before, during, and after the pandemic unemployment spike. The GAO reports that as of December 2021, 32 states/territories were still using legacy information technology (IT) systems—many of them developed in the 1970s and 80s—to support their UI benefits system, tax system, or both.[52]

As the GAO has documented, obsolete IT systems contributed to inefficiency, slower processing of payments, and difficulty finding staff and contractors able to program, operate, and maintain the older technology.[53] States with legacy IT systems had greater difficulty setting up the federal pandemic UI programs, processing workers' UI claims efficiently, and detecting and addressing improper payments (discussed further below).

Yet simply updating technology is not enough: NELP has long argued that states must put workers at the center of UI modernization efforts, prioritizing customer-centered design and user experience (UX) testing rather than simply automating processes.[54] Without a focus on workers, particularly those most marginalized, states may end up replicating or even exacerbating many of the same problems and inequities created by legacy IT systems. For example, when Florida modernized their unemployment computer systems, the state created new barriers for workers, delayed payments, and increased false accusations of fraud.[55]

NELP is encouraged by the work of DOL in beginning to address these substantial challenges. With funding from the American Rescue Plan Act, DOL set up an effective new Office of UI Modernization to provide strategic leadership as the department works with state agencies to modernize their unemployment insurance systems. In addition to providing grants to states, DOL is working to develop open, modular technology solutions that states can adopt as part of ongoing modernization and improvement efforts. Yet, as noted above, effective modernization efforts will require substantial and ongoing investments, which Congress has not yet provided.

Improved staffing and administrative practices are also vital to improving UI access.

In addition to updating outmoded technology, the pandemic highlighted the need for state agencies to improve staffing levels and administrative practices to provide better access and services to unemployed workers. The GAO documents the significant challenges agencies faced handling the high volume of UI claims during the pandemic, including insufficient call center staff, staff turnover, insufficient time to train new staff, and staff difficulty using automated systems.[56] The GAO also highlights administrative challenges for state UI agencies in providing effective customer service to UI claimants, even outside of economic downturns.

As states struggled to handle the volume of unemployment claims, the CARES Act provided state agencies with emergency flexibility to hire outside contractors, temporarily waiving federal merit-based hiring requirements. Although intended to handle the historic increase in claims, the hiring of inexperienced and insufficiently trained contract staff likely contributed to increased errors in determining workers' eligibility for UI benefits, delayed payments, increased fraudulent activity, and created greater obstacles for workers seeking benefits.[57] In fact, research finds that the exclusive use of state merit staff to both conduct UI eligibility reviews and provide more extensive employment services supports effective, efficient, and equitable service.[58]

There is no substitute for adequate staffing at state UI agencies or the federal DOL that supports their work. As the GAO notes, "providing for staffing levels at the state and federal levels that are adequate to meet demand for UI during all phases of the economic cycle is critical to ensuring effective service delivery."[59] It is up to Congress to ensure this critical ongoing need is adequately funded.

Underfunded, Under-Staffed, Unprepared State UI Systems Created a Target for Organized Crime

Many of the same shortcomings that undermine equitable access to UI benefits also made the UI system an appealing target for organized crime during the pandemic. Chronically underfunded and under-staffed state UI systems operating with antiquated technology were tasked with carrying out a major new set of federal programs with little advance preparation, providing multiple points of vulnerability for criminal enterprises to exploit.

The spike in fraudulent UI claims during the pandemic was primarily the result of criminal enterprises engaging in identity theft fraud, not of individual workers making improper claims.[60] As Department of Labor officials have explained, sophisticated organized crime rings that had previously stolen the identities of U.S. workers during private sector failures such as the Equifax data breach of 2017 seized upon the pandemic as a time to use those stolen identities to obtain UI benefits.[61]

Generally, fraudulent claims in regular state UI programs are relatively uncommon.[62] State agencies have developed several checks in the regular UI benefit system to identify and stop payment on potentially fraudulent claims.[63] As the temporary federal pandemic programs had to be built virtually overnight, state agencies were not able to design the same type of systems to protect against identify theft fraud in these programs. By reforming the UI system and establishing permanent programs that automatically turn on during economic downturns, Congress can ensure these programs adequately protect against criminal enterprises attempting to use stolen identities to obtain benefits.

It is important to put identity fraud claims within UI in context: Identity theft is a problem for the entire public and private sector and is far from unique to unemployment insurance. In 2021, the Federal Trade Commission received 395,948 reports of ID theft related to public benefits, including UI. This number is dwarfed by more than one million cases of ID theft related to private business, such as credit card fraud or identity theft relating to bank loans.[64]

Investments in staffing and worker-centered modernization would improve UI security.

The UI system can and should be made more secure. Criminal enterprises exploited a number of weaknesses in state UI systems. The GAO notes that one major cause of increased identity fraud was the insufficient number of state UI staff and the fact that staff were severely undertrained. As I described above, when state agencies added staff to deal with the pandemic surge in claims, many cut short training programs, resulting not only in delayed or improperly denied claims for workers but also in a reduced ability to detect and respond to identity fraud.

For example, Louisiana officials informed the GAO that the typical training period for UI staff is 6 months, and they had to condense this into one week.[65] In Arizona, training claims adjudicators had taken up to eight weeks, but during the pandemic only five weeks of training were provided.[66] Florida also shortened staff trainings and hired outside contractors to train other contractors.[67]

The GAO further explains that increased identity fraud also resulted from criminal enterprises taking advantage of outdated IT systems with insufficient security.[68]

Using funds from the American Rescue Plan Act, DOL has made substantial investments in strengthening state systems to detect and prevent future identity fraud. DOL tiger teams, equity grants, and IT modernization assistance all combine a focus on improving access to UI for eligible workers with resources and expertise to combat fraudulent activity.

Nevertheless, a stable and reliable increase in federal funding for UI administration and worker-centered technology modernization is needed to address security challenges. The haste with which pandemic UI programs were set up is yet another risk factor: preparing in advance for a surge in unemployment during the next inevitable recession would enable states to set up programs at a more deliberate pace with improved security.

Efforts to prevent or recover improper payments must not hinder workers' access to UI benefits.

State UI agencies have an obligation to pay claims in a timely manner based on the best information available at the time, and to provide workers claiming benefits with due process when the state has questions about their eligibility or identity.[69] Efforts to prevent fraud must not be permitted to further impede workers' ability to access UI benefits for which they are eligible. NELP's research finds that state agencies' focus on preventing eligibility fraud already contributes to improper denial of UI applications, delays in paying claims, and difficult and time-consuming processes to apply for and access benefits.[70] To be sure, program integrity is important, but that not only means taking measures to root out eligibility fraud, but also making all efforts to pay benefits in a timely manner whenever they are due.

Congress must help ensure states appropriately balance equitable access to benefits for eligible workers and preventing and detecting improper payments and fraud. As DOL recently reminded states "[p]rogram integrity involves both ensuring that entitled workers are not underpaid nor overpaid, and preventing payments to those who are not entitled to benefits."[71] Over the past decade, state program integrity measures have focused almost exclusively on detecting and preventing eligibility fraud – which DOL distinguishes from cases of stolen identity ("identity fraud") and defines as "occurring when benefits or services are acquired as a result of false information with the intent to receive benefits for which an individual or individuals would not otherwise be qualified."[72]

This singular focus led many state agencies to put substantial resources into scrutinizing workers' eligibility, many times at the cost of ensuring entitled workers received timely payment, leaving states unprepared for the spike in identity fraud during the pandemic and exacerbating access issues for workers when there was the influx of claims.[73] Congress must support ongoing efforts at DOL to rebalance the focus state agencies put on equity and program integrity: This includes passing the recently introduced Guaranteeing Unemployment Assistance and Reducing deception act by Congressman Horsford (H.R. 8661) that would mandate that DOL set new performance standards in key access areas.

It's also important that UI agencies not use identity verification technology that creates new barriers for workers legitimately trying to claim benefits. NELP joins Members of Congress in expressing "serious concerns about the efficacy, privacy, and security" of facial recognition technology from the company ID.me now being used by a majority of states to screen unemployment applicants.[74]

ID.me's cumbersome verification process reportedly contributed to substantial delays in workers' receiving UI benefits in California,[75] Florida,[76] and other states.[77] In addition, the company's requirement that workers applying for benefits use smartphone cameras may have excluded workers without access to personal smartphones. We are particularly concerned that facial recognition systems routinely misidentify people of color—particularly Black and Native American people—far more frequently than white people.[78]

It is welcome news that the Internal Revenue Service announced their own transition away from the requirement that taxpayers use third-party facial recognition services for the purposes of identity verification.[79] State unemployment insurance systems must do the same.

Overzealous efforts by state agencies to recover UI benefits that were overpaid to workers through no fault of their own also threaten to become a barrier to access for UI in the future. As state agencies rushed to administer new and unfamiliar programs with deficient staffing and technology, and workers unfamiliar with UI rushed to apply for benefits, mistakes inevitably occurred. Yet forcing workers to pay back benefits that were paid out through no fault of their own is now causing hardship for workers and their families.[80] NELP and other advocates are concerned that the negative experience could strongly discourage workers from seeking UI benefits in the future even if their families badly need the support.

Conclusion and recommendations

The expansion and enhancement of unemployment insurance during the pandemic provided a critical lifeline to workers, families, communities, and the nation's economy. By temporarily addressing the UI system's huge gaps in areas of eligibility, duration, and adequacy of benefits, pandemic UI programs powerfully illustrated a path toward building a more equitable system that truly serves unemployed workers. At the same time, the pandemic underscored the system's deficient infrastructure: underfunded, understaffed state agencies using antiquated technology were completely overwhelmed by the surge of pandemic claims—resulting in long waits and improper denials, creating hardship for workers, and leaving the system vulnerable to organized crime.

Workers deserve access to UI whether the entire economy has shut down or just the workplace where they used to be employed. But there is particular urgency to fix UI before the next recession takes hold. Congress must learn from experience and build on the success of pandemic unemployment benefits while also securing the system's failing infrastructure.

Members of this committee are paying special attention to UI administration, including DOL's work supporting states' efforts to modernize UI technology, improve administrative practices, promote equitable access to UI, assure the prompt payment of benefits, and detect and prevent fraud, among other goals. Through the strategic leadership of the new Office of UI Modernization, the creation and deployment of expert tiger teams to the states, the development of open, modular technology solutions, and a range of grant programs to support states in expanding equity and access and combatting fraud, DOL is working innovatively to improve administration of the UI program. Yet this work cannot succeed without additional legislation and resources.

Congress as a whole must act to:

- **Ensure that the nation's regular UI system equitably supports unemployed workers across the country.** Building on the success of pandemic UI in expanding UI—effectively reducing poverty and hardship among unemployed workers and supporting local businesses and economies—Congress must enact permanent reform that establishes minimum federal standards for UI eligibility, benefit duration, and benefit adequacy that all state unemployment systems must meet.

- **Ensure equitable access to UI.** Congress must mandate that state agencies provide meaningful language access and access for people with disabilities, mandate plain language, ensure state unemployment websites are accessible to mobile phone users and have an alternative means of claim filing for workers who are unable to use the online claim filing system.

- **Strengthen UI infrastructure at the federal and state levels.** Learning from the vulnerabilities of UI infrastructure exposed by the pandemic, Congress must allocate substantially more administrative funding to state unemployment agencies in order for them to have adequate resources to deliver benefits in a timely and accurate manner during all phases of the economic cycle, and to help workers navigate the UI system when they have questions or face barriers in the application process. This includes updating the current administrative funding structure by reforming the Resource Justification Model used to determine a state's administrative budget and increasing the federal taxable wage base for UI. Stable, long-term funding for UI modernization and administration will enable states to both improve UI access and prevent identity fraud.

- **Reform and modernize the federal Extended Benefits program.** Before the next recession, Congress must reform and modernize the federal Extended Benefits program so that additional weeks of federally funded UI benefits automatically trigger on and remain available during economic downturns.

- **Establish additional emergency UI programs that automatically trigger on during periods of high unemployment.** To prepare for the next recession, Congress must also set up permanent federally funded programs that automatically expand access to benefits (like the successful Pandemic Unemployment Assistance program), provide an additional federal supplement to state UI benefits, and fully fund the Short-Time Compensation (work sharing) programs during times of high unemployment. This will ensure that when the next recession hits, state agencies will not be overwhelmed trying to set up new programs overnight, workers will be able to receive much-needed benefits as soon as possible, and the risks of fraud associated with administering a new program will be minimized.

The GAO's first-ever designation of the UI system as "high-risk" should be a wakeup call to transform unemployment insurance and build a more equitable and effective system that will truly support jobless workers across the country as they seek new employment.

Endnotes

[1] Elizabeth Weber Handwerker, et. al. "Employment Recovery in the Wake of the COVID-19 Pandemic," *Monthly Labor Review*, U.S. Bureau of Labor Statistics, December 2020, https://doi.org/10.21916/mlr.2020.27.

[2] U.S. Bureau of Labor Statistics; D.L. Feir and Charles Golding, "Native Employment During COVID-19," Federal Reserve Bank of Minneapolis, August 5, 2020, https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.

[3] The American Rescue Plan Act also created Mixed Earner Unemployment Compensation (MEUC) which provided an additional UI supplement for workers with self-employment income.

[4] "Unemployment Benefits Kept 4.7 Million People Out Of Poverty In 2020," National Employment Law Project, September 14 2021, https://www.nelp.org/publication/unemployment-insurance-kept-4-7-million-people-out-of-poverty-in-2020/.

[5] "Expanded Unemployment Insurance Substantially Reduced Poverty in 2021," National Employment Law Project, September 2022, https://www.nelp.org/publication/expanded-unemployment-insurance-substantially-reduced-poverty-in-2021/.

[6] Patrick Carey, et. al., "Applying for and Receiving Unemployment Insurance Benefits During the Coronavirus Pandemic," Monthly Labor Review, U.S. Bureau of Labor Statistics, September 2021, https://doi.org/10.21916/mlr.2021.19.

[7] NELP calculations based on "Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through August 13, 2022," Office of Unemployment Insurance Employment and Training Administration.

[8] Kyle Coombs, et.al., "Early Withdrawal of Pandemic Unemployment Insurance: Effects on Earnings, Employment and Consumption," Harvard Business School, August 20, 2021 https://www.hbs.edu/ris/Publication%20Files/22-046_ce11d30f-72bc-4dd6-8367-e1dce9e75154.pdf

[9] Ammar Farooq, Adriana Kugler, and Umberto Muratori, "Do Unemployment Insurance Benefits Improve Match Quality? Evidence from Recent U.S. Recessions," NBER Working Paper Series Working Paper 27574 July 2020, https://www.nber.org/system/files/working_papers/w27574/revisions/w27574.rev0.pdf.

[10] Thomas Costa et. al., "Unemployment Insurance: Pandemic Programs Posed Challenges, and DOL Could Better Address Customer Service and Emergency Planning," US Government Accountability Office, June 2022, https://www.gao.gov/assets/gao-22-104251.pdf.

[11] Among the studies reviewed by the GAO: Lucas Finamor and Dana Scott, "Labor Market Trends and Unemployment Insurance Generosity during the Pandemic," Economic Letters 199, 2021; Dana Scott and Lucas Finamor, "Employment Effects of Unemployment Insurance Generosity During the Pandemic," Munich Personal RePEc Archive no. 102390, 2020, https://mpra.ub.unimuenchen.de/id/eprint/102390; Arin Dube, "Aggregate Employment Effects of Unemployment Benefits During Deep Downturns: Evidence From the Expiration of the Federal Pandemic Unemployment Compensation," NBER Working Paper Series Working Paper 28470, National Bureau of Economic Research, Feb. 2021; Kyle Coombs, et. al., "Early Withdrawal of Pandemic Unemployment Insurance: Effects on Earnings, Employment and Consumption," Harvard Business School Working Paper, No. 22-046, Aug. 2021; Peter Ganong, et. al., "Spending and Job Search Impacts of Expanded Unemployment Benefits: Evidence from Administrative Micro Data," Becker Friedman Institute, Feb. 2021;

[12] Lucas Finamor and Dana Scott, "Labor Market Trends and Unemployment Insurance Generosity during the Pandemic," *Economic Letters* 199, 2021.
[13] Kyle Coombs, et. al., "Early Withdrawal of Pandemic Unemployment Insurance: Effects on Earnings, Employment and Consumption," Harvard Business School Working Paper, No. 22-046, Aug. 2021.
[14] Peter Ganong, et. al., "Micro and Macro Disincentive Effects of Expanded Unemployment Benefits," University of Chicago and JP Morgan Chase Institute and NBER, July 29, 2021, https://voices.uchicago.edu/noel/files/2021/07/disincentive_effects_of_expanded_ui.pdf.
[15] Thomas Costa et. al., "Unemployment Insurance: Pandemic Programs Posed Challenges, and DOL Could Better Address Customer Service and Emergency Planning," US Government Accountability Office, June 2022, https://www.gao.gov/assets/gao-22-104251.pdf.
[16] U.S. Bureau of Labor Statistics.
[17] Angela Hanks, Danyelle Solomon, and Christian E. Weller, "Systemic Inequality," Center for American Progress, 2018, https://www.americanprogress.org/article/systematic-inequality/.
[18] Amy Traub and Kim Diehl, "Reforming Unemployment Insurance is a Racial Justice Imperative," National Employment Law Project, 2022, https://www.nelp.org/publication/reforming-unemployment-insurance-is-a-racial-justice-imperative/.
[19] Neil Bhutta, Jacqueline Blair, Lisa Dettling, and Kevin Moore, "COVID-19, The CARES Act, and Families' Financial Security," *National Tax Journal* 73, no. 3, 2020 https://www.journals.uchicago.edu/doi/10.17310/ntj.2020.3.02
[20] Ibid.
[21] Kaitlyn Henderson, "The Crisis of Low Wages in the U.S." Oxfam, 2022, https://www.oxfamamerica.org/explore/research-publications/the-crisis-of-low-wages-in-the-us/.
[22] Rebecca Smith, "Independent Contractors and Covid-19: Working Without Protections," National Employment Law Project, March 24, 2020, https://www.nelp.org/publication/independent-contractors-covid-19-working-without-protections/.
[23] Labor Force Statistics from the Current Population Survey, 2021.
[24] Sebastian Martinez Hickey, "New Personal Income Data Show the Need for Broad and Permanent Unemployment Insurance Reform," *Working Economics Blog*, Economic Policy Institute, April 23, 2021, https://www.epi.org/blog/new-personal-income-data-show-the-need-for-broad-and-permanent-unemployment-insurance-reform/.
[25] Shawn Donnan, Reade Pickert and Madeline Campbell, "Georgia Shows Just How Broken American Unemployment Benefits Are," *Bloomberg News,* November 19, 2021, https://www.bloomberg.com/graphics/2021-georgia-unemployment-bias/.
[26] Labor Force Statistics from the Current Population Survey, 2021.
[27] Andrew Sherrill et. al., "Unemployment Insurance: States' Reductions in Maximum Benefit Durations Have Implications for Federal Costs," US Government Accountability Office, April 2015, https://www.gao.gov/assets/gao-15-281.pdf.
[28] "How Many Weeks of Unemployment Compensation Are Available?" Center on Budget and Policy Priorities, August 23, 2022, https://www.cbpp.org/research/economy/how-many-weeks-of-unemployment-compensation-are-available.
[29] Jasmine Tucker, Julie Vogtman, "When Hard Work Is Not Enough: Women In Low-Paid Jobs," National Women's Law Center, April 2020, https://nwlc.org/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf
[30] "Billions in Tip-Related Tax Noncompliance Are Not Fully Addressed and Tip Agreements Are Generally Not Enforced," Treasury Inspector General for Tax Administration, September 28, 2018, https://www.treasury.gov/tigta/auditreports/2018reports/201830081fr.pdf.
[31] Amy Traub and Kim Diehl, "Reforming Unemployment Insurance Is A Racial Justice Imperative," National Employment Law Project, February 2022, https://www.nelp.org/publication/reforming-unemployment-insurance-is-a-racial-justice-imperative/.
[32] Angela Hanks, Danyelle Solomon, and Christian E. Weller, "Systemic Inequality," Center for American Progress, 2018, https://www.americanprogress.org/article/systematic-inequality/.
[33] Monthly Program and Financial Data, US Department of Labor Employment and Training Administration.
[34] "COVID-19 Household Pulse Survey, phase 3" US Census Bureau, 2022.
[35] "Foundations for a Just and Inclusive Recovery: Economic Security, Health and Safety, and Agency and Voice in the COVID-19 Era," Color of Change, National Employment Law Project, Time's Up Foundation, and The Worker Institute at Cornell ILR, Feb. 3, 2021, https://www.nelp.org/wp-content/uploads/Foundations-for-Just-Inclusive-Recovery-Report.pdf.
[36] The GAO also initially analyzed data from Arizona, but the state's data was excluded due to large amounts of potential fraud in multiple months.
[37] Thomas Costa, et. al., "Pandemic Unemployment Assistance: Federal Program Supported Contingent Workers amid Historic Demand, but DOL Should Examine Racial Disparities in Benefit Receipt," US Government Accountability Office, June 2022, https://www.gao.gov/assets/gao-22-104438.pdf.
[38] Ibid.
[39] "Designed to Exclude: New York's Failure to Provide Compensation and Language Access to Unemployed Workers," National Center for Law and Economic Justice, August 2022, https://nclej.org/news/designed-to-exclude.
[40] Unemployment Insurance Weekly Claims, Office of Unemployment Insurance Employment and Training Administration U.S. Department of Labor, March 26, 2020, https://oui.doleta.gov/press/2020/032620.pdf.
[41] Rebecca Dixon, "From Disrepair to Transformation: How to Revive Unemployment Insurance Information Technology and Infrastructure," National Employment Law Project, July 15, 2020, https://www.nelp.org/publication/from-disrepair-to-transformation-how-to-revive-unemployment-insurance-information-technology-infrastructure/.
[42] Unemployment Insurance Core Measures, Office of Unemployment Insurance Employment and Training Administration U.S. Department of Labor, https://oui.doleta.gov/unemploy/ranking.asp; Julia Simon-Mishel et. al., "Centering Workers: How to Modernize Unemployment Insurance Technology," The Century Foundation, the National Employment Law Project and Philadelphia Legal Assistance, September 17, 2020, http://stage.nelp.org/wp-content/uploads/UI-mod-report_FINAL.pdf.
[43] Thomas Costa, et. al., "Unemployment Insurance: Pandemic Programs Posed Challenges, and DOL Could Better Address Customer Service and Emergency Planning," US Government Accountability Office, June 2022, https://www.gao.gov/products/gao-22-104251
[44] Travis Lavenski, "Exploring Barriers to Unemployment for Limited English Proficiency Claimants," OnLabor, December 15, 2021, https://onlabor.org/exploring-barriers-to-unemployment-for-limited-english-proficiency-claimants/.
[45] Jenna Gerry and Alexa Tapia, "U.S. DOL'S Grants to States Can Improve Equity Within the Unemployment Insurance System," National Employment Law Project, September 29, 2021, https://www.nelp.org/publication/usdol-equity-grants/.
[46] Andrew Perrin, "Mobile Technology and Home Broadband 2021," Pew Research Center, June 3, 2021, https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.
[47] "Promoting Equitable Access to Unemployment Compensation Programs: Overview of State Equity Grants," American Institutes for Research, August 2022, https://oui.doleta.gov/unemploy/pdf/AIR_ARPA_StateEquityGrantsSummaryMemo_Final.pdf.
[48] "US Department of Labor Awards Nearly $26M in Funding to Support Workers' Equitable Access to States' Unemployment Insurance Systems," US Department of Labor Employment and Training Administration, August 2022, https://www.dol.gov/newsroom/releases/eta/eta20220823-0.

[49] "US Department of Labor Announces Funding to States to Modernize Unemployment Insurance System, Combat Fraud, Address Equity," US Department of Labor Employment and Training Administration, August 2021, https://www.dol.gov/newsroom/releases/eta/eta20210811.
[50] "Unemployment Insurance Modernization" US Department of Labor Employment and Training Administration, https://www.dol.gov/agencies/eta/ui-modernization.
[51] "US Department of Labor Awards More Than $18M in Grants to Address Disparities in Delivery of Unemployment Benefits, Services in 7 States," US Department of Labor Employment and Training Administration, June 10, 2022, https://www.dol.gov/newsroom/releases/eta/eta20220610-0.
[52] Thomas Costa, et. al., "Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks," US Government Accountability Office, June 2022, p 10, https://www.gao.gov/assets/gao-22-105162.pdf.
[53] Ibid.
[54] Julia Simon-Mishel et. al., "Centering Workers: How to Modernize Unemployment Insurance Technology," The Century Foundation, the National Employment Law Project and Philadelphia Legal Assistance, September 17, 2020, http://stage.nelp.org/wp-content/uploads/UI-mod-report_FINAL.pdf.
[55] George Wentworth and Claire McKenna, "Ain't No Sunshine: Fewer Than One in Eight Unemployed Workers in Florida Is Receiving Unemployment Insurance," National Employment Law Project, September 21, 2015, https://www.nelp.org/publication/aint-no-sunshine-florida-unemployment-insurance/.
[56] Thomas Costa, et. al., "Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks," US Government Accountability Office, June 2022, p 10, https://www.gao.gov/assets/gao-22-105162.pdf.
[57] Ibid.
[58] Marios Michaelides, et.al., "Impact of the Reemployment And Eligibility Assessment (REA) Initiative In Nevada," Impaq International, January 2012.
[59] Thomas Costa, et. al., "Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks," US Government Accountability Office, June 2022, p 10, https://www.gao.gov/assets/gao-22-105162.pdf.
[60] Ibid.
[61] Greg Iacurci, "Is a Scammer Getting Unemployment Benefits in Your Name?" February 2, 2022, CNBC, https://www.cnbc.com/2022/02/02/victims-of-unemployment-fraud-may-find-out-this-tax-season.html; Mike Baker, "Feds Suspect Vast Fraud Network Is Targeting U.S. Unemployment Systems," *The New York Times*, May 22, 2020, https://www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html.
[62] "Unemployment Insurance Improper Payment Rates," US Department of Labor Employment and Training Administration,https://oui.doleta.gov/unemploy/pdf/UI_Improper_PaymentRates.pdf
[63] Emily Badger and Alicia Parlapiano, "States Made It Harder to Get Jobless Benefits. Now That's Hard to Undo," *The New York Times*, April 30, 2020, https://www.nytimes.com/2020/04/30/upshot/unemployment-state-restrictions-pandemic.html.
[64] "Consumer Sentinel Network Data Book 2021," Federal Trade Commission, February 2022, https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2021.
[65] Thomas Costa, et. al., "Pandemic Unemployment Assistance: Federal Program Supported Contingent Workers amid Historic Demand, but DOL Should Examine Racial Disparities in Benefit Receipt," US Government Accountability Office, June 2022, p 20 https://www.gao.gov/assets/gao-22-104438.pdf
[66] Thomas Costa et. al., "Unemployment Insurance: Pandemic Programs Posed Challenges, and DOL Could Better Address Customer Service and Emergency Planning," US Government Accountability Office, June 2022, p 14-15, https://www.gao.gov/assets/gao-22-104251.pdf
[67] Ibid.
[68] Thomas Costa, et. al., "Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks," US Government Accountability Office, June 2022, p 10, https://www.gao.gov/assets/gao-22-105162.pdf.
[69] Thomas Costa, et. al., "Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks," US Government Accountability Office, June 2022, p 10, https://www.gao.gov/assets/gao-22-105162.pdf.
[70] George Wentworth, "Closing Doors on The Unemployed: Why Most Jobless Workers Are Not Receiving Unemployment Insurance and What States Can Do About It," National Employment Law Project, December 19, 2017, https://www.nelp.org/publication/closing-doors-on-the-unemployed/.
[71] Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 20-21, Change 1, https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2022/UIPL_20-21_Change_1_acc.pdf.
[72] Ibid.
[73] Gabriel Petek, "Improving California's Unemployment Insurance Program," California Legislative Analyst's Office, August 2022, https://lao.ca.gov/Publications/Report/4615.
[74] "Maloney and Clyburn Launch Investigation into Use of ID.me Facial Recognition Technology in Public Services," US House Committee on Oversight and Reform, April 14, 2022, https://oversight.house.gov/news/press-releases/maloney-and-clyburn-launch-investigation-into-use-of-idme-facial-recognition.
[75] Josh Lyle, "EDD Verification Delayed by Long Waits for ID.me," ABC 10, January 15, 2021, http://www.abc10.com/article/money/edd-verification-id-me-delay/103-b3a5de8e-9150-464f-9020-7fff939b9b17.
[76] "Unemployment Accounts Still Locked for Hundreds Across Florida," Fox 4, May 4, 2021, http://www.fox4now.com/rebound/unemployment-accounts-still-locked-for-hundreds-across-florida.
[77] Andrew Kenney, "No Internet, No Unemployment: Solving This ID.me Glitch Took Two Months and a Journey Across The Rural Front Range," Colorado Public Radio, July 7, 2021,http://www.cpr.org/2021/07/07/colorado-unemployment-idme-glitch-internet-access/.
[78] Rachel Metz, "Want Your Unemployment Benefits? You May Have to Submit to Facial Recognition First," CNN Business, July 23, 2021, https://www.cnn.com/2021/07/23/tech/idme-unemployment-facial-recognition/index.html.
[79] "IRS Statement: New features put in place for IRS Online Account registration; process strengthened to ensure privacy and security," Internal Revenue Service, February 21, 2022, https://www.irs.gov/newsroom/irs-statement-new-features-put-in-place-for-irs-online-account-registration-process-strengthened-to-ensure-privacy-and-security.
[80] "Understanding and Improving Overpayment Waivers for Federal and State Unemployment Insurance Benefits," National Employment Law Project, 2022, https://www.nelp.org/publication/understanding-and-improving-overpayment-waivers-for-federal-and-state-unemployment-insurance-benefits/.