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## State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
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ROBERT ASARO-ANGELO  
Commissioner

**TO:** Members of New Jersey Congressional Delegation  
**FROM:** Commissioner Robert Asaro-Angelo  
**RE:** Unemployment Insurance Policy Recommendations  
**DATE:** September 9, 2020

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I would like to bring to your attention some policy recommendations informed by conversations with members of our Congressional delegation, counterparts in other states, and by NJDOL's experiences with the unemployment insurance ("UI") system prior to and since the pandemic began.

### **I. EXECUTIVE SUMMARY**

A major barrier preventing the timely delivery of UI benefits to New Jersey residents are well-intentioned but outdated program integrity measures, particularly those that are required before benefits are paid. These measures can wrongly delay and deny benefits to significant numbers of claimants. Chief among these is the requirement that claimants certify each week that they are able, available, and seeking work. 42 U.S.C. 503(a)(12). Second is the requirement that, for claimants with wages in multiple states, NJDOL must receive interstate wage data before paying claims, which likely has a more deleterious effect on New Jersey workers than any other state. (Unemployment Insurance Program Letter 23-20).

There are three additional measures that, while occurring less frequently, also cause significant problems for claimants, and raise significant equitable concerns. These are the exclusion of certain full-time student workers from receiving UI; deducting certain pension and retirement benefits from UI; and permitting educators to receive UI only if they are not given a "reasonable assurance" of continued employment in the following school year. 26 U.S.C. 3306(c)(10); 26 U.S.C. 3304(a)(15); 26 U.S.C. 3304(a)(6)(A)(i)-(iv). The below policy recommendations, if implemented, will yield a fairer system that delivers benefits swiftly.

### **II. BACKGROUND**

Since mid-March, 29 percent of our labor force has applied for unemployment benefits. Despite this overwhelming volume of claims, our Department has now paid out over \$15 billion to over 1.3 million New Jersey workers during the pandemic. Our Department has created new programs as part of the CARES Act, providing extended benefits, enhanced benefits, and benefits to a new population who



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have never paid into our unemployment trust fund: gig workers, independent contractors, and the self-employed. What would normally take months to plan for and implement, we accomplished in weeks.

I accept the criticism during this unprecedented time that our call centers were not adequately staffed, our computer technology is outdated, and our communications with claimants are imperfect. Your colleagues from other states are likely hearing the same complaints from their constituents. This is not to divert responsibility, but to make the point that now is the time for a federal solution.

One of the public's biggest frustrations is their inability to speak on the phone with an agent to have their questions answered and claims cured. We are working on this by hiring additional claims examiners, retired examiners, contracting an additional call center, as well as reassigning DOL staff (and staff from other state agencies) to assist with UI claims. While we are increasing the supply of agents on the phones, our overall goal must be to reduce the demand for agent intervention in the first place. For the majority of claimants, the only reason they need to speak to an agent is because of federal laws, regulations, and guidance, principally focused on deterring fraud.

This renewed interest in UI as Congress continues to field complaints from their constituents brings about the opportunity to reform the current system to benefit unemployed individuals in a future pandemic or recession. In addition to being inefficient, the current system is needlessly difficult to navigate and implicitly classifies some forms of work as less "deserving" of UI benefits than others. I say this even as our Department led the nation last year in the percentage of unemployed residents who received benefits (57 percent) in a state that has the highest percentage of workers (at 53 percent) who were eligible for traditional unemployment insurance. The proposed reforms may not help all claimants in the short term, but I do believe, depending on the scale of the reforms and if included in a near-term COVID relief bill, it could enhance current claim processing. These changes to the system can help us deliver benefits more efficiently and fairly in the future and not just in a crisis.

I share USDOL's desire for careful stewardship of federal and state tax dollars, and I take seriously my role as a fiduciary for our state's Unemployment Compensation Trust Fund. Further, our state Supreme Court has held that "the basic policy of the [Unemployment Compensation Law] is advanced as well when benefits are denied in improper cases as when they are allowed in proper cases." Krauss v. A. & M. Karagheusian, Inc., 13 N.J. 447, 455-456 (1953).

However, in a (hopefully) once-in-a-lifetime pandemic, with more than six million Americans infected by, and over 187,000 deaths from COVID-19, and unemployment reaching levels not seen since the Great Depression, such considerations must yield to meeting the basic economic needs of our residents.

Despite this, there has been continued insistence on strict compliance with program integrity measures. In a June 5, 2020 letter to Governor Murphy, USDOL Secretary Eugene Scalia stated that as the pandemic eases and the economy re-opens, "it will become even more important for states to prevent ineligible individuals from obtaining UI benefits." Furthermore, Secretary Scalia indicated that states should expect "significant oversight of their efforts to safeguard UI program integrity."

I disagree with the Secretary's emphasis. Although I welcome the decline in COVID-19 transmission rates in New Jersey, we are a long way from a position of safety. While transmission rates are declining in the Northeast, in other parts of the country they are rapidly increasing. As Governor Murphy frequently says, although the situation has improved, "we cannot take our foot off the gas."

Apart from our progress in fighting the pandemic, we must also come to the aid of the more than 40 million Americans who are unemployed because of COVID-19. They need UI benefits, and they need them without delay.

### **III. POLICY RECOMMENDATIONS**

Congress should relax the strict federal requirements around the weekly certification for benefits. Currently, in order to receive benefits a claimant must, for each week, certify that they are able, available, and seeking work 42 U.S.C. 503(a)(12). If a claimant does not so certify (which in most states, including New Jersey, involves answering a set of specific questions in precisely the right manner), he or she is unable to receive any benefits at all for that week. This is by far the biggest problem that we have had during the pandemic. With more than one million claimants certifying for benefits every week, even a 10 percent adverse certification rate means more than 100,000 claims needing agent intervention every week.

Permitting adverse certifications to be resolved without agent intervention, and permitting states to modify or suspend the requirement entirely during times of crisis would dramatically reduce the number of calls to our agents and would increase the number of claimants receiving benefits.

In addition, rather than concentrate program integrity requirements on the front end, we can focus our concerns on the back end, after claimants have received benefits. With better technology and enhanced data-sharing, there are a number of ways in which USDOL can identify and correct improper payments. For example, in New Jersey we have taken some proactive steps in this direction. In January of this year, Governor Murphy signed into law a measure allowing our Treasury Department to share any information, including tax information statements, reports, audit files, and tax returns, with the NJDOL. This has resulted in more accurate benefit determinations and reduced overpayments. Federal legislation to permit state labor departments to access IRS or their own state taxation records as well would help facilitate transparency in the process

Congress should also work to streamline the system of collecting interstate wage data, perhaps having it be directly administered by USDOL. Just last month, USDOL reminded states of their duty to check for interstate wages before paying claims. (Unemployment Insurance Program Letter 23-20). In a state like New Jersey, where it is common for residents to work in other states, this causes huge delays. It is further exacerbated by the fact that other states' UI systems are similarly overwhelmed, and providing wage data might not be their top priority. Tens of thousands of claimants with combined wage claims from other states have been waiting weeks if not months for this mandated process. There is no reason why we should not be able to pay claims first, and then adjust as needed as information comes back from other states.

Congress should work to lift restrictions on student workers who work full-time for the school where they are enrolled. Under the Federal Unemployment Tax Act ("FUTA"), such workers are excluded from most UI benefits. 26 U.S.C. 3306(c)(10). Currently, identifying student status is part of the weekly certification in New Jersey and it frequently causes significant delay in claim processing for all students, not just those described at 26 U.S.C. 3306(c)(10). It is [estimated](#) that more than 40 percent of full-time college students work while going to school and must be noted that black full-time students are 63 percent more likely to work a full time job than their white counterparts. We should reward such behavior, not penalize it.

Fourth, there is no reason to deduct certain pension and retirement benefits from UI benefits, as required by FUTA. 26 U.S.C. 3304(a)(15). As with student status, disclosure of these benefits is part of the weekly certification in New Jersey and often delays claim processing. Apart from this, the deduction penalizes older workers and is a disincentive for them to return to work. In addition, we often see claimants (many of which are younger) cash in their pension contributions when they become unemployed because they need money immediately. To reduce their benefits by a percentage of that

amount is unfair to someone who needs the most help now. In the spirit of fairness, these benefits should not be deducted.

Finally, USDOL should update its rules prohibiting teachers and adjunct faculty from receiving UI if they have a “reasonable assurance” of returning in the following academic year. This prohibition is required by FUTA and dates to 1970, when most teaching positions were full-time and on tenure tracks. 26 U.S.C. 3304(a)(6)(A)(i)-(iv). The prohibition was added to prevent full-time teachers who received their annual salary in 10 months from “double dipping” by collecting UI benefits in the summer. Our UI division expends significant staff time and energy each summer (close to thirty full time staff for multiple months) to help claimants, school districts, colleges, and universities navigate the anxiety-causing complexities of “reasonable assurance.” It would be more efficient and provide more stability to educational employees to require their employers to provide notification, before the summer begins, of which faculty will continue their employment in the following school year. If employers are unable to provide such notification, we should allow the potential claimants to collect UI until they are provided assurance.

It is my hope that, working together, we can come up with a bipartisan set of policy recommendations that will allow for the speedy delivery of UI benefits as well as address significant equity concerns. The nearly nine million residents of our great State deserve nothing less.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Asaro-Angelo", with a long horizontal flourish extending to the right.

Robert Asaro-Angelo  
Commissioner