

APPENDIX

Legislative Testimony

Thursday, March 10, 2022

Good afternoon Chair Madden, Vice-Chair Lagana, and members of the Committee. Thank you for inviting me today to talk about two things: misclassification and unemployment insurance.

I'm going to start with misclassification, which the legislature has put a bullseye on and used its authority and jurisdiction with great success. I will then discuss unemployment, a federal program, which limits the state's ability to make changes – even those that would directly benefit workers in need.

This entire time, through pandemic and UI issues, our resolve to achieve our core mission has never

wavered: to ensure our workforce is among the strongest and healthiest in the country, to see our businesses flourish, and do our part to help achieve a stronger and fairer economy.

YOU – our legislators, this committee in particular – have worked hard to make New Jersey a great place to work and do business.

We want ALL our workers to reap the benefits of your policies, which is why we're putting your laws to good work, especially the new packages of bills aimed at combatting misclassification.

Falsely classifying employees as independent contractors, and paying workers in cash off the books, deprives them of their rights to minimum wage, overtime, earned sick days, workers' comp,

family leave, unemployment... and most work-related benefits you can think of.

New Jersey has taken a very strong bi-partisan stance against misclassification; and our best in the nation ABC Test has been upheld in state and federal courts time and time again.

Misclassification costs New Jersey billions of dollars in critical income tax and benefits contributions, and we've clearly seen during the pandemic how vital these benefits are.

One very helpful tool you gave us is the power to issue stop-work orders for violations of state wage, benefit, and tax law. We've used this power about four dozen times, on construction contractors, restaurants, medical offices, an internet radio

station – a wide variety of businesses, most of which paid their workers at the mere sight of the stop-work notice.

In September we implemented a misclassification penalty – paid from the employer to a misclassified worker, and equal to 5% of the worker's gross earnings for the prior 12 months. In the past six months, more than half a million dollars was paid to 641 misclassified workers from 39 different businesses. We are the ONLY state to have this innovative tool for misclassified workers.

The misclass laws have made it easier for us to work with our sister agencies to take down bad actors, and pursue criminal charges. Our staff meets regularly to collaborate with stakeholders and our partners at Treasury, DOBI, and the AG's office.

Our success on this issue in New Jersey is making waves. I quote directly from the recently released Pennsylvania Misclassification Task Force report which says: "Many experts in the field, along with members of this Joint Task Force, consider New Jersey the 'Gold Standard' for addressing worker misclassification."

You've made our policies strong, and given us the tools to protect our workers and keep our employers accountable.

I know you all want to know why you're still hearing about unemployment insurance, or UI. This is the tougher issue to remedy as a state.

I understand everyone's concerns. I know you and your staff get distressing calls to your offices from UI claimants, and you want to know what we're doing about it.

When the pandemic hit, workers reached out to elected leaders for help navigating an unfamiliar and complex system that excludes far too many.

My thanks and appreciation to you and your staff cannot be overstated.

And I'm extremely proud of DOL staff and the work they've done working day and night to help the millions of claimants seeking their hard-earned benefits. They've been handling the same calls and emails as your offices. Hearing of the dire situations of our residents every day. Crying with your

constituents over the phone as they do whatever they can to help.

In 2019, EACH agent provided about \$23 million in benefits on average to 4,500 claimants; in 2020, their individual productivity skyrocketed to almost \$140 million per agent, paid to 9,600 claimants. So, no one can say they haven't been doing their jobs. In fact, I doubt any group of state workers has been as effective and productive as our UI agents these past two years. They're doing the best job they can, day in and day out, and for that I am grateful and inspired every day.

It may not seem like it on your end, but I assure you that circumstances are very different now than last year at this time, when we were dealing with record

numbers of claims and implementing multiple enhanced federal benefits programs.

With the aid of those programs, we've gotten over \$37 **Billion** dollars in benefits out the door and into the hands of over 1.6 million New Jerseyans, including over 200,000 self-employed workers with small businesses who received over \$7 billion dollars.

\$37 billion dollars to more than 1.6 million claimants is incredible, and no state program has delivered that much money to so many people in such a short time, ever, let alone during a pandemic.

But, I know none of that matters to the small percentage who have been waiting for their benefits; or to you and your staff, who have been

patiently fielding calls. Of course, we care deeply about all claimants, but that small percentage is not representative of the whole picture. But I know for them – and for your offices – it's the world.

We've done everything in our power to serve as many unemployed workers as quickly as possible and ensure the most workers possible are eligible.

Every determination is made to the letter of the law that we are bound to implement and enforce.

Luckily, here in New Jersey, for almost 90 years, Governors, legislators, and voters have supported one of the most generous UI programs in the country, and one of only three in which workers contribute.

As Sen. Madden pointed out last Thursday in the Senate Chambers, we're processing complete applications in 2 to 3 weeks, the same as before the pandemic.

If a claim requires agent intervention, it may add another few weeks, depending on the issues and the responsiveness of the claimant and their employer.

Unemployment is confusing – especially when you've never had to navigate it before. We've done our best to ease the process through automation, and by providing information on our website, including three dozen new pages, about 25 documents in several different languages, and instructional videos, explaining everything from eligibility, how to submit a claim, and how to resolve common issues.

We continue to add efficiencies week in and week out. Recently we launched a tool for employers to report UI information online instead of going through the mail.

But as easy as we try to make it, we know some claims require more time and attention than others due to the many nuances of federal unemployment policies.

Claims with multiple wage sources, student workers who are typically ineligible for unemployment, deductions for pension and retirement benefits, or making a simple mistake on an application or weekly certification... all require the attention of a specialist.

Unfortunately, the reality is, not everyone is eligible for unemployment benefits under federal law.

Generally, 20% of claims are ineligible – they may not have enough earnings, may have exhausted their benefits, or they might be self-employed. This has equated to over 400,000 New Jerseyans since COVID hit.

Those who are ineligible or exhaust benefits aren't left in the lurch. We share important resources and programs that can assist with food, child care, health, rent, housing, utilities, as well as specialized services for older adults, individuals with disabilities, and survivors of domestic or sexual abuse. And, of course, we provide information on our career services to get them back on the job.

People call your offices and ours in dire financial situations, often telling their stories about their serious medical condition, having to take care of a relative who is sick from, or highly at-risk of, COVID, they're retired on a fixed income, they have a serious injury preventing them from working and can't support their family... and they can't get their unemployment – these stories are heartbreaking, but more heartbreaking is the fact that they're most likely not eligible for UI.

During the pandemic, the enhanced UI benefits, particularly here in New Jersey, were so generous that it became the first stop for almost every financial issue.

I wish we could give benefits out to absolutely everyone who needs them – as much as they need,

for as long as they need. But UI is not an entitlement to anyone out of work, and the benefits eventually do run out. We try harder than any other state to get to a "yes" on eligibility, which is why we consistently lead the country in the percentage of unemployed workers who receive benefits.

But we have a responsibility of due diligence on each claim. Otherwise we would further deplete the trust fund, and possibly force that claimant's employer to pay thousands of additional dollars in taxes the next year.

As mentioned earlier, New Jersey law pushes as far as we can to offer eligibility to as many workers as possible; but if we push the boundaries too far, the US Department of Labor reminds us we are risking our ability to pay any benefits at all, and the ability

for more than 250,000 employers to receive their federal payroll tax deduction.

You may remember in May of 2020, we had over 40,000 workers a week tripping up on the weekly certification process. We were proud our IT staff programmed a process to clear them automatically so they could continue collecting benefits.

Unfortunately, the USDOL made us stop this automated process late last year, which contributed to increases in calls to us and to you even though overall claimant numbers are declining.

We're forced to go through a gauntlet of federal requirements before paying out claims.

Many federal and state government programs were rolled out in response to the economic strain caused to individuals and businesses by COVID-19.

Here are all the rules and regs to apply and receive assistance from the NJEDA'S Sustain and Serve NJ Program, 77 pages.

On the federal side the United States Treasury Department, not known for being clear and concise, issued rules to receive assistance from one of their Coronavirus State and Local Fiscal Recovery programs - 437 pages:

For New Jerseyans who found themselves out of work after COVID hit, these are all the unemployment regulations they had to wade

through, over 7,000 pages handed down to us by the federal government.

It is a massive program that takes time and expertise to administer. Federal rules and regulations have changed about 30 times just over the past two years, far exceeding other programs like the Paycheck Protection Program.

With this massive set of rules for our agents to navigate, we contracted a call center to help with our unprecedented call volume. Last year, the call center answered up to 12,500 calls per day. Last month, they averaged a 3-minute wait, 90 percent of calls got resolved on the spot, and 10 percent needed additional support from a specialist. As claims and call volume have decreased, we've been

able to shift more UI agents to the phones to get more claims resolved on the spot.

And recently we were able to remove the dreaded message claimants often heard – “due to high call volume, you may not be served”.

Long before the pandemic – and long before my tenure as commissioner – UI was moved from in-person to online and by telephone because it was faster and more efficient. Agents can process more claims online and over the phone than meeting in person. There haven’t been ‘unemployment offices’ in two decades.

Limited UI services remained at about a dozen One-Stop Career Centers, which we paused during the pandemic for customers’ and workers’ safety, and

because we needed all hands on deck to help as many claimants as efficiently as possible.

By the end of this month, we'll resume in-person assistance at the One-Stop locations across the state where they were available pre-pandemic.

We're committed to getting all claims resolved – every single eligible one on your desks – and we understand sometimes a worker needs to speak to someone face to face to fully feel comfortable with the process.

With the complexities involved with unemployment, the services at the One-Stops will be like going to the hospital. If you go to the ER, the nurse might wrap a bandage or fit a wrist splint, and an ER doc may give you a prescription, but you also might need to follow

up with a cardiologist or orthopedist to get the underlying issue straightened out. If you come for an appointment at a One-Stop, our agents may be able to do some basic things with your claim, but you may still have to follow up with the specialist that can help with your unique case, and we'll do everything we can to expedite that on the spot.

The Murphy Administration and my colleagues at other departments have had great success in bringing our services directly to the communities that needs them most. I look forward to working with all of you to bring the full services of the Department of Labor: job placement, family leave insurance, Wage and Hour, resume and interview assistance, vocational rehabilitation services, training placement and UI help to areas of your district you feel might need additional touches.

To make UI benefits more accessible, we recently applied for USDOL grants to help fund eight UI equity-improving projects – totaling \$6.8 million dollars. We hope to complete these initiatives within the next two years. These projects will aim to make UI easier for everyone to use and understand, and to strengthen our communication with claimants. We seek to increase our ability to analyze our equity-measuring data –with a focus on outreach and better communication with under-resourced communities.

As I showed you, we're held up by the laundry list of regulatory hurdles **per federal law** before paying claims.

Delays haven't been unique to New Jersey. No state has been spared, even those who've spent hundreds of millions of dollars to modernize their computer systems. I've watched many of my counterparts testify in sometimes raucous hearings in just the past few weeks.

As Chair of the National Association of State Workforce Agencies, or NASWA, I've seen how we've performed versus the other 52 states and jurisdictions, as well as the many issues we prevented.

Still – after two years – the headlines keep coming every day from around the country:

To quote KMBC in Kansas City... "People still navigating Kansas Labor Department to get pandemic unemployment payments"

Channel 8News in Richmond, VA... "Issues with unemployment upgrades 'unacceptable,' says Virginia Employment Commissioner" when asked

about their newly modernized system their new Commissioner said, "we have not been able to run it for 30 days without major defects...The first part of this was launched when I was previously in the governor's office **two administrations ago**, and to see where we are today just doesn't really make a lot of sense."

... In Harrisburg last week, at a hearing like this one, the Pennsylvania Department of Labor's

unemployment efforts were called '*a stain on the Commonwealth*'

All these headlines were from the last few weeks.
And that was a small sampling.

And two of those states launched new modernized systems in the past year.

The problems lie in federal policies – not legacy computer systems, not virtual services. Everything we and our colleagues in other states are trying to do to ease this process for our workers is just putting duct tape and band-aids on outdated federal policy, seemingly designed for applicants to fail.

And none of these policy issues are new. They've been largely unchanged since the 1930s, but never

before have tens of millions of people tried to access their benefits at the same time.

I've been very vocal on how antiquated our federal UI system is, and how ill-equipped it is to be the main source of emergency funding. I and my counterparts have been advocating for almost two years on the need for change at the federal level.

Unfortunately, there's been almost no progress. In September 2020, I wrote to our congressional delegation outlining key issues: outdated eligibility restrictions, procedural issues surrounding the weekly certification process and verification of interstate wages. There's no flexibility to modify these requirements, even in times of crisis.

Last March, I wrote our delegation again, urging their support of the Unemployment Insurance Technology Modernization Act of 2021.

I'm proud New Jersey provided the most co-sponsors of any state and thanks to Congressman Smith, the only sponsor from the other side of the aisle.

Unfortunately, it did not get a vote, but many important provisions made it to the American Rescue Plan, including funding for USDOL to partner with the U.S. Digital Service in a pilot program to modernize the application process.

I'm thrilled New Jersey was chosen as a pilot state, because we've been at the forefront of system improvements throughout the pandemic – creating

innovative solutions to paying benefits during a time of unprecedented demand, and providing some of the most generous benefits in the country. Our counterparts in other states often call us for advice.

The purpose of this pilot is to design an application system with equitable and timely access to benefits for eligible workers, while rooting out fraudulent claims that bog us down. This is an effort not only to upgrade our systems, but make New Jersey a national model for equity, fairness, and true customer service. Through this pilot, we seek to address the major communication issues claimants face – like eliminating the jargon on application forms and weekly certifications, the major problem I spoke of earlier, and providing real-time claims statuses.

This week our pilot partners from USDOL and USDS were here in Trenton on-site for three days of meetings and user testing, which is why I couldn't join you all on Monday.

Today I'm excited to announce that we're on track to roll out our first round of user-friendly changes by the end of April. This first set of improvements, and the ones to follow, will help solve many of the problems claimants run into just answering the questions. Later this year we'll have a whole new system for our agents to work within, which will give them easier access to information about the claim, and allow us to fix claimants' issues faster.

This week, on the two-year mark of the pandemic, I sent another letter to our delegation, reiterating the biggest issues and presenting solutions: one being to

eliminate the weekly certification process altogether.

During the pandemic, eligible claimants answered a question adversely on their weekly certification over 2 million times and, per USDOL, each can only be cleared for payment after the personal attention of an agent. Even now, more than 5,000 claimants per week get caught in this trap causing financial harm and taking valuable time from our agents who could be resolving other claims.

Despite our repeated correspondence, there's been no action in Congress, not even in the multi-trillion-dollar omnibus package passed last night. But I won't give up hope. We need solutions at the federal level that will clear up the most common issues we've seen holding up claims. Changes that will make more

workers eligible for benefits, and make staying eligible easier.

I thank you very much for your support and the support of your staff during these difficult times.

Thank you for having me here today, and I'm happy to answer any questions.



PHILIP D. MURPHY
Governor

State of New Jersey

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ROBERT ASARO-ANGELO
Commissioner

March 9, 2022

The Honorable Joshua Gottheimer
213 Cannon House Office Building
United States House of Representatives
Washington, DC 20515

Dear Congressman Gottheimer,

Thank you for the assistance you and your staff have provided to New Jerseyans; both through your votes for enhanced federal benefits and through constituent service on behalf of frustrated claimants.

It has been two years since New Jersey recorded its first COVID-19 case. We went from an unemployment rate of 3.8 percent in March 2020 to 16.6 percent in April 2020 - a level not seen in this state since the Great Depression. Since then, the New Jersey Department of Labor (NJDOL) has paid out more than \$37 billion in Unemployment Insurance (UI) benefits to 1.6 million workers.

For almost 90 years, New Jersey Governors, legislators and voters have supported one of the most generous UI programs in the country and one of only three in which both employers and workers contribute. We have done everything in our power to ensure that the most workers possible are eligible for benefits.

I am writing today to again advocate on behalf of New Jersey workers, particularly those who find themselves unemployed, to finally bring federal UI policy into the modern era. While there has been rightful focus on obsolete technology in New Jersey and across the country, most often, the barrier to receiving benefits isn't old programming, but antiquated policy.

In September of 2020 I wrote you about these constraints; particularly outdated eligibility restrictions as well as procedural issues surrounding the weekly certification process and verifying interstate wages. These federal demands on states cause delays in regular benefit payment, and significant economic insecurity for our workers in times of crisis, particularly those already in precarious financial situations.

On March 25th last year, I wrote asking for your support of the "Unemployment Insurance Technology Modernization Act of 2021" (H.R. 1458). While the bill did not receive a vote, most of its important provisions ended up in the American Rescue Plan, including funding for the United States Department of Labor (USDOL) to partner with the U.S. Digital Service (USDS) in a pilot program to modernize the UI application process.



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COMMISSIONER

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The NJDOL was one of two states chosen to partner with USDOL and USDS to design a system that provides equitable and timely access to UI benefits, while rooting out fraudulent claims that bogged down state UI systems during the pandemic. This is an effort not only to upgrade our systems, but to create a national model for equity, fairness, and true customer service that will make New Jerseyans proud. However, the fact remains we are still constrained by the inflexible statutory framework that I described in my September 2020 letter. Without true policy progress, any of the worthy changes made in the application process may only be cosmetic improvements at the margin and not address the most common underlying issues holding up frustrated claimants.

Despite all of the attention on UI and unemployed workers the past two years, there has been no movement on any significant changes to this overly restrictive system. Too often, innovative changes sought by New Jersey and other states to speed payments to eligible claimants are determined by USDOL to not comply with existing laws and regulations. While frustrating, USDOL is usually following the law as it has been written. It is up to Congress to give them the authority to be more flexible and to adapt, in partnership with the states, to the new realities of our workforce and economy.

The September 2020 letter recommended reforming the weekly certification requirement, which has been, and remains, the single biggest impediment to the dependable delivery of UI benefits as well as the issue that has consumed the most time for our UI agents.

Throughout the pandemic, our claimants have faced problems with their weekly certification more than 2 million times and per USDOL, each can be resolved only with the personal attention of a UI agent. Even now, more than 5,000 claimants per week answer a weekly certification question adversely and have their payments stopped. A majority of those who initially answer a certification question adversely end up being eligible for payment, further highlighting how superfluous this process is.

It is time to eliminate the weekly certification process altogether.

It may have made sense when laid-off factory workers had to go to local unemployment offices each week and fill out a form to pick up a check. This outdated process is unnecessary and based on the presumption that the worker is trying to defraud the system. We can provide the same robust anti-fraud and integrity measures we do now, while still treating unemployed workers with the respect they deserve.

Once a claimant is determined eligible for unemployment benefits, states could continue to distribute benefits each week, along with directives for steps to take if their eligibility factors changed or if they return to work. Failure to do so would carry the same penalty under law as it does now. We already receive employment information through wage records each employer files with the Department. This change would be consistent with the requirements of the Social Security Act - that claimants must be able to work, available to work, and actively seeking work in order to receive benefits. It would merely alter the method by which that is attested to every week.

Additionally, I want to emphasize a recent request regarding waiver of overpayments. On January 7, 2022, as Chair of board of the National Association of State Workforce Agencies, I and my counterpart from Alaska wrote to Congressional leadership asking for legislation to permit states to waive all non-fraudulent pandemic related UI overpayments. This was a unanimous request - Democratic and Republican states alike saw the merit of this policy. A month later, USDOL issued guidance providing minor additional flexibility to issue waivers in specific situations.

While this USDOL assistance was welcome, it is very limited in scope and it remains that hundreds of thousands of our residents still owe an average of over \$4,000 in overpayments through no fault of their own.

I have no doubt that when each of you voted for the CARES Act to provide crucial and timely financial support to millions, you did not intend that the money would have to be returned two years later. I am reminded of the policy behind the Paycheck Protection Program: to hold employers and employees harmless for a pandemic that was far beyond their control. Congress should adopt the same policy with respect to all expanded UI overpayments.

The time to fix UI is now. While we don't know when the next crisis or recession will come, we do know the federal unemployment system isn't ready for it.

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

Selected, time related, USDOL UI administration core measures

1. All first payments: 14/21 day timelines.

Calendar Year	2018	2019	2020	2021	2022	2018 to 2022
Federal Standard	87.0%	87.0%	87.0%	87.0%	87.0%	87.0%
<i>New Jersey compliance rate</i>	81.4%	87.3%	77.2%	68.0%	50.2%	77.8%
National average compliance rate	85.0%	85.5%	66.2%	60.4%	67.7%	69.2%
Best state compliance rate	98.1% (ND)	98.0% (ND)	91.7% (MN)	91.7% (RI)	98.6% (ND)	92.3% (WY)
Worst state compliance rate	40.9% (NC)	58.1% (NC)	31.7% (KY)	31.3% (OH)	22.0% (VA)	40.4% (HI)
Number of states not meeting the federal standard	19	15	45	48	38	45

Italics means NJ below standard. *Italics and bold* means NJ below standard and below national average.

2. Nonmonetary determinations: 21-day timeliness.

Calendar Year	2018	2019	2020	2021	2022	2018 to 2022
Federal Standard	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
<i>New Jersey compliance rate</i>	64.0%	83.3%	69.8%	39.1%	27.1%	65.8%
National average compliance rate	76.4%	75.2%	51.4%	50.8%	46.1%	60.5%
Best state compliance rate	98.0% (MS)	96.0% (IA)	84.7% (ND)	96.3% (TX)	96.5% (UT)	87.0% (WY)
Worst state compliance rate	40.1% (NC)	46.4% (NC)	16.8% (KY)	4.5% (AR)	2.1% (DE)	28.5% (VA)
Number of states not meeting the federal standard	24	22	49	47	39	45

Italics means NJ below standard. *Italics and bold* means NJ below standard and below national average.

March 10, 2022, Senate Labor Committee Hearing – Department of Labor and Workforce Development

FY 2019-2022 Federal Appropriations and Expenditure Scoresheet - Unemployment Insurance (\$000)							
FY	Original Approp	Budget Authority	Budget Reserve	Expended	USDOL Allocation Data*	Additional USDOL Allocation	
2019	\$ 131,797	\$ 87,394	\$ 44,403	\$ 87,394	\$ 91,330	\$ 40,467	
2020	\$ 131,797	\$ 143,400	\$ -	\$ 143,348	\$ 92,434	\$ 39,363	
2021	\$ 156,797	\$ 99,611	\$ 54,897	\$ 99,611	\$ 97,266	\$ 59,531	
2022	\$ 178,822	\$ 106,582	\$ 70,940	\$ 18,175	\$ 116,700	\$ 62,122	
Total	\$ 599,213	\$ 436,987	\$ 170,240	\$ 348,528	\$ 397,730	\$ 201,483	

*The State UI Allocations show the base funding amounts distributed to the state for the operation of the UI programs. In addition to the amounts shown, the State may earn additional funds each quarter for actual UI claims workload above the base.

Questions:

- Given that for the current fiscal year the department has spent about \$18.2 million out of the \$178.8 million original appropriation or \$106.6 million in budget authority (10% of the original appropriation or 17% of the budget authority), what are the UI administrative expenditure patterns during the year?
- Please explain the claims' flow during the FY 2022. Is there a steady flow pattern that reflects the lower unemployment rate?
- \$54.9 million were placed in budget reserve. Is the department planning on spending those funds, or will they be allowed to lapse?

ID.me Presents Barriers for Low Income People Seeking Unemployment Insurance and Other Government Benefits

During the early days of the pandemic, fraudulent filings in the unemployment insurance ("UI") systems around the country reached epidemic proportions. States tried in vain to implement identity verification procedures on the fly, to make sure they were paying claims filed by real unemployed people. Into the breach stepped ID.me, a company providing digital identity credentials that promised to screen out fraudulent claims but "leave no identity behind."

Since then, ID.me's influence has increased, as numerous federal departments¹ and scores of states have signed on for its services. In addition to unemployment benefits, ID.me prominently has been used in the new Advance Child Tax Credit program. Unfortunately, thousands upon thousands of identities of low-income people, the elderly, immigrants and other disadvantaged groups (referred to by ID.me as "last frontier individuals") have in fact been left behind.

This issue brief reviews the barriers created by ID.me for disadvantaged groups within the context of Pennsylvania's unemployment benefit programs as encountered by legal aid staff representing their clients. These obstacles primarily are either technology barriers or lack of accepted identity documentation. The paper not only explores the specific problems encountered by ID.me users in UI programs and potential solutions to them, but also a more fundamental understanding: **A digital identity credential should not be required to access UI benefits, so long as applicants provide adequate evidence that they are who they say they are.**

ID.me Digital Identity Credentialing

ID.me is a security vendor that verifies identities through approval of government ID and other identity documentation uploaded on its computer app. When the uploading of documents alone is not successful, ID.me provides the backstop of a "trusted referee" available by videocall to resolve the matter.²

ID.me has described the digital credential that it has established as "trusted, portable, secure." The concept is for a person to establish the credential once, for repeated use in multiple government programs and other contexts.³ Such broad usage requires a high level of reliable proof to create the credential.

ID.me applies standards for identity proof and authentication developed by the National Institute of Standards and Technology ("NIST"), an agency of the U.S. Department of Commerce. NIST standards set the baseline for acceptable verification, which is fairly demanding and non-negotiable.

For verification,⁴ ID.me requires either two "primary" documents⁵ (government issued ID) or one primary and two "secondary" documents.⁶ **Notably, a person without a government issued ID cannot meet these standards.**

¹ These federal agencies include the Department of Labor, Department of the Treasury, Veterans Administration, and Social Security Administration.

² Until recently, ID.me users also had the option of answering questions about their credit histories to verify their identities. This option has been abandoned as being subject to fraud.

³ They analogize their credential to a Visa credit card or a driver's license.

⁴ The documentation requirements are laid out at <https://help.id.me/hc/en-us/articles/360017833054>.

Period. Full stop. In addition, ID.me may require proof of social security number ("SSN"),⁷ proof of name change, and proof of address.

ID.me's digital credentialing generally requires the applicant to have a cell phone or computer/tablet with webcam. A borrowed cell phone can be used, but by a difficult process which includes getting permission to install ID.me's authenticator app on the borrowed phone.

The steps for online verification include the following.

- Creation of an email address (if the person has none).
- Creation of an ID.me account.
- Set-up of multi-factor authentication (MFA).
- Generation of a recovery code.
- Photographing of documents and uploading them to the app.
- Taking of a "short video selfie."
- Confirmation of personal information.
- In cases with complications, waiting for and talking with a "trusted referee."

Clearly, the document requirements and the technology requirements present a series of barriers that must be overcome for ID.me verification to be successful.

ID.me in Pennsylvania's Unemployment Benefit Programs

In April 2020, Pennsylvania implemented its Pandemic Unemployment Assistance ("PUA") program, an emergency program created by the federal government to provide unemployment benefits to workers not covered by the state's traditional unemployment compensation ("UC") program. Within months, PUA was beset by hundreds of thousands of fraudulent claims, many filed from outside US borders. State officials responded by requiring PUA applicants to upload identity verification documents on their online PUA dashboards, but the overtaxed UC system lacked even remotely adequate staffing to review and approve the documents.

The state concluded that ID.me was the solution to this dilemma. It was convinced by ID.me's promise of "no identity left behind" and determined that ID.me was the "gold standard" in identity verification. On October 1, 2020, Pennsylvania announced a contract with ID.me.⁸

⁵ Examples of primary documents include: driver's license or state ID; passport; military ID; permanent resident card; employment authorization card; veteran's health ID card; Transportation Security Administration ("TSA") ID card; Department of Homeland Security ("DHS") trusted traveler cards; and certificate of naturalization. We have been told that the municipal ID issued by the City of Philadelphia will also be accepted.

⁶ Examples of secondary documents include: credit card; health insurance card; social security card; DD214 certification of discharge or release; US birth certificate; school ID with photograph; voter registration card; school record or report card; clinic, doctor or hospital record.

⁷ Accepted documents for proving SSN include (if they contain the SSN): social security card; DD214; W-2 or 1099 Form; bank or financial documents; pay stub.

⁸ Although at first only PUA applicants were required to use ID.me, that mandate was later extended to PUA recipients to continue to receive ongoing funds.

By November 30, 2020, the state had sent out around 400,000 messages to PUA applicants providing a link to ID.me. Of these, only around 50,000 identities, or 12.5%, were verified.

Among the 87.5% of the cases that were not verified, the state and ID.me were unable to separate fraudulent claims from legitimate ones where PUA applicants either were unaware of the requirement to use ID.me or unable to use it. Legal aid staff representing legitimate PUA claimants had large numbers of clients who had not been able to verify. Moreover, concerns about ID.me reliability were exacerbated by recurring cases where applicants had proof of verification from ID.me, but that information was not processed by the PUA program so that their benefits would be released.

In September 2021, the state issued hundreds of thousands of PUA disqualification determinations for failure to verify identity.

On the UC side of Pennsylvania's operations, the state implemented a new digital platform for the filing and administration of UC claims on June 8, 2021. Known as "Benefits Modernization" ("BenMod"), the new software was similar to that used in the PUA program. Unfortunately, the same onslaught of fraudulent claims-filing began in the UC system as BenMod went into effect.

On July 16, 2021, the UC program also began requiring identity verification through ID.me for new applications. The following week, it implemented ID.me for continued weekly claims. Because ID.me was embedded in the application for UC benefits, a new application could not be filed until ID.me had been successfully used. By September 15, 2021, 12,908 attempts to use ID.me in the UC system had resulted in failure.

Again, it is not known how many of the failed attempts were fraudulent claims and how many were failures by legitimate applicants. But again, legal aid staff received large numbers of cases where real people had been unable to establish their identities through ID.me.

Obstacles Encountered by Pennsylvania Unemployment Benefit Claimants

ID.me's own writing acknowledges technological barriers in certain demographic groups, especially low-income persons and seniors.⁹ In addition to those groups, legal aid staff have encountered these barriers to ID.me use among immigrants and people with limited English proficiency.

1. Limits of users' technology

Commonly, our clients simply do not have the technology required to use ID.me. Many of our clients do not have smartphones and are even less likely to have computers. The lack of technology often leads them to try to use others' smartphones, which is problematic for getting MFA codes needed to complete the process.

Other technological problems we have encountered include:

- Inability to use phones not bought from major vendors (a problem usually arising among immigrant users);
- Sim cards that don't work with ID.me;
- Pre-paid phones, which do not work with ID.me.

⁹ ID.me, *No Identity Left Behind: Enabling Access for All with Call Center and In-Person Identity Proofing* (2018).

2. Limited user technology skills

Even for those who have or get access to the needed technology, they often lack the necessary skills to use it in a manner that results in their verifying their identities through ID.me. Their problems may start at Step One, with needing to set up an email address. For a large number of our clients, the MFA process is entirely unfamiliar and presents an insurmountable barrier. They may be unable to photograph documents and upload them. Documents and selfies even are rejected if the images are "blurry."

For people who lack computer or smartphone skills, the ID.me process requirements, taken as a whole, are daunting. Even people with significant computer skills have reported needing an hour to complete the process. Those without those skills ultimately abandon the process in frustration.

These challenges are exacerbated by language in the app that is unnecessarily technical or complicated, making it harder for disadvantaged persons to understand. Consider the following instructions;

"When you have set up MFA in your ID.me account, you begin the sign-in process with your email address and password, then you will also enter additional credentials – often, a verification code, which has been sent to a trusted device, sometimes via a trusted phone number."

In addition to the language used, the app design is not easy enough for users such as people with limited English proficiency to follow.

3. Lack of required documentation

As noted, a person CANNOT establish identity verification through ID.me without a government-issued ID. This is the step at which many of our clients' ability to use the app will grind to a halt. Moreover, none of the documents are accepted if they are expired. This makes little sense. While an expired driver's license does not permit the person to drive, it does not change the fact that it proves the person's identity.

Moreover, the complications of proving identity are amplified when a person is asked to also prove social security number, address change, or name change.

4. Inability to get help from ID.me

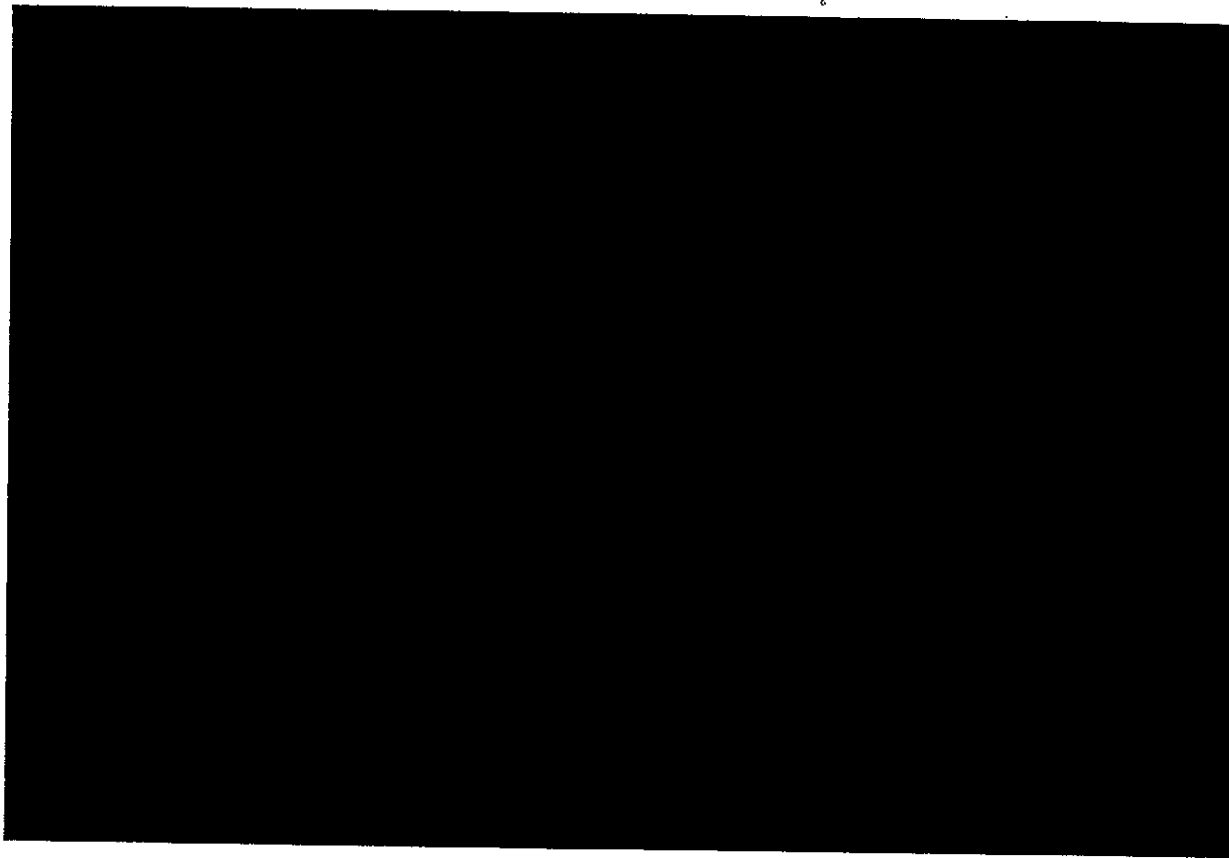
ID.me currently does not provide access to live help except through its "trusted referee" option. *Unfortunately, people can't get to the trusted referee unless they have uploaded acceptable identity documentation!* This means that the very processes for which people need help may screen them out from getting help.

For those fortunate enough to get into the trusted referee queue, the wait can be daunting. We have had clients wait many hours. Other times, clients have been told there would be a wait of a few minutes, only to have to wait almost an hour.

ID.me also has "member support" by messaging. But this source of potential assistance can be very difficult to find in the app, and there have been long delays in receiving a response. For instance, one person who submitted a request for help on July 30th was still waiting at Labor Day and beyond.

ID.me indicates that they are exploring the future possibility of phone or live chat in some states.

ID.me also states that users can select languages other than English. However, such an option is not easily seen by users. ID.me contends that it is working on improving its language options.



What Are We Trying To Do Here, Anyway?

Doubtlessly, ID.me's identity verification helps screen out fraudulent claims. Unfortunately, for the very reasons that ID.me identified the need for a "no identity left behind initiative," its credentialling is not working for marginalized groups. As a result, low-income people, seniors and immigrants also are being screened out from getting UI (and other benefits) to which they otherwise would be entitled.

Rather than taking these false positives for fraud as a necessary evil, policymakers and advocates should step back and ask a fundamental question: **Knowing that marginalized people will be screened out of desperately needed benefits, do we need to require an iron-clad identity verification credential like ID.me verification in all cases?**

Clearly, the answer is no. ID.me recognizes that. They acknowledge that they will not be able to resolve all identity issues in UI claims and that those cases should be escalated back to the state program. That redirection allows a person's evidence that they are who they say they are to be accepted even if it does not meet the demanding NIST standards.

Again, going back to fundamentals, the issue is whether the person is who they say they are, not whether they can produce perfect identity verification paperwork or successfully use a complex computer app. In the UI context, there are several ways that claimants should be able to prove their identity.

- **There should be an ID.me offramp.** ID.me should not be the sole method of identity verification. In Pennsylvania, capacity has been built in the Career Link (One Stop) system for workforce development professionals working as intermediaries to take UC claimants' documents and perform an eyeball

comparison between picture ID and the person in front of them. Going forward, Pennsylvania intends to replace the workforce development staff with UC staff who will be located in the Career Links, using "Equity Grants" (USDOL funding for "activities that promote equitable access to unemployment compensation programs...").

- **People should be able to prove their identities in UI hearings.** Isolating the correct issue is key. The question is not whether the person has supplied certain documents; it is whether the person has proved that they are who they say they are, based on a preponderance of the evidence standard.

Additionally, governmental programs should think critically about what functions require ID.me verification, rather than simply requiring it for all functions. For example, the Internal Revenue Service has a GetMyPayment Tool that allows people to find out information about where stimulus payments went that is not behind ID.me; that tool just requires inputting SSN/date of birth/address. Some program administration can be done with another tool with less rigorous requirements.

The incidence of real people being squeezed out of benefits to which they are entitled because of a new, unacknowledged requirement of digital identity credentialling should be revisited. Preventing fraud is a necessary goal. But at some point, the human cost of using such a tool outweighs the benefit of screening out some fraudulent claims.

Petty, Cynthia D.

From: Carrie Foulke [REDACTED]
Sent: Thursday, March 10, 2022 9:10 AM
To: OLSaideSLA
Subject: March 10th Labor Meeting: Voice of a constituent

Hello, my name is Carrie Foulke. I live in Ocean City, and I can't believe I am saying this, but I will be a member of the public in attendance today at the Labor Committee meeting concerning the current unemployment situation!

I am coming today because I, like thousands of NJ claimants, have been unable to access unemployment benefits and we do not feel HEARD by the people that are supposed to be helping us. There are no offices to visit, no easy or timely way to speak to someone on the phone, often taking weeks just to get a call through. Then, the phone call often leads to another phone call that needs to be made, and the cycle starts all over. I have been trying to straighten out the problems with my unemployment claim since October of 2021. I, like thousands of others, cannot seem to receive the unemployment insurance benefits that are supposed to help us through times of unemployment. It is simply mind-boggling. I cannot imagine working at a company, getting a notice from the payroll department that my paycheck cannot be issued because of a problem, and then waiting days, WEEKS, and MONTHS without getting paid, and not having any idea WHEN that paycheck may finally be issued! Today, I want to hear for myself why the unemployment system cannot seem to be fully functioning and serviceable.

My questions...

Why can't the DOL have in-person services available to claimants?

Why are our representatives, congressmen, and senators and their staffs doing the work of the DOL?

Why and how does it take months to confirm our ID's? I had my ID confirmed in seconds at the AC Convention Center in order to receive my Covid shot. The state didn't have a difficult time confirming my ID in that situation. Perhaps the National Guard can be recalled for a day or two and check everyone's IDs in-person and in seconds, to get our claims moving again.

My family owns a seasonal restaurant at the shore and for many years I have collected partial unemployment in the off season, while I also work as a substitute teacher. I have NEVER seen problems with the system as awful as they are now, but I could see them coming. Every year I am asked by quite a few people to help them file their claim with unemployment because they are so afraid to make a mistake and delay their claims. They feel this way because of the way the system is structured.

This is what I have observed:

1. The application is written in a style of writing that is not easily understood, and is poorly formatted, leading to mistakes made that initiate the need for a phone call to remedy mistakes made in filling the application out.

WHY can't the application be well written and easy for ANYONE to understand?

2. When a notice about a claim is issued, there is no explanation as to why or how the determination has been reached concerning the claim. It is written in department jargon or lingo, which makes it difficult to understand for claimants. For example, "your claim is not payable at this time". That is that is written. Period. Why can't there be a drop down box, for example, to explain that if you see a particular message this is the action to take next, or this is what the notice means. This again initiates a phone call to seek answers to what steps to take next to remedy the issue.

42x

WHY can't there be online tools to help claimants fix mistakes quickly? There is never a place to add something as an explanation.

3. Why is the appeals process so short? If a claimant wants to make an appeal based upon a determination, they have 10 days from the date of mailing to appeal. I have received a determination letter on the actual last day that I was given to appeal! The appeal process hardly allows time to gather documents and information needed by the claimant to submit to the appeal board. There should be more time to prepare an appeal.

WHY can't an appeal be filed at any time the claim is open, with sufficient time to prepare? 30 days, perhaps?

4. I work as a substitute teacher, and during the school year there are breaks when school is not in session. During those weeks, when certifying for benefits, the system requires me to REOPEN the claim! The average time it takes from reopening a claim to the first time slot to certify for benefits is about 17 days! Every school break leads to a reopened claim, and that averages out to about 3 such instances. That has to take a good deal of time for employees to process all of those claims. There should be a box to check for part time school workers to indicate that there is no school in session, and to pause the claim for a week, and then activate it again the following week. It would help greatly to not lose income for almost a month because of a school recess. (This is course is ironic in itself that a claimant cannot be paid during a school break, when the purpose of unemployment insurance is to help someone when they aren't getting a paycheck.) I would much rather pause a claim than have to start from square one 3 times in one claim year!

WHY not have the option to pause claims for school workers?

5. Why does the state have the power to make determinations without explanation? Twice now I have had benefit funds remaining in my claim with one week or more left in my claim year, and the state informed me that my claim year was exhausted. I was not able to access those funds. Why?

WHY is a year not a year to the DOL?

6. Why can't the DOL simply make appointments like the MVC, for instance? Or a doctors or dentist appointment? Sometimes it takes months to be seen, but at least we can go about our lives while waiting. It's so much better than worrying, stressing, losing sleep over wondering how to pay bills, and spending endless amounts of time making phone calls that are answered with a "We're sorry, we are unable to take your call. Please call on the next business day!", and getting nowhere any way.

WHY can't we go online, pick a time slot, and make an appointment for assistance?

There seems to be absolutely no reason why all other businesses, state offices, schools, restaurants, grocery stores, theaters, shops, malls, sports arenas, and literally every other public venue can be open for business, but the DOL and One Stop Career Centers cannot be open for in-person assistance???

Is there not enough help?

Is it the need to keep people socially distanced?

Is it not enough space to handle the amount of claimants needing assistance?

Again, let people make appointments!

We have already waited months with no hope of a resolution in sight.

Give people the help they need!

In closing, the very idea that the Department of Labor, whose mission it is, is to assist the citizens of New Jersey during times of unemployment, is the main reason why many of those same citizens are facing foreclosure, ruined credit, repossessed vehicles, are deciding which bills to pay each month, what groceries to do without, which things to tell their children they have to do without, and other daily difficult financial situations, is at the very least evidence of department wide dysfunction and at its worst a dereliction of duty to the very people they are appointed to serve.

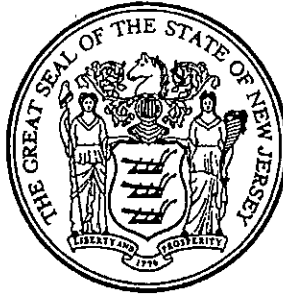
This is what I would like the Department of Labor to hear. Thank you. If you have any questions, please feel free to call me at 609-432-6389. I would be happy to speak with you!

Sent from my iPhone

4/4x

S. 2082/A-3517

Michael L. Testa, Jr.
Senator
Erik K. Simonsen
Assemblyman
Antwan L. McClellan
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NEWS RELEASE

✓ For Immediate Release
February 22, 2022

Contact: SRO Press
(609) 847-3600

First Legislative District Team Introduces Bills to Require Reopening of NJDOL Unemployment Offices or Cut Top Leaders Pay

Vineland NJ – In an effort to put teeth into the repeated calls from thousands of New Jersey's unemployed workers, the three members from the First Legislative District announced their legislation to require the reopening of Department of Labor and Workforce Development (NJDOL) state unemployment offices as soon as March 1, 2022, for in-person appointments or the personal pay of the Department's top leadership will be cut and used for a new fund for unemployed workers.

The legislation, sponsored by Sen. Michael Testa (R-1) and Assemblymen Antwan McClellan and Erik Simonsen (R-1), directs the Commissioner of Labor Robert Asaro-Angelo to reopen the facilities for in-person appointments.

If the state unemployment offices are not reopened by that date, under the bill, the total compensation of the commissioner, deputy commissioner, assistant commissioners, and the department's chief of staff are to be reduced by five percent every two weeks, for the first month, thereafter until all closed state unemployment offices are reopened. The funds collected from the pay reductions would be placed in a special fund in the Department of the Treasury to be known as the "Unemployed Workers Compensation Fund" to repay the filers who were harmed by the Department's inaction.

"Teachers are back in classrooms, first responders are patrolling our streets, and medical professionals are in facilities caring for our most vulnerable. If they can serve out in the community, then so can Department of Labor employees," said Sen. Testa (R-Vineland). "This failed system where Department employees work from their couch and get paid every two weeks is not working for all New Jerseyans. Commissioner Asaro-Angelo needs to do his job and order his employees back to work and this bill will incentivize him and his staff to do just that."

(continued)

First Legislative District Team Introduces Bills to Require Reopening of NJDOL Unemployment Offices or Cut Top Leaders Pay (pg. 2)

"Our office has dealt with a countless number of people all dealing with the same issue, the failures of the NJDOL, and it is time to do something about it," said Simonsen (R-Cape May). "We will continue to help our constituents because we will not leave them in their time of need, but at the same time, we need to get to the root of the issue, which is the NJDOL not being accountable for their constant self-created failures. Failures that only hurt already struggling New Jerseyans, and we will make sure the NJDOL is accountable for those failures. We cannot let government agencies believe they are above being accountable for their actions. New Jerseyans deserve accountability from government agencies and their elected officials."

The trio sent a letter in January asking when in-person appointments could be restarted and noted that the First District office staff and legislative offices across New Jersey have been working tirelessly to help increasingly desperate constituents who cannot access their unemployment benefits via the NJDOL's failing system.

"Many issues that are taking anywhere from six to eight weeks to process could be resolved in six to eight minutes with the restoration of in-person services," the legislators wrote in the letter.

These offices and One-Stop Centers were closed on March 18, 2020, more than 700 days ago, by order of Commissioner Asaro-Angelo. At that time, the release said that "operations are expected to reopen on March 30, 2020." According to a recent news article, the Commissioner has said that "One-Stop Career Centers continue to function, but they are only open for in-person visits by appointment and most cases don't need these centers to get answers to unemployment questions."

The legislators believe that if the One-Stops are open for in-person appointments, the state unemployment offices should follow suit and reopen as well.

"People are fed up and need assistance, but the NJDOL continues to keep their doors closed," stated McClellan (R-Ocean City). "The One-Stop centers are open, but New Jerseyans cannot access many of the needed NJDOL's services at those locations. Schools, department stores, and other government offices are back open, yet the NJDOL has not budged, refusing to open its doors to the very people the department is supposed to help. The NJDOL's unfair and unprofessional actions have hindered many New Jerseyans while creating a massive backlog of people waiting for services and benefits. They forget they are servants of the people, not the other way around. When a government agency performs in this matter, it is time for elected officials to stand up to lead the charge. I am incredibly proud that my fellow District One legislators are stepping up to do what needs to be done to hold the NJDOL accountable."

The bill will be introduced early next week when the Legislature reconvenes.

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