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Improving the Safety Net: Reforming an Unemployment Insurance Program to Serve the Jobless and Preserve Job Creation

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EXECUTIVE SUMMARY

California workers and employers have a joint interest in a responsive, efficient, and accurate Unemployment Insurance (UI) program that pays legitimate claims rapidly without time-consuming, multi-layered appeals to resolve disputes. California's elected leaders, program administrators and stakeholders should drive toward this goal, but must also recognize the fundamental federal requirements that underlie the UI system regarding eligibility, fraud prevention, fund solvency, and re-employment of unemployed workers.

Since the onset of the pandemic in 2020 and the volatile employment picture for many industries, elected leaders and stakeholders have expressed urgent concern about the UI program's speed and accessibility for claimants. This focus has led to numerous reviews and oversight of the system from the Legislative Analyst, State Auditor, as well as numerous legislative hearings.

To this day, legislators and advocates propose changes in how California shapes the eligibility and management of the state's UI program, but any improvements to the system must be informed and guided by the fundamental requirements within a federal-state program, as well as how a program financed by employer taxes can provide an adequate safety net for unemployed workers without undermining the employer's competitiveness and business health. Improving the system must also draw on an understanding of how California's current practices on eligibility and claims administration compare with the practices in other states.

This paper provides background and context to consider further reforms of the unemployment insurance system in California, and clarifies the federal requirements and economic dynamics of four main areas of the UI system:

- **Generous eligibility and appeals processes**. California is a claimant-friendly state. Its law and practice provide among the most generous and least restrictive eligibility requirements in the nation, and it is more forgiving of fraud by claimants. The complexity of California law also creates difficulty complying with federal requirements on rapid distribution of benefits, and likely generates excessive inaccurate eligibility determinations. Policy makers must carefully consider compliance and tax consequences of further loosening eligibility for UI, and consider where eligibility, appeals and fraud rules can be rationalized and brought closer to national norms.
- **Relatively low penalties for fraud.** California law has a narrow definition of fraud compared with other states, is relatively forgiving towards individuals who have committed fraud, and program enforcers have struggled to recover incorrectly distributed funds efficiently and effectively. California policy makers must recognize the struggles of the existing anti-fraud efforts when considering legislation to expand eligibility, speed benefits distribution, or ease verification requirements.
- **UI fund solvency**. The unprecedented pandemic-fueled unemployment shock in 2020 created a massive debt in the state's UI fund. The fund's insolvency (hovering near $18 billion at the time of this paper's release) and mandate on taxing employers to restore its health, underscore the need to ensure that benefits for workers are balanced by prudent and fair eligibility rules and fraud enforcement, as well as effective re-employment efforts. Long-term fund insolvency and related steep payroll taxes will have a dampening effect on hiring and maintaining employment.
- **The UI system's role in rapid re-employment of workers**. Discussion of the UI system is inseparable from its re-employment elements. With increased federal money related to re-employment services, California has an opportunity to improve these critical services. We recommend expanding UI recipient identification, connection and uptake, as well as better enforce participation in these re-employment programs.

This paper will note how California's status concerning each of these areas affects the delivery of UI services and employer success. It will also note where the consultants differ from some of the other recent reviews of this program, especially some of the conclusions reported in 2022 by the Legislative Analyst.

BACKGROUND

Unemployment insurance is a federal-state partnership that provides benefits to qualifying unemployed Californians, subject to federal programmatic requirements and California law. Pursuant to federal law, employers are taxed on a wages-paid-per-employee[1] basis, and those funds are held by the federal government in state-specific reserve accounts, then distributed to qualifying unemployed individuals from a state's account to help them through periods of unexpected or unpredictable unemployment. If a state's account falls into insolvency, the federal government will provide a loan to the state fund but will gradually remove tax credits (effectively increasing taxes) until the state's fund has a positive balance. The program places no cost on employees, and benefits are completely funded by employers. The federal government provides administrative funding for some aspects of states' UI programs, so long as the state program complies with federal requirements.

The COVID-19 pandemic pushed the UI program to the forefront of national and California politics, as entire sectors of industry were compelled to shut down and swathes of the workforce became unemployed. The unemployment rate increased from 5.5% to 16.1% over just two months in the spring of 2020. As part of the unprecedented event, California's UI system faced massive logistical strain, and fraudulent claims siphoned off approximately $20 billion in benefits.

Appropriately, California's Legislature and the Administration have attempted to review and examine the Employment Development Department's (EDD) performance over the last few years, to avoid repeating the mistakes of the pandemic. This has included multiple California State Auditor reports,[2] as well as multiple legislative hearings,[3] and a report from the Legislative Analyst's Office[4] discussing everything from EDD's claims processing technology to staffing issues. However, most of these discussions have focused on administration of the state's program, and not the federal context and restrictions on states' programs, or California's practices compared with other states' practices.

This paper intends to add to that discussion by emphasizing California's relative role (and flexibility) vis-à-vis the federal unemployment compensation requirements, as well as suggesting some improvements to be considered going forward.

THE ELIGIBILITY PROCESS AND IMPROVING CLAIMANT ACCESS

The federal government's role in unemployment insurance eligibility

Like all other states, California's UI system is authorized and subsidized by the federal government.[5] As part of that authorization, federal law sets certain minimum requirements regarding who is eligible for unemployment compensation, as well as providing operational guidelines (discussed below) for California's UI program.[6] Regarding eligibility, the fundamental requirements for claimants under federal law are:

1. The individual be unemployed involuntarily (and not due to misconduct).[7]
2. The individual must have earned wages sufficient to establish a benefit year.[8]
3. The individual must be a U.S. citizen or have a legal status to work in the United States.[9]
4. The individual must be **able to work**, **available to work**, and **actively seeking work** for the duration of their receipt of benefits.[10]

California — just like any other state — must incorporate these federal requirements into state UI law for the state to participate in the program. If the federal government were to determine that California's UI program is not in compliance with federal requirements, California would risk losing operational funding for its UI program.[11] In addition, California employers would lose their Federal Unemployment Tax Act (FUTA) tax credit — effectively raising their tax rates on a per-employee basis.[12]

California's eligibility rules are more generous and more complicated than are other states'

Onto this basic framework of federal law, the California Legislature has imposed one of the most complicated and generous sets of eligibility laws in the nation. This complexity, in turn, makes a quick determination of eligibility for benefits much more difficult — potentially harming claimants (whose benefits are delayed) and adding challenges for the Employment Development Department (which must attempt to quickly sort applicants based on much more complicated rules).

Notably, a recent report by the Legislative Analyst's Office (LAO)[13] suggested that California's eligibility process had become slanted in favor of employers based on a review of benefits decision appeals by claimants — which we would contend is incorrect, based on California's extreme eligibility provisions. Though the August 2022 LAO report did acknowledge that complexity in California's eligibility law could play a factor in errors in benefits determinations, it failed to provide any thorough explanation of this so-called complexity, or to sufficiently consider its role in apparent errors in benefits determinations.

Below is a short summary of some of the provisions that make California's eligibility laws more claimant-friendly than those of other states, and more forgiving of fraud by claimants.

California's UI eligibility standards

California's UI program allows for workers to be eligible for benefits in a range of scenarios where they would likely not qualify in other states. The following examples illustrate the claimant-friendly nature of California's UI laws, and also highlight the complexity of the benefits determination that EDD must complete for each claimant. Notably, some of these provisions may differ from federal law — though the U.S. Department of Labor has so far not raised any issues with California's UI program.

- California law presumes the eligibility of claimants unless the employer proves otherwise — whereas other states purposely make no presumption and require the claimant to demonstrate eligibility. This presumption is directly at odds with the August 2022 LAO report's conclusion that California's UI program inherently favors employers over workers.[14]

- California law provides many more exceptions to the foundational requirements for eligibility for unemployment insurance under federal law, that a claimant be: 1) able to work, 2) available to work, and 3) actively seeking work. These exception provisions in the California UI Code include if the claimant is:[15]

- Responding to a subpoena or serving on a jury;
- Responding to a summons or while hospitalized;
- Waiver for being arrested;
- Experiencing a death in the family;
- Discharged from the armed services, and has unexpired leave time for which the claimant has been compensated;
- Employed in the longshoring trade and has an uncompensated holiday or day off.

- California UI law includes fewer provisions under which individual applications may be disallowed or denied as compared to other states, and the sanctions are less costly than in most states. Unlike other states, California pays weekly benefit amounts without deducting the amount of vacation pay, separation pay, remuneration in lieu of notice and other payments attributable to the week claimed.[16] In most states the policy underlying allocation and reduction is that if an individual is receiving vacation pay, separation pay, or similar employment-related payments, then simultaneously receiving unemployment would be duplicative and disallowed.

- California law does not currently provide for an enhanced penalty for gross misconduct or gross negligence related to an employee's termination. In contrast, many states provide for an enhanced penalty for gross misconduct that may not meet the definition of fraud but is nevertheless deserving of a greater penalty.[17] For example, theft of a significant amount of money is not direct fraud in claiming unemployment compensation, but arguably justifies a greater penalty than does, say, repeated absenteeism. In other states, these penalties can include longer disqualification from benefits after gross misconduct, reduction of benefits, or benefits postponement.

- California law permits an employee to escort a spouse or domestic partner to a place "from which it is impractical to commute [back to the worksite]," and still qualify for unemployment — despite the worker's absence being entirely voluntary.[18]

- California allows claimants to turn down work and remain eligible for UI if the offered work is not within the "customary occupation and prior earnings" of the claimant. In most other states, a claimant cannot turn down "suitable work" and remain eligible for unemployment compensation.[19] Most state laws require agencies to consider the broader list of factors, including the degree of risk to the claimant's health and safety and morals, the claimant's physical fitness, prior training, previous experience and earnings.

- The base period wage requirements are relatively low in California. According to the National Foundation for Unemployment Compensation and Workers' Compensation annual report for 2023, average wages in California are higher than all but two states.[20] California's requirement of base period wages of $1,125 is lower than all other states except Connecticut, Delaware, Hawaii, Nevada, Oregon, and Puerto Rico.[21] This means that a worker becomes eligible for UI benefits *sooner* in California than in most other states.

- The wage replacement amount provided to unemployed workers in California is higher than in most other states for lower-wage workers. Although the benefit determination is generally set at 50% of wages with a limiting cap on the weekly benefit amount, the percentage in California is based on the **highest quarter** in the base period instead of the average weekly wage throughout an individual's base period, which is more common. This results in higher wage replacement amounts in comparison to the prior year average and may discourage individuals from seeking and accepting work that might pay lesser amounts for full-time or part-time work.

- California permits individuals to be paid unemployment compensation for weeks during which they are totally disabled. This is generous because one of the basic federal requirements of unemployment insurance is that the worker "be able to work" — and an individual who is determined to be totally disabled under workers' compensation has been determined to be unable to work. This is also in sharp contrast to the majority of states, which prohibit the payment of unemployment compensation for a week or part of a week if the individual claiming unemployment compensation is determined to be totally disabled for such period under a workers' compensation law or plan or a public or private disability law policies or programs (e.g., Social Security Disability Insurance (SSDI)).[22]

- California permits waiver of the non-compensable first week, or "waiting week." Many states utilize a one-week waiting period in recognition of the fact that an individual who becomes unemployed receives a paycheck in the week or weeks following becoming unemployed, and the payment of UI is intended as partial wage replacement for weeks when no wages are received. However, California law permits the waiting week to be waived, increasing immediate benefit payout. Notably, this appears to raise concerns for California's UI program and its federal funding, as one of the requirements of the federal extended benefits program is that an individual **must serve a waiting week** as a condition of the 50% federal reimbursement for the first week of federal extended benefits. In other words, if extended benefits were to be triggered in California, California's law runs the risk of causing the state UI Fund to lose out on the 50% federal reimbursement for such benefits due to its waiver of the "waiting week."

- California more broadly provides for "waivers" of overpayments than other states. In the event an applicant receives an overpayment — either due to EDD error, or due to being paid then subsequently informing EDD of re-employment — the overpayment amount should, theoretically, be returned to the state UI Fund. Instead, California law provides that individuals do not need to repay the overpayment if 1) the overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient, and 2) the overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.[23] This waiver is structurally favorable to claimants and diminishes the UI Fund, where employer taxes are then used to restore the fund for EDD's errors.

- California provides for a shorter period for the state to recover fraudulently obtained benefits or non-fraudulently obtained overpayments than other states. Benefits recovery traditionally begins with administrative notice, and, if that is not successful in causing the claimant to return the improper distribution, then a civil lawsuit is commenced. California law permits EDD only a relatively short period of time to file a lawsuit for recovery — one year in the case of non-fraud, and three years in the case of fraud. This limited time to file a lawsuit means that even more improper payments cannot be recovered by the state, and employers are forced to repay the fund for EDD's mistake or fraudsters' misconduct.

- California law delays determination of benefits eligibility until after a criminal complaint is resolved. Californians who are arrested and are repeatedly absent from work (because they are held in jail due to potentially criminal behavior) would, in most states, be ineligible for unemployment because the employer would terminate them for good cause (i.e., failure to show up to work). However, in California, an employee may still be able to claim unemployment even if they are terminated while they are being held in jail — depending on whether they eventually are found guilty.[24] Notably, this provision means a determination of eligibility may be delayed by weeks — or months — depending on a criminal trial's duration and outcome.

- California provides that an individual's benefits determination may hinge on whether they allege a labor law claim against their employer. Similar to the allowance for arrested claimants, California workers can be eligible for benefits — even if they left their job voluntarily and therefore would normally be ineligible — if they file a lawsuit alleging discrimination in the workplace.[25] Though anti-discrimination lawsuits are certainly important, this law illustrates that exceptions exist even for the most basic requirement of unemployment eligibility — that a claimant did not quit voluntarily. Furthermore, this provision delays EDD's ability to reach a determination of benefits eligibility for months (or years) based on the outcome of a completely separate lawsuit in which EDD is not a party and is presumably not aware of new developments.

California's UI program has among the most forgiving exceptions for misconduct or fraud in the nation

- After quitting or being fired for misconduct, an employee is disqualified from receiving UI benefits until they earn sufficient wages to meet the "suspension penalty," which is defined differently in different states. California imposes a particularly low standard, requiring only that an employee earn five times their weekly benefit amount before being again able to claim unemployment. For contrast, most states require an employee earn six times or ten times weekly benefits before returning to eligibility.[26]

- For a fraudulent claimant to lose their benefits, California law requires that they be criminally convicted of willfully making a false statement or knowingly failing to disclose a material fact to obtain or increase any benefit or payment. If the fraudster is convicted, then they forfeit rights to benefits for the weeks at issue and the following 51 weeks. In other states, an administrative finding of fraud is sufficient to impose the penalty. As a result, California's policy effectively protects fraudsters by requiring district attorney resources be available to pursue each case for a fraudulent claimant to be penalized. If a local prosecutor's office chooses to allocate their resources toward more violent crimes, then the fraudster in California faces no penalty — regardless of the scope or certainty of their fraud. As a result, many fraudsters likely go uncharged, not to mention unpenalized in California.

- California imposes a lesser period of ineligibility for fraud than other states. In many states, claimants who commit unemployment insurance fraud are disqualified from receiving unemployment for a statutory period — such as one year — as a punishment for fraud. In California, the penalty for fraud is between 5–15 weeks.[27] The California code goes even further to provide that the disqualification for fraud shall not be applied after three years. California's penalty for fraudulently claiming unemployment compensation is minimal and disappears from a claimant's record much faster than in other states. A much more common penalty that discourages fraudulent claiming would be to disqualify the claimant from receiving benefits for a full year, as is the case in other states.

- California is the only state to have an "irresistible compulsion" provision that limits disqualifications for intoxication. In other states, as well as in typical employment agreements and in California's labor-related case law, individuals who report to work while intoxicated, use intoxicants on the job, or are intoxicated on the job may be discharged for good cause — and therefore are disallowed unemployment benefits. However, California law specifically protects individuals who can claim an "irresistible compulsion to consume intoxicants, including alcoholic beverages."[28] This provision effectively gives preferential treatment to addicted individuals in seeking unemployment benefits.

California law includes exceptions that potentially conflict with federal requirements for program eligibility

Various provisions of California's Unemployment Insurance Code could be interpreted as potentially differing from federal requirements. Some of these differences have been noted above, while the following provisions pose additional concerns and merit additional mention.

- California waives a federal requirement that claimants are not eligible for the first week of their unemployment period, which seems to conflict with a federal condition for California to receive the benefits of the "extended benefits" program.[29]

- California law provides authority to waive or alter work registration and work search requirements by regulation. Specifically, California law currently authorizes EDD to waive or alter the requirement that claimants be registered for work[30] and report as a condition of eligibility for unemployment compensation. In addition, California law permits the agency not to register the claimant for 21 days.[31] This agency-granted "waiver" potentially conflicts with the federal requirement (claimants must "be seeking work"), and in any case this requirement should not be waived by regulation.[32]

Put simply, the myriad exceptions and alterations contained in California's UI program create a legal framework where the benefits determination process is much more complicated and generous than in other states. This legal complexity, though well-intentioned, makes speedy and accurate determinations of eligibility more difficult, makes mistakes in benefits determinations more likely, and increases the cost to employers of the UI program.

Though the LAO report attempted to draw an implication of bias from differing appeals rates by claimants and employers, we do not read any such bias in California's system. Indeed, given the extreme complexity and generosity of eligibility laws in California, if we were to determine who was favored in California's UI program, we see a strong case for bias in favor of the claimant. Moreover, data supports this interpretation. A review of California's reports to the U.S. Department of Labor demonstrates that California's variety of lenient provisions serve to reduce the number of denied applicants when compared to other states.[33]

As a result, policy makers should step carefully when considering changes to eligibility requirements. California's generous and complicated eligibility laws already make it more difficult to accelerate benefits distribution and create risk of conflict with federal law — and additional legislation may unintentionally worsen those concerns.

The Legislative Analyst's Office acknowledged the complexity of California's eligibility law but failed to note the implications for California's appeals rates

Recent LAO analysis acknowledged the complexity of California's current eligibility rules as among the potential causes for improper denials of worker claims.[34] However, the LAO report also concluded that California's rate of appeals (of denied claims) was too high vis-à-vis other states,[35] and that such a difference was a "sign of imbalance" in the UI program.[36] Though we would agree that incorrect denials should be minimized, we believe the LAO report fails to acknowledge that one of the likely causes of California's proportionately higher appeals rate **is the complexity of California's eligibility guidelines**. In other words, the more complicated the eligibility law becomes in California, the more likely a state eligibility worker might reach an incorrect determination, **and** correspondingly the more likely such a determination would be appealed.[37]

Claims processing: federal requirements, California's potential improvements, and federal constraints

All parties to the unemployment insurance system — claimants, employers, and the state — share a common goal: quick and accurate claims processing resulting in timely distribution of benefits. However, claims processing also presents two difficult limitations for state policy makers. First, California's processing is constrained by federal laws, which require certain minimum verifications be completed. Second, there is often an inherent trade-off between accuracy and speed when examining an application.[38]

Federal limitations on California's claims processing

Any changes California can make (and is making) to improve claims processing must recognize the federal limitations that California cannot change. Federal law requires that certain substantive information be gathered and requires certain timing guidelines to push states toward rapid payment of benefits. As discussed below, the combination of these requirements inherently pressures states to distribute benefits promptly — regardless of claimants' merits — and thereby increases mistaken overpayments and negatively affects the solvency of the state's UI fund.

Regarding substantive information, federal law requires that applicants provide their name and Social Security number, or approved alien registration number.[39] Federal law also requires that employees provide information about their employment relationship, terms of termination, and wage information.[40] This information is critical to both calculate an applicant's benefit amount and to prevent fraud. However, it can take time to gather this information, and can take additional time to resolve any conflict between an employee's and employer's accounts of a termination.

Regarding timing guidelines, federal law includes certain guidelines that push states to distribute benefits quickly — far more quickly than when actual processing often can be completed. Most significantly, U.S. Department of Labor performance measure guidelines set the standard that on average, **87% of payments** for a first weekly claim for benefits be paid within **14 days of the first compensable week claimed**.[41] This creates a hard deadline for states to resolve claims — and pressures them toward payment rather than denial — regardless of whether an applicant's actual eligibility has been resolved within 14 days.

An example illustrates the inherent conflict between these two policies. An applicant files a claim on Day 1. This claim must be shown to the employer to ensure that it will not contest eligibility. However, it takes time for this claim information to be gathered by EDD, processed, and shared with the employer (for example, 3 business days). Then the employer must be allowed a minimum amount of time to review the claim and respond (10 days in most states). Then the information must be returned to EDD, and EDD staff must analyze the information.

Because these communications take time, it often is *impossible* for EDD to have gathered the relevant information, analyzed it, and reached a benefits determination within the 14-day federal timeline. As a result, states (including California) are pressured to pay benefits *before* the applicant's claim has been resolved in order to stay in compliance with the federal guideline of averaging 87% payment within 14 days. This "pre-determination payment" also occurs commonly when an employer appeals a benefits determination, because federal law does not contain any extra time for "claims under appeal."

This 14-day federal guideline creates a structural pressure toward overpayments (where a good-faith applicant receives an incorrect determination) and fraudulent payment (where a bad-faith applicant receives benefits based on a fraudulent claim). These biases toward overpayment add debt to the state's UI fund because the improperly distributed funds are unlikely to be recovered.[42]

California's ability to improve claimant processing

Though federal law creates some substantive minimums, California still has control over large aspects of claims processing — and all participants in the UI program would benefit from improvements in claims processing. Thankfully, California has already started down this road. Since the widely reported failures of claims processing during the COVID-19 pandemic (discussed in multiple legislative hearings and reports from the State Auditor and Legislative Analyst's Office), considerable time and money has been dedicated to improving processes at EDD. The department is taking steps to make the UI process more accessible for limited English-speaking workers and workers with difficulty utilizing the online system.[43] Further, the speed of determinations will be improved in California through the extensive computer system upgrade that EDD is undertaking. Pursuant to the Auditor's two audits and related recommendations, the EDD has been working on improvements to address pandemic-era failings, including: 1) addressing claims backlog; 2) ensuring identity verification tools work as intended; 3) retaining as much automation as possible to speed processing of claims; 4) model workload projections to prepare for future spikes in claims; and 5) improving call center responsiveness and phone services.[44]

In looking to continue accelerating claims processing, California policy makers should be mindful that certain federal requirements *cannot* be waived (including certain fraud prevention requirements) and create minimum requirements that California must comply with to continue to receive the federal subsidy to administer the UI program.

Federal performance measures pressure state programs to distribute benefits quickly and accurately

The LAO report asserts that California's UI program lacks "safeguards to make sure eligible workers can get benefits easily" and asserts that "federal pressure to avoid errors creates incentives to conduct lengthy reviews. However, the LAO report fails to mention that specific federal performance measures compelling rapid distribution of benefits **do exist**, and act as a counterweight to accuracy-based performance measures.

Specifically, the U.S. Department of Labor publishes specific performance metrics and acceptable levels of performance for state UI programs on a quarterly basis.[45] One example is the requirement that 87% on average of applicants receive their first payment "within 14/21 days after the week ending date of the first compensable week in a benefit year."[46] This specific provision is federal pressure on state systems to **rapidly** distribute the first payment to claimants. In fact, this metric pushes California (and other states) to distribute benefits **prior** to a determination of whether an applicant is eligible for benefits in some cases. Other performance metrics focus specifically on speed of benefits determinations, and other elements of states' programs.[47]

The LAO report suggests that there are no implications for states that fail to meet such federal standards — which is not true.[48] States that fail to meet federal performance measures risk having their UI program lose federal funding and lose their FUTA tax credit for employers. Though this nuclear option is not utilized often by the U.S. Department of Labor, it has been used against other states. Notably, the U.S. Department of Labor has exercised its authority against both New Hampshire and New Jersey.

FRAUD PROTECTION: FEDERAL REQUIREMENTS AND CALIFORNIA'S PERFORMANCE

For years prior to the pandemic, UI fraud mainly involved claimants who went back to work and failed to notify EDD that they had returned to work (and thus continued to inappropriately receive benefits). The pandemic changed this, ushering in a new level of identity theft, hurting individual workers who had their identities compromised as well as increasing costs to employers and the state's General Fund.

Fraudulently obtained benefits are rarely recovered

When considering both federal law and California law around fraud protection in the UI program, one important principle must be kept in mind: once money is sent to fraudsters, it is rarely recovered.

Common sense indicates several variables would limit recovery — including the difficulty in locating fraudsters and the low likelihood that claimants who committed fraud still have the fraudulently procured funds when enforcement proceedings catch up with them. California's recovery system also often relies on district attorney involvement for prosecution — which requires those offices to have available staff and experience in such cases.

Based on information from the EDD, it appears that approximately $1.5 billion in benefits has been recovered since the start of the pandemic — including recoveries based on benefits distributed before the pandemic.[49] Comparing this $1.5 billion in recovery to the approximately $20 billion in fraudulent distributions made during the COVID-19 pandemic, we can see that recovery rates are far below the total of fraudulent and non-fraudulent overpayments. This data supports anecdotal evidence that — assuming the fraudster can be identified — it still is very difficult to recover funds after they are distributed.

Federal requirements related to fraud

Identity theft/UI fraud is not an issue limited to California, and fraud prevention is not only a matter of state concern. Federal law requires states to take certain steps to verify claimants' identities and prevent fraud and has established best practices for fraud prevention. In light of both written and oral LAO comments about removing or easing fraud prevention programs in order to accelerate benefits, an examination of federal requirements in this space is important.

Put simply, federal law requires states to pursue fraud prevention. The federal requirements for states' UI programs are set out in the State Quality Service Plan (SQSP) and are provided annually to states. Notably, the 2023 guidance makes clear that states must combat fraud, improve prevention and detection, and recover improper and fraudulent overpayments.[50] In addition, the SQSP directs states to utilize the new federal Integrity Data Hub,[51] which is a multi-state data system that allows participating states to cross-match, compare and analyze unemployment compensation claims data against a variety of datasets for enhanced prevention and detection of improper payments and fraud in UI programs.

Failure to comply with the SQSP's requirements risks loss of federal approval of a state program, and all the related benefits, including administrative funding, federally funded extended benefits, tax credits, and more.

Lessons from the COVID-19 pandemic about fraud and fraud prevention

The tremendous increase in claims load associated with the COVID-19 pandemic created unprecedented backlogs and confusion in virtually every state, including California. International and domestic fraud rings targeted unemployment insurance online application processes because of 1) the increased amount of funding flowing through the system, 2) the relative age and lack of updated security in state systems, 3) relaxed integrity requirements enacted in federal law to enable faster payments, and 4) backlogs in claims that resulted in multiple weeks of benefits being paid retroactively.

Though estimates differ, California's UI program appears to have distributed approximately $20 billion in fraudulent payments during the pandemic.[52] The majority of these distributions came from the federally funded Pandemic Unemployment Assistance (PUA) program, which provided benefits to independent contractors and had considerably lower verification requirements than California's traditional UI program.[53] As to the fraud in California's traditional UI program, estimates differ: EDD estimated approximately $1.3 billion of fraud, while LAO estimated a lower number.[54] In any case, the traditional UI program experienced significantly fewer fraudulent payments, likely due to its more robust fraud-prevention mechanisms.

Though any fraud represents a failure to some degree, California's experience during the pandemic provides a comparison of two programs (PUA and traditional unemployment compensation) and shows the value of anti-fraud measures. Looking at the difference in fraudulent payments from the PUA program ($20 billion) and California's UI program (less than $2 billion by even the highest estimates), the program with less verification (PUA) had considerably more fraud. Common sense suggests that California's anti-fraud precautions were important to minimizing fraud to California's UI program during the pandemic, as rationally acting fraudsters pursued money where it could be obtained most easily — the program with fewer verification requirements.

As a result, California policy makers should recognize the relative efficacy of the mainline state anti-fraud efforts when considering legislation to speed benefits distribution or ease verification requirements.

FUND SOLVENCY AND THE CURRENT $18 BILLION DEBT

California's UI system has been utilizing a multi-billion-dollar loan from the federal government to pay benefits, which adds costs to employers and the state's General Fund.

The California UI Trust Fund Account is the least solvent of any state or territory in the country. Only California, New York and the Virgin Islands have outstanding loan balances, and California's outstanding loan balance of more than $17.9 billion is more than 73% of the combined debt of these jurisdictions ($24.5 billion).[55]

California has a history of not meeting solvency recommendations from the U.S. Department of Labor[56] and relying on the imposition of federal unemployment tax increases paid by employers and federal loans to provide funds to pay state unemployment benefits. The last year for which California met the recommended solvency balance of 1.0 Average High Cost Multiple was 1990. After the Great Recession, California relied on federal loans and FUTA taxes that were increased annually by $21 per employee per year for calendar years 2011 to 2017. California was the last state in the country to repay its outstanding federal loan balance after that recession.

Because California did not repay the current outstanding federal loan of $18 billion by November 10, 2022, FUTA tax increases of $21 per employee began in January 2023. For each additional year with an unpaid loan balance remaining as of January 1 and unpaid by November 10, the net FUTA tax will increase by approximately $21 per employee, with the potential for even greater increases under federal law after three and five years of failure to make repayment. By comparison, the Great Recession demonstrates the cost for California employers during periods of insolvency. Over the six years of insolvency after the Great Recession (2008–2009, with tax increases from 2012 to 2018), more than $1.1 billion was paid from the state's General Fund in interest alone. Failure to pay this interest would jeopardize the availability of federal funds for UI administration and the offset otherwise available against the FUTA tax.

Pursuant to the 2022–2023 budget bill enacted in June 2022, California provided funds to bolster the state unemployment trust fund balance and included legislative intent language to provide additional state funds in the 2023–2024 budget to: 1) provide tax credits to businesses to address tax credits and 2) pay down a portion of the state's debt directly. However, the 2023–2024 state budget adopted by the Legislature removed both these commitments in light of the state's revenue shortfalls.

This ongoing insolvency also will increase costs to the state. Interest on the federal loan will increase due to increases in the federal funds rate in 2023. California paid more than $330 million in interest in federal fiscal year 2022 on the outstanding federal loan. Payment is due each year by September 30. Interest on the outstanding loan amount in 2022 accrued at the low rate of 1.59%, but that rate increased for 2023, and will likely increase again in 2024, on the continuing loan balance. Under federal law, such interest must be paid from a source other than regular state employer contributions; in California that has been the state's General Fund.

UI AS RE-EMPLOYMENT: HELPING CLAIMANTS GET A JOB

From its inception in the 1930s, the UI system was designed not only to provide benefits, but also to achieve rapid re-employment of UI recipients. With this goal in mind, the UI system in California for years has operated job search workshops for UI recipients and provided other job search assistance.

The federal Reemployment Services and Eligibility Assessment (RESEA) grant program provides funding to California for its re-employment efforts with UI recipients.[57] Notably, this funding comes with requirements for states (including California) to follow in providing re-employment assistance.[58]

California's RESEA program identifies UI recipients most likely to exhaust benefits (that is, those unlikely to obtain a job within 26 weeks) using data analytics based on the claimant's work history, occupation, and local labor market opportunities. The identified UI recipients receive notification that they are required to attend a job search workshop to continue to receive UI.

RESEA job search workshops are held locally, throughout the state, and are led by EDD staff. These workshops differ in curriculum among sites, but generally cover the basic job search techniques (networking, job search boards and LinkedIn connections/referrals from contacts). During the pandemic, they were held virtually. As of fall 2022, the workshops are a mix of virtual and in-person deliveries.

Federal funding for RESEA nationwide has increased significantly in recent years, from $150 million in 2019 to $375 million in 2023. It is scheduled to increase even more dramatically in the next few years, increasing annually up to $750 million in 2027. Consistent with these increases, California's federal funding for RESEA has increased in the past year from $22.7 million to more than $40 million, and the annual amount is expected to double by 2027.

The increases in federal funding will provide opportunities for California to strengthen its re-employment system. Drawing on the experiences of RESEA programs throughout the nation, we identify several potential strategies for strengthening the assistance to UI recipients in finding a new job:

- Expanding the number of UI recipients who are identified to participate in RESEA, and enrolling them soon after they file for UI.
- Enforcing the requirement of RESEA participation for UI recipients who are identified.
- Increasing co-enrollment of RESEA participants in Workforce Innovation and Opportunity Act (WIOA) services, so as to intensify the level of job search assistance available to RESEA participants.
- Improving tracking of RESEA participants to measure re-employment outcomes.

Below is a brief description of each strategy. In thinking about RESEA, we draw heavily on the major RESEA implementation study completed in 2022 by Abt Associates, in collaboration with the Urban Institute and Capital Research Corporation.[59]

Improvement #1: Expand the number of UI recipients who are identified to participate in RESEA, and contact UI claimants about RESEA and other workforce assistance soon after they file for UI

The percentage of UI recipients identified to participate in RESEA has been only a small number of the total UI recipients. According to the Abt Associates study, nationwide for the most recent fiscal year 2019, RESEA interviews were scheduled for around 2 million UI claimants, equal to only 10% of total initial UI claims.[60] Though no numbers are available in the Abt study for California UI recipients alone, national UI experts estimate a similar limited percentage of UI recipients in California served by RESEA.

The limitation on the reach of RESEA services nationwide and in California has been due primarily to funding constraints. Since the 1980s, the federal funding for employment services has been cut in real dollars nearly every year, with only periodic one-time increases. However, recent federal funding for RESEA has been increasing,[61] providing California an opportunity to improve re-employment services for claimants.

In conjunction with providing RESEA services to more UI recipients, EDD should look into enrolling claimants for re-employment services sooner after they file for UI. At present, usually some weeks pass between when UI claimants file and when they are contacted to participate in RESEA. That delay between signing up and enrollment can undermine RESEA participation. Over time, claimants often do not hold the same drive to return to work as when first unemployed. To address this, UI claimants could be contacted on job search assistance through RESEA, as well as the American Job Centers and Local Workforce Development Boards, as soon as they apply. A segment of these claimants will subsequently be deemed ineligible for receiving UI. But providing job search services to them will still improve re-employment throughout the workforce system.

Improvement #2: Enforce the requirement of RESEA participation for UI recipients who are identified to participate, and increase the frequency of contacts with these recipients

When UI claimants are identified for RESEA services, they are contacted and told that their participation is mandatory and that failure to participate will result in loss of UI benefits. Despite this mandatory participation, a study of participants under REA, the predecessor of RESEA, found that in the four states evaluated, failure to report (FTR) rates were a third to a half of all participants.[62] The Abt study reported that under the first years of RESEA the FTR rates had declined, but still stood at approximately 30% of participants.[63]

Reasons for failures to appear identified in the Abt study for FTR include: 1) concern among claimants that the notification calls, emails or letters for RESEA participation were a scam; 2) lack of some support services; and 3) claimants did not really consider the participation to be mandatory or did not believe that their benefits really would be cut off.

These issues are being addressed with the "Tiger Team" grants from the U.S. Department of Labor and individual state initiatives to improve access to application for unemployment compensation. In California, EDD is implementing measures to address these issues, particularly with respect to language barriers, plain language explanations, and alternative methods to apply and obtain guidance.

While it is clear that some states do suspend benefits immediately, it is unclear how often punishment is applied in California.

EDD should be encouraged to review its enforcement policies for RESEA participation, and at the same time look into greater flexibility and contacts for increasing RESEA participation. A number of the strategies undertaken by other states to increase participation include self-scheduling of RESEA meetings, as well as ongoing notifications and automated reminders.

Improvement #3: Co-enroll RESEA participants in WIOA services, so as to intensify the level of job search assistance available to RESEA participants

The U.S. Department of Labor (USDOL) has encouraged states to use RESEA funding for intensifying job search assistance to UI claimants. A complementary approach is to co-enroll RESEA participants in WIOA services, which can augment RESEA funding. USDOL has also recognized this approach, as has EDD, but implementation remains incomplete.

In a recent survey of Local Workforce Board directors in California, a main recommendation for RESEA going forward was WIOA co-enrollment. These directors singled out two strategies for achieving this:

- The first strategy involved greater involvement of Board staff in RESEA presentations, to recruit participants for co-enrollment. Board directors noted that prior to the pandemic, when the RESEA workshops were in person, Board staff participated in the presentations. With the virtual RESEA presentations, staff participation became uneven, and in some cases non-existent. The operator of the American Job Centers network in the north California region noted that since the virtual RESEA workshops started, co-enrollment in WIOA of RESEA participants had dropped from 80% to an estimated fewer than 50%.

- The second strategy involved sharing the names of RESEA participants with the Board staff. Several directors reported seeking to obtain a list of RESEA participants, but being told that providing such a list would violate privacy concerns. It's not clear why this would be so, given that RESEA participants are required to co-enroll in CalJOBS.

Improvement #4: Better track RESEA participants to measure re-employment outcomes

As a condition of federal funding, USDOL in recent years has increased requirements to report RESEA metrics, as part of encouraging evidence-based approaches.[64] Among these metrics are ones relating to service numbers including 1) the number of UI recipients completing the initial RESEA session; 2) the number of UI recipients completing subsequent sessions; and 3) the number of UI recipients that report to training as a result of RESEA referral.[65]

More substantial outcome metrics should be required, including 1) re-employment rate in the 2nd quarter after program exit quarter; 2) median earnings in the 2nd quarter after program exit quarter; and 3) re-employment rate for all eligible participants in the 2nd quarter after program exit quarter.[66] Beginning in fiscal year 2019, states were given the ability to use up to 10% of RESEA funding to conduct evaluations of their RESEA outcomes. Beginning in 2023, states will be required to use at least 25% of their grant funds on evidence-based strategies.

In California, past RESEA efforts have not fully tracked RESEA outcomes. Such tracking should be a priority going forward.

CONCLUSION

As the COVID pandemic revealed, EDD struggled to distribute benefits in a timely and accurate manner when faced with a deluge of claims. In the wake of these difficulties, significant oversight and investigation by the State Auditor, Legislative Analyst's Office, and legislative committees have brought many underlying programmatic weaknesses to light. In addition, significant funding was directed toward modernizing and improving EDD's ability to rapidly receive claims, process them, and distribute benefits to those in need. This oversight and modernization should result in some improvement — but the underlying federal and state law framework for the UI program has not changed. To improve California's UI program, an understanding of this framework is necessary. Moreover, potential improvements to California's re-employment system have been largely excluded from much of the post-pandemic analysis, but could provide concrete back-to-work improvements for out-of-work Californians.

ENDNOTES

1 Technically, the tax is paid on the first $7,000 of each employee's wages — but this functions very similarly to a per-employee tax. *See* "California State Payroll Taxes – Overview." Employment Development Department, available at: ***https://edd.ca.gov/en/payroll_taxes/what_are_state_payroll_taxes/***.

2 State Auditor reports, titled "Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments" (January 28, 2021) and "Employment Development Department: EDD's Poor Planning and Ineffective Management Left It Unprepared to Assist Californians Unemployed by COVID 19 Shutdowns (January 26, 2021), available at: ***https://www.auditor.ca.gov/reports/agency/30***.

3 Multiple hearings were held by various committees of the California Legislature focused on EDD's performance during the pandemic, including: 1) July 30, 2020 hearing by the Assembly Accountability and Administrative Review Committee; 2) February 3, 2021 joint hearing of the Assembly Insurance and Joint Legislative Audit Committees; 3) February 8, 2021 joint hearing of the Senate Budget Subcommittee No. 5, Senate Labor, Public Employment and Retirement Committee, and Senate Banking and Financial Institutions Committee; 4) September 28, 2022 joint hearing of the Assembly Insurance Committee and Assembly Accountability and Administrative Review Committee.

4 "Improving California's Unemployment Insurance Program" (August 8, 2022), available at: ***https://lao.ca.gov/Publications/Report/4615***.

5 The federal government appropriates funds for the **administration** of the UI program from accounts funded through FUTA taxes paid by employers, and employers also finance benefits for workers through contributions paid to the state under state law. For administrative funding. *see* 42 USC 501 et seq., particularly Section 503 in defining required due process; employers pay "contributions" in the form of state taxes under state law that are deposited into unemployment benefit trust fund accounts maintained for the states by the U.S. Treasury as part of the federal unified budget. *See also* Title IX of the Social Security Act and "Highlights of State Unemployment Laws" (2022) by the National Foundation for Unemployment Compensation and Workers' Compensation, p. 135.

6 Federal regulations set forth the interpretation of the U.S. Secretary of Labor with respect to the methods of administration that must be used by a state to meet the terms of the federal grant of administrative funding to the state for the unemployment insurance program. Very specific claims administration requirements are set forth in 20 CFR 602.

7 26 USC 3304(a)(10).

8 *See* 26 USC 3304, 3304(a)(7), and 3306(b).

9 *See generally* 26 USC 3304(a)(14)(A).

10 *See* 42 USC 503(a)(12).

11 *See* 42 USC 501 et seq.

12 The FUTA tax (and tax-reducing credit) can cost employers from $42 to $420 per employee annually. Generally, when the tax credit is fully in effect, an employer will pay $42 per employee per year. However, if the tax credit is fully removed, that same employer will pay $420 per employee per year. Individual employers' rates will vary to some degree based on their own experience as well.

13 *See* "Improving California's Unemployment Insurance Program," August 8, 2022, available at: ***https://lao.ca.gov/Publications/Report/4615*** (August 2022 LAO Report).

14 Section 1256 of the California Unemployment Insurance Code provides in part: "*An individual is presumed to have been discharged for reasons other than misconduct* in connection with his or her work and not to have voluntarily left his or her work without good cause *unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption*. The presumption provided by this section is rebuttable." (emphasis added)

15 The following provisions are found in: Sections 1253.6, 1253.7, 1253.1, 1253.12, 1253.15, and 1253.2, respectively.

16 *See* Sections 1265.5, 1265.6, 1265.7, 1265.9. Notably, this means employers in California may simultaneously be paying the special payment (vacation, etc.) and pay again in charges for unemployment compensation for the same week. Without reduction or an offset of benefits, the receipt of such payments discourages claimants from actively seeking work and increases the duration of unemployment compensation to the detriment of the UI trust fund.

17 In other states, such penalties may include loss of wage credits or other mechanisms which may, in effect, delay or reduce an applicant's ability to receive benefits.

18 *See* Section 1256. While the goal of providing transit for a spouse is certainly understandable, exceptions such as this certainly add costs and complexity to the benefits determination.

19 Notably, this requirement is subject to important exceptions, however, including: the worker is not required to accept work: 1) if the position is vacant due to a labor dispute; 2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; and 3) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. *See* Sections 1258, 1259.

20 For employers with 1,000 or more employees in California, the average weekly wage is higher than all states except Washington and New York. For smaller employers, the average weekly wage is closer to other states. *See* the U.S. Bureau of Labor Statistics chart at ***https://www.bls.gov/charts/county-employment-and-wages/average-weekly-wages-by-size-class-by-state-private-industry.htm***.

21 "Highlights of State Unemployment Compensation Laws 2022," published by the National Foundation for Unemployment Compensation and Workers' Compensation.

22 *See* California Unemployment Insurance Code, Sections 1253.5 and 1255.5.

23 *See* Section 1375.

24 *See* Section 1256.1.

25 *See* Section 1256.2.

26 "Highlights of State Unemployment Compensation Laws 2022," published by National Foundation, pp. 78–79.

27 *See* Sections 1257 (a) and 1260 (c)–(e).

28 *See* Section 1256.4.

29 The "extended benefits" program is a federal requirement which provides additional weeks of unemployment benefits when certain economic triggers (related to a difficult economy) are met in a state. Generally, the extended benefits program provides up to an additional 13 weeks of unemployment when a state is experiencing high unemployment. Generally, the federal government pays for the cost of half these additional benefits — though during the COVID-19 pandemic, the federal government paid for the entire cost of such benefits via specific legislation that has now expired. *See* Section 4105 of the Families First Coronavirus Response Act. P.L. 116-127 and as amended.

30 Usually, this registration is with a state agency — in California, it is with CalJobs. *See* ***https://www.caljobs.ca.gov/vosnet/Default.aspx***.

31 *See* UI Code, Section 1253 (b) and 22 CCR Section 1253.1.

32 We do not dispute that EDD should set forth the requirements for claimants to register for work and report necessary information to the agency as part of claiming unemployment, and that such requirements may be properly handled via regulation. However, the administrative practice of waiving requirements for eligibility should be reviewed to assure that claimants are registered for work before being paid unemployment compensation and claimants are provided with assistance early in the process to assure that they are actively seeking work and able to return to work.

33 Notably, this apparent favorability toward claimants is also evident in appeals data. For example: in the second quarter of 2022, EDD reported that the denial rate in California was 22.3% (59,303 denied of 265,434 appeals seeking benefits) compared with a national denial rate of 35.6% (24,176 denied out of a total 67,878 appeals). While the LAO Report speculates that this is due to an underlying bias in initial determinations of claims, we do not see this favorability supported in data, and believe further analysis is necessary before such a conclusion.

34 LAO Report, p. 11 ("While our review does not allow us to know how extensive these [improper denials] are, these examples raise questions about … the complexity of current eligibility rules…"). Notably, the LAO Report did not provide the specific examples of this complexity, such as those discussed above.

35 LAO Summary, p. 4 ("In recent years, about half of EDD's decisions to deny workers' UI benefits have been overturned on appeal. In contrast, less than one-quarter of other states' decisions to deny eligibility are overturned.").

36 LAO Report, pp. 10-11.

37 We do not believe that the omission of this causal link is intentional but instead is likely the result of the relatively short, digestible format which the LAO attempts to utilize in presenting its findings. Nevertheless, it is important to emphasize the causal link between: 1) California's exceptionally complicated eligibility law; 2) incorrect denials based on that complicated eligibility law; and 3) the resulting appeals of those denials.

38 The LAO Report acknowledges this trade-off as well, noting that "Eliminating all fraud and overpayments would require onerous eligibility standards … on the other hand, a program without fraud controls would expose the state and businesses to financial risk." (LAO Report, p.8) In addition, we should note that California's complex eligibility provisions (discussed above) only add to the difficulty of quick and accurate claims processing.

39 *See* 26 USC 3304(a)(14) and 42 USC 1320b–7. This is not only a requirement of the UI program but also needed by the IRS in tracking FUTA and ensuring that the individual pays federal income tax on amounts paid. Because the UI program accounts are managed by the U.S. Treasury and part of the federal unified budget, the federal government requires this information to make sure that funds within federal accounts (even those dedicated for California UI) are not dispersed by the state without federal control.

40 Though employers must be given a chance to respond, federal law does not dictate the length of that opportunity — that is covered by state law.

41 *See* USDOL UI Performs Core Measures at ***https://oui.doleta.gov/unemploy/pdf/Core_Measures.pdf*** (doleta.gov).

42 Discussion of the difficulty in recovered overpayments and fraudulent payments in "Fraudulently obtained benefits are rarely recovered."

43 ***https://edd.ca.gov/siteassets/files/pdf/news-22-31.pdf***.

44 Both of the California State Auditor's reports, as well as a summary of the implementation of their recommendations, are available at: ***https://edd.ca.gov/en/newsroom/facts-and-stats/audit-progress/***.

45 These so-called "Core Measures" are available at: ***https://oui.doleta.gov/unemploy/pdf/Core_Measures.pdf***.

46 14 and 21 are both used here because either may apply. If the applicant has a noncompensable benefit week for their first week, then 21 days is used. If not, then 14 is used. *See* ***https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2004/UIPL21-04.pdf***, p. 3. ("14 days if a waiting week is required, and 21 days if no waiting week is required").

47 For example, the Core Measures also include a Benefits Measure focused on nonmonetary determination time lapse, requiring such determinations be reached for more than or equal to 80% of determinations within 21 days of the date of detection of the issue.

48 LAO Report, p. 7 ("Although the federal government tracks key metrics and suggests performance targets, there are no penalties for states that do not meet the standards."). Presumably, this statement is meant to refer to the fact that the U.S. Department of Labor has never fully exercised their power to strip a state program of all funding.

ENDNOTES

49 In response to inquiry, the EDD reported a total recovery of **$1,505,060,195.19** between **March 2020 and October 2022**. This total figure includes recoveries from various programs, including recoveries for 1) California's UI fund; 2) federal Pandemic Unemployment Assistance benefits; 3) additional UI-related payments. Notably, this figure does not separate recoveries related to fraud committed during the pandemic from recoveries for fraud committed prior to the pandemic.

50 Additional Planning Guidance for the Fiscal Year (FY) 2023 Unemployment Insurance (UI) State Quality Service Plan (SQSP).

51 Notably, the Integrity Data Hub includes a variety of best practices to reduce fraud and improve state programs, such as adoption of direct deposit. While other states have moved to adopt direct deposit as a method of distribution, California has not yet done so. Information available at: ***https://www.naswa.org/integrity-center/integrity-data-hub***.

52 $20 billion was estimated by EDD staff at the September 28, 2022 Joint Informational Hearing of the California Assembly Committees on Insurance and Accountability and Administrative Review.

53 This is widely agreed upon, and has been publicly repeated in multiple forums. For example, EDD's public Fraud Info Sheet, available at: ***https://edd.ca.gov/siteassets/files/unemployment/pdf/fraud-info-sheet.pdf***.

54 "The 2022–23 Budget: State Payments on the Federal Unemployment Insurance Loan," Legislative Analyst's Office, February 15, 2022. Available at: ***https://lao.ca.gov/Publications/Report/4543***.

55 *See* ***https://oui.doleta.gov/unemploy/budget.asp***. UI Trust Fund Account balances accurate as of August 10, 2023.

56 For example, the U.S. Department of Labor published a "high cost" multiple recommendation in 1996, which recommends that states maintain sufficient reserves in their UI funds to provide for one "high cost" year of benefits at all times. *See* Advisory Council on Unemployment Compensation, Recommendation 1995-2, available at: ***https://oui.doleta.gov/dmstree/misc_papers/advisory/acuc/collected_findings/adv_council_94-96.pdf***.

57 RESEA was established in 2015 to replace the federal Reemployment and Eligibility Assessment (REA) program that had been operating since 2005.

58 The Employment and Training Administration (ETA)'s Unemployment Insurance Program Guidance Letter No 10-22, issued in January 2022, sets out minimum requirements for the initial session between the RESEA service provider and claimant that are fairly detailed and include 1) customized labor market and career information based on claimant's needs; 2) co-enrollment in the Wagner-Peyser Act-funded Employment Service program; 3) support in the development on an individual reemployment plan tailored to the claimant's needs; and 4) referral and information provided for additional services, including the American Job Center services. The Guidance Letter also sets out subsequent RESEA services that the states should consider, including ongoing reviewing of work search activities.

59 Abt Associates, "RESEA Program Strategies: State and Local Implementation," Washington D.C., U.S. Department of Labor, April 2022.

60 Abt Associates, op. cit., p. vii.

61 In fiscal year 2021, California received $22.7 million in RESEA funds from the federal government. For the current year, fiscal year 2022, this amount jumped to slightly over $40 million. Federally, RESEA funding has increased 400% from 2019 (without accounting for inflation).

62 Klerman, J. A., Saunders, C., Dastrup, E., Epstein, Z., Walton, D., Adam, T., with Barnow, B. S. (2019). Evaluation of impacts of the Reemployment and Eligibility Assessment (REA) program: Final report. Prepared for the U.S. Department of Labor. Cambridge, MA: Abt Associates.

63 Abt Associtess, op. cit. p. 32.

64 ***https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/RESEA_Toolkit_February2021.pdf***.

65 ***https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-10-22***.

66 Ibid., p. 15.