

# Proposed Performance Standards for Equitable Access to Unemployment Insurance

*All eligible unemployed and underemployed workers must have equitable access to unemployment insurance (UI) benefits. Yet current federal UI standards do little to hold states accountable for ensuring equitable access. Incorporating feedback from more than 30 experts and stakeholders, this proposal recommends a set of new federal performance standards that would measure and improve UI access. The proposal is intended to supplement [existing federal UI standards](#), but all UI standards and metrics should be periodically reevaluated and updated as the conditions facing unemployed workers and benefit delivery change.*

*These proposed performance standards are a companion piece to our brief, "[Federal Standards Needed to Provide Equitable Access to Unemployment Insurance](#)." Read the brief for more on the barriers workers face in accessing UI benefits, why federal standards are an important tool to address them, and why new standards must be accompanied by new enforcement mechanisms and resources.*

## Proposed Core Measures for Equitable Access to UI

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*State UI agencies would be evaluated on these standards as they are on current [UI PERFORMS Core Measures](#) and would be held accountable to an acceptable level of performance.*

### 1) **Standard on reciprocity rates:** 50 percent of unemployed workers should receive UI benefits.

- This standard uses the current USDOL measure of the insured unemployed in regular programs as a percentage of the total unemployed.
- In addition, states must track and report the percentage of unemployed workers who receive UI benefits by race, ethnicity, gender, language, disability status, military status education, and geography of residence (urban/suburban/rural).
- Why this standard? It incentivizes states to encourage eligible workers to enroll.
  - It's important for federal standards to apply to all unemployed workers, not only eligible workers, because evaluating states based on reciprocity by eligible workers would create a perverse incentive to further restrict state eligibility rules.
  - States must pay special attention to reciprocity among demographic groups that are currently and historically underserved by UI.
- Why this proposed target?
  - An estimated 55 percent of all unemployed workers are eligible for UI based on separations and monetary eligibility, with substantial variation between states as a result of different eligibility rules.<sup>1</sup> A target of serving 50 percent of unemployed workers provides an ambitious but attainable goal, which some states already achieve and exceed.
  - During recessions, more workers typically take up UI benefits, making this standard, which is geared to non-recessionary periods, easier to meet.
- Data on reciprocity among all unemployed workers is already collected and available.
  - In 2022, the national average reciprocity rate was 25 percent among all unemployed workers.<sup>2</sup>

- The highest reciprocity state, Minnesota, had a rate of 58 percent among all unemployed workers, while New Jersey's reciprocity rate was 53 percent.
- The lowest reciprocity states, Alabama and North Carolina, had rates of 8 percent and 9 percent respectively among all unemployed workers.
- Measuring UI reciprocity among workers by race, ethnicity, gender, language, disability status, military status, education, and geography of residence would require additional data collection. USDOL is already working to improve collection of this type of demographic data.<sup>3</sup>

**2) Standard on improper denials:** less than 10 percent denied-claim accuracy rate.

- This standard uses the existing Benefit Accuracy Measurement measure of the percentage of claimants who are improperly denied benefits.
- States must track the denied-claim accuracy rate by race, ethnicity, gender, language, military status, disability status, education, geography of residence (urban/suburban/rural), and method of applying for benefits (via computer, mobile phone, app, phone call, and in person). In any case where agencies are permitted to include non-merit staff in claims processing, the type of agency staff making a decision (merit vs. non-merit staff) must also be reported.
- Why this standard? It incentivizes states not to deny benefits to eligible workers.
- Why this proposed target? It mirrors the existing acceptable level of performance for improper payments.
- Data is generally collected and available, but mandatory reporting was temporarily suspended during the pandemic (it resumed in 2022, but this data is not yet available, so the most recent annual data is from 2019 and early 2020).
  - USDOL collects data on monetary denials (determining workers were not eligible because of their prior earnings or work hours), separation denials (determining workers were not eligible because of the circumstances under which they left their job, e.g., quitting voluntarily or being fired for cause), and nonseparation denials (determining workers were not qualified because they were not able and available to work, failed to provide required information, or failed to meet work search requirements).
  - USDOL investigators determining a state's denied-claim accuracy rate look at a sample of denied claims and verify facts contained in the case file, obtain missing information, and conduct new and original fact-finding that may impact the denial determination.<sup>4</sup>
  - In 2020, the national average improper denial rate was 17.68 percent for monetary denials, 10.25 percent for separation denials, and 13.11 percent for nonseparation denials.<sup>5</sup>
  - Improper denial rates were as high as 45.01 percent (monetary denials in New Mexico) and as low as 1 percent or less.
  - Measuring improper denials among workers by race, ethnicity, gender, language, etc. would require additional data collection. Since Benefit Accuracy Measurement data is based on a sample of overall claims data, accurate demographic data would require a substantial expansion of Benefit Accuracy Measurement and additional resources to undertake this.

**3) Standard on clear written communication:** states must meet a checklist of requirements.

- Written communications must meet federal plain-language guidelines and be readable by people with low literacy <https://www.plainlanguage.gov/guidelines/>.
- Communications must use plain language describing the reason for the communication.
- Communications must provide clear instructions and time frames for any action claimants must take to proceed with their claim.
- Communications must describe the consequences of action or inaction.

- Communications must provide clear reasons for any determination made.
- Communications alleging fraud or false statements on the part of the claimant must include the statement(s), representation(s), or fact(s) alleged to be false or withheld.
- Communications must use the state's logo in the header/footer.
- Communications must provide the state agency's most relevant contact information.
- If a communication includes a determination that can be appealed, it must include notification of that right and information about how to appeal and the time frame.
- States must test all communications with a diverse group of claimants, including claimants with low literacy, before using them.
- Why this standard? Worker advocates and legal assistance providers report that unclear and confusing communications are a major barrier to access for UI benefits. This standard codifies best practices for clear communications of all types.
- States do not currently report to USDOL about clear communications. This standard would require new reporting as well as regular verification (audits) by USDOL. USDOL's Office of Unemployment Insurance Modernization offers resources for state communications, including a repository of plain language UI notices, available at <https://www.dol.gov/agencies/eta/ui-modernization/language-portfolio>.

**4) Standard on access for people with disabilities:** states must meet a checklist of requirements.

- Provide claimants with disabilities access to web-based services and information that is comparable to the access available to other claimants.
- Offer alternative options (for example, via phone or in person as well as online) for accessing benefits, services, and information.
- Advertise alternative options widely and in multiple formats.
- If the alternative option includes remote video interpreting services for claimants who communicate via sign language, these services must meet federal requirements outlined in 29 CFR § 38.15(a).6, and staff must be trained to use video remote interpreting.
- States must allow workers with disabilities to have a designated 3<sup>rd</sup> party support person present for all interactions.
- States' telephone-based systems must use telecommunications devices or systems such as telephone relay services to provide equally effective communications for claimants with hearing or speech disabilities.
- When the agency uses an automated-attendant system (e.g., voicemail and messaging) or an interactive voice response system, such systems must provide effective, real-time communication with claimants using auxiliary aids and services, including all forms of telecommunications relay systems approved by the Federal Communications Commission.
- States' websites and telephone-based services must include information about how a claimant with a disability who has difficulty using the site or service can get assistance to access the site or service.
- Websites must comply with Section 508 of the Rehabilitation Act.
- Web-based claims-filing systems must also provide information about how claimants with disabilities can file a complaint about delayed or denied service resulting from inaccessibility or failure to provide equally effective communication.
- Why this standard? USDOL has long had regulations mandating that states provide UI access for people with disabilities—these standards are drawn directly from existing USDOL policy directives (UIPL 02-16) and reflect federal laws and regulations.<sup>7</sup> Writing these directives into the form of standards used to evaluate states will provide greater oversight and enforcement power.

- States do not currently report to USDOL about disability access. This standard would require new reporting. States would report annually on the extent to which their systems meet these standards, and USDOL would regularly review state services and materials for compliance.

5) **Standard on access for people with limited English proficiency (LEP):** states must meet a checklist of requirements.

- Include a “Babel notice”—a short notice in multiple languages that informs the claimant how to access the agency’s language services—in all communications of vital information, including applications for benefits, notices of rights and responsibilities, and communications requiring a response from the claimant, including any identity verification requirements.
- Identify a claimant's language assistance needs—including need for sign language—and preferred spoken and written language at the earliest point of contact with the claimant or applicant.
- Record the limited English proficiency and preferred spoken and written language of each LEP claimant, and as soon as the agency is aware of the preferred language, convey vital information in that language.
- Provide spoken interpretation or written translation of both hard copy and electronic materials in the appropriate language for all “vital information,” including applications for benefits, notices of rights and responsibilities, and communications requiring a response from the beneficiary or applicant, including any identity verification requirements, for all languages spoken by 0.5 percent or more of a state’s population or more than 10,000 people in the state, whichever is fewer.
- Ensure LEP claimants can complete forms and applications in their preferred language.
- All translated communications must be transmitted directly to the claimant and available electronically.
- Conduct outreach to LEP communities to improve service delivery in needed languages.
- Ensure all language assistance services are accurate, provided in a timely manner, and free of charge. Language assistance is considered timely when it is provided at a place and time that ensures equal access and avoids delay or denial of any aid, benefit, or service at issue.
- Provide notice to LEP individuals that interpretation and translation services are available at no cost.
- Ensure that if language barriers cause a delay, the agency considers this good cause for late submissions or filings.
- Why this standard? USDOL has long had regulations mandating that states provide UI access for LEP workers—these standards are drawn directly from existing USDOL policy directives (UIPL 02-16) and reflect federal laws and regulations.<sup>8</sup> Writing these directives into the form of standards used to evaluate states will provide greater oversight and enforcement power.
- States do not currently report to USDOL about language access. This standard would require new reporting. States would report annually on the extent to which their systems meet these standards, and USDOL would regularly review state services and materials for compliance.

6) **Standard on identity (ID) verification procedures:** states must meet a checklist of requirements.

- Provide a non-digital option for workers to bypass digital ID proofing and facial recognition technology by using an alternate method, including mail, fax, or presenting identity documentation in person at locations such as American Job Centers.

- Any digital ID proofing required to access UI benefits must align with National Institute of Standards and Technology’s (NIST)’s most recent [digital identity guidelines](#) and NIST IAL2/AAL2 compliant ID verification.
  - The ID verification system must accept all names, including names that include characters outside of the English alphabet, are very long or short, include mixed capitalization, or otherwise do not follow traditional American naming conventions.
  - The ID verification system must have an option to access a live representative same day.
  - The ID verification system must have an option to use a variety of identity documents.
  - The ID verification system must not require claimants to have a bank account.
  - The ID verification system must not require claimants to have a permanent address.
  - High-volume mailing addresses must be manually reviewed before being flagged as fraudulent.
  - Frequent bank account changes by a claimant must be manually reviewed before being flagged as fraudulent.
- Why this standard? Many advocates and observers, including the Department of Labor’s Office of the Inspector General, have expressed concern that the ID verification services and contracts used by state UI agencies may impede equitable access to UI benefits.<sup>9</sup> This standard incorporates best practices recommended by USDOL<sup>10</sup> and other experts.<sup>11</sup>

## Proposed Reporting Measures for Equitable Access to UI

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*State UI agencies would report data on these measures to USDOL as they currently do on [UI PERFORMS Management Information Measures](#) and would not be required to meet a predetermined acceptable level of performance.*

- 1) Means of access measure:** states report all of the methods available for claimants to use for each step, including website, app, text message, fax, in person, phone, and mail.
  - Which methods can claimants use to apply for initial UI benefits?
  - Which methods can claimants use to certify for continued UI benefits?
  - Which methods can claimants use to submit an appeal if benefits are denied?
  - Which methods can claimants use to participate in a hearing for appealing benefits denials?
  - Which methods can claimants use to exchange prehearing discovery materials?
  - Which methods can claimants use to verify their identities?
  - Which methods can claimants use to provide additional information for adjudication purposes?
  - Which methods can claimants use to receive alerts, updates, and determinations?
  - Which methods can claimants use to schedule a hearing?
  
- 2) Claimant portal (website/app) usability measure:** states report the percentage completing each step for all claimant portal visitors; for visitors accessing the portal via mobile phone, computer, and app; for visitors who use or attempt to use LEP services; and for visitors who use or attempt to use services for people with disabilities.
  - Percentage of claimant portal visitors who begin the registration process and go on to successfully create an account, and percentage of visitors identified as likely bots.<sup>12</sup>
  - Percentage of claimant portal visitors who begin the application process and successfully complete remote identity proofing (recognizing that some failures are the intended result of deterring fraud).

- Percentage of claimant portal visitors who begin the application process and go on to successfully complete and submit an application for UI benefits (even if they are ultimately denied benefits).
- Percentage of claimant portal visitors who begin the process of weekly/biweekly recertification for benefits and go on to successfully submit recertification (even if their continuing claims is ultimately denied).
- Number of minutes on average to complete an initial application for benefits.
- Number of minutes on average to submit a weekly/biweekly recertification for benefits.

**3) Call center customer service measure (where applicable):** states report data for all callers, for callers using phone services for people with disabilities, and for callers using phone services for LEP claimants.

- Percentage of calls answered in five minutes.
- Average wait time to speak to a representative (in minutes) or to receive a call back option (where applicable).
- Average time between requesting a callback (if this feature is available) and receiving the requested call from the state.
- Average time for callers with limited English proficiency to connect with an interpreter.
- Percentage of calls dropped by caller before speaking to an agent.
- Percentage of calls dropped by state.
- Average number of minutes call duration.
- Average number of minutes to complete initial application for benefits (for states where initial applications can be completed by phone).
- Average number of minutes to complete weekly/biweekly recertifications for benefits (for states where weekly recertifications can be completed by phone).
- Hours per day callers can connect with an agent.
- Customer satisfaction.<sup>13</sup>
- In any case where agencies are permitted to include non-merit staff, type of agent answering the call (merit or contract staff).
- Location of call center(s).

**4) In-person customer service measure (where applicable):** states report data overall, for services provided to claimants with disabilities, and for services provided to LEP claimants.

- Average distance to the nearest in-person location from all points in the state.
- Greatest distance to nearest in-person location from all points in the state.
- Hours of availability at all in-person locations.
- Number of customer-facing workers at each local office per 10 claimants (staffing ratio).
- Average number of minutes wait time to communicate with an agent.
  - For walk-in service (where applicable)
  - For claimants with appointments (where applicable)
- Average number of minutes to complete initial application for benefits.
- Average number of minutes to complete weekly recertification for benefits.
- Customer satisfaction.

**5) Mail service measure (where applicable)**

- Average number of days to respond to initial applications via mail.
- Average number of days to respond to weekly/biweekly recertifications via mail.
- Ratio of mail response times to deadlines (what proportion of the time for applicants to respond is consumed by mail time).
- Percentage of mailings returned undelivered.

## 6) Fax service measure (where applicable)

- Average time to respond to initial applications via fax.
- Average time to respond to weekly/biweekly recertifications via fax.
- Percentage of faxes sent that are not deliverable.

## 7) Waiver measure

- Does the state allow waivers for overpaid benefits that were not due to fraud?<sup>14</sup>
- Does the state assess whether a claimant qualifies for a waiver as part of the overpayment determination process?
- Are claimants who are charged for overpayment of benefits notified that a waiver may be available and informed how to apply for it (if waivers are allowed)?
- How many waiver applications are submitted overall, by people with disabilities, and by people with limited English proficiency (if waivers are allowed)?
- How many waivers are granted overall, by people with disabilities, and by people with limited English proficiency (if waivers are allowed)?

## 8) Timely notification measure

- Average time to send a notice after a decision is made or an action is taken.
- Average time for acknowledgment of an action or submission by claimants.

## 9) Employer accountability measure

- Percentage of employers reporting timely information to the state.
- Percentage of UI eligibility claims contested by employers.
- Percentage of employer-contested UI claims approved on appeal.
- Names of employers that contest more than 50 percent of employee claims.
- Percentage of UI claim decisions appealed by employers.
- Percentage of employer appeals denied.
- Names of employers that have more than 50 percent of appeals denied.
- Why this measure? It establishes accountability among employers who fail to respond to state requests or routinely overburden the system by contesting workers' eligibility for UI benefits.<sup>15</sup> Publicly naming employers who contest or appeal claims only to have most of them overturned provides a disincentive to overburden the appeals system.
- This measure would require new data collection. Some states may already track UI appeals and timely reporting by employer, but this data is not currently reported to USDOL.

## 10) Agency employment measure

- Number of UI agency vacancies unfilled for more than 6 months.
- Percentage of UI agency vacancies unfilled for more than 6 months that represent eligibility determination positions.
- Average agency tenure for employees.
- Average rate of year-to-year turnover for employees.
- Why this measure? Understaffing, long-term agency vacancies, and a lack of experienced agency workers significantly affect the capacity of UI agencies to provide equitable access to UI benefits for unemployed workers.



## Appendix: Expert Review of Proposed UI Performance Standards

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NELP greatly appreciates the time and valuable input provided by the following internal and external experts who reviewed and made recommendations on the proposed UI performance standards. Some reviewers requested not to be listed. Affiliations are offered for informational purposes only. **The proposed standards are solely the responsibility of the National Employment Law Project.**

- Rob Asaro-Angelo, Commissioner, and Gillian Gutierrez, Director of Strategic Planning and Outreach, New Jersey Department of Labor & Workforce Development, NJ
- Matt Darling, Senior Employment Policy Analyst, Niskanen Center
- Michele Evermore, Fellow, The Century Foundation; formerly Deputy Director for Policy, U.S. Department of Labor, Office of Unemployment Insurance Modernization
- Ciara Farrell, Attorney, New York Legal Assistance Group, NY
- Alix Gould-Werth, Director of Family Economic Security Policy, Washington Center for Equitable Growth
- Mary Gable, American Federation of State, County, and Municipal Employees
- Jenna Gerry, Senior Staff Attorney, National Employment Law Project
- Steve Gray, Senior Counsel, National Employment Law Project; formerly Director of the State of Michigan Unemployment Insurance Agency, MI
- Jinny Kim, Managing Attorney, Disability Rights Advocates
- René Lara, State and Local Legislative Issues Coordinator, and Charity Wilson, Legislative Representative, AFL-CIO
- Joann Lee, Special Counsel on Language Justice, Legal Aid Foundation of Los Angeles
- Anjana Malhotra, Senior Staff Attorney, National Center for Law and Economic Justice
- Nicole Marquez, Director of Social Insurance, National Employment Law Project
- Kevin Pape, National Director, Working America, Black Worker Unemployment Project
- Anne Paxton, Attorney and Policy Director, Unemployment Law Project, WA
- Jason Salgado, Attorney, Greater Boston Legal Services, MA
- Nicole Salk, Senior Staff Attorney, South Brooklyn Legal Services, NY
- Drew Schaffer, Director, and Brenda Furnish, Staff Attorney, William E Morris Institute for Justice, AZ
- Zach Schiller, Research Director, and Michael Shields, Researcher, Policy Matters, OH
- Alexa Tapia, Unemployment Insurance Campaign Coordinator, National Employment Law Project; formerly Special Assistant to the Secretary, Kansas Department of Labor, KS
- Dave Wells, Research Director, and Amy Pedotto, Research Project Manager, Grand Canyon Institute, AZ



## Endnotes

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- <sup>1</sup> Elira Kuka and Bryan A. Stuart, *Racial Inequality in Unemployment Insurance Receipt and Take-Up*, fact sheet (Cambridge, MA: National Bureau of Economic Research, 2021), [https://www.nber.org/system/files/working\\_papers/w29595/w29595.pdf](https://www.nber.org/system/files/working_papers/w29595/w29595.pdf); Thomas Callan et. al., *Unemployment Insurance Modernization and Eligibility* (Washington, DC: Urban Institute, 2015), <https://www.urban.org/sites/default/files/publication/81541/2000815-Unemployment-Insurance-Modernization-and-Eligibility.pdf>; Christopher J. O'Leary, et. al., "Equity in Unemployment Insurance Benefit Access," (Kalamazoo, MI: Upjohn Institute for Employment Research), December 2, 2021, [https://research.upjohn.org/cgi/viewcontent.cgi?article=1025&context=up\\_policypapers](https://research.upjohn.org/cgi/viewcontent.cgi?article=1025&context=up_policypapers).
- <sup>2</sup> "Unemployment Insurance Chartbook," U.S. Department of Labor Employment and Training Administration, <https://oui.doleta.gov/unemploy/Chartbook/a13.asp>.
- <sup>3</sup> *Department of Labor Equity Action Plan* (Washington, DC: U.S. Department of Labor, 2022), <https://www.dol.gov/general/equity-action-plan/plan#5>.
- <sup>4</sup> *Benefit Accuracy Measurement State Data Summary: Improper Payment Information Act Performance Year 2020* (Washington, DC: U.S. Department of Labor Employment and Training Administration, 2021), [https://oui.doleta.gov/unemploy/bam/2020/IPIA\\_2020\\_Benefit\\_Accuracy\\_Measurement\\_Annual\\_Report.pdf](https://oui.doleta.gov/unemploy/bam/2020/IPIA_2020_Benefit_Accuracy_Measurement_Annual_Report.pdf).
- <sup>5</sup> *Benefit Accuracy Measurement State Data Summary*.
- <sup>6</sup> <https://www.govinfo.gov/content/pkg/CFR-2021-title29-vol1/pdf/CFR-2021-title29-vol1-sec38-15.pdf>
- <sup>7</sup> *Unemployment Insurance Program Letter No. 02-16* (Washington, DC: U.S. Department of Labor Employment and Training Administration, 2015), <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-02-16>.
- <sup>8</sup> *Unemployment Insurance Program Letter No. 02-16*.
- <sup>9</sup> Carolyn Hantz, Alert Memorandum: ETA and States Need to Ensure the Use of Identity Verification Service Contractors Results in Equitable Access to UI Benefits and Secure Biometric Data Report Number: 19-23-005-03-315, (Washington, DC: U.S. Department of Labor Office of the Inspector General, 2023), <https://www.oig.dol.gov/public/reports/oa/2023/19-23-005-03-315.pdf>.
- <sup>10</sup> *Unemployment Insurance Program Letter No. 22-21 Change 2* (Washington, DC: U.S. Department of Labor Employment and Training Administration, 2023), <https://www.dol.gov/agencies/eta/advisories/uipl-22-21-change-2>.
- <sup>11</sup> Ryan Burke, et. al., *A Playbook for Improving Unemployment Insurance Delivery*, (Washington, DC: New America, 2021), <https://www.newamerica.org/new-practice-lab/playbook/improve-unemployment/>.
- <sup>12</sup> A survey by Georgetown University's Beeck Center Digital Benefits Hub finds that as of 2022, most UI portals require users to register and create an account before applying for benefits <https://www.digitalbenefitshub.org/digital-authentication-and-identity-proofing-data/unemployment-insurance>.
- <sup>13</sup> The Department of Labor's 2017 Call Center Report recommended a "3-pronged approach to measuring customer satisfaction . . . that combines quarterly customer surveys conducted by team leaders with independent third party analysis, and quality assurance measurements." Lester Coffey et. al.
- <sup>14</sup> When there is no evidence that the worker committed fraud, USDOL has provided guidance suggesting that overpayments should be waived if they violate equity and good conscience or would cause economic hardship. *Unemployment Insurance Program Letter No. 20-21, Change 1* (Washington, DC: U.S. Department of Labor Employment and Training Administration, 2022), [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_20-21\\_Change\\_1.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_20-21_Change_1.pdf).
- <sup>15</sup> DeParle, "Contesting Jobless Claims."