

General Application of Equitable Access to the UI Program and Graphical Representation of the Claimant Journey

This attachment describes how states may continuously improve equitable access by building safeguards into their systems to detect and rectify gaps in access. It also provides a graphical representation of the claimant journey discussed in Section 4.c.i. of this UIPL. The information below is not exhaustive. Reviewing for equitable access requires ongoing attention, particularly as states evolve their processes and requirements and update their technology.

For each step of the claim cycle, the Department encourages states to conduct iterative reviews to improve equitable access across their systems. Mapping the claimant's journey can be an informative tool for states to identify opportunities to create more accessible programs for all demographic groups. Below are the broad steps that each claimant takes, but specific maps can be made based on each state's laws, policies and procedures. Importantly, states' nondiscrimination obligations extend to their own employment practices. See 29 C.F.R. §§ 38.2(a)(3) and 38.4(s). State UI agencies can benefit from having a diverse staff that reflects the state's demographics. Some benefits of this practice include the ability of a state agency to foster trust within the communities it serves and to better communicate with its stakeholders.

- 1. Before the claim is filed.** Potential claimants may have limited knowledge about the UI program, including whether they may be eligible for unemployment benefits and how to complete the application process. According to U.S. Bureau of Labor Statistics (BLS) data, most unemployed workers did not apply for unemployment primarily because they were confused about whether they would be eligible.²¹ Interestingly, BLS found that workers with higher educational attainment were more likely to apply for unemployment benefits. State UI agencies can expand access to the UI program by extending the reach of web-based and print resources that explain eligibility and qualification requirements and how to apply for UI. Print resources can be distributed in community locations, like libraries, secretary of state and DMV offices, and community-based organizations. Additionally, UI agencies can focus on disseminating information about the UI program in areas and industries where unemployment issues are more pervasive. In addition to ensuring print and web-based resources are more widely available, states can expand access by improving the quality of these resources and by drafting them using plain language. States can user-test print materials, portals, and websites with prospective claimants. They can also take steps to ensure materials are user-friendly (*e.g.*, by creating videos about difficult parts of the application and certification process, making resources easier to find, etc.) and translated into languages other than English, particularly those reflecting significant language groups of the State.
- 2. Initial claims application.** The initial claims application is the gateway for claimants to learn about and access the UI system. States should design the application with the claimant

²¹This is based on an extensive analysis BLS performed of its 2018 data. See U.S. Bureau of Labor Statistics, Employment and Wages, <https://www.bls.gov/opub/ted/2019/most-unemployed-people-in-2018-did-not-apply-for-unemployment-insurance-benefits.htm>.

in mind, should conduct user testing of the web-based and offline processes with individuals who are external to the state agency and should continuously solicit feedback from the community, including claimants, advocates, and claimant groups. Moreover, states should look for common user errors and process misunderstandings as claimants complete the application so that the state can update and improve this initial access point. Finally, after the application is completed, states should consider using a status tracker or other similar method to help claimants understand where their claim is in the process and what is required of them to maintain their eligibility throughout their claim. With regard to access to languages other than English, consistent with the U.S. Web Design System, a state’s “language selector” or indicator should have “consistent placement, interface, and behavior of the language selection component [that] allows users to easily find and access content in the language the user is most comfortable in.” After an individual indicates their preferred language – having been encouraged to/supported in doing so, all subsequent communications should be made in the preferred language.

- 3. Identity authentication and verification.** Detection and prevention of identity (ID) fraud is critical for states to maintain UI program integrity. However, these efforts should not create undue burdens or barriers to claimants’ ability to access UI benefits and services. States should regularly monitor the outcomes of their fraud risk scoring methodologies by reviewing data and create solutions to ensure that all legitimate claimants are able to verify their ID by using both web-based and non-electronic methods.

Someone who does not complete or fails ID verification is not necessarily a fraudulent actor. There are many reasons why legitimate claimants may not be able to complete or successfully complete these requirements (*e.g.*, the claimant submitted ID verification information but did not provide enough information or provided the wrong information, administrative barriers prevented the claimant from being able to access the system to complete requirements, the claimants name changed due to marriage, or the claimant underwent a gender transition, etc.). State UI agencies are required to have, and to make claimants aware of, alternatives to online methods of verifying their identities, for example, in-person or by phone. See UIPL No. 2-16 and UIPL No. 2-16, Change 1 If a claimant initially chooses to complete ID verification online, but is unsuccessful, the state should again provide the information regarding alternative methods.

ID proofing, while often conducted through a credentialed service provider (CSP), is only one of many options for UI ID proofing.²² When using a CSP for ID proofing or a third-party solution, ETA recommends that states establish within their contracts a process to receive Personally Identifiable Information (PII) and data on an individual’s ID proofing status (*i.e.*, verified, not verified, pending, inconclusive) within a service provider’s system or solution. See UIPL No. 22-21, Change 2 and its attachments, including contractual provisions for CSPs. To be able to properly respond to customer inquiries, states should have access to such information in real-time (if possible), but no later than 24

²² National Institute of Standards and Technology (NIST) Special Publication (SP) 800-63 defines a credentialed service provider (CSP), as a trusted entity that issues or registers subscriber authenticators and issues electronic credentials to subscribers. A CSP may be an independent third party or may issue credentials for its own use.

hours after an individual started the ID proofing process and whenever there is a change in the ID proofing status. By knowing the individual's ID proofing status, the state can also ensure that appropriate instructions and next steps are provided to the individual. The Department outlined stringent technical, service level, business performance, and equity requirements in its solicitation for ID proofing services described in TEN No. 06-21. ETA recommends that states incorporate similar provisions in their ID proofing solicitations and contracts with service providers.

When a state notices that individuals are unable to verify their ID through web-based or self-service means, or the state flags individuals as suspicious with automated cross-matching or data analytics activities, states must generate and retain documentation of these instances. States are also required to investigate the flags and make appropriate determinations so that eligible claimants are able to access UI benefits without undue barriers or delay. The state UI agency should then analyze the data to determine if the state's ID proofing system, fraud detection and prevention solutions, cross-matching and data analytic parameters, or service provider(s) correctly identified fraud or incorrectly flagged claimants. In line with their nondiscrimination obligations under 29 CFR §38.51, states should conduct statistical or other quantifiable data analyses to determine whether their fraud detection systems are disproportionately flagging certain groups. States should improve their systems to address improper flags and related adjudication issues. See UIPL No. 11-23 and UIPL No. 09-23. States must work with their service provider(s) or with in-house fraud management staff to identify the root cause of the issue, resolve the issue, and improve the ID proofing process and other improper payment processes to continually strive for balance between ensuring eligible claimants maintain access to benefits while also stopping fraudulent actors. See UIPL No. 11-23 and UIPL No. 09-23.

Efforts to address equity in the ID authentication and verification processes must also include ensuring there are alternatives to digital mechanisms of identity proofing and that the mechanisms used to prove identity or indicate potential fraud do not contain bias.

- 4. Completing work search activities.** The requirement for a claimant to actively seek work is a leading cause of errors prompting improper payments for the UI program nationally. The work search requirement may come into play at various stages of the claims process, as some states require registration for work at the beginning of a claim as well as requiring weekly work search activities to remain eligible for benefits. A review of equitable access with respect to work search requirements involves discovering common sources of claimant confusion and implementing solutions that help claimants better understand work search requirements, including how to document work search contacts and activities. As mentioned previously, many claimants are new to the UI process. Thus, it is important for claimants to be supported throughout the UI process and reminded of all steps in the process, including the weekly obligation to conduct a work search for suitable employment. Training and Employment Notice (TEN) No. 17-19 provides additional information on how states might review acceptable work search activities and how such expectations are communicated with claimants. See the work search reminder messaging discussed in the Behavioral Insights Toolkit described in TEN No. 15-21.

5. **Continued claims certification.** The continued claims certification ensures that claimants continue to meet program eligibility requirements. See Section 4.a. of UIPL No. 23-20. Questions regarding ongoing eligibility requirements can be complex, and simple responses can raise eligibility issues. Ordinary words take on UI-specific meanings unknown or unfamiliar to many claimants. Mistakes and confusion regarding continued claim certifications can trigger eligibility issues, improper payments (including erroneous denials), and hours of extra work for states. States should spend time to conduct external user tests across diverse populations and iterate on the phrasing of claimant facing documents, develop agency aids (*e.g.*, helper text, handbooks, video tutorials, and glossaries of specialized terminology in languages other than English), and provide clear options for claimant selection that help the claimant properly convey eligibility information to the agency. Continued claim certifications should incorporate lessons learned from the equity-based review as mentioned above in Section 4.d. of this UIPL.

6. **Fact finding and resolving eligibility issues.** Accurate and timely responses to fact-finding questions lead to the accurate and timely resolution of eligibility issues. States should incorporate equity-based review, as mentioned above in Section 4.d. of this UIPL, to design questions and answer choices. Claimants may also need additional help to understand why they are required to submit fact-finding forms, as claimants are often unaware of potential eligibility or qualification issues after their payments have begun. For example, claimants often struggle to understand the requirement that they be able and available for each week they are collecting benefits. Providing claimants with helper text, videos, and further information about specific UI terms may help some claimants answer appropriately.

There can be a cascading effect related to claimant misunderstandings in the UI system. A misunderstanding in the initial application or continued claim certification may trigger potential eligibility issues on the initial and then subsequent claims. One way states can further improve their fact finding would be to allow claimants opportunities to give context to avoid misunderstandings that may arise due to the complexity of UI laws and related jargon. (*i.e.*, the definition of “available” in UI is not the same outside of UI). States should craft fact-finding questions neutrally, rather than forming them based on assumptions from previous submissions. For example, a claimant who does not have childcare at the time of certifying for UI benefits is not necessarily “unavailable” in the UI context, especially if they could secure childcare if they were offered a job. If a claimant answered that they were unavailable because of a lack of childcare the state agency, in its fact-finding phase, should clarify the meaning of available for work and why they are asking the question to the claimant. Further, state UI agencies should ask additional questions (*i.e.*, if you were offered a job, could you find childcare) to ensure the claimant is truly unavailable and understands the potential consequences of being unavailable. States should also allow for claimants to answer in a free-form response regarding their eligibility, which may also clear up misunderstandings and allow the agency to resolve the issue accurately. Limiting the claimant’s options based on prior responses can lead to a compounding mistake and denies claimants a chance to correct their misunderstanding of the process and UI terms. This information, analyzed over multiple cases, can be leveraged to improve both the underlying forms (application and certification) as well as the state’s fact-finding questions in general. States should also conduct external user testing.

When using pre-defined options for fact finding, as discussed in Section 4.d. of this UIPL, states should continuously review and improve their fact-finding decision trees based on user input or testing. While the initial adjudication process and the appeals process are two separate administrative procedures with different ways of gathering information from interested parties, states can analyze appeal reversals to identify opportunities to improve fact-finding questions and selection options. Further, regular meetings between UI Benefits leadership and Appeal and Adjudication staff can identify gaps in knowledge, for both UI Benefits leadership and Appeal/Adjudication staff, and identify training needs.

Importantly, many improper payments are created because claimants do not respond to agency's fact-finding questions. Sending claimants reminders to respond to fact-finding requests can lead to higher submission rates. However, claimants may believe they have already provided the information to the agency in prior submissions, or claimants may not understand what information the agency is seeking. Claimants often receive many letters from the agency. Some letters require claimants to take an action, others are informational. The more letters a UI system issues, the harder it is for claimants to follow what is being asked of them. This is an important balance to keep in mind as states develop communication methods with claimants. See Section 7 below for more information.

- 7. Correspondence and adjudication.** The UI program is complex. Because of this complexity, states often send several separate documents over the course of a claimant's single claim for benefits. Some documents require claimants to respond while others are purely informational. Where feasible, states should consolidate and streamline correspondence with claimants to limit confusion. Furthermore, states should clearly state if a communication is simply sharing information or if it requires the claimant to take action. Information about the availability of auxiliary aids and services for individuals with disabilities (including documents in alternative formats), and how to request them, should be prominently displayed across different platforms. Additionally, if agencies can re-write their correspondence to claimants in plain language and ensure applicable translation services during all stages of the claimant journey, fewer misunderstandings may occur, thereby reducing the number of claims requiring fact finding and further adjudication. It's important to apply plain language review to important documents and to clearly explain the requirements of the program, why the agency needs the information, how the requested information may affect the claim, and how failing to respond to the request for information may result in a delay or denial of benefits. The state may also consider sending out reminders to claimants when the agency requires a response. Further, following an individual's indication of preferred language, subsequent communication should be made in the language other than English. Behavioral insights have shown that sending reminders to claimants about documents that require responses has improved the claimant response rate and has also improved the quality of agency adjudications. See TEN No. 15-21.

Additionally, states should consider making use of multiple ways to inform claimants about the agency's correspondence and action items – including sending text messages and emails to alert claimants to new messages sent via mail and uploaded to the claimant portal. State agencies should also consider sending portal correspondence via mail because, of the array of pitfalls with auto-defaulting to only portal notifications, especially for claimants with limited

access to or understanding of technology. For example, some claimants may not have reliable access to the internet or a computer and can only receive mail correspondence, whereas others may be experiencing housing insecurity and have no access to mail, but could access the portal through a phone, a library, or in a state office. When claimants receive reminders in multiple formats, all claimants, will be better able to maintain access to their claim.

8. **Appeals.** States should consistently review the types of issues being appealed and whether certain issues are more prevalent for individuals in certain demographic groups. Likewise, states should consistently review what types of cases are reversed on appeal and whether there are any demographic groups affected by a higher reversal rate. Understanding why cases were appealed and, where applicable, reversed on appeal may provide insights into what additional questions could have been asked during the initial adjudication process or areas that may have been confusing for groups of claimants. States can also leverage this data to train adjudicators which may help to avoid future appeals issues.

Equity analysis calls for states to identify and improve upon areas that may be challenging for claimants to navigate as they apply for and maintain benefits. One way to do this is through analyzing denial rates by category (*e.g.*, monetary determination and each type of non-monetary determination) broken down by demographic group. See UIPL No. 11-14. The state can then review this data and should address the challenges identified. See UIPL No. 11-14.

EXAMPLE: If more people from a certain geographical area are missing the deadline to appeal or fail to respond timely to fact-finding requests, analyzing appeals data related to late appeals or failures to report could produce an opportunity to learn why. Perhaps they are not responding timely because mail is delayed getting to them, or perhaps they lack access to the technology or to the internet to respond in time.

9. **Analyzing improper payments (where applicable).** States must have systems reasonably calculated to ensure that claimants are not underpaid, erroneously denied, or overpaid. When underpayments, including erroneous denials, are discovered, state agencies must ensure that the decisions are corrected in accordance with state law, and benefits are properly dispersed to the claimant. To improve internal system processes, states should review the underlying reasons why underpayments, overpayments, and erroneous denials are happening and to whom they are happening. Even if a state has a finality law that may prevent correction of an underpayment, overpayment, or erroneous denial, the state UI agency will still benefit from understanding how the mistake occurred so that it can take steps to correct any issues that are within the state's control for current and future claims. States must continue to strive for prompt detection of underpayments, overpayments, and erroneous denials. State UI agencies can leverage the Benefits Accuracy Measurement (BAM) and Benefit Timeliness and Quality Reports (BTQ) programs' analyses of improper payments and improper denials to identify systemic issues and how regular communications between the BAM program staff

and other areas of the state UI agency are necessary to ensure the reduction of improper payments and improper denials.

Claimants may make errors that can lead to overpayments, but it should not be presumed that the claimant is at fault. In providing equitable access, states should further analyze the agency processes that may have resulted in non-fraudulent errors, regardless of with whom fault lies. When assessing whether a claimant is at fault for the overpayment, states should consider factors that may have contributed to the claimant's responses. Some common examples of contributing factors include:

- misunderstanding the question because the language used was too complex,
- sending individuals with disabilities documents that are inaccessible to them due to their disability,
- not understanding the form due to a lack of English proficiency or not knowing how to get the form in their native language (or the state not having translations of forms in the claimant's native language), and
- confusion about which agency documents require claimant responses (when multiple documents were sent within a short period of time).

States should continuously review the basis for all types of improper payments to improve their own internal procedures. States should also ensure that they are establishing and maintaining equitable channels for claimants to complete waiver processes and consider utilizing overpayment waivers, where state law permits, especially when the cause of the overpayment may be due to an equitable access issue.

States should ensure claimants understand why the overpayment exists, including what determination(s) led to the UI benefit denial, regardless of whether a waiver is granted. This communication should be in plain language and should be in the claimant's preferred language. If the claimant's preferred language is not known and/or translation into that language has not been done, the communication should include a clear explanation of how to get translation or interpretation services. Claimants may be able to provide the correct evidence to allow a state to quickly reverse the underlying determinations establishing non-fraudulent overpayments when they have clear determinations that explain why the agency made the decision it did (*e.g.*, the agency is issuing a denial determination because of a specific issue and the agency did not receive information from the claimant to make a proper decision; the claimant now owes money because they are being denied benefits that were previously paid, and the claimant has the right to appeal the decision and provide any needed information if they disagree with this decision).²³ Further, states must include

²³ States are required to abide by proper notice requirements. In the Standard for Claim Determination, the Department interprets the Federal UI requirements for providing claimants notice. Section 6013.C.1.c. of the Standard for Claim Determination (see Employment Security Manual, Part V; Section 6010-6015) provides that the state agency must give each claimant a written notice of any determination that adversely affects his or her rights to benefits. Section 6013.C.2 provides that this written notice of determination(s) to claimants must furnish "sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal." The information that must be provided to the claimant in the notice of determination includes an explanation of the disqualification or ineligibility, the source of information about the reason for

information on the process for obtaining a waiver. Clarifying this part of the process may also allow claimants to provide the needed information to resolve underlying eligibility issues.

- 10. Analyzing demographic data:** Some states have analyzed UI demographic data in partnership with higher education institutions. Higher education institutions can also leverage other data sources, such as those collected by the U.S. Census Bureau, to give state agencies a broader understanding of unemployment insurance reciprocity and application rates among historically marginalized communities.
- 11. Graphical representation:** See the next page for a graphical representation of the claimant journey that encompasses some, but not all, potential claimant equitable access barriers and possible action plans. The graphic includes each step of the claimant journey as identified in steps 1-9 in this Attachment across the top of the document. In blue, the graphic identifies various barriers that claimants may face throughout each of the identified phases of the claimant journey. In yellow, the graphic provides some ideas for states to consider tracking, mitigating, and resolving the negative effects of these barriers, which in turn will allow the state to create plans for continuous improvement.

disqualification, and a statement of appeal rights. Thus, while states may offer claimants a variety of methods to receive information, the content of a written determination, whether it is a letter mailed to the claimant or provided in an electronic medium, must comply with the requirements in the Standard for Claim Determination specified above. States must choose a method of communicating determinations with claimants that ensures the claimant will receive the determination. States may also want to consider the equity implications of their timeline and methods of appeals to better address equitable access.

Attachment I to UIPL No. 01-24

