Pennsylvania's UC System No Longer Can Be Relied Upon to Serve Unemployed Workers

Traditionally, Pennsylvania's Unemployment Compensation (UC) system was simple and effective. An unemployed worker went to an "unemployment office," filed a claim, and got about the business of finding a new job. As a result of declining administrative funding, that system started to erode at the beginning of this century. However, the deficiencies and inequities of the UC system have gotten immeasurably worse since the pandemic began in March 2020.

- **The pandemic brought an unprecedented volume of claims, new programs and other operational challenges** that strained the system to its limits and beyond. Many of the system's old reliable values, including access, timeliness, and due process, were badly eroded, with no known comprehensive plans to restore them by the PA Department of Labor & Industry (DLI).
- **Benefits Modernization (BenMod) was implemented in June 2021** and presented separate formidable barriers to UC recipiency. The "BenMod" software (known within DLI as "Geographic Solutions Unemployment System," or "GUS") screens out UC claimants who lack the necessary technology or know-how to use it, while also not effectively serving DLI's management needs. Because the product is described as a "Commercial Off-the-Shelf" system, Geographic Solutions, Inc. (GSI), the state's software contractor, has made needed changes many months later, if at all.
- **Fraud** became DLI's primary concern. Fraud prevention led to the system-wide adoption of identity verification through **ID.me**, yet another technological hurdle that has the effect of slamming the door on a significant percentage of claimants.

Pennsylvania's unemployed workers continue to pay a staggering cost for these changes to the UC system. Despite more than a year passing since BedMod was implemented and the special pandemic programs ended, UC claimants continue to suffer because of administrative failures, despite unemployment rates being at historic lows.

- **Technology barriers** presented by GSI's software and ID.me's digital identity verification prevent unemployed people who are eligible for UC benefits from getting them. A person who lacks the technology or ability to use this software faces an uphill battle to get benefits. Too many, frustrated by these barriers, abandon applications.
- **Communications** between unemployed workers and DLI remain unavailable or ineffective. Claimants continue to dial their phones all day hoping against hope that DLI will answer their call. Email messages are not answered for months.
- **Prompt payments** are a thing of the past, despite timeliness requirements being one of the central features of the original design of the UC program during the Great Depression. Eligible claimants waiting months for adjudication of their claims may be the biggest cause of unnecessary suffering among the unemployed.
- **Inadequate staffing** contributes to most of the ongoing problems, including adjudication delays and lack of assistance for claimants struggling with the poorly functioning system.

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- **Equity** is undermined, when staff display a lack of cultural competency or understanding of persons of color or urban claimants, or when claimants face disparate impact based on race, language, status, or disability in being able to use the technology.

If these problems are not solved before a recession, suffering among unemployed workers will be even greater.

These problems are not only policy and operations failures; they also violate legal requirements that include due process and payment of benefits "when due."

Some DLI management seem to conceive of the many current issues as "glitches" to be methodically worked through like a punch list. That view lacks context. *Pennsylvania's UC system is thoroughly broken and needs a comprehensive plan to repair it, as soon as possible.*

The challenge before DLI is to identify, prioritize and implement strategies that will most effectively rectify these daunting systemic problems. This paper recommends possible solutions.

Topline recommendations

1) **Remove Technology Barriers that Prevent Eligible People from Getting Benefits.**

2) **Eliminate Delays in Paying Benefits and Become Compliant with Federal Law.**

3) **Provide More Effective Communications with Claimants.**

4) **The Performance of DLI's Software Contractor Must Improve.**

5) **Reform Identity Verification.**

6) **Improve Handling of Overpayment Collections   .**

7) **Implement Data Collection, Transparency, and Reflection.**

8) **Open Hiring to All Parts of the State, Especially Philadelphia and Other Urban Areas.**

This paper is endorsed by the Philadelphia Unemployment Project and the Mon Valley Unemployed Committee.

#1:   Remove Technology Barriers that Prevent Eligible People from Getting Benefits

Since the pandemic began, virtually the entire interface between the UC system and its claimants is by computer. Filing a new application by telephone – or even asking a simple question or getting desperately needed help – is practically impossible, as getting through on the phone remains extremely difficult to impossible because of the lack of adequate staffing.

Many unemployed people do not have the technology necessary to use the online system. Many do not have computers and must try to make do with smartphones. Many do not even have smartphones. Those who do have the technology do not necessarily have the know-how or wherewithal to file applications or handle their UC business online. People with disabilities, with limited English proficiency, or who just are "not good with computers" may find it impossible to file an application, even though they are entitled to benefits.

DLI and its software contractor GSI must take corrective action to fix the online programming.

- **Barriers to filing new applications and weekly claims must be identified and eliminated.** We are unaware of *any* DLI initiative to study or correct the critical access problems that keep people from filing. One such problem is the embedding of the difficult ID.me program in the middle of the initial claim application, which can stop an application in its tracks (see #5 below). DLI should provide different hotline numbers for filing applications and for other issues, as well as special accommodations of people with disabilities and limited English.
- **Create a better process for people to recover their login ID or password.** As with so many problems, the only option at this point is to call the overburdened central phone number. A claimant seeking her login from a prior application recently reported calling two weeks without success.
- **Eliminate unnecessary questions and improve confusing ones** in applications and weekly claims. The vast increase in information sought since BenMod is a major reason why applicants struggle to complete the application and make mistakes in answering questions. For instance, laid off building trades workers have been denied benefits for answering a question indicating that they were "seasonal workers." They did not know they would not be considered as such by DLI.
- **Provide adequate access to staff to answer questions and troubleshoot problems** (see #3 below).
- **Backdating must be allowed for people who miss weeks of filing for benefits because of technology problems.** For those who manage to resolve their problems caused by technology, the solution often has taken weeks or months. Backdating weeks of filing can be difficult under existing law. The backdating regulation, 34 Pa. Code §65.43a, should be amended to make clear that liberal backdating is permitted to account for technological obstacles to filing.
- **Resolve technology problems that recently have developed for claimants using iPhones.** Claimants are unable to open attachments, such as notices, determinations that they may need to appeal, and appeals decisions.
- **Redesign determinations to provide individualized factfinding.** Current determinations provide just the highest overview of why benefits are being denied (or paid). They are useless for framing the issues on appeal and *violate due process.*
- **Create a technology leadership role.** The many technology issues could be more effectively addressed by hiring someone with technical expertise, focus and responsibility to solve them.

#2   Eliminate Delays in Paying Benefits and Become Compliant with Federal Law

Even though federal law sets standards for prompt payment of UC benefits, delays by DLI in deciding whether a person is eligible and then paying the claim is perhaps the most painful administrative problem at this time. The Philadelphia Unemployment Project (PUP) and the Mon Valley Unemployed Committee (MVUC) report that adjudication delays consistently are the most common problem that is reported to them by claimants seeking help. These claimants must wait weeks and even months to receive their benefits. DLI indicates that as of early December 2022, **37,680 claims await adjudication, and 16,195 more must be addressed by a UC interviewer.** What these statistics mean is that tens of thousands of workers are experiencing excruciating hardships because their claims have not been decided; they have no idea when they can expect adjudication to happen; and there is nothing that they, or their advocates, can do about it.

The Social Security Act requires that UC benefits be paid "when due." 42 U.S.C. § 503(a)(1). This requirement means that benefits are to be paid "with the greatest promptness administratively feasible." 20 C.F.R. §§ 640.3(a), 650.3(a).

Federal regulations establish specific numerical benchmarks for compliance with the timeliness requirement at each level of decision making. DLI is in compliance for initial determinations if 87% of first payments of UC benefits are issued within 14 days of application and 93% are issued within 35 days. 20 C.F.R. § 640.5. Appeals timeliness compliance is achieved if at least 60% of first-level appeals are decided within 30 days of the filing of the appeal and 80% are decided within 45 days. 20 C.F.R. § 650.4(b).

Understandably, the pandemic temporarily made these standards unworkable. But it did not eliminate DLI's obligations to meet them; they remain the benchmarks for which DLI must strive. Delays in adjudication of claims have gotten worse in the last year, not better. PA's performance compares unfavorably to the rest of the country. **In October 2022, DLI made only 32.3% of first payments within 14 days, and only 42.7% within 35 days. This is the third worst performance in the country.** DLI must take aggressive steps to remediate these delays.

- **Automated payments must be made on initial UC claims when employers have not contested them within the 14-day period permitted by state law.** The best way to move towards compliance with initial claim benchmarks is to pay uncontested claims by automation as soon as possible. Automated payment would not only help the workers whose claims were promptly paid; it would also reduce the time required to pay the rest of the claims by significantly reducing the backlog. While DLI has indicated interest in this recommendation, Secretary Berrier says only that "we have begun to look into ways" to automate payment. This tepid commitment and discouraging timeline do not inspire confidence. For more information about this issue, see CLS's issue brief, *Timeliness of UC Payments Should Be Improved by Automated Payment of Claims with No Timely Employer Responses.*
- **Review the design of GUS to identify issues that are being unnecessarily sent to adjudications.** For instance, human review of many "able and available" issues on claims might be avoided with a few additional questions on the application or weekly claim.
- **Operationalize prompt payment of benefits awarded in appeals decisions.** It is not usual for months to pass before payment, even with pushing from advocates. This situation is inexcusable.
- **Develop realistic systemic corrective action plans.** Include claims projections, strategies, staffing plans, and target dates.

#3   Provide More Effective Communications with Claimants

As the system has become technology-based, a strong customer service component is a vital component in the system for those who face technological barriers, otherwise need help, or simply cannot determine the status of their claims. Currently it simply does not exist. To the contrary, claimants rarely manage to speak to or directly communicate with staff, or such communication comes comically late. DLI recently indicated that there is more than a 3-month backlog for responses to emails received from claimants from its UCHelp account. Phones ring busy for days for most claimants seeking help.

Earlier this year, DLI Secretary Berrier testified that to adequately provide customer service, DLI would need 2,000 staff. DLI has initiated four classes of new workers since August, as well as improving pay, benefits, and pay grades for over 600 existing staff. However, staffing levels remain far short of the goal. As of November 2020, however, there were only 879 staff in the UC system, short of the goal.

- **Make full staffing a top priority.** DLI must continue to improve its jobs to make them desirable so that it can effectively compete for and retain quality staff in the current tight labor market.
- **Continue the program that places merit staff at PA CareerLinks.** This year, DLI has detailed a small number of staff to provide in-person assistance to claimants. Even though the staffing levels are completely insufficient and those few claimants who find out about it must wait weeks for an appointment, the program provides invaluable assistance to those who access it. This program currently is funded by a U.S. Department of Labor (DOL) equity grant, which is set to run out of funding in the spring of 2023.
- **Communications must be structured so that claimants speak to *people who can help them*.** When claimants finally do get through on the phone after days or weeks of calling, the stakes for them to succeed in solving their problem are immense. However, they often speak to staff without the expertise to solve their problem or even to direct them to someone who can. Communications must be better structured to be effective.
- **Claimants must be able to speak to technology specialists.** Claimant-facing staff specializing in clearing technology barriers, such as a help desk, are essential but currently do not exist.
- **Text messaging to alert claimants of vital communications is essential.** Too many workers are losing benefits because they do not know of a deadline they have been given to provide information or to appeal a disqualifying determination. Text messaging is one way to address this problem.
- **Eliminate communication through portal-only messages.** See above.
- **Communicate with claimants more clearly about their communications options.** Many claimants do not understand that when filing their claim, they have selected an option that requires them to check their email or their dashboards regularly to avoid missing an important communication.
- **Retain mail communication as an option.** Although the problems of the US Postal Service make mail far from the best option, it is the only real option for those workers unable to use the technology.

#4   The Performance of DLI's Software Contractor Must Improve

BenMod was supposed to enhance the UC administrative system and save resources, but it has had the opposite effect in many respects. In addition to creating the challenges faced by claimants using the software, GSI's performance as DLI's contractor has left much to be desired.

GUS is not well designed with an eye toward the timely and efficient administration of UC programs. It creates many unnecessary work items that must be cleared, consuming resources and causing claims delays. For example, it fails to alert staff that claimants or employers have uploaded documents for staff to act on.

These design problems are exacerbated by GSI's lack of responsiveness to DLI programming requests. These requests often languish six months or more, even if DLI deems them high priorities.

Perhaps most infuriating, GSI regularly sends out notices as messages to hundreds of thousands of claimants that are wrong as a matter of Pennsylvania law. Some of these emails have contained the law of other states using GSI's GUS system. Several of these messages have incorrectly threatened claimants who received non-fault overpayments with non-existent repayment obligations and coercive tactics to recoup benefits, causing immense anxiety among these claimants. Amazingly, DLI neither sanctioned these messages nor knew that they were being issued. GSI also withheld one-half of people's benefits to recoup overpayments during the height of the pandemic, even though Pennsylvania law limits recoupment to one-third. Unlike mistakes made by claimants, these repeated errors by GSI apparently have had no consequences for them.

- **DLI must bring pressure to improve GSI's performance.** Legal counsel must be actively engaged. Contractual as well as due process and other legal obligations are involved.
- **GUS's design problems must be studied and addressed.** Thorough internal review and external review by stakeholders is key to improving user experience and timeliness performance and effectively using finite DLI staff resources.
- **GSI must obtain DLI approval before sending out systemwide messages.** GSI's repeated errors are not only painful for claimants and embarrassing for DLI; they expose DLI to litigation.

#5   Reform Identity Verification

ID.me is DLI's identity verification vendor. It verifies identities through approval of government ID and other identity documentation that a user photographs and uploads on its computer app using a smartphone or a computer.

The steps for ID.me verification include the following, any one of which present potential stumbling blocks.

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

As noted in CLS's issue brief *ID.me Presents Barriers for Low Income People Seeking Unemployment Insurance and Other Government Benefits*, ID.me's process screens out low-income people, seniors, immigrants, and people "not good with computers" from getting UC. But even professionals with strong computer skills have been flummoxed by ID.me. Quite simply, a significant percentage of users cannot successfully complete ID.me screening.

ID.me has made some improvements to its product over this year, yet users still often hit a barrier that they cannot get by. DLI created workarounds to ID.me verification, but did not publicize them and often did not effectively integrate them into their administrative system. Moreover, DLI recently doubled down on making ID.me a gatekeeper by requiring use of ID.me credentials to get into users' dashboards (while not accounting for its own ID.me workarounds).

- **Remove ID.me from the middle of the UC application.** People should be able to submit an application before they struggle with ID.me. Changing the ordering would avoid discouraging applicants and make it easier to determine which and how many applications are prevented from going forward by unsuccessful ID.me attempts. Moreover, this placement of ID.me within the application is prohibited by DOL guidance.
- **Build upon the ID.me workaround in the CareerLinks.** ID.me cannot be the be-all and end-all for people who cannot master it. DLI's alternative, in-person verification option by which claimants present their identity documents in the CareerLinks is an essential component of DLI's overall identify verification process. However, this alternative is only used in a small number of cases and often remains unknown and ineffective.
  - **Publicize the existence of the CareerLink alternative.** To date, not a single DLI website or social media post has made the public aware of the workaround. The combined ID.me/CareerLink system only works if the public knows about the latter part.
  - **Improve integration of the workaround into the administrative system.** The system must, for instance, more effectively record that identity has been verified and must notify the claimant that the identity verification issue has been resolved.
  - **Eliminate the requirement of an ID.me sign-in to the dashboard for those establishing their identity through alternate means.** Otherwise, people who have verified through the CareerLink process or in a referee hearing still face barriers because of ID.me.
- **Contract the highest level of technical assistance ID.me offers.** As ID.me improves its product and makes more in-person assistance available, DLI must invest in it.
- **Issue policy to make clear to staff that the goal of using ID.me is to determine whether the person is who they say they are,** not whether they can produce perfect identity verification paperwork or successfully use a complex computer app. Referees should be instructed that in appeal hearings, the issue is verifying identity by a preponderance of the evidence produced, not whether the claimant has effectively used ID.me.

#6   Improve Handling of Overpayment Collections

As noted, GSI has caused great confusion about the obligations of Pennsylvanians who received overpayments through no fault of their own.. Many of these overpayments were DLI's fault (or even GSI's fault, as with its double payment of $280 million of PUA benefits in July 2020). GSI's erroneous messages have caused panic among many former recipients who do not have the means to repay their benefits. In

some cases, people responded to the threats by making repayment that caused them hardship and that they were not required to make.

Pennsylvania's law on recovery of non-fault overpayments is clear. The only mechanism is for DLI to withhold one-third of any unemployment benefits payable for three years after the overpayment. 43 P.S. § 804(b). There is no requirement that persons receiving overpayments repay them. Of course, significantly stiffer collection mechanisms exist for benefits obtained by fault of the claimant. 43 P.S. § 804(a).

- **Send out a clear and accurate communication about recoupment of non-fault overpayments.** Because of GSI's repeated misstatements, DLI must take corrective action by sending out a clear, unambiguous explanation of the law for non-fault overpayments, including that there is no repayment obligation. DLI's website also must clearly explain recoupment law.
- **Send separate letters to people with non-fault and with fault overpayments** about how the money can be recouped. Currently DLI has a single letter that it sends to all people with overpayments, whether their overpayments are fault or non-fault. As noted, recoup methods are very different depending which category claimants fall into. Rather than leaving it to claimants to determine which rules apply to them, DLI should send claimants separate notices depending on the nature of the overpayment, to mitigate confusion.
- **Permit people who repaid money based on the erroneous GSI communications to seek and get refunds.** There is precedent for such a step. DLI reimbursed claimants from whom GSI had erroneously recouped one-half of their benefits for the portion withheld in violation of Pennsylvania's UC law.

#7   Implement Data Collection, Transparency, and Reflection

Data collection should have been central to major systems changes like BenMod and ID.me. However, very little data that would permit a hard look at the functioning of the software and other administrative processes is being collected. Now is the time to start, requiring the cooperation of DLI's vendors.

- **Provide monthly data on barriers to payment of benefits.** This should include;
  - Numbers of user attempts that fail at each step of the GUS and ID.me processes;
  - Number of claims awaiting adjudication, and how long they have been pending (this analysis is maintained for appeals, but not initial claims);
  - Claimant demographics.
- **Data must be made publicly available.** Some state unemployment insurance programs have public facing data dashboards.
- **DLI must reflect and act on this data**. The agency must conduct continuous evaluation of its processes and outcomes.

#8   Open Hiring to All Parts of the State, Especially Philadelphia and Other Urban Areas

Currently, UC Service Centers exist only in Altoona, Duquesne, Erie, Indiana, and Scranton. But given that DLI's staff worked remotely during the pandemic, hiring people in other parts of the state is not only

feasible, but advisable. As DLI repeatedly has bemoaned its difficulty filling vacancies, opening hiring would have several salutary effects.

- **Greatly expand the applicant pool.** Currently, few of DLI's staff are working out of the southeast part of the state, the most populous area.
- **Expand desperately needed administrative resources by filing vacancies.** Having more staff would alleviate the communications and timeliness imperatives discussed above.
- **Improve equity for claimants.** People from the Southeast, especially minority workers, would have a fairer chance of having their claims adjudicated by someone sharing their experiences. It also would permit greater recruitment of bilingual staff.
- **Improve employment fairness.** The southeast part of the state should not continue to be excluded from these employment opportunities.

Great, but what are the top priorities? These top five steps will get the most bang for the buck.

1) **Implement automated payments for eligible claimants when there has been no timely employer response to claims.** This strategy is key to reducing the backlog of delayed determinations.

2) **Continue to prioritize hiring towards full staffing.** The technology-focused system simply cannot work without a complementary human customer service component.

3) **Remove ID.me from the middle of the application.** That step will remove one of the biggest barriers to filing and come into compliance with DOL directives.

4) **Bring technical leadership into DLI.** Someone with the technical chops and the responsibility for software improvements is badly needed.

5) **Demand a change in DLI's relationship with GSI.** GSI must become part of the solution, not the problem.

Conclusion

To be sure, the pandemic placed unprecedented stress on the UC system, its management, its workers, and its contractors. Together, they did a remarkable job of disbursing more than $50 billion of UC and PUA benefits that were vital to keeping the Commonwealth and its unemployed workers afloat during the first two years of the pandemic. But there was collateral damage, with large numbers of Pennsylvanians now encountering the barriers described here.

Although the sheer number of specific corrective actions suggested here may seem daunting, these strategies would address the wide range of issues still plaguing the UC system and ameliorate the hardships still faced by unemployed Pennsylvanians. Having a comprehensive plan, including a timetable, to address these issues is crucial.

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