Unemployment Insurance

Summary

Unemployment Insurance (UI) is a social benefit program that provides temporary economic relief to the unemployed with the goal of supporting workers who lose their jobs through no fault of their own. Short-term cash benefits help reduce the negative impacts of unemployment while workers seek new jobs.

With the onset of the pandemic and public health orders restricting economic activity, the unemployment rate in New Mexico rose to a peak of 12.5 percent in July 2020, and a record 197 thousand New Mexicans filed for unemployment insurance benefits. Federal stimulus funds expanded both benefit amounts and eligibility, allowing new categories of workers to apply. By September 2020, the unemployment insurance trust fund from which benefits are drawn was insolvent; and, as of May 2021, New Mexico had borrowed $278 million from the federal government to pay claims. Over the course of the pandemic, the Workforce Solutions Department (WSD) has distributed an estimated $3 billion in unemployment insurance benefits. With more unemployment claims filed in New Mexico than ever before and an over 900 percent increase occurring within just five weeks, the pandemic created unprecedented pressure on the department.

Growing program risks contributed to an estimated $250 million in overpayments in unemployment insurance benefits.

WSD reassigned staff to help address the surge in claims, contributing to backlogs in investigation of potentially fraudulent claims. The surge and staffing reassignments exacerbated already rising rates of improper payments. New federal benefit programs increased improper payment vulnerabilities due to an inability to verify employment information. LFC staff estimate the state has made $250 million in benefit overpayments since the start of the pandemic.

Prior to the pandemic, fraud rates were already increasing and are now at the highest level in recent years. Insufficient staff and training made it challenging for WSD to process claims effectively while also following new federal requirements. Inadequate interpretation of state law and federal guidance led to incorrect calculation of employer taxes and benefits.

Additional federal stimulus funds and the state’s decision to continue to waive the work search requirement contributed to a disincentive to seek reemployment for those on unemployment insurance. Reduced participation in reemployment services also contribute to high rates of unemployed New Mexicans who are exhausting benefits. In addition, unemployment insurance taxes paid by employers will increase if the Legislature does not appropriate federal funds to replenish the trust fund.

WSD should reduce improper payment and fraud risk by hiring additional contract staff to assist in quickly addressing backlogs and reporting on fraud detection and improper payment activities, increase the accuracy in interpretation of state law and federal guidance by expanding training, boost the use of reemployment services, and address the solvency of the trust fund by using federal funding to repay the loan and replenish the fund.

Spotlight

Program Evaluation Unit
Legislative Finance Committee
May 19, 2021

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

Covid-19 Stresses Unemployment Insurance: More Claims, More Fraud, and Fund Insolvency

Unemployment Insurance: Brief Overview

1. Employers pay taxes on employee payroll.
2. Taxes are pooled into a trust fund.
3. Employees are eligible to receive limited weekly cash benefits drawn from the trust fund.
4. The cash benefit is a temporary and partial wage replacement while the individual looks for new work.

The unemployment insurance system, which lessens the negative impact of unemployment on both the individual and the broader economy, was already facing increasing improper payments and a civil rights lawsuit when pandemic closures pushed thousands of suddenly unemployed workers into the system. New federal programs expanded benefits and eligibility. Unemployment soared, straining an overtaxed program, opening the door to fraudulent claims, and draining the unemployment insurance fund.

Background

The Social Security Act and the Federal Unemployment Tax Act (FUTA) establish broad provisions regarding eligibility, benefits, taxes, and administrative requirements, while state laws (Chapter 51 NMSA 1978, Unemployment Compensation Law) and rules (NMAC 11.3.100 – 11.3.500) define the particulars. Additionally, the federal government allocates grants to states to fund the administration of their programs and requires oversight through planning and performance documents, audits, program letters, and advisories, as well as program integrity, and claims processing requirements (see Appendix A describing state and federal responsibilities).

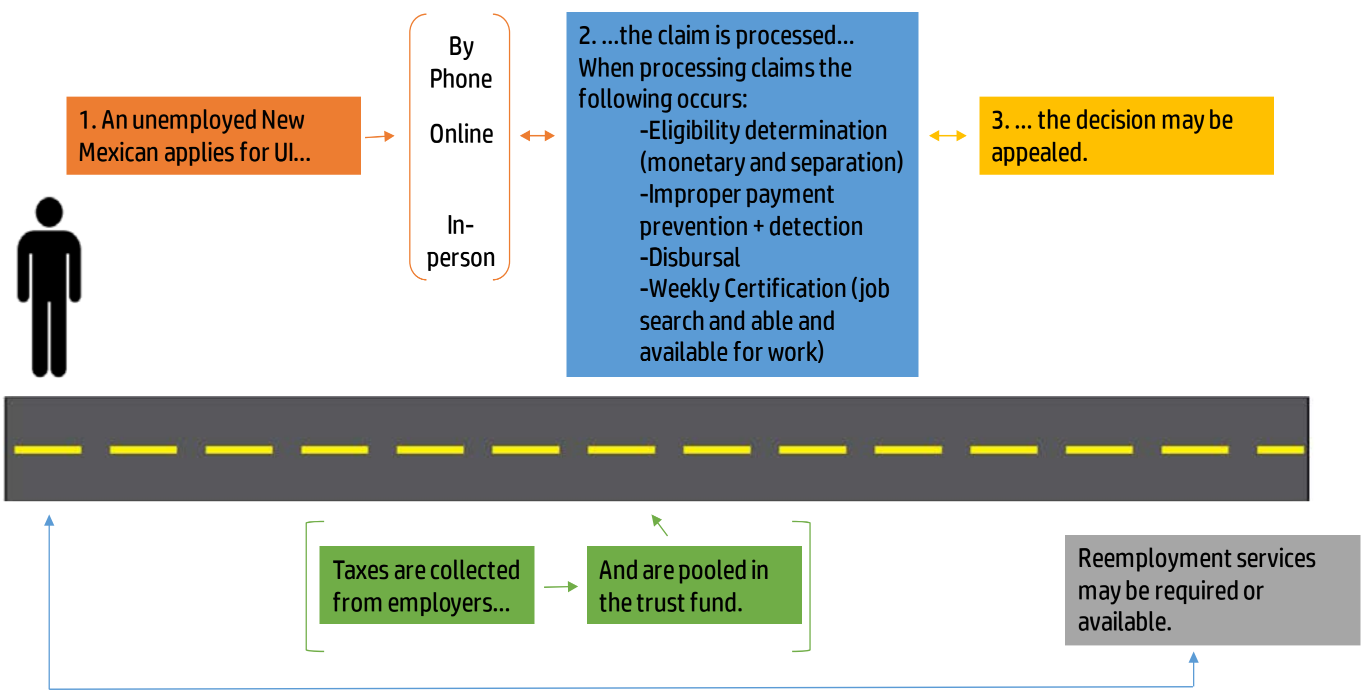
Wage history, reason for job loss, and work search determine eligibility for unemployment insurance. An unemployed person applies for benefits online, in-person (this option has been unavailable throughout most of the pandemic), or on the phone. In New Mexico, in federal fiscal year (FFY) 2020 (ending September 30, 2020), 92.2 percent of initial claims were filed online and 7.8 percent by phone. Once submitted, the claim is processed to determine eligibility based on whether an individual:

- Earned sufficient wages in the first four of the last five completed calendar quarters (During the Covid-19 pandemic, the state began allowing those who had reduced hours to claim unemployment insurance as well.);
- Did not voluntarily quit without good cause (i.e. the conditions of the job separation);
- Did not commit misconduct connected with the individual's employment (i.e. conduct in which employees bring about their own unemployment);
- Did not refuse an offer of suitable work without good cause; and
- Is able, available, and actively seeking work.

Using computer algorithms from an IT system updated in 2013, WSD determines whether the claim has components making it likely to be ineligible, incorrect, or fraudulent. The agency then provides notice of eligibility to the claimant and employer and disburses benefits if the claim is found to be eligible. Benefits are paid from taxes on employer payroll pooled into a trust fund. Claimants or employers can appeal WSD's decision with an opportunity for three levels of appeal. To remain eligible and continue to receive benefits, an individual must continue to meet these criteria and certify weekly. Due to the pandemic, New Mexico waived its weekly work search requirement per federal suggestion. However, while federal guidance suggests a quick reinstatement of the requirement once a state determines it is safe to do so, New Mexico continued the waiver until the week of May 9.

Once eligibility is established, all workers who qualify for benefits must wait one week before receiving benefits. This rule was also waived based on federal guidance during the pandemic, but the agency implemented a five-day waiting period. After the week waiting period, benefits in New Mexico (as in most states) are typically available for a maximum of 26 weeks. During periods of high unemployment, extended benefits (EB) are available for up to an additional 13 weeks. Federal programs extended some benefits to September due to the pandemic. In 2021, standard unemployment benefit amounts range from $90 per week to $484 per week (prior to the supplemental benefits provided through federal economic recovery acts), with the minimum amount of earnings necessary to be eligible set at $2,186.92 for 2021.[1]

Figure 1. Application Flow Chart for Unemployment Insurance

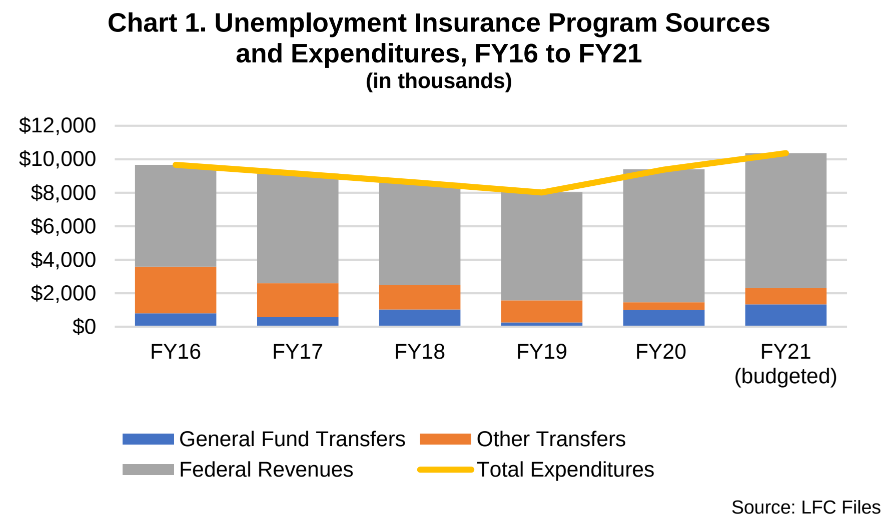


Note: Eligibility separation is an examination of the circumstances around job loss to ensure the claimant lost their job or left with good cause.

Source: LFC

[1] These earnings must have been gained during the first four of the last five completed calendar quarters before the start date of a claim.

In FY21, WSD's Unemployment Insurance Division ran the program with a budget of $10.4 million and 164 FTE. Federal revenues of $8 million accounted for most of this budget and was primarily used for personnel (see Appendix B for more detailed sources and uses).



The state's advanced technology helped confront increased risks presented by the pandemic. Noteworthy elements include:

- Modernized claims processing and tax collection system (one of just 22 states);
- Predictive analytics to reduce application inaccuracies;
- Fraud checks, including cross-checks with incarceration and death data; and
- Chat bots to help answer answers.

These proactive measures were not implemented in some states that experienced high rates of fraud and improper payments

In the decade before the pandemic, the unemployment insurance system was modernized, a civil rights complaint was filed, and improper payments began increasing.

In 2013, New Mexico implemented an online unemployment insurance system that allows for both tax collection and claims processing. The modernized system created clear efficiencies such as reduced reliance on paper applications and elimination of obsolete technology but also presented barriers to individuals with limited English proficiency. In FFY20, the rate at which the state paid an incorrect or "improper" benefit amount to individuals applying for unemployment insurance more than doubled from FFY18. These improper payments result from errors committed during the application process by individuals, employers, or the agency. These can lead to over-, or sometimes under-, payment of benefits. Some errors are due to intentional deception and can result in fraudulent payments. Fraud is therefore a subset of improper payments.

New Mexico spent $49 million to modernize its unemployment insurance system in 2013. The purpose of modernization was to streamline processes and create efficiencies with a new system to collect taxes and process claims, as well as manage overpayments and other program integrity measures. In 2013, New Mexico was the only state to address both tax collection and claims processing, and it remains one of 22 states with modernized systems that no longer rely on obsolete technology. According to a May 2013 presentation before the Department of Information Technology's Project Certification Committee, the entire modernization project cost $48.56 million. Two years after the state modernized its unemployment insurance system, WSD also increased its improper payment prevention activities at an expense of $1.3

million. These activities included assessing risk associated with individual claims and the use of predictive analytics to help "nudge" people toward correct and honest answers to application questions. The Pew Charitable Trusts and the U.S. Department of Labor (USDOL) highlighted New Mexico's innovative use of predictive analytics as a best practice.

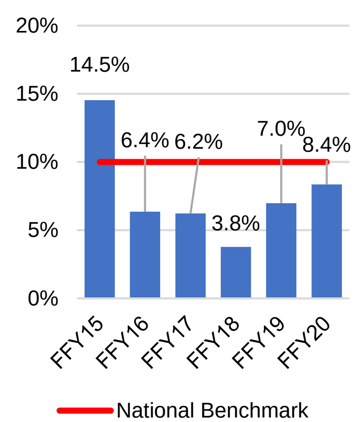
In 2016, USDOL found New Mexico's unemployment insurance system presented barriers to access for limited English proficient speakers. Online claims filing systems like New Mexico's provide convenient access for people to file claims. However, when designed inadequately, these systems can create barriers to access, potentially violating federal nondiscrimination and unemployment insurance laws (e.g., SSC Section 303(a)(1), Title VI of the Civil Rights Act). Because unemployment insurance benefits are an entitlement, states are required to ensure eligible individuals have access regardless of disability, English proficiency, age, race, or membership in other protected groups. Both intentional discriminatory treatment as well as policies that appear neutral but have a disproportionate impact on members of some protected groups are prohibited.

A 2013 complaint filed with USDOL's Civil Rights Center claimed New Mexico's online unemployment insurance system created significant barriers for applicants with limited English proficiency, resulting in "racial/national origin discrimination." USDOL identified these barriers in letters to WSD in 2016 and February 2020. By September 2020, WSD began updating the tax and claims system to be fully available in Spanish. USDOL urged WSD to take action without delay because the pandemic exacerbated barriers to claims filing. In January 2021, WSD settled the complaint with USDOL by agreeing to ensure limited English speakers have meaningful access to benefits. The settlement requires WSD to review its language access plan, provide adequate interpretation services, train staff, and review and remedy complaints. The deadlines associated with each element of the settlement agreements extend from May 2021 through April 2022. (See Appendix C for settlement details, state action and deadlines.)

System modernization decreased two USDOL core performance measures related to accuracy and timeliness of benefit decisions. A September 2020 report from the Century Foundation, the National Employment Law Project, and Philadelphia Legal Assistance notes from the year before (2012) to the year after (2014) modernization, New Mexico's program declined in two of five measures of performance (see Appendix D). The accuracy of decisions concerning job separation decreased and the average age of appeals increased. The former can result in incorrect payment of benefits to claimants and the later impacts how quickly correct benefits are distributed to claimants or issues that impact employers' tax rates are resolved. However, in subsequent years performance improved and WSD received national recognition in 2018 and 2019.

New Mexico's improper payment rate more than doubled from FFY18 to FFY20. While New Mexico's improper payment rates have remained below the national benchmark of 10 percent since FFY16, in recent years, rates have been increasing. From FFY18 to FFY19, these rates increased from 3.8 percent

Chart 2. New Mexico's Improper Payment Rate, FFY15 to FFY20



Source: USDOL

to 7 percent, even before the pandemic presented new risks to improper payments. In FFY20 (ending September 2020), improper payment rates reached 8.4 percent. Additionally, over the last three federal fiscal years, New Mexico's performance compared with other states has declined, falling from having the third lowest rate in the country in FFY18 to the 17th lowest rate in FFY20.

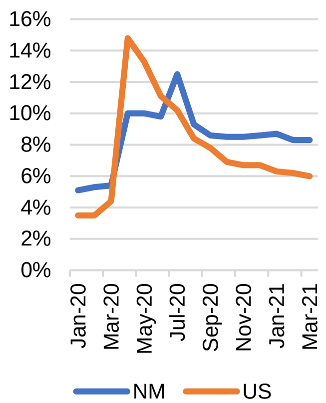
Improper payments result from errors made during the application process.

Fraudulent payments result from intentional deception.

During the pandemic, claims spiked, federal programs expanded, the trust fund was depleted, and fraud risk grew.

In July 2020, both unemployment and claims peaked, with an unemployment rate of 12.5 percent and 197 thousand total unemployment insurance claims (both initial and continued) filed for the week of July 18. This means there were nearly 21 claims for unemployment benefits per 100 people in the labor force in New Mexico. Through the Coronavirus Aid, Relief, and Economic Security Act (CARES), the federal government created new federally funded relief programs that required WSD to establish new programs and protocols. The significant influx of funds, the expanded eligibility for the programs, and the rush to quickly deliver benefits left states vulnerable to improper payments, including fraudulent activity. The increased demand quickly depleted New Mexico's trust fund reserves, requiring the state to borrow $278 million (as of May 2021) from the federal government and allocate $52.9 million in CARES Act funds to fill the trust fund. Claims will likely stay high until early September 2021, when extensions of new federal unemployment programs are due to expire.

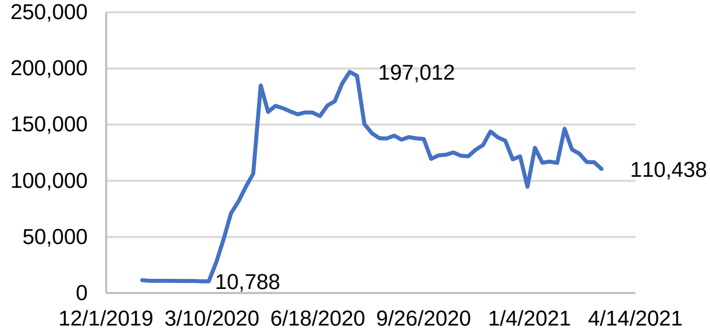
Chart 3. Unemployment Rate New Mexico vs United States



Source: U.S. Bureau of Labor Statistics

Over 197 thousand claims were filed in July 2020, and while volume has decreased, claims remain 924 percent higher than pre-pandemic levels. While claims peaked in July and have decreased 44 percent since then, they remain 942 percent above pre-pandemic levels, with 110,439 total claims filed in mid-April 2021. This increased demand translated into dramatically increased workload for WSD. Processes and staffing designed to respond to lower levels of demand were not adequate to address this new surge, resulting in agency performance on three of five state measures for the unemployment insurance program dropping significantly in the first two quarters of FY21. The timeliness of eligibility determinations and first-time payments and the accuracy of separation determinations dropped below target levels (see Appendix E for WSD's Performance Report Card). The timely delivery of benefits and the quick resolution of appeals have also been impacted (see Appendix F). In January 2020, 93 percent of lower authority appeals decisions were made within 30 days, and by March 2021, this rate had fallen to 2.8 percent.

Chart 4. Total Initial and Continued UI Claims, January 2020 through March 2021



Source: WSD

Since the pandemic began, the state received almost $3 billion in federal funding for unemployment insurance benefits and administration. The CARES Act created federally funded relief programs for workers who lost their jobs (see Table 1 for definitions and funding levels). The federal government provided funding for both the administration of the programs and the payment of benefits. As of March 2021, these new programs and the regular unemployment insurance program had received $21.6 million in administrative funding and $3 billion in funding for benefits.

These federal stimulus supplements to unemployment insurance improved the spending power of individuals and likely positively impacted state revenues, through both increased spending and state income tax. According to a National Bureau of Economic Research analysis, in Illinois, eliminating the $600 per week Federal Pandemic Unemployment Compensation (FPUC) supplement would have led to a 44 percent decline in local spending. A reduction of $200 or $400 per week to the FPUC supplement is estimated to result in a reduction of spending between 12 percent and 28 percent.[2] However, the specific impacts of these stimulus funds have not yet been studied in New Mexico.

[2] Casado M.G., Glennon, B., Lane, J., McQuown, D., Rich, D., Weinberg, B.A. (2020). The Effect of Fiscal Stimulus: Evidence from Covid-19, NBER Working Paper No. 27576, Accessed from: https://www.nber.org/system/files/working_papers/w27576/w27576.pdf

Table 1. Summary of State and Federal Unemployment Insurance Programs and Pandemic Related Funding

Description	Federal Funding for Administration	Federal Funding for Benefits
Standard UI (Unemployment Insurance)		
Provides compensation for workers who were fired or left their jobs with good cause.	$11,677,290	$278,163,848
PUA (Pandemic Unemployment Assistance)		
Provides compensation to workers who have typically not been eligible for UI benefits (e.g., the self-employed, independent contractors).	$8,346,361	$358,044,279
FPUC (Federal Pandemic Unemployment Compensation)		
Provides an additional $600 per week, in addition to regular state UI benefits and PUA benefits. Both UI and PUA recipients receive this additional benefit. American Rescue Plan Act reinstated and lowered the benefit to $300 per week.	$128,948	$1,756,742,831
PEUC (Pandemic Emergency Unemployment Compensation)		
Provides up to an additional 24 weeks of UI benefits beyond the regular 26 weeks New Mexico provides.	$1,478,121	$287,130,892
Other Federal Programs		
LWA: Provides lost wage assistance through FEMA EB: Federal Extended benefits MEUC: An additional $100/week for those who are both self-employed and worked for an employer Temp Comp: Federal funds for this initial week of UI		$314,842,761
Total	**$21,630,720**	**$2,992,249,521**

Note: Standard UI administrative funding is for FFY21 and is the base funding amount. Data collected March 2020. States earn additional funds each quarter for actual UI claims workload above the base. Claims funding for standard UI comes from the state trust fund that became insolvent, requiring the state to borrow the funds included in the table. WSD also received $2.43 million for PUA and PEUC fraud prevention and identity theft activities. The federal funding claims totals are from the week ending 4/18/20 through the week ending 4/17/21. This does not include other federal programs, including TRA, UCX, UCFE.

Source: USDOL and WSD

In the face of record high claims, unemployment insurance systems across the country struggled to maintain a balance between the timely and accurate delivery of benefit payments. New Mexico, like all states, must balance the timely delivery of benefits to claimants with the accurate distribution of those benefits to those eligible. In federal guidance to state workforce agencies published in an Unemployment Insurance Program Letter in 2000, USDOL notes it “requires an appropriate balancing of the dual concerns of promptness and accuracy.” However, federal guidance during the pandemic encouraged states to quickly deliver benefits. For instance, the federal government encouraged states to waive the waiting week and paid for benefits during that period. During the pandemic this balance became more difficult but no less important to strike because of both the urgent need for benefits to be delivered quickly and the growing fraud risks. New Mexico, like most states, focused on quickly getting benefits to claimants.

“Our work over the past several months has always been focused on getting New Mexicans the benefits and resources to which they are entitled as quickly as we can.”

- Former WSD Secretary Bill McCamley, June 2, 2020

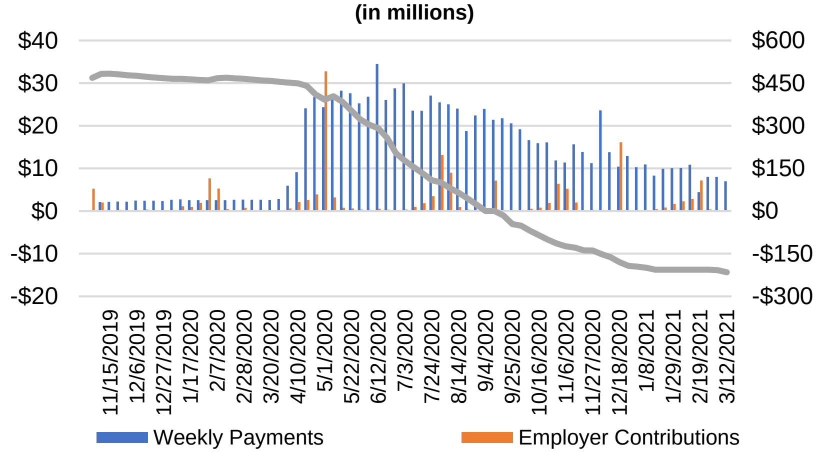
Source: WSD

In August, Pew highlighted a number of states that have had to stop or delay payments to ensure claims are not fraudulent. For instance, Nevada cited fraud as one reason for a large claims backlog, while Arizona reported that by August they received 2.7 million applications even though the state only has 3.4 million workers. Pew also mentioned some states that paid unemployment benefits quickly were later found to be targets for fraud. However, some individuals also were caught in the fray of increased vigilance against fraud and did not receive benefits in a timely manner.

A number of states reported significant fraud since the onset of the pandemic. In two January 2021 reports published by the California state auditor, lapses in state practices and failure to keep up with best practices contributed to approximately $10.4 billion in unemployment benefits fraud associated with 600 thousand accounts. In a December press release from the Maryland department of labor, over 85 percent of flagged claims were confirmed as fraudulent. A fraud investigation report from the Washington state auditor identified over $647 million in benefits fraud. In a March 2021 report, Louisiana's program audit services identified $405 million in payments to individuals who did not appear eligible for UI programs. In March 2021, Rhode Island's department of labor found 43 percent of claims were suspected or confirmed to be fraudulent, with $247 million paid out for fraudulent claims.

Increased demand for unemployment insurance depleted otherwise adequate reserves in New Mexico's unemployment insurance trust fund. In September 2020, the trust fund reached insolvency, causing the state to begin borrowing funds (along with 22 other states and territories) from the federal government for the first time since at least 1974 to be able to continue to pay benefits. As of May 2021, New Mexico's outstanding federal loan stood at $278 million. New Mexico is now confronted with the dual challenge of repaying the federal loan and replenishing reserves in the UI trust fund.

Chart 5. Standard UI Weekly Payments, Contributions, and Trust Fund Balance
(in millions)



Source: WSD

Insufficient Staffing and State and Federal Noncompliance Contributed to an Estimated $250 Million in Overpayments

Improper payments (both over- and underpayments) result from errors during the application process. The three leading causes are:
- Claimants not meeting work search requirements;
- Claimants continuing to claim benefits after their return to work; and
- Employers failing to provide timely and adequate information about why an individual was separated from their employment.

Fraudulent payments result from intentional deception.
Source: OAG

Pandemic-driven high unemployment increased UI claims to record levels, leading to backlogs and increased call volume. WSD diverted staff to assist with these increases, resulting in a backlog of uninvestigated claims and contributing to a reduction in the detection of improper payments. From FFY19 to FFY20, New Mexico's rate of recovering overpayments fell by more than half, driven by the increased volume of overpayments. A growing backlog of uninvestigated claims could take more than a year to address at the agency's current pace.

LFC staff calculated that from April 2020 through April 2021 the state made overpayments totaling an estimated $250 million.[3] This estimate was reached by multiplying New Mexico's overpayment and fraud rates for FFY20 reported by USDOL by the total benefit amounts for standard unemployment insurance, Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, and temporary compensation paid from the week ending April 18, 2020 through the week ending April 17, 2021 (See Appendix G for detailed calculations).

Figure 2. Estimated Overpayments of UI Benefits in New Mexico, April 2020 to April 2021

WSD paid an estimated total of **$250 million** in overpayments of UI benefits…

…of these…

an estimated **$133 million** were fraudulent payments

…of these…

an estimated **$15.6 million** were associated with PUA claims.

Source: LFC analysis of WSD and USDOL data

Of the estimated $250 million in overpayments, LFC estimated $133 million was the result of fraud, and an estimated $15.6 million was related to the untraditional benefits of PUA. At the same time, WSD reports preventing $172.9 million in fraud prior to any payment being disbursed due to its advanced system. Additionally, WSD identified $42.1 million in uninvestigated potential fraud. In FFY20, New Mexico had the 17th lowest rate of improper payments. However, since 2018 New Mexico's rates of improper payments and fraud have more than doubled. Furthermore, having a low rate of improper payments may not be sufficient to prevent a state from experiencing high amounts of improper payments during the pandemic due to both the surge in claims and increased vulnerability from new programs.

Untimely and unclear federal guidance on new programs exposed states to additional risks to program integrity. The federal government created the new Pandemic Unemployment Assistance (PUA) program to provide benefits to a category of workers who were never before eligible. This meant that states had to quickly create new policies, procedures and processes to address claims from these new claimants. Because of a lack of employer verification, the PUA program presented additional vulnerabilities to program integrity and likely became a target for fraudsters. After the enactment of the CARES Act in March 2020, USDOL was slow to provide guidance to states on PUA, which may have led to confusion regarding implementation of the program and increased risk of overpayments in New Mexico and elsewhere. For instance,

[3] Overpayment amounts for PUA were calculated using the same overpayment rate as standard UI of 8.233 percent, as reported by USDOL from New Mexico's Benefit Accuracy Measurement analysis. This calculation does not include extended benefits programs.

according to an OIG DOL survey, 55 percent of responding states said their state identified system vulnerabilities as they handled the high volumes of claims due to Covid-19 and implementation of PUA. Additionally, the Office of the Inspector General has issued reports highlighting risks to program integrity posed by PUA and the role of untimely and unclear federal guidance in contributing to this risk.

Furthermore, the pandemic stressed unemployment insurance systems across the country, making them vulnerable to fraudsters seeking to take advantage of the increased benefits. Cyber criminals using stolen identity information contributed to the over $10 billion in fraudulent claims paid in California. Cases of identity theft to steal government benefits such as unemployment insurance increased more than 500 percent from 2019 to 2020. Poor oversight and incorrect interpretation of state law and federal guidance led to incorrect calculation of employer taxes and inaccurate delivery of some benefits.

WSD reassigned staff to address the drastic increase in claims, contributing to increased risk of improper payments from an investigation backlog.

The unprecedented high volume of UI claims filed during the pandemic presented unique challenges, and WSD reassigned staff from various units from both within and outside the agency to address the surge. USDOL and the National Association of State Workforce Agencies both stated that New Mexico's reallocation of staff impacted program integrity functions.[4] Both improper payments and fraud rates were already increasing in recent years in New Mexico and rose higher during the pandemic. Reports of identity theft, both nationally and in New Mexico, posed new challenges for UI systems. WSD currently does not report to the Legislature on fraud detection and prevention activities.

WSD reassigned staff from claims adjudication and employment services to help process claims, slowing detection of improper payments. To respond to the deluge of claims, the state reassigned staff from other duties across WSD, hired new temporary state employees, and contracted staff. The state paid Deloitte at least $3 million to improve responsiveness through both technology and call center staffing from November 2020 through January 2021 and handled 291,722 calls over that period compared with 108,428 over the same period of the prior year, a 2.7-fold increase. According to National Association of State Workforce Agencies, "WSD has been forced to allocate resources from various internal and external departments to address the tremendous increase in claims workload. As a result, integrity functions focused on benefit overpayment detection and recovery have lagged behind, creating a backlog of cross-match investigations and audits."

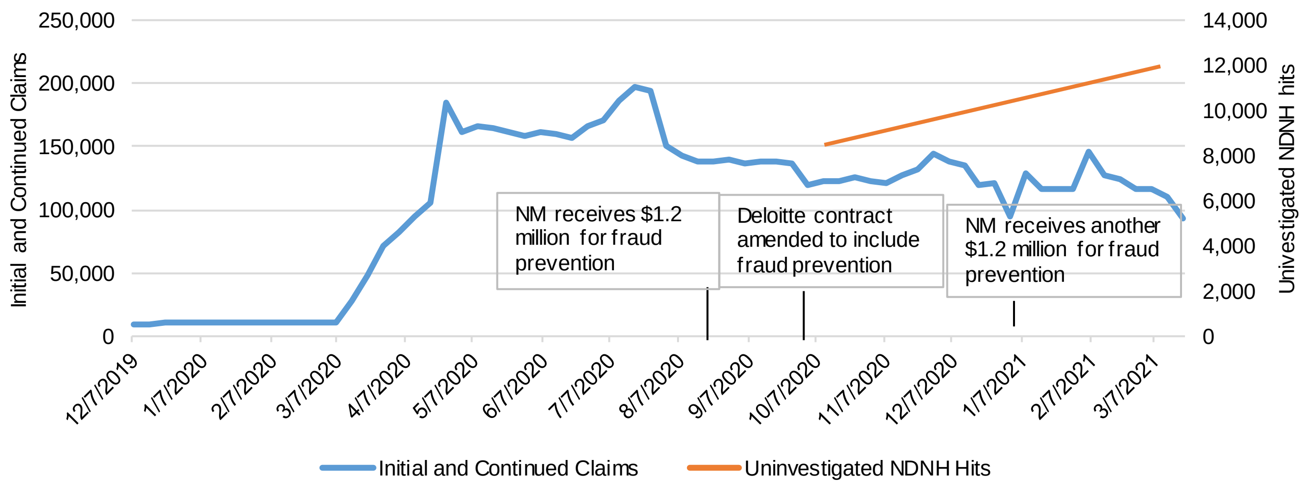
WSD's large and growing backlog of uninvestigated claims may take more than a year to address at the agency's current pace. WSD submits UI claims to the State and National Directories of New Hires (a freely available federal resource) to identify potential improper payments due to claimants not

"The most important thing that states can do to prevent improper payments … is to take immediate steps when there is a New Hires cross-match 'hit.' Untimely investigation of … new hire "hits" halts the detection of improper payments and increases claimant overpayments."
Source: USDOL

[4] WSD has not contested audit finding #10 in December 2021 USDOL audit.

reporting new employment. Claims that produce matches with these databases require investigation by WSD staff to resolve. A December 2020 USDOL audit of WSD found 8,664 claims flagged through cross-matches with these databases had yet to be investigated due to the increased workload caused by the pandemic. By March 2021, the backlog of uninvestigated claims increased 45 percent to 12.5 thousand. According to USDOL, the department has never stopped investigating "hits" but reallocation of staff to respond to the pandemic workflow left it with only three investigators.

Chart 6. UI Claims and Uninvestigated Hits



Note: Fraud prevention activities included staffing and technology solutions

Source: LFC analysis of WSD data

Quickly addressing hits from these databases is crucial because delay can potentially increase the amount of improper payments. As USDOL stated, "The most important thing that states can do to prevent improper payments … is to take immediate steps when there is a New Hires cross-match 'hit.'"

At the state's current rate, it is estimated it will take 84 weeks, or about 1.5 years, to clear the backlog.

California had a backlog of unprocessed claims they addressed by creating a staffing and workload projection tool.

To address the backlog, WSD added 11 additional staff, three from within the department and eight contract staff from Deloitte. WSD also prioritized cases by creating an audit triage team. While WSD's actions have accelerated the number of cases being investigated, the increase in speed is not enough to meaningfully reduce the backlog. In October 2020, staff were investigating 74 claims a week; by March 2021, the weekly average doubled to 149. However, at this rate, the state will take an estimated 84 weeks, or about 1.5 years, to clear the backlog. The state needs a different strategy to more quickly reduce the backlog. One potential solution would be to increase the number of contracted staff who can quickly clear cases or who can be used to replace investigators who were allocated to other roles during the pandemic. The backlog of cases should be monitored regularly until it is fully resolved.

A similar situation arose in California where staffing decisions exacerbated a significant backlog caused by the pandemic. A team created a "staffing and workload projection tool" that identified 16 areas of work that would help eliminate its backload within three months (from September 2020 to January 2021). Workload projections embedded in the tool relied not merely on retrospective analysis of past economic trends (such as seasonality in particular labor markets) but also forecasted economic trends that might be on the horizon. New Mexico may want to consider such a tool to address its backlogs.

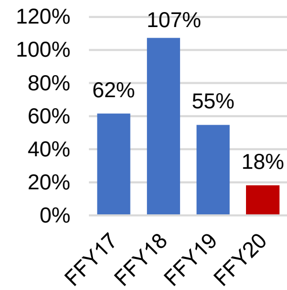
New Mexico's recovery rate of overpayments fell to less than 20 percent in FFY20. In addition to the increase in uninvestigated claims, the recovery rate of overpayments dropped by more than half from FFY19 to FFY20. Using USDOL data, the average recovery rate of overpayments from FFY17 to FFY19 was calculated as 75 percent, with a high of 107 percent in FFY18. However, recovery rates dropped to 18 percent in FFY20. This relatively low rate of recovery coupled with a higher rate of improper payments means, at the close of FFY20, the state had $43 million in outstanding (or unrecovered) improper payments for the standard unemployment program. PUA recovery rates are likely to be lower than the state recovery rate, especially because the state is waiving PUA overpayments for individuals who apply and who are found to have been overpaid due to no fault of their own.

Fraud rates have more than doubled since 2018. Fraud is a type of improper payment due to deliberate deception. According to USDOL federal fiscal year benefit accuracy measurement reports, fraud rates were at the low level of 1.8 percent and 1.9 percent in FFY16 and FFY18, respectively. However, the rate more than doubled in FFY19 and increased to 4.4 percent in FFY20. It should be noted FFY20 data includes information through September 2020 and, therefore, does not cover all of the pandemic. New Mexico's most current fraud rate is at the highest level since at least FFY12. Additionally, fraud has made up a larger proportion of improper payments in recent years, constituting 12 percent of improper payments in FY14 and over 50 percent in FFY19 and FFY20 (see Appendix H).

USDOL cautions against comparing fraud rates across states due to differences in state laws, and it does not provide a benchmark for states to meet. However, the average fraud rate nationally in FFY20 was 4.3 percent, with a high of 20.9 percent and a low of 0 percent. While these data indicate New Mexico is performing about average at preventing fraud within the UI system, rising fraud rates require increased attention by the state.

Identity theft associated with government benefits increased more than 500 percent from 2019 to 2020 in New Mexico. In 2020, fraud of government documents and benefits rose significantly. This included fraud associated with UI, Medicaid, and other programs. The Federal Trade Commission (FTC) found government benefits fraud increased 2,292 percent nationally from 2019 to 2020. However, the analysis did not break out fraud for each specific type of government benefits.[5]

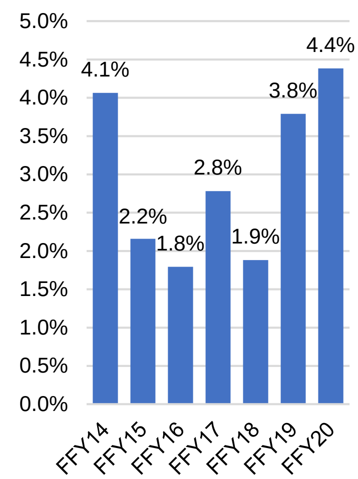
Chart 7. Rate of Overpayments Recovered, FFY17 to FFY20



Note: Graph only includes overpayments from standard unemployment and does not include federal programs. Recovery can be over 100 percent if the state recovers money from a different time period or if benefit accuracy measurements are underestimates.

Source: USDOL data

Chart 8. Fraud Rate, FFY12 to FFY20

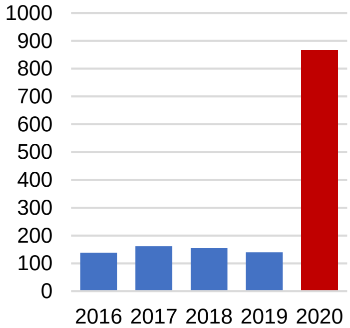


Note: These rates are for only regular unemployment insurances. USDOL does not report on improper payment rates for federal unemployment insurance programs. IPPI stands for the Improper Payment Iniative, which WSD contracted with Deloitte to complete. The fraud rate captures fraud due to not reporting earnings (i.e. program fraud) and not imposter claims (i.e.indentity theft).

Source: USDOL

[5] Federal Trade Commission (2020). Consumer Sentinel Network 2020 Databook.

Chart 9. New Mexico Reports of Government Documents or Benefits Fraud, 2016 to 2020



Source: FTC, Consumer Sentinel Network Reports

In New Mexico, fraud of government documents and benefits went from making up roughly 5 percent of identity theft reports to 40 percent of identity theft reports. According to FTC, in New Mexico there were 140 reports of this type of identity theft in 2019 and 867 reports in 2020. However, WSD reports much higher rates of confirmed identity theft, indicating the problem may be even greater, with the department identifying 3,492 cases of identity theft for which they stopped payments and withdrew claims. The state likely needs increased attention to identify theft, particularly related to government benefits.

Case Study: A Victim of Identity Theft and Available State Resources
On April 15, 2021, a state of New Mexico employee received a text message from WSD saying, "Your UI account is locked and requires ID verification." Because the employee was fully employed and had not filed for benefits, she realized she was likely the victim of identity theft. On calling WSD's fraud investigation message line at 505-24-FRAUD, she was instructed via voicemail to submit relevant information via email to id.verify@state.nm.us. She found advice from the Federal Trade Commission to freeze her credit. While her credit remains protected, she does not know if the issue has been resolved by WSD.

With identity theft on the rise, quickly responding to these cases is both critical and challenging. In addition to WSD, the New Mexico Attorney General works to combat identity theft with partners across state agencies and local government by offering training, education, and victim support services.

New Mexico does not require reporting of fraud detection and prevention activity to the Legislature. The California Legislature statutorily requires the state's Employment Development Department to annually report on its fraud deterrence and detection activities. The report includes the number of cases under investigation, number of criminal complaints filed, completed prosecutions, fraud overpayments established, and fraudulent benefits prevented from multiple employment programs, including unemployment insurance, state disability insurance, employment tax collection, and Workforce Innovation and Opportunity Act programs (see Appendix I for more detail from California's report). By providing this information, the Legislature can determine if the fraud prevention and detection programs are meeting targeted goals and how to improve them. New Mexico does not currently require annual fraud detection reports from WSD. However, if the state required performance measures on fraud detection, it would likely improve legislative knowledge around the risk to program integrity within unemployment insurance.

Inadequate oversight and incorrect interpretations of state law and federal guidance led to inaccurate calculation of taxes and benefits.

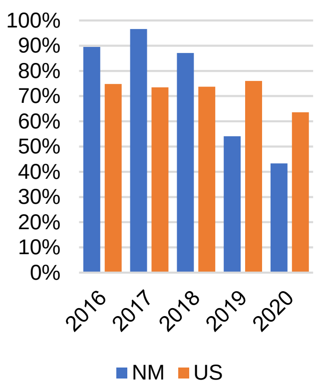
A December 2020 USDOL audit and a February 2021 audit from the Office of the State Auditor (OSA) identified accounting and benefit determination errors made by WSD that were likely caused by not having sufficient staff; inadequate staff training, poor oversight, and turnover; and incorrect interpretation of federal guidance. Similar issues contributed to WSD failing three performance measures required by USDOL. Additionally, the state failed to fully implement legislation passed during the first special legislative session in 2020 to hold employer taxes harmless from layoffs that occurred during the pandemic.

Table 2. Examples of New Mexico Incorrectly Interpreting State Law and Federal Guidance

State Law	*State Action*
Layoffs that occurred during a prohibited period during the pandemic will not be used to calculate the experience history of the employer. NMSA 1978, Section 51-1-11 (Q)	For at least eight employers, UI taxes increased during the prohibited period. WSD identified roughly 7,000 employers that experienced increases in their UI taxes
Federal Guidance	*State Action*
"… the base period to be utilized in computing the [Disaster Unemployment Assistance] weekly amount shall be the most recent tax year." 20 CFR § 625.6	In April 2020, WSD posted that 2018 and 2019 tax documents could be used to file a PUA claim.
"… the claim **must** be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed…." UIPL 16-20, Change 1, Question 4	WSD choose to not backdate PUA claims to the date the claimant first became unemployed due to a Covid-19-related reason in order to deter fraudulent activity and increase program integrity. (2020 USDOL audit)
"Recovery of any overpayment of [Disaster Unemployment Assistance] shall not be enforced by the State agency until the determination establishing the overpayment has become final..." 20 CFR § 625.14	OSA found in 44 of 45 PUA overpayments tested the overpayment recovery process began immediately prior to the overpayment becoming final. (2021 OSA audit). WSD has submitted a letter to DOL explaining their overpayment procedures in this circumstance and is awaiting approval.
Section 2107(e) of the CARES Act does not permit the establishment of a penalty on PUA or PEUC.	WSD's assesses a penalty for overpayment and fraud determinations for PUA and PEUC. (2020 USDOL audit). WSD and DOL are in communication to resolve this issue with some components still outstanding.
"Employers [must] provide notification of the availability of UI to employees at the time of separation from employment." UIPL 13-20	Each employer…shall post and maintain printed notices to individuals in its employ informing them they are covered under the provisions of the Unemployment Compensation Law of New Mexico (NMAC 11.3.400.403)

Source: USDOL, OSA, WSD

Chart 10. Quality of Separation Determinations, New Mexico vs United States, 2016 to 2020



Source: USDOL

Table 3. Employer Tax Rates 2020 to 2021, Due to Increased Benefits Charged

Employer	2020 Tax Rate	2021 Tax Rate	% Difference
A	0.33%	0.74%	124%
B	1.18%	5.45%	362%
C	0.33%	0.80%	142%
D	0.33%	1.50%	355%
E	0.33%	0.99%	200%
F	0.33%	0.61%	85%
G	0.33%	2.53%	667%
H	0.33%	3.80%	1052%

Source: Local businesses providing information from WSD

Failure to review claims accurately about half of the time resulted in the inaccurate delivery of benefits. To qualify for benefits, an unemployed worker must be involuntarily unemployed or voluntarily unemployed for good cause. Determinations about the reasons for a job loss impact the timely and accurate delivery of benefits to eligible workers, as well as tax rates for employers. According to USDOL, these "nonmonetary separation determinations" should be accurate at least 75 percent of the time. However, New Mexico reported an accuracy rate of 43.3 percent in 2020. In its state quality service plan submitted in October 2020, WSD cited staffing issues as the reason for the deficiency, including retiring staff, staff leaving for other agencies, staff promotions, and reallocation of staff to answer phone calls and other temporary assignments. WSD plans to increase the review of claims and training to address the issue. While WSD noted additional training will be provided to adjudication staff, regular updates to its IT system to ensure maximum automation where possible could also be helpful.

Employer unemployment insurance taxes increased in multiple instances from 2020 to 2021, potentially violating state law. Funds deposited in the UI trust fund come from employer taxes. The *experience rating* and the *reserve factor* determine an employer's tax rate. The *experience rating* comes from the history of an employer's workers filing for unemployment benefits. The *reserve factor* relates to the solvency of the state's UI trust fund. Action during the first special legislative session in 2020 froze both the experience rating and the reserve factor. This legislation states any layoffs between March 1, 2020, and June 30, 2021, will not be used to calculate the experience history of the employer. Additionally, for 2021, the reserve factor will stay the same as the 2020 level (Section 51-1-11 NMSA 1978). While the prohibited period began March 2020, the experience factor is calculated beginning January 2020. Therefore, it is possible an employer's taxes could still increase due to layoffs that occurred between January and March 2020. (See Appendix J for description of employer tax calculations).

LFC staff obtained tax information from a convenience sample of ten employers that experienced increases in their UI tax rates from 2020 to 2021. In eight instances, the tax increase was due to employee layoffs charged against the employer that likely occurred during the protected period. In another two instances, the causes for these increases require further investigation by WSD. According to *The Santa Fe New Mexican*, WSD identified roughly 7,000 employers that experienced increases in their UI taxes and 9,000 employers with UI tax rate decreases. WSD has sent a notice to all employers that experienced a tax increase informing them that their rate increase is under review and extending quarterly tax payments to allow for completion of the rate review. For the state to know the extent of the incorrect implementation of state law, WSD and Office of the State Auditor should conduct a thorough review of all employer UI tax increases that went into effect January 2021.

Incorrect interpretation of federal guidance increased risks to program integrity, including potential over- and underpayments. WSD provided incorrect guidance on tax information required for Pandemic Unemployment Assistance (PUA) applications, likely leading to increased overpayments of

PUA claims. In April 2020, WSD posted that 2018 and 2019 tax documents could be used to file a PUA claim; however, only 2019 tax documents were allowed per USDOL. While WSD quickly corrected this mistake, many individuals filed for PUA and may have received overpayment notices because they provided the incorrect tax filing information.

WSD also did not ensure backdating for all PUA claims that qualified, potentially leading to underpayment of some PUA claims. From August 2020 through November 2020, WSD required claimants provide good cause to backdate PUA claims. This practice was not required by federal rule and, while it may have decreased overpayments, it likely led to underpayment of claims. Providing increased training regarding federal guidance could lead to more accurate interpretation of guidance in the future. One approach would be to expand the agency's training modules (or "toolbox talks"), noted as a promising practice by USDOL.

Inadequate fiscal oversight created inconsistent accounting practices and untimely reporting, leading to inaccurate and untimely benefit delivery. In the February 2021 audit, OSA identified turnover within the accounting department, including the departure of the chief financial officer (CFO) and accounting complexities and disruptions due to the pandemic as the cause of inconsistent accounting policies and untimely reporting. According to the OSA audit, in 44 of 45 tested claims, the overpayment recovery process began prior to the overpayment becoming finalized, a practice in contradiction of federal guidance. This could potentially lead to the state owing recovered overpayments back to claimants. WSD has submitted to DOL an explanation of their practices and is awaiting response and approval. An acting CFO has been in place since July 2020. The WSD secretary resigned on April 16, 2021, and an acting secretary assumed the position.

The December 2020 USDOL audit highlighted three findings with a fiscal impact likely relating to poor fiscal oversight. The findings stated WSD did not follow state or federal accounting guidelines regarding CARES Act grant awards. The issues related to a misclassification of funds, leading to a lack of transparency, and insufficient documentation on employee time and effort and records for equipment.

A failure to review system access increased risk for fraud. The OSA audit also found WSD had not performed a formal user access review of its IT systems in 2020. This could lead to former employees having access to the state's UI system, which increases the state's risk for fraud. The audit recommends WSD establish policies, procedures, and controls to comply with the Department of Information Technology's requirements to review user access at least annually. WSD responded it will have policies and procedures in place by June 2021 to ensure these checks are done each summer.

New Mexico does not require employers to notify workers at the time of separation about unemployment insurance, a practice required by USDOL. On registering a business with WSD, New Mexico employers, like most employers across the country, are required to display a workplace poster with information about unemployment insurance. However, as part of the

Families First Coronavirus Response Act (FFCR), the federal government required states to not only post a notice but to also notify separated employees (by mail, email, text message, or flyer) about their rights to UI benefits. In guidance to state agencies, USDOL recommended states amend their statute or regulation, issuing an emergency regulation if necessary, to comply with this requirement. USDOL provided model language that could be used in the notice. A November 2020 review of state workforce agency requirements by Ernst & Young found New Mexico was one of 17 states that did not have information available online about this new requirement. While failure to directly notify separated workers about UI does not impact improper payment rates, it may impact the number of eligible workers who apply for and receive benefits. (See Appendix K).

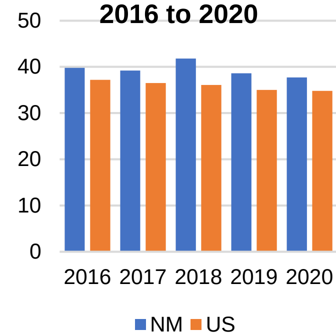
Waived Federal Requirements and Relatively High Benefits May Contribute to Disincentives to Find Work

The state has a high rate of unemployment and has not met its targets for getting workers who lost their jobs back to work, according to data from the Workforce Innovation Opportunities Act (WIOA) program presented in an August 2020 LFC Policy Spotlight. WIOA is a federally funded employment services program that serves dislocated workers, youth, and adults through career and education programs. New Mexico was in the bottom 20 percent of all states for five of the six WIOA performance metrics, including employment retention and average earnings.

New Mexico's lower-than-average performance in reemploying workers is particularly problematic because of the long-term negative impacts of unemployment. Even prior to the pandemic, from January 2020 through March 2020, 38.4 percent of workers on unemployment insurance in New Mexico exhausted their benefits, with workers staying on UI an average of 13.5 weeks. During the pandemic, 75 percent of staff from employment services were reallocated to help with unemployment insurance.

As of May 2021, there are an estimated 64 thousand jobs available in the state that need to be filled. By the state continuing to waive the work search requirement through the beginning of May 2021, it likely contributed to a disincentive for some claimants to look for work or enroll in training. The state can help workers through expanding its mandatory case management program for unemployment recipients.

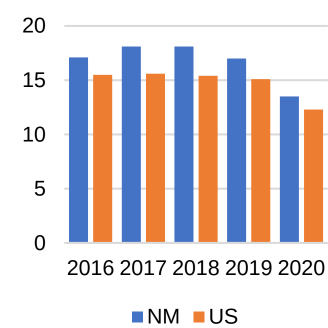
Chart 11. Exhaustion Rate of UI, New Mexico vs United States, 2016 to 2020



Note: Only first quarter data was used for each year.

Source: USDOL

Chart 12. Average Duration on UI, New Mexico vs United States, 2016 to 2020
(in weeks)



Note: Only first quarter data was used for each year.

Source: USDOL

New Mexicans stay on unemployment longer and tend to exhaust benefits more than national averages.

New Mexico's higher than average exhaustion rate – the share of individuals staying on unemployment for the full time allowed – and duration – average length of time on unemployment – impact the solvency of the unemployment insurance trust fund because individuals who stay on unemployment longer draw more money from the trust fund. Prior to the pandemic, exhaustion rates peaked in 2018 at roughly 42 percent of those receiving unemployment insurance benefits, while duration rates peaked in 2017. The state may need to examine how its goals for the unemployment insurance system, the effects of long-term unemployment, and the costs of exhaustion of benefits impact both the state and the unemployed.

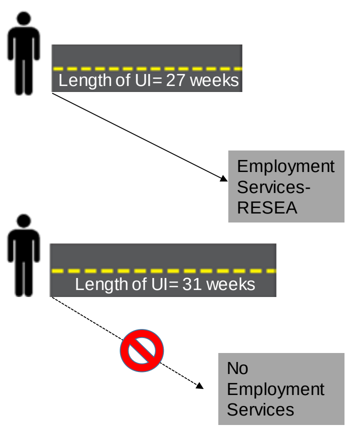
New Mexico could save at least an estimated $5.1 million by reducing its rate of exhaustion of unemployment benefits to the national average. In 2019, 38.2 percent of New Mexican workers on UI exhausted their benefits, a rate 8.8 percent above the national average. If those workers had received benefits for even one less week, the state would have spent $5.1 million less from the UI trust fund. Improving trust fund solvency is of particular importance because New Mexico (like several other states) depleted its trust fund reserves in 2020 due to the impact of the pandemic. Because New Mexico

Long Term Unemployment:

- Reduces income by 40 percent;
- Decreases reemployment wages by 5 percent to 15 percent;
- Increases applications to social security disability insurance;
- Increases mortality rates by 10 percent to 15 percent;
- Increases student grade retention;
- Decreases student high school graduation; and
- Increases arrests in a community by 14 percent.

Source: Urban Institute

Figure 3. Impact of Employment Services on UI Duration



Note: The Reemployment Services and Eligibility Assessment program is a type of evidence-based employment service that provides mandatory case management to UI recipients.

Source: Adapted from Nevada REA evaluation

As the country continues to re-open, states must revisit whether such waivers are still necessary to respond to the spread of COVID-19.

Source: USDOL UIPL 13-21

had unemployment rates 22 percent above the national average in December 2020, and exhaustion rates have been 8 percent above the national average from 2016 to 2020, the state may need to focus on reemployment.

Lowering exhaustion rates can improve long-term negative impacts of unemployment. In addition to a fiscal impact, according to the Urban Institute, long-term unemployment leads to negative social determinants of health, including lower life expectancy, decreased high school graduation rates, and increased crime. Given these negative and long-term social, psychological, and economic impacts of unemployment, and the negative impact to the state trust fund, the department may need to strengthen programs that help workers reduce their length of time on UI. Due to the large positive impact of lowering unemployment exhaustion and duration rates, the state should regularly monitor and report these rates through performance measures.

The state contributed to a disincentive for claimants to look for work or enroll in training by waiving the work search requirement.

As part of WSD's overall mission, the UI system has a goal to help employ workers. While ensuring those eligible receive benefits is essential, the state should also examine how individuals are able to successfully reengage with the workforce. For some workers, retraining or gaining new skills may be needed. The disconnect between UI and reemployment services is a problem nationally, as highlighted in a 2012 Organization for Economic Cooperation and Development report that stated unemployment insurance would provide greater value if "offered in tandem with a more 'active' set of reemployment services that can connect job seekers with job opportunities, facilitate job search, and guide individuals toward training and education."

One critical way to better connect those receiving UI with the job market is to require UI claimants to look for work or be enrolled in an approved training program. During the Covid-19 pandemic, New Mexico, like many states, waived its work search requirement due to public health concerns. This requirement remained waived through the first week of May even though the state had relaxed many public health restrictions. This waiver coupled with other factors meant that claimants might not have had an external incentive to look for work or start a training program until they are about to exhaust benefits. Benefits may be paying more than a claimant would make working, due to the increased federal benefits that expire in September 2021 and the low median incomes in New Mexico. Additional barriers to return to work likely existed including: limited child care, inconsistent school openings and availability of after care, reduced public transportation and unequal access to healthcare. As the pandemic recedes and these barriers become less prevalent, the state should consider how to best address workers' immediate needs to replace lost wages while creating meaningful training and job opportunities.

Half of states reinstated the work search requirement before New Mexico. According to the National Governor's Association, at least Arkansas and Missouri reinstated work search requirements in summer 2020. Most neighboring states to New Mexico have removed the waiver and as of April 29, 2021, a total of 25 states have done so (see Appendix L for full list of states with removed work search waiver). New Mexico reinstated the work search requirement on May 9. In guidance to states, USDOL said the suspension of the work search requirement is permissible under the federal law only as needed to respond to the spread of Covid-19 and only on an emergency temporary basis.

Table 4. Waived Work Search Requirements and Unemployment Rates

State	Date Work Search Waiver Ended	Unemployment Rate March 2021
Colorado	2/2021	6.4%
Texas	11/2020	6.9%
Oklahoma	10/2020	4.2%
Nevada	5/2021	8.1%
New Mexico	5/2021	8.3%
Arizona	Still Waived	6.7%

See Appendix L for complete list of states who have reinstated work requirements.

Source: BLS, state UI divisions

Federal stimulus payments may disincentivize New Mexicans from returning to work. According to a paper from the National Bureau of Economic Research (NBER), between April 2020 and July 2020, 76 percent of workers on UI nationwide received benefits in amounts higher than their lost wages, that is "replacement rates" above 100 percent. NBER found high replacement rates create disincentives to return to work. This may be particularly true in states with low median household incomes. New Mexico has the sixth lowest median household income in the country at $51.9 thousand and has the third highest wage replacement rate in the nation at 162 percent of lost wages (See Appendix M).

For example, a worker earning the median per capita income of $880 per week would receive an estimated $467 per week on UI prior to the pandemic and an estimated $1,067 per week when receiving $600 weekly Federal Pandemic Unemployment Compensation (FPUC) payments during the first months of the pandemic. This disincentive to return to work is felt by New Mexico businesses. According to KRQE, Bernalillo County businesses are reporting they are having trouble recruiting and hiring, citing the additional unemployment benefits as a potential reason.

Table 5. States with Highest Replacement Wages and Replacement Wages in Neighboring States

State	Replacement Rate with FPUC	Replacement Rate without FPUC
State with Highest Replacement Rates		
Oklahoma	165%	57%
Georgia	163%	63%
New Mexico	**162%**	**53%**
Neighboring states		
Texas	153%	53%
Colorado	150%	60%
Arizona	119%	34%

Source: NBER, Gangong et al. 2020

"Why would anybody want to … start at a minimum wage job when they are earning more money … on unemployment?"
-Albuquerque business owner
Source: *Albuquerque Journal*

Montana is ending its participation in the federal unemployment program that provides extra weekly benefit amounts. Beginning June 27, unemployed workers in Montana will no longer receive the extra $300 in weekly benefits provided through the Federal Pandemic Unemployment Compensation (FPUC) program. Instead, the state will launch a new program that provides a onetime $1,200 bonus to workers who return to work for four weeks. $15 million in funding has been set aside for the program which could provide bonuses to as many as 12,500 workers. Additionally, the state will require the unemployed receiving benefits to return to actively searching for work, a requirement that was waived in Montana at the beginning of the pandemic.

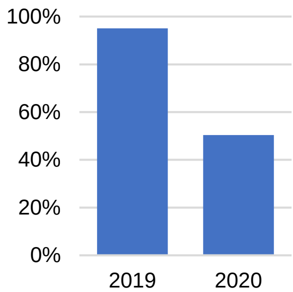
Recipients of unemployment in Montana typically can receive between $151 and $519 and with the federal boost were receiving $451 and $810. In New Mexico, the minimum benefit amount is $90 and the maximum is $494 and with the federal funds becomes $390 and $794. In March 2021, the unemployment rate in Montana was 3.8 percent compared with 8.3 percent in New Mexico.

As May 2021, Alabama, Arkansas, Mississippi, South Carolina, and Tennessee have also stopped participating in the federal benefit programs.

Source: CNBC, The Hill

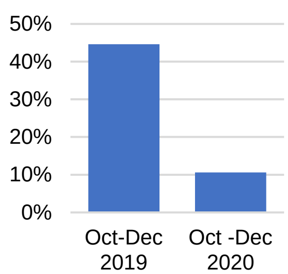
The Reemployment Services and Eligibility Assessment (RESEA) program is a mandatory case management program for those found to be at highest risk of exhausting UI benefits. It typically requires these UI recipients to meet with a case worker to determine services needed to help get claimants reemployed.

Chart 13. Percent of Selected Claimants Participating in RESEA, 2019 vs 2020



Note: Used April through December in both years. Participation is defined as completing an RESEA meeting.
Source: USDOL

Chart 14. Percent of New Mexico TANF Recipients Fulfilling 2-Parent Work Participation Requirement



Source: HSD

However, with the reduction in federal stimulus benefits from $600 to $300 per week, there may be less of an incentive to stay on unemployment (although this may not be the case for minimum wage jobs.) As the pandemic subsides and children return to school, fewer workers may have reasons for staying on unemployment (such as health concerns or needing to care for children at home).

Participation in an evidence-based reemployment program dropped by 47 percent during the pandemic. The reemployment services and eligibility assessment (RESEA) program has been found to be effective in reducing length of time on unemployment and limiting the likelihood an individual becomes a repeat user of the UI system. The program has a $17 return on investment for every dollar spent in New Mexico, as mentioned in the August 2020 LFC *Workforce Development Policy Spotlight*. According to WSD, RESEA only serves 6,200 UI claimants, or an estimated 4.2 percent of the number of individuals who filed an initial claim in the first half of FY21.

RESEA program participation dropped significantly during the pandemic, from 95 percent of selected participants completing at least one visit to only 50 percent. One likely reason for this drop may be due to the waived work search requirement. A similar drop occurred with participants in the state's Temporary Assistance to Needy Families (TANF) program, where a work search requirement for its New Mexico Works Program was also waived at the beginning of the pandemic. According to a National Governor's Association memo, many states canceled or changed how they implemented the RESEA program because of Covid-19. New Mexico paused the program at the onset of the pandemic and restarted it in the Fall. In January 2021 federal guidance, USDOL advises RESEA services may need to be adjusted when work search is waived but continues to state the program is mandatory once a claimant is notified.

The Legislature appropriated $5 million for an evidence-based job training program to serve up to 46 thousand New Mexicans, but it was vetoed. New Mexico may want to increase use of reemployment services, particularly for those likely to stay on UI for an extended period or for those who are likely to become repeat users of UI without additional services. Such programs can reduce repeat use of UI. A 2014 USDOL Bureau of Labor Statistics article found, in states that used reemployment services (such as RESEA), those enrolled in the program were less likely to have repeat use of UI within one year and received between $348 and $424 less total UI benefits. New Mexico should determine how to fund an expanded RESEA program because these services are cost beneficial and recovery from the current economic downturn may last years. The Department of Finance and Administration could designate American Rescue Plan Act (ARPA) federal funds be used for this purpose.

WSD, the Higher Education Department and New Mexico Workforce Connections are introducing a comprehensive plan for assisting workers with training and reemployment services. This initiative creates a single statewide system for both individuals and businesses to access training, education, and employment resources. Through these resources, UI claimants can both look for work and learn new or advanced skills to get a better job. The initiative includes professional development workshops and financial aid resources. A partnership with the state's higher education institutions allows schools to create short-term "direct to career" training programs. Because this is a new program, assessment of it is important to determine whether it leads to more UI claimants reentering the workforce and whether a similar strategy should be used in future recessions.

U.S. Treasury Affirmed New Mexico's Legislative Spending Plan to Address Trust Fund Insolvency

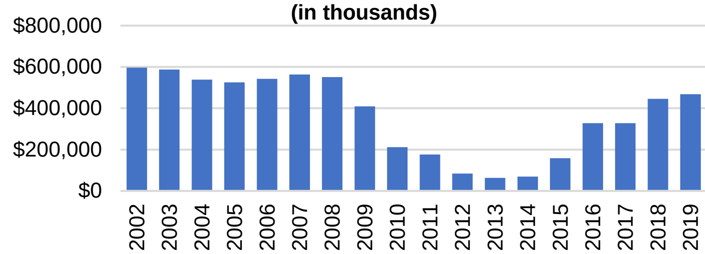
Table 6. USDOL Rating of New Mexico Trust Fund Solvency, 2014 to 2020

Year	USDOL rating of Trust Fund
2020	green
2019	green
2018	green
2017	yellow
2016	red
2015	red
2014	red

Source: USDOL

For the first time since at least 1974, New Mexico's UI trust fund became insolvent in 2020. The solvency of the trust fund depends on two components: the amount of money going out through UI benefits being paid to eligible workers and the amount of money coming in through employer taxes. From 2002 through 2019, the trust fund averaged $369 million in reserve. In the aftermath of the Great Recession from 2012 through 2014, the trust fund reserves were less than $100 million. However, the fund reached adequate levels by 2018. According to the U.S. Department of Labor, the fund received a strong "green" rating in 2018, 2019, and 2020 (prior to the pandemic), up from cautious and concerning "yellow" and "red" ratings from 2014 through 2017.

Chart 15. Average Unemployment Insurance Trust Fund Balance, 2002 to 2019
(in thousands)

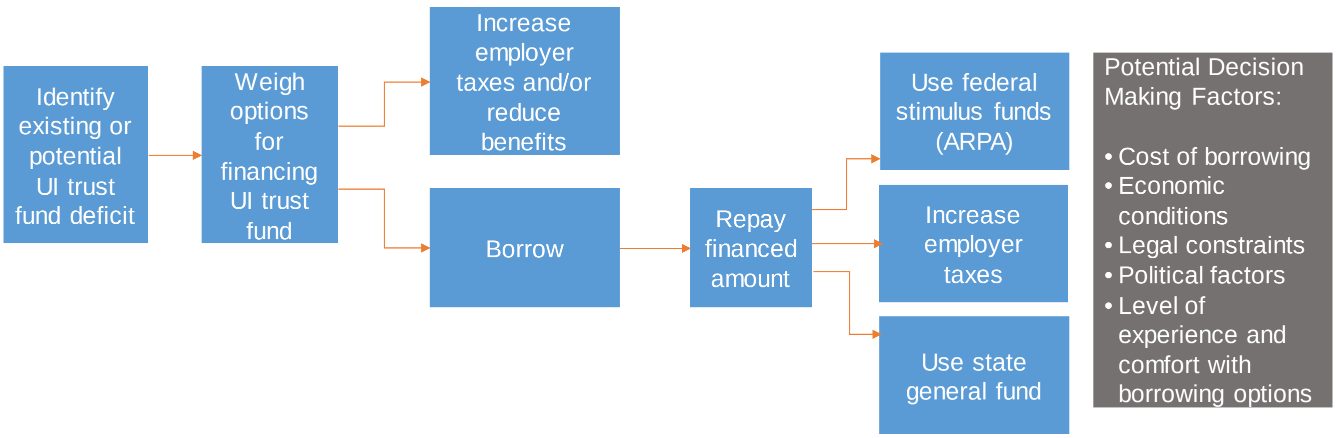


Source: US Treasury

Federal stimulus funds should be used to repay the $278 million federal loan and supplement New Mexico's insolvent unemployment insurance trust fund.

New Mexico will need to address how to regain solvency of its trust fund and can consider a number of potential options to do so. The primary option is for the Legislature to appropriate the use of federal stimulus funds from the American Recovery Plan Act of 2021 (ARPA) to repay the loan and replenish the fund. If the state does not repay the loan, then the federal government will impose increased employer taxes.

Figure 4. Decisions Involved in Financing Unemployment Insurance Trust Fund Deficits



Source: Adapted from the Urban Institute

The state borrowed $278 million from the federal government and allocated $52.9 million from the CARES coronavirus relief funds to address trust fund insolvency. During the second special session in 2020, the state allocated $194 million of CARES Act funds to WSD for additional unemployment benefits of $1,200 per person. WSD spent $143.6 million and the unused $50.4 million, as well as $2.5 million of unused funds from other uses, was deposited in the UI trust fund. Additionally, the state borrowed $278 million from the federal government through a Title XII grant. Beginning September 2021, the state will be required to pay interest on the federal loan if the principal has not yet been repaid at an interest rate of 2.2777 percent. However, the state could take action to defer or delay interest payment.

If New Mexico does not repay its federal loan, the federal government must recoup it by raising taxes on employers. While state payroll taxes fund unemployment cash benefits, the Federal Unemployment Tax Act (FUTA) also supports New Mexico's unemployment insurance system and covers a federal share of administering the UI program. FUTA pays for half of extended unemployment benefits during periods of high unemployment and provides for a fund from which states can borrow, when necessary, to pay for benefits. If a state does not repay its federal loan, the federal government must recoup it by raising UI taxes on employers. The regular FUTA is calculated by multiplying the first $7,000 earned by an employee by 6 percent. Employers who paid wages subject to unemployment tax can receive a credit of 5.4 percent and pay only 0.6 percent or $42 (0.006 X $7,000). The credit is reduced for all employers when a state has an outstanding loan balance, effectively raising taxes by 0.3 percent for each year the state has not repaid its loan in full. This would effectively double the tax rate paid by 79 percent of employers in 2020 who paid the lowest rate of 0.33 percent.

LFC staff contend that the Legislature has authority to appropriate federal funds. An April 2021 Legislative Finance Hearing Brief on the tracking of federal funds describes the legislative authority to appropriate federal funds. State law (Section 6-4-2 NMSA 1978) dictates that the State Treasurer must credit all revenues not otherwise allocated by law to the general fund, and that expenditures from the general fund shall be made only in accordance with appropriations authorized by the Legislature. Moreover, Article IV, § 30 of the State Constitution dictates that money shall be paid out of the state treasury only upon appropriations made by the Legislature, and every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied. Despite the vetoes, in accordance with state law, LFC staff contend that the ARPA money will still need to be deposited into the general fund and appropriated by the Legislature before its expenditure.

In March 2020, the Legislature earmarked $600 million of federal stimulus funds to replenish the trust fund and repay the federal loan; however, the Governor vetoed the appropriation. Congressional estimates show the New Mexico state government will receive $1.75 billion of ARPA funds, signed March 2021, which would be available until the end of 2024. Additionally, through Senate Bill 377, the Legislature allocated $100 million from the state general fund to repay the federal loan and the Governor signed the bill. The aid for the trust fund (as outlined in Table 7) reflects the estimated amount needed to pay benefits through the end of 2021 and help restore the trust fund balances to cover future benefit costs. Currently, LFC staff project the amount of the federal loan to be repaid will be up to an estimated $243 million in FY22.

Table 7. UI Trust Fund Projection Scenario

UI TRUST FUND SOURCES AND USES

(in millions)

	2020		2021				2022			
	2020Q3	2020Q4	2021Q1	2021Q2	2021Q3	2021Q4	2022Q1	2022Q2	2022Q3	2022Q4
BEGINNING BALANCE	**$149.39**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$22.80**	**$19.80**
REVENUE										
Existing UI Tax Revenues*	$51.02	$52.72	$14.90	$65.40	$45.20	$28.70	$21.50	$68.50	$44.80	$29.30
Loan from Federal Gov.	$85.60	$121.00	$45.10	$39.60	$22.20	$26.70	$25.00			$6.20
CARES Act Reversion			$54.00							
TOTAL REVENUE	**$136.62**	**$173.72**	**$114.00**	**$105.00**	**$67.40**	**$55.40**	**$46.50**	**$68.50**	**$44.80**	**$35.50**
TOTAL BENEFIT EXPENDITURES	**$286.01**	**$173.68**	**$114.00**	**$105.00**	**$67.40**	**$55.40**	**$46.50**	**$45.70**	**$47.80**	**$55.30**
ENDING BALANCE	**$0.00**	**$0.03**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$22.80**	**$19.80**	**$0.00**
DEBT OWED AT END OF QUARTER	**$85.60**	**$206.60**	**$251.70**	**$291.30**	**$191.30**	**$218.00**	**$243.00**	**$243.00**	**$243.00**	**$249.20**
Repayment of Federal Loans in 2020 Regular Session				$100.00						

*Tax revenues are subject to change based on WSD tax implementation. Projections assume the reserve factor will increase to 4.0 in CY22.

Source: WSD and LFC files

Federal guidance from the U.S. Treasury clarifies that states can use stimulus funds to both pay back the federal loan and backfill the trust fund to pre-pandemic levels. U.S. Treasury guidance published on May 10, 2021 outlines that states are allowed to use ARPA relief funds to "make deposits into the state account of the Unemployment Trust Fund...up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [May, 2021]." On January 27, 2020, New Mexico's trust fund balance was approximately $460 million and as of May 11, 2011 the federal loan stood at $278 million. The guidance also states that since New Mexico's current unemployment rate is high (i.e. more than two percent higher than the rate in February 2020), the entire stimulus amount of $1.75 billion is available in one payment to the state, rather than two.

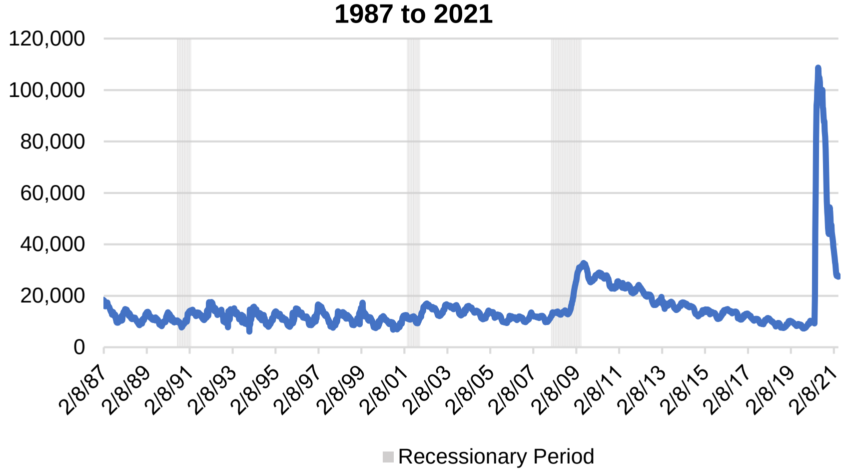
If 2020 data for payout of benefits is included in reserve factor calculations, it could impact employer taxes for 25 years. The reserve factor, which can float between .5 and 4, relates to the solvency of the state's UI Trust Fund. It is determined annually by whether there are less than adequate, adequate or more than adequate reserves in the Fund. For 2020, the reserve factor was 1.6528, indicating that reserves were slightly less than adequate. During the first special legislative session of 2020, the Legislature held the reserve factor constant for 2021 (Section 51-1-11 NMSA 1978). The calculation for the reserve factor includes information about the trust fund balance as well as the average of the five highest years of benefits paid in the last 25 years (NMAC 1978 11.3.400.427, see appendix N). Given the historically high amounts of benefits paid in 2020, the reserve factor calculation would be impacted for up to 25 years.

Table 8. Reserve Factor

Less than adequate reserves	=	Between 1.0001 and 4.0000
Adequate reserves	=	1.0000
More than adequate reserves	=	Between .5000 and .9999

Source: WSD

Chart 16. Unemployment Insurance Continued Claims in New Mexico, 1987 to 2021



Source: U.S. Employment and Training Administration

For the nearly 80 percent of employers paying the lowest employer tax rate of .33 percent in 2020, the impact of removing 2020 data from the reserve factor calculation would likely be minimal. However, for employers who pay a higher tax rate due to increased layoffs, the impact of this change would be greater. For example, an employer that paid a tax rate of 1.18 percent in 2021 could be faced with a tax rate of 1.96 percent in 2022, if 2020 data is included in the reserve factor calculation, holding all else constant. WSD should therefore consider excluding 2020 information in the calculation of the reserve factor because it was an abnormal year during which benefits paid were more than double during the Great Recession. While 2021 benefit claims are likely to be elevated, they do not appear on track to be unusually high compared with other recessionary years.

Next Steps

The state can implement a number of strategies to improve the performance of unemployment insurance. These include strategies that can reduce improper payments and fraud risk, increase accuracy in interpretation of state law and federal guidance, increase employment service utilization to reduce exhaustion rates, and improve the solvency of the trust fund.

To reduce improper payments and fraud risk, the Workforce Solutions Department should, per Federal USDOL guidance, immediately address backlogs; consider hiring additional contract staff to assist in quickly addressing backlogs; regularly monitor the backlog of National Directory of New Hire hits and include updates regarding when the backlog will be fully resolved; Refrain from reassigning essential staff to handle increased call center demands in future periods of high unemployment; In collaboration with the Legislative Finance Committee and the Department of Finance and Administration, add a performance measure examining amount of UI fraud prevented and overpayment rates; consider developing a workload projection tool to assist in determining appropriate staffing levels; and ensure regular review of user permissions of its UI system.

To increase accuracy in interpretation of state law and federal guidance, the Workforce Solutions Department should continue to review and recalculate UI tax rates for employers to determine extent of inappropriate increases, crediting employers when necessary; expand promising training practices such as the "toolbox talks," and require employers to directly notify separated employees of UI program.

To increase use of employment services to reduce exhaustion rates, the Workforce Solutions Department should, in collaboration with the Legislative Finance Committee and the Department of Finance and Administration, add a performance measure examining exhaustion and duration rates for the UI system; expand use of the evidenced-based RESEA program to capture a $17 to $1 return on investment through allocation of federal ARPA funds; and measure the impact of the new comprehensive for assisting workers on reemployment.[6]

To improve the solvency of the trust fund, the Legislature should appropriate ARPA funds to repay the federal loan for UI claims and replenish the state's trust fund to pre-pandemic levels; the Workforce Solutions Department should change rule to exclude 2020 data in reserve factor calculations.

To reduce improper payments and fraud risk, the Workforce Solutions Department should:

- Consider hiring additional contract staff to assist in quickly addressing backlogs;
- Regularly monitor the backlog of National Directory of New Hire hits and report when the backlog will be fully resolved;
- Refrain from reassigning essential staff to handle increased call center demands in future periods of high unemployment; and
- Collaborate with the Legislative Finance Committee and the Department of Finance and Administration to add performance measures on fraud detection and improper payment activities;

To increase accuracy in interpretation of state law and federal guidance, the Workforce Solutions Department should:

- Continue to recalculate UI tax rates for employers;
- Ensure regular review of user permissions; and
- Expand the use of training such as "toolbox talks" to increase knowledge of federal guidance;

To increase use of reemployment services to reduce exhaustion rates, the Workforce Solutions Department should:

- Expand use of the evidence-based RESEA program through ARPA funding; and

To improve the solvency of the trust fund:

- The state should use ARPA funds to repay the federal loan and replenish the UI trust fund.
- The Workforce Solutions Department should change rule to exclude 2020 data in reserve factor calculations.

[6] In a draft copy of the report sent to WSD a recommendation to remove the work search waiver was included but during the report review period the agency enacted the recommendation.

APPENDICES

Appendix A: State and Federal Unemployment Insurance Responsibilities

Category	State	Federal
Overall	• Design UI program within federal requirements. • Set operation methods and directly run the program • Take claims from individuals, determine eligibility and insure timely payment of benefits to workers • Determine employer liability and collects taxes • State statute sets forth benefit structure (eligibility/disqualification provisions, benefit amount) and state tax structure (state taxable wage base and tax rates) Perform audits of a sample of UI claims to determine overpayment rate and system reliability and validity.	• Establish broad guidelines • Ensure conformity and substantial compliance of state law, regulations, rules, and operations with Federal law
1. Benefit and Tax Laws and Rules		
Eligibility	• A sufficient work history • Good cause for unemployment • Is the individual able to work, available for work, and actively searching for work? NMSA 5-1-1-7	• Broad categories of workers who must be covered
Benefit amounts	Equal to just over half of one's salary up to a maximum cap	• Minimum weekly Disaster Unemployment Assistance (DUA) benefit amounts
Length of time of benefits	• 26 weeks	
Extended Benefits (EB)	Periods of high unemployment when EB benefits kick in defined as exceeding 120 percent of the average rate for the same period for the preceding two years or equaling or exceeding five percent. (Section 51-1-48 NMSA 1978)	• Method for triggering the EB program • Temporary changes to EB program due to emergencies (i.e. CARES Act extended EB by 13 weeks and CAA extended EB for 11 weeks)
Tax structure	Taxable wage base and formula for determine employer UI taxes (NMSA 51-1-8-11)	• The floor for the highest state unemployment tax rate to be imposed on employers • Floor for taxable wage base' • Federal Unemployment Tax Act (FUTA) – pays for portion of EB and serves as a fund for state borrowing when unemployment is high • Reports are required of states on their tax contributions operations and tax program activities.
Trust Fund	Unemployment compensation fund defined as having a clearing account, Trust Fund account and benefit account. Money collected goes to the clearing accounts and then deposited in the treasury of the US in the NM state account. NMSA 51-1-19	• Hold and invest all money in the unemployment Trust Fund (UTF) until drawn down by states for the payment of compensation • Title IX, SSA authorizes various components of the federal Unemployment Trust Fund • Title XII, SSA authorizes loans to insolvent state programs

2. Funding and Oversight		
Funding	FY 21 • GF $1,333,400 • OSF $968,700	• Title III, SSA authorizes state grants for administering state UC laws o Resource Justification Model (RJM) used to determine base allocations. o FY 21 Federal Funds $8,065,000
Planning and performance documents	• Performance measures	• UI State Quality Service Plan (SQSP) – 24-month window to plan and implement vision to enhance UI and implement corrective action as needed
Audit	• OSA audit • State samples and runs the BAM data, sending this information to USDOL	• Benefit Accuracy Measurement program (BAM) determines the accuracy of paid and denied claims. NM is required to annually audit a statistical sample of between 360-480 claims and submit them to USDOL to estimate accuracy of payment and to ensure the state is reliably processing claims and meeting benchmarks. There are ~106 BAM variables collected. • USDOL Audit
Program Letters, Advisories and Guidance	• States determine how they choose to enact federal guidance or requirements.	• ETA Program Letters on: RESEA grants and performance measures, emergency program guidance related to fraud, identity theft and recovering of fraud overpayments, replacement IT hardware, etc.
Program Integrity and Claims Processing Requirements	• Activities and reports on UI system integrity and claims processing including improper payment prevention initiative.	• SS Administration cross-match • Systematic Alien Verification for Entitlement • Incarceration cross-matches • Interstate Connection Network (ICON) • Internet Protocol address • Data mining and Data analytics • Connection with Integrity Data Hub and its additional surveillance capabilities (i.e. Suspicious Actor Repository)

Source: NMSA, USDOL

Appendix B: Unemployment Insurance Division Sources and Uses FY16 - FY20 (in thousands)

SOURCES	**FY21**	**FY20**	**FY19**	**FY18**	**FY17**	**FY16**
General Fund Transfers	1334.4	1009.3	254.4	1,022.2	566.3	796.8
Other Transfers	968.70	450	1312.7	1,456.3	2,029.2	2,792.2
Federal Revenues	8,065.00	7938.7	66464.2	6,121.2	6,550.1	6,076.7
SOURCES TOTAL	**10,367.10**	**9380.60**	**8,031.3**	**8,599.7**	**9,145.6**	**9,665.7**
USES						
Personal Services and Employee Benefits	7,778.2	7,981.20	6,672.2	6,964.6	7,419.8	7,981.2
Contractual Services	546.0	353.5	347.9	389.5	351.2	353.5
Other	2042.9	1,331.00	995.2	1,246.7	1,374.6	1,331.0
TOTAL USES	**10,367.1**	**8,839.7**	**8,015.3**	**8,600.8**	**9,145.6**	**9,665.7**
FTE						
Permanent	132	132.0	133.0	131.7	141.7	145.3
Term	32	32.0	50.0	50.0	67.0	66.6
TOTAL FTE POSITIONS	**164.0**	**164.0**	**183.0**	**181.7**	**208.7**	**211.9**

Source: LFC files

Appendix C. WSD Civil Rights Settlement Requirements, Steps Taken, And Deadlines

Settlement Requirements	Steps Taken	Deadlines
WSD will review its current language access plan to ensure it provides meaningful access to the LEP populations and revise its plan as needed	• WSD completed a detailed review of its current language access plan and determined that it provided meaningful access to the LEP populations and that no revisions were needed. • On March 16, 2021, WSD submitted to USDOL a copy of its WSD language access plan for approvals and/or comments. • On April 14, 2021, USDOL contacted WSD and requested additional time to provide their approval and/or comments on the submitted language access plan.	• WSD will begin implementation of the language access plan fifteen (15) days after it receives approval and/or comments from USDOL. • WSD will complete implementation of the language access plan 120 days after it receives approval and/or comments from USDOL.
WSD will continue to assure that LEP individuals are afforded meaningful access to all programs and services by providing language assistance at no cost to LEP individuals including identifying all written or electronic materials that contain vital information and ensuring that these vital documents are translated by a qualified expert and made available to the public.	• WSD compiled a list of all written or electronic materials that contained vital information as well as copies of these vital documents which have been translated into Spanish by a qualified expert. • On May 11, 2021, WSD submitted the list of vital documents along with the compilation of Spanish documents to USDOL for approval and/or comments.	• USDOL is to provide its approval and/or comments on the list of vital documents and the Spanish documents by June 10, 2021 unless additional time is requested. • WSD will begin to translate all vital documents into Vietnamese, a language spoken by a significant number of the population, upon receipt of USDOL's approval and/or comments. • WSD will provide USDOL with a progress report every 45 days after it receives approval and/or comments from USDOL. • WSD will ensure a complete translation of all vital documents into Vietnamese within 180 days after it receives approval and/or comments from USDOL.
WSD will identify and correct any deficiencies with the provision of interpretation services to LEP individuals	• WSD is currently conducting a review of its services, including the UI program and Wage Claim process, to identify all points at which employees may have oral interactions with LEP individuals and is developing corrective actions for any deficiencies discovered.	• By July 13, 2021 WSD will report on the identified deficiencies, • WSD will implement the corrective measures within 120 days after receiving USDOL's approval and/or comments and will notify USDOL in writing when all corrective actions have been fully implemented.

WSD will provide training to all staff on language access obligations	• WSD reviewed and updated its current LEP Training, "Properly Serving the LEP Customer." • On April 19, 2021, WSD submitted its training plan and a copy of the updated LEP Training to USDOL for approval and/or comments.	• WSDWSD • USDOL is to provide its approval and/or comments on the training by May 19, 2021 unless additional time is requested. • WSD will provide initial LEP Training to all employees and provide written documentation that training has occurred within 180 days after it receives approval and/or comments from USDOL.
WSD will provide notice to customers regarding language access rights and the right of individuals with disabilities to fully participate in WSD programs, the right to file claims of delay/denial, and the availability of make-whole relief.	• WSD created a Notice to be displayed in its Workforce Connection Centers, on the WSD website and to be mailed to any identified individuals. • On March 16, 2021, WSD submitted to USDOL a copy of the proposed Notice, in English and in Spanish, for approval and/or comments. • On April 14, 2021, USDOL contacted WSD and requested additional time to provide their approval and/or comments on the submitted Notices	• WSDWSD • WSD will mail, post and publish the approved Notices and provide USDOL with documentation that these actions have been taken within 120 days after it receives approval and/or comments from USDOL. • WSD will provide documentation to USDOL that all claims received have been processed, or provide an explanation as to why the claims have not been process, within 180 days after it receives approval and/or comments from USDOL.
WSD agrees to take steps to address serving individuals with disabilities including those that access UI and engage in wage claims process.	• WSD is currently reviewing its policies, practices and procedures with respect to the claims-filing process for individuals with disabilities. • WSD will draft revisions to remedy any deficiencies found.	• By July 13, 2021, WSD will submit draft revised policies and practices. • WSD will implement all revisions within 75 days after it receives approval and/or comments from USDOL. • WSD will perform annual reviews to ensure that the policies, practices and procedures comply with federal law.
WSD will review claims of complainants and provide remedies.		No specified deadline

Source: WSD, Settlement with USDOL, 2021

Appendix D. Effects of Modernization of Unemployment Insurance Benefits Systems on Five Program Activities in New Mexico[7]

Program Activity	Definition	Improved or Declined After UI Modernization
First payment timeliness	The period of time it takes for an eligible claimant to receive their first payment	**Improved**
Nonmonetary quality	Non-monetary eligibility criteria are divided into two categories: 1. **Separation policies** explore the reason for the job loss. To receive benefits, the worker must be involuntarily unemployed or voluntarily unemployed for good cause. 2. **Non-separation policies** examine whether the worker is able to work, available for work, and in most states, actively seeking work.	**Declined**
Nonmonetary timeliness	Nonmonetary timeliness refers to the period of time with which separation and non-separation findings are reached	**Improved**
Quality of appeals decision	The appeals decision meets the correct parameters.	**Improved**
Average age of appeals	The time it takes the state to decide appeals of benefits findings	**Declined**

Source: Unemployment Insurance Handbook 2017 and "PLA et.al.

[7] The impacts of various program activities were measured the year before (2012) and the year after (2014) modernization.

Appendix E. Performance Report Card for WSD FY21Q2

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

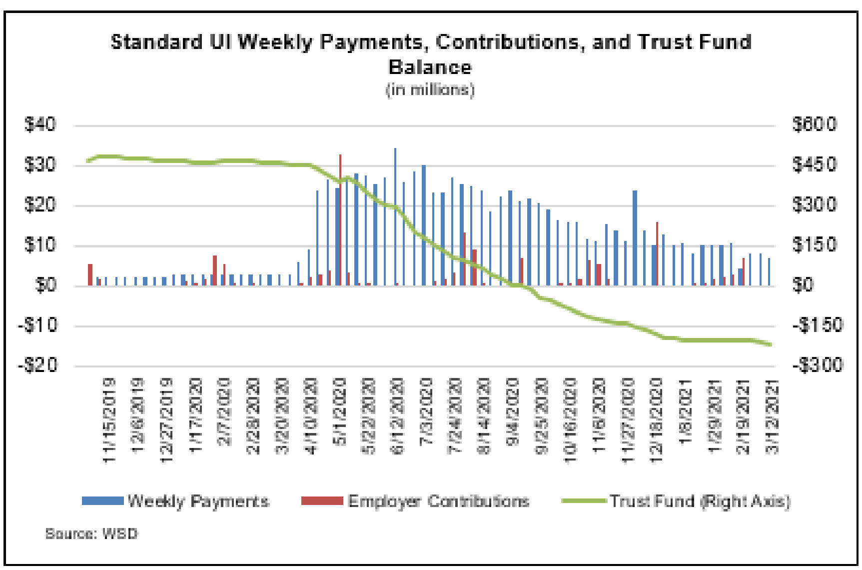
PERFORMANCE REPORT CARD
Workforce Solutions Department
Second Quarter, Fiscal Year 2021

Workforce Solutions

During the second quarter of FY21, WSD continued to process an unprecedented amount of unemployment claims resulting from the Covid-19 public health crisis. By December 2020 there were over 116 thousand continuing claims, including over 47 thousand standard unemployment claims as well as 69 thousand pandemic unemployment and extended benefits claims. The state's unemployment rate in January 2021 was 8.7 percent, down from a high of 13.4 percent in July of 2020, the highest rate since measurement began in 1976.

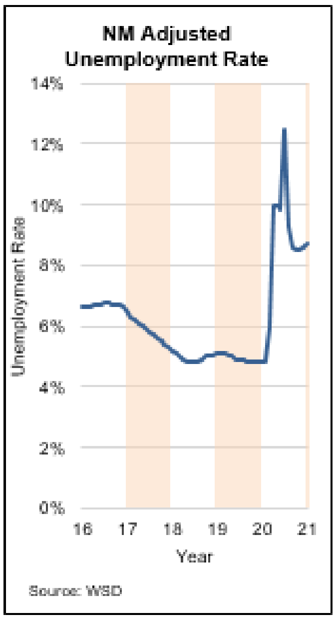
Since March 2020, WSD has paid out more than $3.5 billion in unemployment benefits and will continue to implement and process claims across various state and federal unemployment programs through September 2021. The federal Coronavirus Aid, Relief and Economic Security (CARES) Act created three major unemployment insurance programs, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, and Federal Pandemic Unemployment Compensation (FPUC), which originally ended in December 2020 but were continued through March under the Consolidated Appropriation Act of 2021, which also created a fourth program, Mixed Earner Unemployment Compensation. On March 11, 2021, the American Rescue Plan Act of 2021 was signed into law making changes to each of the programs and continuing benefits through September 5, 2021, including the additional $300 per week on top of standard benefit levels initially provided under the FPUC program.

In March 2020, the state's unemployment trust fund had a healthy balance of $458 million, but with record unemployment claims, the fund was depleted and reached insolvency on September 8, 2020. New Mexico, like many other states, is now borrowing from the federal government to stand up the fund until it can be replenished through employer contributions or some other funding source. As of March 12, 2021, New Mexico had an outstanding loan balance of $215 million.



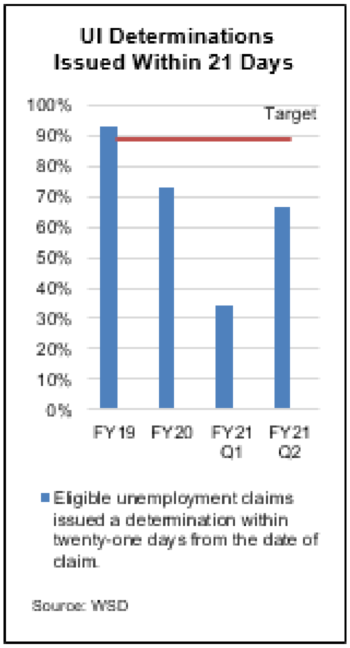
ACTION PLAN

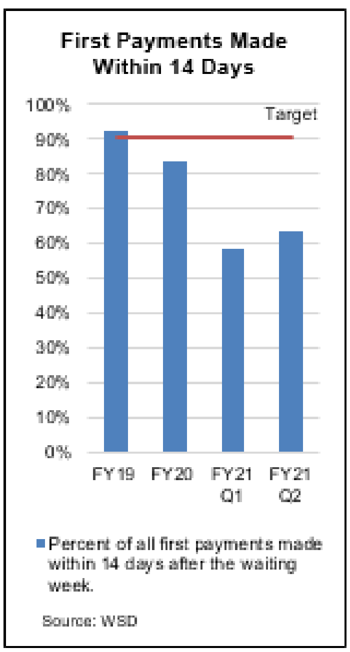
Submitted by agency?	Yes
Timeline assigned?	Yes
Responsibility assigned?	Yes



During the 2021 Legislative Session, the Legislature set aside $600 million of funding through the American Rescue Plan Act (ARP) to pay off federal loans and replenish the unemployment trust fund. However, the state is waiting on guidance from the U.S. Treasury Department regarding how ARP funds can be used.

PERFORMANCE REPORT CARD
Workforce Solutions Department
Second Quarter, Fiscal Year 2021





Unemployment Insurance

During the second quarter of FY21, WSD's unemployment division continued to process a record number of unemployment claims. The significant increase in claims brought a number of challenges to the department, including a rise in issues that required adjudication to determine eligibility and benefits. To reduce fraudulent claims, a 10-day hold on payments and request for identity verification were added to suspicious claims. This hold, coupled with delays in claimants submitting their verification documents, has made an impact on the timeliness of first payments. WSD continues to hire and train additional staff to assist with the workload and clear the backlog. WSD was unable to report on the accuracy rate of claimant separation determinations this quarter due to technical issues. The department plans to report both second quarter and third quarter data in the next quarter. Despite the unprecedented workload, the division continues to exceed its targets related to customer service wait times.

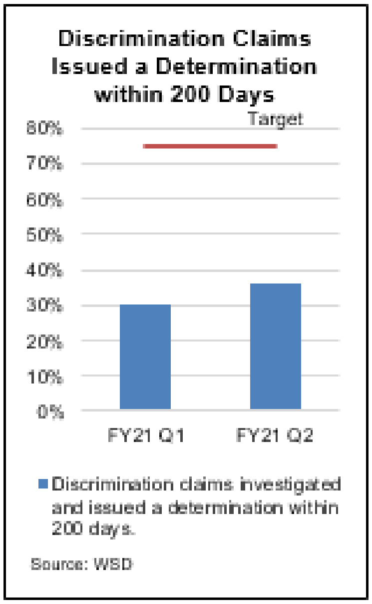
Budget: $10,367.1 FTE: 164	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Eligible unemployment claims issued a determination within 21 days from the date of claim.	93.1%	72.8%	89%	34.4%	66.7%	-	R
Percent of all first payments made within 14 days after the waiting week.	92.4%	83.5%	90%	58.6%	63.1%	-	R
Accuracy rate of claimant separation determinations.	70.4%	N/A*	91%	43.3%	No Report	-	R
Average wait time to speak with a customer service agent in the unemployment insurance operation center to file a new unemployment insurance claim, in minutes.	17:05	24:48	18:00	9:54	13:51	-	G
Average wait time to speak with a customer service agent in the unemployment insurance operation center to file a weekly certification, in minutes.	15:00	18.48	15:00	11:57	14:32	-	G
Program Rating							Y

*Measure is explanatory and has no performance target.

Labor Relations

The Labor Relations Division continues to report a backlog of cases and staff turnover. WSD was unable to report on the timeliness of administrative determinations because certain wage claim administrative decisions are not currently tracked and require a significant amount of staffing to do so. The division's wage and hour department has initiated several new processes to better identify and report case determinations and plans to report on this measure in the third quarter. Current in-person public works inspection projects are on hold due to the public health pandemic. In the interim, the department's management analyst team is continuing to process payroll audits and in the second quarter collected a total of $9.7 thousand in wage claims. The division again fell well below targets on the resolution of legacy and discrimination claims. The division anticipates the on-boarding of a new mediator this quarter will help resolve some cases in the early stages and the implementation of a new case triage process will improve timely case determinations and generate more accurate data.

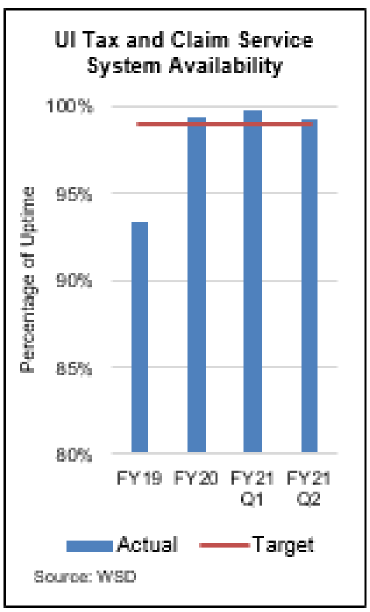
PERFORMANCE REPORT CARD
Workforce Solutions Department
Second Quarter, Fiscal Year 2021



Budget: $4,993.7	FTE: 41	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Investigated claims that are issued an administrative determination within 90 days.		43.8%	17%	85%	No Report	No Report	-	R
Total public works projects inspected.		NEW	NEW	80%	12%	0%	-	R
Legacy claims that are issued an administrative determination.		NEW	NEW	90%	38%	38%	-	R
Discrimination claims investigated and issued a determination within two-hundred days.		NEW	NEW	75%	30%	36%	-	R
Program Rating								R

Workforce Technology

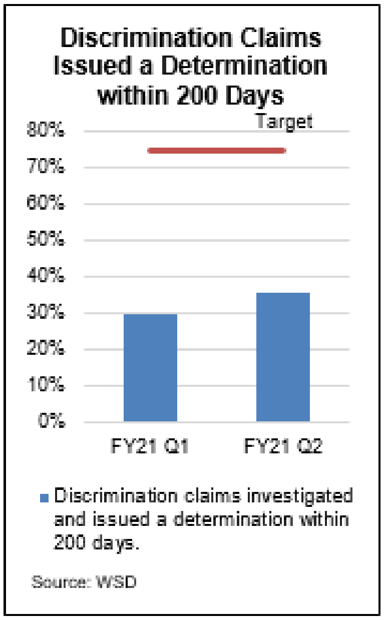
Despite the surge in claims due to the health emergency and a series of system modifications required to manage new eligibility and certification requirements, the Workforce Technology division achieved a system "up-time" of 99.3 percent. The division did not fare as well on timely restoration of the system from outages. The systems database archive reached capacity due to the large volume of claims and slowed performance of the UI system. The division is reviewing all logs to ensure archiving services are run more frequently and reworking the system architecture so system failures will not impact access to the UI system.



Budget: $17936.1	FTE: 48	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Time the unemployment framework for automated claims and tax services are available during scheduled uptime.		93.3%	99.4%	99%	99.8%	99.3%	-	G
Response time from system outage to restoration of service on unemployment framework for automated claims and tax services in minutes.		NEW	147	20	64.5	486	-	R
Program Rating								G

Employment Services

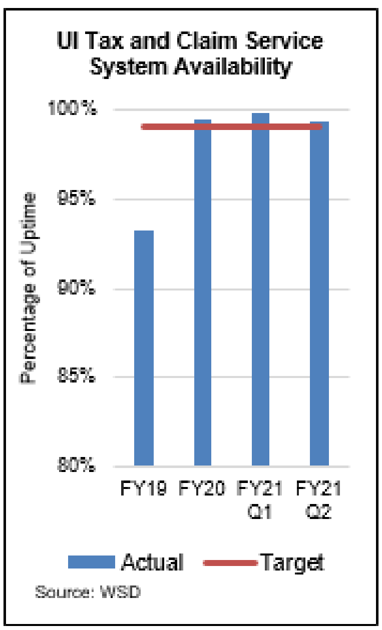
WSD reports individuals are accepting employment at a lower rate of pay due to the uncertainty of the economy and individuals who were employed pre-Covid-19 are accepting employment that is outside their previous profession and at a lower rate of pay. WSD and the Economic Development Department (EDD) have hired two full time staff to determine labor market trends and help workers access in demand jobs with higher starting salaries. WSD is also working in collaboration with EDD to enhance the state's layoff aversion program and work with businesses statewide to address workforce issues and other company challenges.



Budget: $4,993.7	FTE: 41	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Investigated claims that are issued an administrative determination within 90 days.		43.8%	17%	85%	No Report	No Report	-	R
Total public works projects inspected.		NEW	NEW	80%	12%	0%	-	R
Legacy claims that are issued an administrative determination.		NEW	NEW	90%	38%	38%	-	R
Discrimination claims investigated and issued a determination within two-hundred days.		NEW	NEW	75%	30%	36%	-	R
Program Rating								R

Workforce Technology

Despite the surge in claims due to the health emergency and a series of system modifications required to manage new eligibility and certification requirements, the Workforce Technology division achieved a system "up-time" of 99.3 percent. The division did not fare as well on timely restoration of the system from outages. The systems database archive reached capacity due to the large volume of claims and slowed performance of the UI system. The division is reviewing all logs to ensure archiving services are run more frequently and reworking the system architecture so system failures will not impact access to the UI system.



Budget: $17936.1	FTE: 48	FY19 Actual	FY20 Actual	FY21 Target	FY21 Q1	FY21 Q2	FY21 Q3	Rating
Time the unemployment framework for automated claims and tax services are available during scheduled uptime.		93.3%	99.4%	99%	99.8%	99.3%	-	G
Response time from system outage to restoration of service on unemployment framework for automated claims and tax services in minutes.		NEW	147	20	64.5	486	-	R
Program Rating								G

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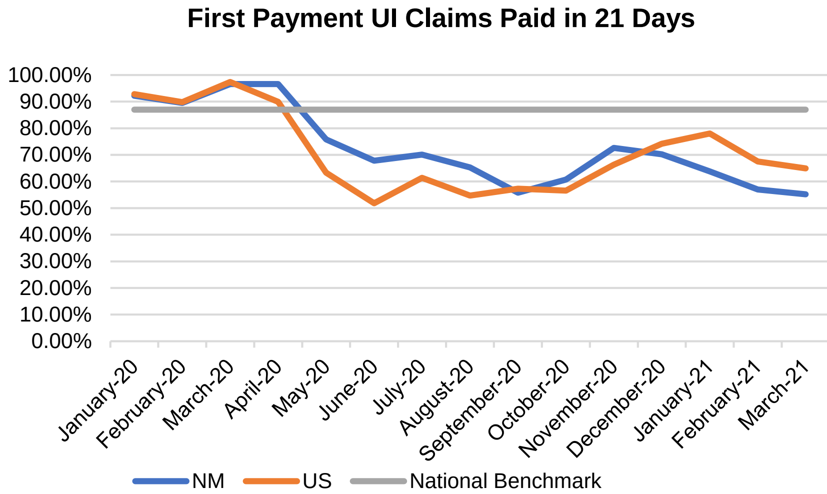
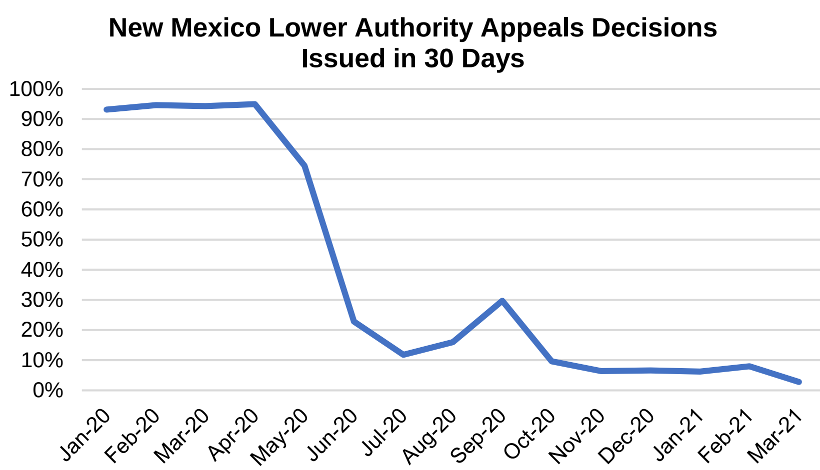
WSD reports individuals are accepting employment at a lower rate of pay due to the uncertainty of the economy and individuals who were employed pre-Covid-19 are accepting employment that is outside their previous profession and at a lower rate of pay. WSD and the Economic Development Department (EDD) have hired two full time staff to determine labor market trends and help workers access in demand jobs with higher starting salaries. WSD is also working in collaboration with EDD to enhance the state's layoff aversion program and work with businesses statewide to address workforce issues and other company challenges.

Appendix F. The Pandemic's Impact on New Mexico's Timely Delivery of Benefits and the Appeals Process



Source: DOL



Source: DOL

Appendix G. Detailed Methodology for Calculating Estimated Overpayment and Fraud Amounts Associated with Unemployment Insurance Benefits

The LFC calculated that from April 2020 through April 2021 the state made overpayments totaling an estimated $250 million. This estimate was reached by multiplying New Mexico's overpayment and fraud rates for FFY20 reported by USDOL from New Mexico's Benefit Accuracy Measurement (BAM)[8] analysis by the total benefit amounts for standard unemployment insurance, FPUC, PUA, and temporary compensation paid from the week ending April 18, 2020 through the week ending April 17, 2021. This timeframe was selected because it represents a full year from the first week of available data for federal programs enacted due to the pandemic. The analysis does not include the following programs: Trade Readjustment Allowances, the UCX program for ex-military service members, Unemployment Compensation for Federal Employees (UCFE), Mixed Earners Unemployment Compensation (MEUC), Pandemic Emergency Unemployment Compensation (PEUC), the extended benefits (EB FED), and Lost Wages Assistance (LWA). These were excluded due to the following reasons: 1. extended benefits are likely to have a lower rate of overpayment or fraud; 2. the limited number of New Mexicans participating; 3. established programs not typically included in BAM measurements.

Calculation of UI Overpayment Amounts

UI Benefit Programs	Benefit Amount From 4/18/21 to 4/17/21	Overpayment Rate for FFY20	Benefit Amount X Overpayment Rate
Standard UI	$890,248,265.97	8.233%	$73,294,139.74
FPUC	$1,756,742,831.92		$144,632,637.35
PUA	$358,044,279.87		$29,477,785.56
Temporary Compensation	$35,030,712.00		$2,884,078.52
TOTAL			**$250,288,641.17**

Source: LFC analysis of USDOL and WSD data

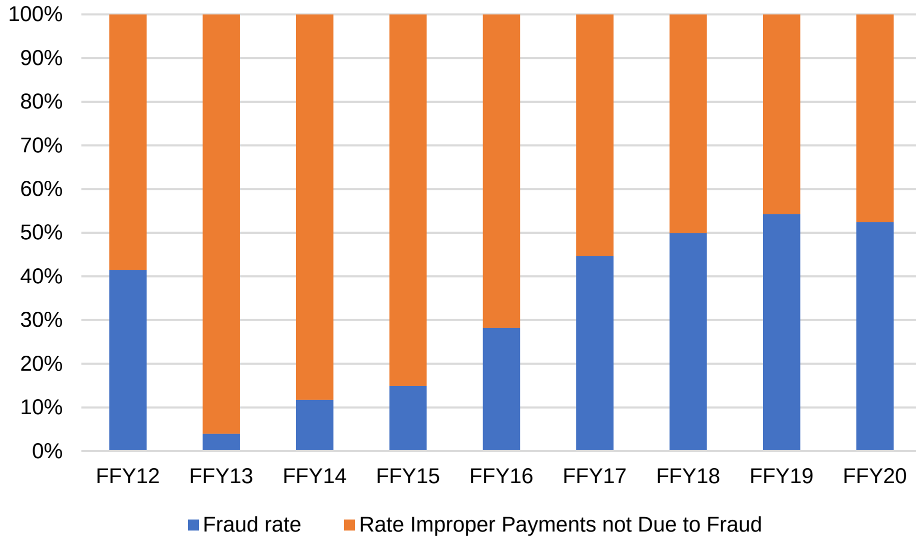
Calculation of UI Fraud Amounts

UI Benefit Programs	Benefit Amount From 4/18/21 to 4/17/21	Overpayment Rate for FFY20	Benefit Amount X Fraud Rate
Standard UI	$890,248,265.97	4.38%	$38,992,874.05
FPUC	$1,756,742,831.92		$76,945,336.04
PUA	$358,044,279.87		$15,682,339.46
Temporary Compensation	$35,030,712.00		$1,534,345.19
TOTAL			**$133,154,894.73**

Source: LFC analysis of USDOL and WSD data

[8] BAM calculations are from a sample of cases.

Appendix H. Proportion of New Mexico Improper Payments Characterized as Fraud, FFY12 to FFY20



Source: USDOL

Appendix I. California's Fraud Detection Report Table

During CY 2019, EDD's comprehensive anti-fraud activities in the SDI, UI, Tax, and WIOA programs identified potential fraud to warrant investigation and actual fraud resulting in criminal complaints and prosecutions (in dollars) as follows:

Description	SDI Program	UI Program	Tax Program	WIOA Program
Cases Under Investigation	$34,280,502 120 cases*	$24,446,437 61 cases*	$97,393,884 157 cases*	N/A
Criminal Complaints Filed	$12,090,967 15 cases*	$10,016,534 15 cases*	$2,166,406 28 cases*	N/A
Completed Criminal Prosecutions	$2,620,779 6 cases*	$3,025,631 10 cases*	$6,978,400 21 cases*	N/A
Fraud Overpayments (OP) Established[2]	$11,047,380 826 OPs	$116,808,262 109,976 OPs	N/A	N/A
Fraudulent Benefits Prevented	$2,918,933	$7,421,483	N/A	N/A

*The case statistics reported in the above table by the Investigation Division are representative of the cumulative total of open and ongoing criminal investigations and prosecutions.

[1]Management Antifraud Programs and Controls – Guidance to Help Prevent and Deter Fraud, American Institute of Certified Public Accountants, 2002, page 5.

[2]"Fraud Overpayments Established" includes overpayments established as a result of both criminal and administrative actions.

Source: CA EDD Fraud Deterrence and Detection Activities Report 2020

Appendix J. Employer Unemployment Insurance Tax Rate Calculation

Total Employer UI Contribution rates are determined through four separate components.

These components include: Benefit Ratio, Reserve Factor, Experience History Factor and the Excess Claims Rate.

The Equation for Total Rate is below. There are two steps to determine the total rate as first the contribution rate is determined. From there an excess claims rate may be added for those employers with particularly high contribution rates.

Benefit Ratio X Reserve Factor X Experience History Factor = Contribution Rate

Then:
Contribution Rate + Excess Claims Rate = Total Rate

Definitions for Each of these Components are below:

Benefit Ratio: Benefits Charged Against Employer Account (3-year period).

Reserve Factor: Is a measure of trust fund health, and floats between .05 and 4.0. This number may be changed annually based upon the solvency of the trust fund. For 2021 the reserve factor was frozen at 1.6528.

Experience History Factor: is based on the difference between all of the employer's previous years' tax payments and all the previous years' benefit charges to the account, divided by the average of the annual taxable payrolls for the immediately preceding fiscal years, up to a maximum of three years.

Excess Claims Premium: An additional rate employers with contribution rates above 5.4% are required to pay and is capped at 1% of taxable payroll.

Appendix K. Model Language from USDOL for Employer Notification to Employees of the Availability of Unemployment Compensation and Requirement of Notification of Unemployment Insurance Eligibility to Separated Workers by State

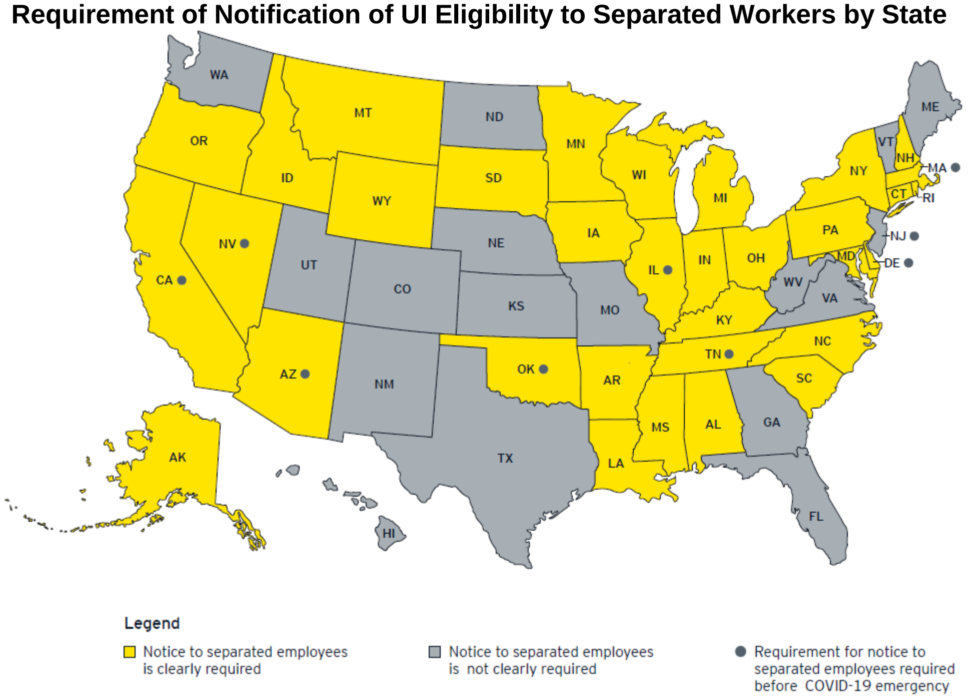
Unemployment Insurance (UI) benefits are available to workers who are unemployed and who meet the requirements of state UI eligibility laws. You may file a UI claim in the first week that employment stops or work hours are reduced.

For assistance or more information about filing a UI claim, call 1800-xxx-xxxx or visit www.xxx.ogv [The state UI agency should insert the options available for filing initial UI claims.]
You will need to provide the state UI agency with the following information in order for the state to process your claim:

1. Your full legal name;
2. Your Social Security Number; and
3. Your authorization to work (if you are not a U.S. citizen or resident).

To file a UI claim by phone, call: XXXXX
To file a UI claim online, visit: XXXXX
If you have questions about the status of your UI claim, you can call the state UI agency at 1-800-xxx-xxxx or email xxxx.

Requirement of Notification of UI Eligibility to Separated Workers by State



Source: Ernst & Young

Appendix L. States That Removed the Waiver on Work Search Requirements and Unemployment Rates

State	Date Work Search Waiver Ended	Unemployment Rate March 2021
Arkansas	6/28/20	4.4%
Missouri	7/5/2020	4.2%
Nebraska	7/12/2020	2.9%
North Dakota	7/26/2020	4.4%
South Carolina	8/2/2020	5.1%
Louisiana	8/9/2020	7.3%
Maine	8/9/2020	4.8%
Mississippi	8/9/2020	6.3%
Wyoming	8/9/2020	5.3%
Utah	8/15/2020	2.9%
Washington	9/1/2020	5.4%
Iowa	9/8/2020	3.7%
Tennessee	10/4/2020	5.0%
Oklahoma	10/25/2020	4.2%
Texas	11/1/2020	6.9%
Ohio	12/5/2020	4.7%
Alabama	1/1/2021	3.8%
Florida	1/2/2021	4.7%
Colorado	2/1/2021	6.4%
Wisconsin	2/6/2021	3.8%
North Carolina	3/14/2021	5.2%
Idaho	4/25/21	3.2%
Nevada	5/1/2021	8.1%
Kentucky	5/9/2021	5.0%
Virginia	6/7/2021	5.1%

Source: BLS, NCSL

Appendix M. Median Statutory Replacement Rates by State

State	Replacement rate (SE) with FPUC	Replacement rate (SE) Without FPUC	State	Replacement rate (SE) with FPUC	Replacement rate (SE) Without FPUC
Alaska	139% (6.1)	46% (0.6)	Montana	154% (3.0)	52% (0.0)
Alabama	148% (1.3)	47% (0.7)	North Carolina	152% (1.1)	50% (0.0)
Arkansas	152% (3.6)	50% (0.0)	North Dakota	148% (5.1)	50% (0.0)
Arizona	119% (5.8)	34% (1.6)	Nebraska	152% (6.1)	50% (0.0)
California	143% (3.2)	50% (0.0)	New Hampshire	139% (4.0)	48% (1.3)
Colorado	150% (5.2)	60% (0.0)	New Jersey	141% (6.0)	60% (0.0)
Connecticut	145% (5.1)	50% (0.0)	New Mexico	162% (5.2)	53% (0.0)
Delaware	159% (7.5)	57% (0.0)	Nevada	139% (2.3)	52% (0.0)
Florida	148% (1.0)	47% (0.3)	New York	135% (2.9)	50% (0.0)
Georgia	163% (1.8)	62% (1.7)	Ohio	142% (4.2)	50% (0.0)
Hawaii	149% (3.6)	62% (0.0)	Oklahoma	165% (6.9)	57% (0.0)
Iowa	151% (2.7)	57% (0.0)	Oregon	158% (6.6)	65% (0.0)
Idaho	152% (3.9)	50% (0.0)	Pennsylvania	147% (4.1)	51% (0.0)
Illinois	149% (4.8)	47% (0.0)	Rhode Island	136% (6.8)	50% (0.0)
Indiana	143% (5.3)	47% (0.0)	South Carolina	138% (4.3)	49% (1.4)
Kansas	143% (5.6)	55% (0.0)	South Dakota	155% (4.2)	50% (0.0)
Kentucky	160% (7.9)	62% (1.6)	Tennessee	142% (6.6)	44% (2.7)
Louisiana	143% (6.2)	39% (2.2)	Texas	153% (4.0)	52% (0.0)
Massachusetts	135% (3.0)	50% (0.0)	Utah	151% (4.5)	49% (0.1)
Maryland	144% (5.7)	54% (0.0)	Virginia	154% (3.3)	52% (0.0)
Maine	161% (4.2)	59% (0.0)	Vermont	147% (5.7)	58% (0.0)
Michigan	140% (3.9)	53% (1.5)	Washington	137% (2.3)	50% (0.0)
Minnesota	145% (5.7)	50% (0.0)	Wisconsin	154% (2.5)	52% (0.0)
Missouri	154% (3.7)	51% (1.5)	West Virginia	157% (3.2)	55% (1.3)
Mississippi	147% (8.9)	41% (2.5)	Wyoming	154% (6.5)	52% (0.0)

Notes: this table reports the *median* statutory replacement rate for April through July 2020 with and without Federal Pandemic Unemployment Compensation (FPUC). The *median* replacement rates we report exceed measures of *mean* replacement rates calculated a part of the Department of Labor's Benefit Accuracy Measurement (BAM) program. For example, using the 2019 ASEC to model benefits in 2019Q2, we find that the national median replacement rate is 50% while the mean "replacement rate 2" in BAM is 36%. This is because benefits schedules have caps, which lower replacement rates for unemployed with high pre-job loss earnings. These caps bring down mean replacement rates but are not relevant for the median unemployed worker. Many states have a reported standard error of zero for their replacement rate without FPUC. The best way to convey the intuition for how this can arise is to consider a scenario where there is no cap in unemployment benefits, so every worker has the *same* replacement rate. In this case, regardless of whether the inference procedure is a bootstrap or replicate weights, we will find that there is no sampling-based uncertainty about the median replacement rate. In practice, states with benefit caps that are high relative to the median wage for unemployed workers will have a standard error of zero.

Source: Ganong, Noel & Vavra NBER, 2020

Appendix N. New Mexico Administrative Code Describing the Reserve Factor Calculation

11.3.400.427 ADEQUATE RESERVE DETERMINATION: The department shall ensure that the fund sustains an adequate reserve.

A. An adequate reserve shall be determined to mean that the funds in the fund available for benefits equal the total amount of funds needed to pay between 18 and 24 months of benefits at the average of the five highest years of benefits paid in the last 25 years.

B. For the purpose of sustaining an adequate reserve, the department shall determine a reserve factor to be used when calculating an employer's contribution rate based upon a formula that will set the reserve factor in proportion to the difference between the amount of funds available for benefits in the fund, as of the computation date, and the adequate reserve, within the following guidelines:

(1) 1.0000 if, as of the computation date, there is an adequate reserve;

(2) between 0.5000 and 0.9999 if, as of the computation date, there is greater than an adequate reserve; and

(3) between 1.0001 and 4.0000 if, as of the computation date, there is less than an adequate reserve.

C. The New Mexico adequate reserve multiple (NMARM) is a measure of fund adequacy used in determining the reserve factor. The NMARM is equal to the reserve ratio divided by the average benefit cost rate. The reserve ratio is the trust fund balance, as of June 30, divided by calendar year total wages. The average benefit cost rate is the average of the state's five highest benefit cost rates, during the preceding 25 years. The benefit cost rate is calendar year benefit payments divided by the sum of total wages for the same period.

D. The formula for setting the reserve factor shall be determined as follows:

(1) If $\text{NMARM} \leq 0.5$ then reserve factor = 4.

(2) If $0.5 < \text{NMARM} < 1.5$ then reserve factor = $11/2 - 3\times\text{NMAR}$

(3) If $1.5 \leq \text{NMARM} \leq 2$ then reserve factor = 1.

(4) If $2 < \text{NMARM} < 3.150$ then reserve factor = $43/23 - 10/23\times\text{NMARM}$.

(5) If $\text{NMARM} \geq 3.150$ then reserve factor = 0.5.

[11.3.400.427 NMAC - Rp, 11.3.400.427 NMAC, 11/30/2016]