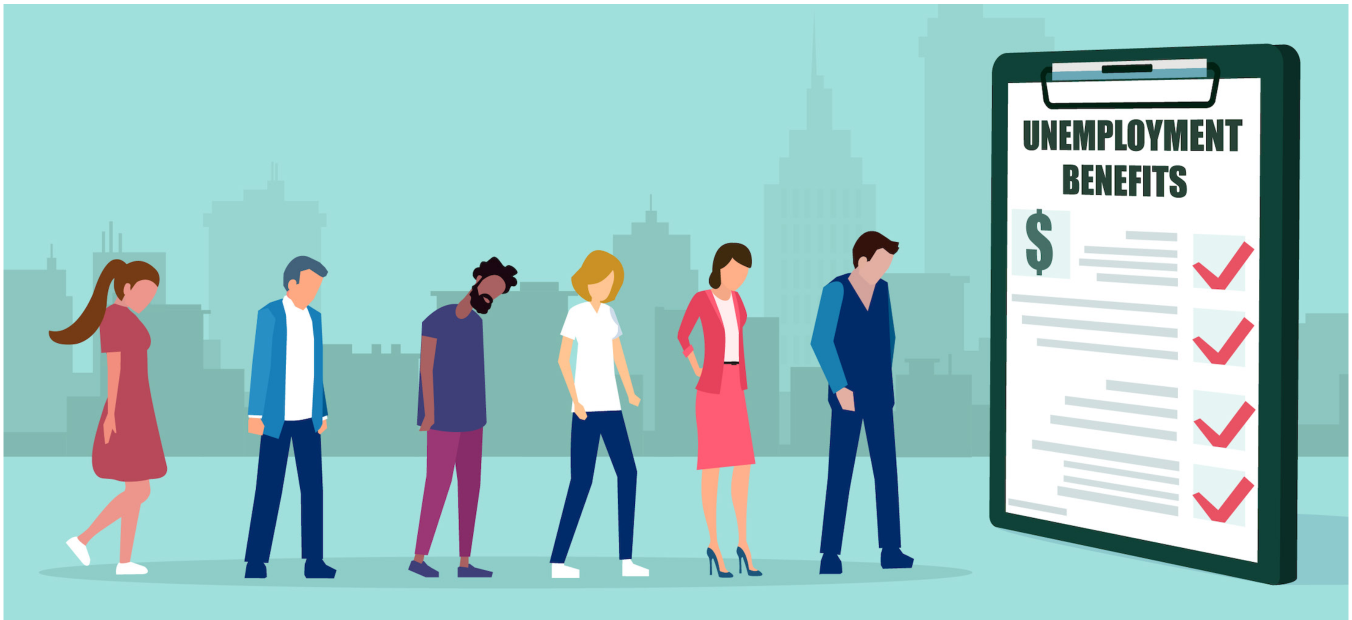

Providing Unemployment Insurance to Immigrants and Other Excluded Workers:

A State Roadmap for Inclusive Benefits

SEPTEMBER 7, 2022 — DAVID DYSSEGAARD KALLICK, ANDREW STETTNER, ASHLEIGH-ANN SUTHERLAND, AND SAMANTHA WING

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The experience of the COVID-19 pandemic and its induced recession underscored the crucial importance of unemployment insurance (UI) to workers, and to the stability of the American economy. Temporary federal expansions[1] of unemployment systems during the pandemic showed how they can quickly be scaled to increase benefit levels and to include categories of workers who were not previously eligible, such as the self-employed, caregivers, and low-wage workers. And, states showed that separate programs can be set up to provide similar benefits to workers who are explicitly excluded from unemployment insurance—in particular immigrants who do not have a documented immigration status.

There were twelve state programs that provided cash support to excluded workers in different forms during the pandemic, with the largest, New York's $2.1 billion Excluded Workers Fund, providing recipients with benefits roughly equivalent to what other workers who were unemployed for a year got in traditional unemployment insurance, $15,600. These temporary measures were critical to allowing families to keep food on the table and a roof over their head. And they were a boost to local economies: across the nation, those who received such funds used them to pay rent, take classes to increase career mobility, repay loans, and provide better schooling for their children.

Today, some states are taking the lessons from these temporary measures and seeking to put in place long-term programs for workers typically left out of the traditional unemployment system. Colorado was the first state to create a long-term, forward-looking program, the annual Benefit Recovery Fund[2] to make it possible for immigrants who lack work authorization—yet whose wages are already subject to unemployment taxes—to collect benefits if they lose their jobs. In California, the Safety Net For All Coalition has gained substantial support for piloting a similar program in that state. In New York, the Fund Excluded Workers Coalition is urging passage of Excluded No More, legislation that would create a fund to provide unemployment compensation to immigrants who are excluded from benefits by their immigration status as well as certain other categories of workers who lose their jobs but are not adequately covered by unemployment insurance. And advocates are advancing the same types of measures in a number of other states around the country.

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This report lays out the considerations that will be relevant to creating annual state-level funds to provide unemployment compensation to immigrants who lack work authorization and others who are excluded from the traditional unemployment insurance system.

Background: Why Unemployment Insurance for Excluded Workers Matters

Unemployment insurance is an integral part of the scaffolding that supports the economy of the United States. When workers lose their jobs, unemployment insurance provides them with a portion of their former income so they can continue to support their families as they look for a new position. The program benefits all workers, not just those who are currently unemployed, providing assurance that they will be able to feed their families if they lose their jobs, and preventing the sort of desperation among job seekers that might allow unscrupulous employers to reduce overall wages and perpetrate other forms of harassment or mistreatment on the job.

Unemployment insurance is also a critical tool for economic policy, acting as what economists call an "economic stabilizer." When a recession hits, even before Congress and the president can act, unemployment insurance starts to provide stimulus where it is needed most.

The sweeping job loss associated with the COVID-19 pandemic brought into sharp focus the enormous value of unemployment compensation, while it also highlighted the pressing need to improve unemployment compensation systems to be more inclusive.

One of the main, most positive responses from the federal government to the huge spike in unemployment rates was to increase the level of unemployment insurance compensation, and to expand the system so that a historically large share of workers were covered—first in the Trump administration, then in the Biden administration.

Yet this federal expansion of the traditional unemployment insurance system slammed the door on immigrants without work authorization at the very moment when so many members of the public were applauding in the streets or posting "thank you" drawings from children in their windows in recognition of the workers—often immigrants without work authorization, and overwhelmingly Latinx, Asian, Black, and Indigenous peoples—who continued through the height of the pandemic to make deliveries, stock grocery stores, and care for people who were sick. Immigrants without work authorization, it was widely understood, were more likely to be in jobs that put them at risk during the pandemic, and more likely to be laid off as restaurants, hotels, and stores were shuttered, with no safety net to turn to.

One-time funds were created in a number of states to address the dire need to cover excluded workers between 2020 and 2022, as well as in numerous municipalities and by nonprofit organizations or philanthropies. The demonstrated success of these programs created an appetite for programs that would serve a similar purpose year in and year out, when unemployment rates are lower, but when many workers are still excluded from the unemployment insurance system.

There is a longstanding effort to improve the traditional unemployment insurance system, and the pandemic unemployment expansions proved both the need for improvements and the huge advantages that come with it.[3] But, traditional unemployment insurance is a joint state–federal program, and federal restrictions prevent it from including workers without work authorization. As a result, states seeking to cover these excluded workers will have to create a separate program without federal funding. The huge advantage of this moment is that a number of states have already set up systems to administer this type of unemployment benefit, proving that what until recently seemed untenable can, in fact, be done.[4]

This new system can function separately from, but side by side with, traditional unemployment insurance. It can make sure that all workers who qualify for traditional unemployment insurance are able to access that system, addressing some challenges in the labor market as they do so. And it can provide a crucial and well-earned benefit to people who are not able to get traditional unemployment insurance. State-level programs will help to address systemic discrimination by providing coverage to excluded workers who are disproportionately immigrants and Black, Indigenous, and people of color (BIPOC).

Immigrants without work authorization make up about 5 percent of the overall labor force of the United States—that is between seven and eight million working-age adults who have been excluded from eligibility for unemployment insurance and many other benefits.[5] That is both too many people to leave out of unemployment insurance, and a manageable share of the labor force to cover with a new fund.

Immigrants without work authorization play a particularly important role in several pivotal sectors of the economy: in work that keeps the food chain vibrant, such as in farms, meat packing, bakeries, food processing, and grocery stores; in construction jobs that put up and refurbish the buildings in our communities; in retail shops and restaurants and hotels; and in household and personal services, in jobs such as landscapers, dry cleaners, delivery workers, nail salon and beauty parlor jobs, car wash workers, home cleaners, home health aides, and nannies.[6] These are people who have earned and deserve support when they become unemployed, as a matter of basic justice and as a way to support themselves and their families through a hard time.

Immigrants who do not have a documented immigration status nonetheless pay taxes to a far greater degree than is typically understood, including including sales, property, and income taxes In all, across the country, an estimated total of $12 billion is paid to state and local taxes governments each year by undocumented immigrants, including $140 million in Colorado, $3 billion in California, and $1 billion in New York, to mention a few states discussed above.[7] And, particularly pertinent to the case for unemployment compensation, employers of immigrants without work authorization pay an average of $1.3 billion nationwide into unemployment insurance funds every year, with state-by-state estimates also available.[8] The mismatch between taxes paid and insurance coverage is a result of our failed federal immigration system, which has led to many workers being paid on the books but still not being able to access unemployment benefits.

As states do the work to set up separate unemployment compensation funds, they should take the opportunity to consider addressing the needs of workers who are typically left out of unemployment insurance for reasons other than lack of work authorization. Many self-employed workers were able to tap into the pandemic assistance provided in 2020 and 2021, temporarily closing an important hole in the safety net. The bill introduced in New York would include low- to middle-wage self-employed workers in a long-term, forward-looking excluded workers fund. The New York bill, if passed, would pay close attention to making sure that workers who are actually employees but are misclassified as independent contractors are covered through the traditional unemployment insurance system, but that those who are truly self-employed could be covered through the newly established fund.

There are also opportunities to include people who may theoretically be eligible for unemployment insurance benefits but are for all practical purposes excluded from the system, such as domestic workers or gardeners working in individual households. While these workers are notionally eligible for traditional unemployment insurance, the likelihood of their being able to get it is slim to none, due to the informal nature of their work arrangements. A large part of the problem is that state governments are currently extremely inefficient in enforcing misclassification laws and in processing claims for workers paid in cash, and also have poor protections for workers who could face retaliation for reporting nonpayment of taxes.

In the long run, the solution for immigrants without work authorization is federal immigration reform and a pathway to citizenship, and the solution for other excluded workers is to cut misclassification of workers as independent contractors, explore ways to extend unemployment insurance coverage to self-employed workers, and to make sure employers of domestic workers or gardeners, among others, properly pay into the unemployment insurance system.

However, until there is federal immigration reform, immigrants without work authorization, who are disproportionately Latinx, Black, Asian, and Indigenous, should not pay the price for failures in the existing system. It is unacceptable for a part of the labor force to be systematically excluded from social insurance, and doubly so when so many of them are in jobs where the taxes already are being paid into the unemployment system.

People who lose their jobs need support today, not years from now. The options below lay out ways state funds can help workers today at the same time as they push toward fixes in the traditional unemployment systems and further highlight the need for a federal immigration reform. And, these efforts should go hand in hand with stronger enforcement of worker classification laws that can help reduce the number of employers that violate labor law and erode standards in the economy.

One-Time Programs for Excluded Workers Established During the Pandemic

Starting in 2020, a number of states stepped up with one-time programs to provide cash aid to immigrant workers without work authorization that was akin to what all other workers were receiving through the traditional unemployment insurance system or the special federal pandemic-related expansions provided under the CARES Act, or to provide something akin to what others received in stimulus checks. (See Table 1.)

Urged by a powerful coalition of advocates in New York, New York State government[9] created the $2.1 billion Excluded Workers Fund and gave a benefit of $15,600, the equivalent to what other workers got in unemployment benefits for a year, to 130,000 excluded workers—over 40 percent of the 305,000 estimated to be eligible. Among the dozen state government programs providing one-time benefits to excluded workers were California's Coronavirus (COVID-19) Disaster Relief Assistance for Immigrants, New Mexico's Human Services Department Financial Assistance,[10] Washington's DC Cares program,[11] the Oregon Worker Relief Fund, and the Oregon Worker Quarantine Fund (specifically for agricultural workers who contracted COVID-19 and who, without the funds, would not be able to afford to quarantine). Table 1 shows a full list of the state-wide, state administered programs.

In addition to the statewide programs listed in Table 1, a large number of local governments created excluded worker funds, from Austin, Texas to Johnson County Iowa; philanthropies often administered or supported excluded worker funds; and some nonprofit groups and membership organizations administered funds for their members.[12]

Table 1 details various state efforts to provide financial assistance to excluded workers across the nation. This data was collected from state partners to ensure the validity of the information, with extensive outreach to establish its comprehensiveness. In addition to the state efforts outlined in Table 1, dozens of localities have also provided financial assistance to immigrants without work authorization, as did a substantial number of nonprofit organizations and community groups.

Learning from Experience, States Look to Create Long-Term Funds for Excluded Workers

The experience of providing one-time programs for excluded workers gave advocates, legislators, and governors in some states a taste of what a long-term solution could look like for workers who are either specifically excluded from traditional unemployment insurance (immigrants without work authorization) and in some cases also those who are functionally excluded since it is exceedingly rare for them to get unemployment benefits (such as domestic workers or day laborers at small residential construction worksites). Three states in particular—Colorado, California, and New York—provide useful case studies of the effort to create state-level excluded worker UI programs.

TABLE 1

State and Local Pandemic Financial Relief Programs for Excluded Workers					
State	Emergency Fund	Unemployment Insurance/ Stimulus Funds	Number of Beneficiaries Served	Payment Amount	Total Fund Amount
CA	California's COVID-19 Disaster Relief Assistance for Immigrants	Unemployment Insurance	150,000	$500 (with a limit of $1,000 per household)	$125M
CA	California's Golden State Stimulus (GSS II) GS II (second round)	Stimulus Funds	All eligible CA residents. Including undocumented immigrants who filed tax returns using an ITIN	$600 (if filled with an ITIN) $1,200 (if qualified for CaIEITC and filed with an ITIN)$1,000 (if filed with an ITIN and claimed dependents)	unk.
CO	Left Behind Workers Fund	Stimulus Funds	25,000	$1,000-$3,000	$38M, ($10M private and $28M public)
CO	Benefit Recovery Fund	Unemployment Insurance	2,500	$300 per week	$15M, capped at $30M
DC	DC Cares (First Round)	Stimulus Funds	13,000	Ranges from $0 to $3,400	$5M
DC	DC Cares (Second Round)	Stimulus Funds	unk.	unk.	$8.1M
IL	Immigrant Family Support	"Unemployment Insurance/ Stimulus Funds"	unk.	Upward of $2,000 per household	$20M
MA	Massachusetts Undocu Fund	"Unemployment Insurance/ Stimulus Funds"	3,400	$300	unk.
NJ	Excluded New Jerseyans Fund	Stimulus Funds	35,000	$2,000-$4,000	$40M was announced; however, it was announced that anyone that was eligible before the funds ran out would receive aid. The fund could be a total $100M
NJ	Newly Announced New Jersey Funds	Stimulus Funds	Approximately half a million undocumented workers	$500	$53M
NM	New Mexico's Human Services Department Financial Assistance	Stimulus Funds	15,000	$456	$10M

NV	The Esperanza Fund	Unemployment Insurance/Stimulus Fun ds	unk.	Upward of $300	$1M
NY	New York's Excluded Workers Fund	Unemployment Insurance	130,000	$15,600 (tier two: $3,200)	$2.1B
OR	Oregon Worker Relief Fund	Unemployment Insurance/ Stimulus Funds	36,504 (5,542 of them received a second payment)	An average of $1,714	unk.
OR	Oregon Worker Quarantine Fund	Unemployment Insurance	11,267	Maximum $430 for one week; $860 for two weeks; average amount per person: $1,289	unk.
RI	weR1 Fund	Stimulus Funds	7,005	$400	$3M
VT	Vermont Economic Stimulus Equity Fund	Stimulus Funds	unk.	$1,200 for adults and $500 for children	$5M
WA	Washington COVID-19 Immigrant Relief Fund	Unemployment Insurance/ Stimulus Funds	unk.	unk.	$340M

Note: For the purposes of the table, unemployment insurance means the programs operated in a similar way to unemployment insurance, not that they were funded by traditional unemployment insurance funds.

Source: Compiled from state partners via email survey.

Colorado

Colorado was the first state to put in place a long-term annually recurring excluded worker UI program. The Benefit Recovery Fund was signed into law in June 2022. It is estimated that the fund—which currently has $15 million and is capped at $30 million—will cover per year, on average, 2,500 immigrant workers ineligible for traditional UI only because of their lack of work authorization.[13] To qualify, workers must show—just as people applying for traditional unemployment insurance do—that they lost a job through no fault of their own, that they had earned enough during the period before they lost their jobs, and that they were paid in a way that is documented in W-2 forms. This would cover a significant number of unauthorized workers—probably more than half, since estimates have shown that half of immigrants without work authorization are paid on the books (using Social Security numbers that may be expired or may not match their identity),[14] and that an overlapping but not identical half file income tax returns using ITINs.[15]

The Colorado fund is financed through a longstanding assessment (or "piggy-back tax") on the traditional unemployment insurance payroll tax. While funds raised through the traditional unemployment insurance tax cannot be diverted from the traditional unemployment insurance program, funds raised through a piggy-back tax can be used for other purposes. In Colorado, the existing assessment was being used for the Employment Support Fund, financing workforce development and employer services, among other things.

The political context helped get business leaders and community groups together in support of the Benefit Recovery Fund. During the pandemic recession, Colorado, like many states, exhausted its existing unemployment insurance fund and borrowed money from the federal government so that it could continue to make payments to unemployed Coloradans. Borrowing of this kind is built into the normal functioning of unemployment insurance, and is automatically approved by the federal government; in the case of Colorado, it amounted to just over $1 billion.[16] This is a debt that is owed by the employers. If the state takes no action to reduce this debt, the federal government will automatically increase the rate of the federal share of the unemployment insurance tax employers pay.

The Colorado Chamber of Commerce was eager to see the state pay down this debt, arguing that it would be bad for the economy if the payroll tax increased. Colorado advocates for the excluded workers fund argued that if the state stepped in with public funds, then there should be a benefit not just to employers but also to workers. In particular, they wanted the state to create the excluded worker UI program, plus some other improvements to the traditional unemployment insurance system.

In the end, the state agreed to use $600 million of federal American Rescue Plan Act (ARPA) funds to pay down the unemployment insurance fund debt of $1 billion, and with premium revenue from employers, Colorado is set to pay down their debt by November 2022. This was a compromise that Colorado legislators, the governor, the business community, and advocates could support: state funds were used to bail out an employer responsibility, but with a concession of unemployment compensation being made available to excluded workers.

California

California is waging a spirited campaign to create a similar excluded worker UI program. Under the proposed California legislation, immigrants who would qualify for unemployment insurance but for their lack of work authorization would be able to be covered by a separate state-financed fund. California's Excluded Workers Pilot Program is proposed as a one-year program, to lay the groundwork for a recurring, annual program. The $690 million budget proposal would benefit over 144,000 individuals and would be largely based off of the state's UI system, but with key differences to ease administrative burden and to ensure access for immigrants without work authorization and cash economy workers. It also includes language directly informed by New York's program and excluded workers themselves about the kinds of documents that workers can use to show their work history. The Safety Net for All Coalition effectively organized hundreds of workers who sent over 25,000 petition signatures to the state's governor demanding the program be included in the state's budget. Funding for the program would come from the state's general fund.

Unfortunately, despite a strong recovery from the coronavirus pandemic among the wealthiest Californians, and a historic discretionary surplus of almost $49 billion, the excluded worker program was not in the state's budget in 2022.[17] The coalition is gearing up for a budget campaign in 2023. Meanwhile, the coalition's legislative proposal, AB 2847 (E. Garcia), which creates the statutory language for the program, passed out of the state legislature and is awaiting the Governor's signature.

New York

The Fund Excluded Workers (FEW) coalition in New York draws from legislation passed to establish New York's Excluded Workers Fund in 2021, but is taking a more expansive approach to push for a new excluded worker UI program that covers a distinct subset of workers who in 2021 could receive Pandemic Unemployment (PUA) funds. The bill the FEW coalition is promoting, Excluded No More,[18] would cover three groups of workers.

- **Undocumented excluded workers:** A worker who loses most or all of their work, and whose reason for exclusion from unemployment insurance is their immigration status, and who made less than the state's median individual earnings for full-time, year-round workers (currently $56,000), and worked at least eighteen weeks in the twelve months before they lost work.
- **Certain cash economy workers:** Immigrant workers with and without work authorization, as well as U.S.-born workers, who are day laborers, domestic workers employed by private households,

and construction and landscaping workers employed by a small-scale home improvement contractor, homeowner, or a construction labor provider. This provision covers workers who arepaid in cash or personal or other non-payroll check, without any tax reporting, and have net earnings under the state's median (again, $56,000). These are individuals who, even if work-authorized, face such high barriers to accessing UI that they are effectively excluded.

- **Truly self-employed workers:** Immigrant workers with and without work authorization, and U.S.-born workers, who are self-employed and have net earnings of less than 80 percent of the median individual earnings (80 percent of the current $56,000 median is $45,000 a year) and who suffer an adverse event (such as losing multiple clients or a major personal issue). Special consideration is given to including particular industries, such as street vendors, and also to making sure not to cover people who should get unemployment insurance, such as platform economy workers and misclassified workers. These are some of the workers who could have received benefits through the Pandemic Unemployment Assistance program, when it was in place.

The bill includes funding for a navigator program, to do outreach and help workers in applying for the excluded worker UI program, and also to ensure that workers who are eligible for unemployment insurance apply for that rather than for this program.

Financing for the program created by the New York bill is proposed to come from general funds, not from a per-worker tax on employers. To increase the general state revenues, the coalition expects in the coming legislative session to consider a range of options for taxes on wealthy individuals and wealthy corporations. If the allocated funds run short of the need, the bill includes rules about making sure the funds are equitably distributed before they run out. If there is a surplus, it is automatically rolled over into the next year's fund.

California and New York are just two among a number of states where advocates, legislators, and governors are considering long-term, annual excluded workers funds.

Key Considerations: Program Design

The states that have embarked on developing excluded worker unemployment programs have had to navigate through a series of program design issues. States need to first decide the universe of workers eligible for benefits. One real policy innovation has been the ways that states have empowered workers who have been excluded from traditional employment relationships to document their work history. Critically, states must design programs that protect the privacy of applicants and the confidentiality of their immigration status and protect them from retaliation from unscrupulous employers. The section that follows provides a deep dive into these key choices and provides guidance to other states discussing the development of excluded worker unemployment programs.

Eligibility

The primary drive to create excluded worker UI programs is to serve unemployed immigrants without work authorization who are barred by federal law from traditional UI benefits. This includes immigrants without work authorization who have work in the formal economy, have work in the informal cash economy, or are self-employed or freelance workers. Some immigrants without work authorization have an Individual Taxpayer Identification Number (ITIN), and some have or use a Social Security number that allows them or their employer to pay taxes. Given this, there are several different approaches to structuring excluded worker programs. With only 28 percent of jobless workers overall currently receiving traditional state UI benefits, we can expect many jobless undocumented immigrants without work authorization to be excluded if the same rules are ported over from state UI programs to excluded worker unemployment programs.[19]

Limiting Eligibility in the Same Manner as UI (Colorado Model)

An excluded worker UI program may follow the rules of traditional UI, serving workers who would be eligible for UI but for their work authorization/immigration status, as specified under state law. Colorado's new recovery benefits program for immigrants without work authorization follows this model, patterning its eligibility and earnings requirement in the same manner as Colorado's unemployment insurance law. In the case of Colorado, this means that the individual would have to demonstrate that they were involuntarily unemployed. This means that they were either (a) laid off, (b) have a lack of work, (c) were fired for a reason other than misconduct, or (d) quit with good cause. In addition, they would need to have earned at least $2,500 with total earnings equivalent to roughly twenty weeks at their average wage in a four-quarter period. All states have similar qualification standards. For Colorado, this option provided a politically obtaintable approach by limiting benefits to those who would most clearly prove that they would have gotten UI except for their immigration status. Significantly, only those who could provide a W-2 or paystub and thus likely had UI contributions made for them could apply.

However, under this option, immigrants without work authorization who are independent contractors/freelancers, sole proprietors, and gig workers would not be eligible. Many workers with short work histories (such as seasonal workers or those who started working recently) or part-time workers may not meet the minimum earnings history of state UI, and thus not be eligible for excluded worker programs defined this way. Undocumented immigrants who lose work for reasons other than what happens at work (such as a family or personal issue like the loss of child care) would also not qualify.

Immigrants without Work Authorization and Others (New York Model)

A more expansive model would be to include immigrants without work authorization along with other worker groups excluded from UI, as described above.[20] New York's Excluded No More proposal would include immigrants without work authorization, as well as both immigrant and U.S.-born workers, both with and without work authorization, who are cash earners in certain industries (limited to domestic workers, day laborers, construction workers, and groundskeepers/landscapers in the bill) and low-wage freelance workers (which would include street vendors). The proposal would strategically target occupations with a higher portion of immigrants without work authorization and in which workers face extremely high barriers to accessing unemployment insurance, even if they may be technically eligible. Of the options, this model serves the most immigrants without work authorization and has the added benefit of helping some documented workers unable to get traditional UI (strengthening ties in worker categories across immigration status), with the cost of the program being correspondingly greater.

Reform of Traditional UI

State UI can be improved to include some of these previously excluded groups without the need for separately administered state solutions; the group for whom this is clearly not the case is immigrants without work authorization. To address other issues, more funding could be allocated to UI enforcement against misclassification and to outreach assistance to cash workers and other low-wage workers who are often eligible for benefits, but in practice often don't receive them. State UI programs can enforce existing laws or enact new laws to ensure that app-based workers are not excluded, requiring app-based employers to pay into the UI system, and include independent contractors/freelancers in the traditional UI program. Organizers have successfully waged legal action in states such as New York and Pennsylvania and forced the states to cover app-based workers through traditional UI. The UI program can also amend the requirements to include those who don't make enough income or work enough hours to apply (such as low wage and seasonal workers) and those who lose work due to the illness of a family member or the loss of child care or domestic violence.

Jobseeker's Allowance

The Jobseeker's Allowance, proposed by the Center for American Progress, National Employment Law Project, and the Georgetown Center on Poverty and Inequality, would fill in gaps left by traditional UI for workers, similar to the way Pandemic Unemployment Assistance (PUA) worked.[21] Under this program, those who do not qualify for UI because they don't have enough work history, have not previously paid into UI, or their reason for job separation makes them ineligible would receive a stipend of about $170 per week for up to thirteen weeks (about 50 percent of the wages of a low-paid worker). Unlike UI, the proposed Jobseeker's Allowance (JSA) is means-tested, limited to households earning under the monthly equivalent of the Social Security taxable wage base (annual earnings of $142,800 for 2021) prior to losing work, and not conditional on participants having contributed to UI through the payroll tax. This program can be federally funded and can serve many workers not currently eligible for UI, as well as potentially other categories like freelancers. In many ways, this proposal would function as a permanent version of the successful PUA program.

Documenting Work History, Identity, and Residency

Traditional UI determines past work history through wage records submitted in advance by the employer on a quarterly basis to the state, and verifies the reason for separation in communication with employers. Excluded worker UI programs serve those who fall through the cracks of that system, and need a different way to operate.

The alternatives availables for excluded worker programs are largely documents submitted by employees. Many employees can submit documents with an exact dollar amount of earnings and number of weeks/months of work, such as pay stubs and tax records or W-2s (the model followed in Colorado). The documentation requirements can utilize previous state and local policy innovations, such as states that allow residents to apply for driver's licenses or state identification irrespective of immigration status, or local or municipal identification cards to verify residency and identity.

But programs should allow methods of proving earnings, residency and identity beyond these as well, because many immigrants without work authorization don't have this type of documentation available due to their precarious position in the labor market. Additional methods of reporting past earnings could include submitting time cards or other employer communications that include earnings information or regular direct deposits or transfers from a person unrelated to the applicant (such as receipts from check cashing or transaction logs from a payment app).

A point system, where each document is allotted a set point value, is one pragmatic way states have allowed applicants to verify their identity with diverse options and combinations of documents that add up to a minimum value. This approach was used effectively in the New York's Excluded Workers Fund and is embedded in California's approach.

The following is a non-exhaustive list of what program can ask applicants to meet along with some example documents:

- **Identity** (to verify an applicant's identity)
  - ***Strong options:*** local or municipal ID, non-expired driver's license or non-drivers ID
  - ***Additional options:*** college/university photo ID, ITIN authorization letter, foreign passport or driver's license, photo card issued by an employer or nonprofit
- **Residency** (to verify an applicant lives in the state)
  - ***Strong options:*** local or municipal ID, non-expired driver's license or non-drivers ID, state or federal tax filing or return
  - ***Additional options:*** utility bill, bank or credit card statement, lease or mortgage payment, pay stub, document issued by a federal, state, or local entity
- **Reason for unemployment/income loss** (to determine an individual is eligible and the separation was through no fault of their own)
  - This could be satisfied by communication (texts, letters, emails) from an employer demonstrating

the reason or a questionnaire filled out by the workers to document the reasons for the separation.

- **Work history** (to determine the applicant meets pre-layoff earnings and/or hour requirements, and are under the maximum earnings cap)
  - ***Strong options:*** tax return, pay stubs/wage statements, W-2 or 1099 form
  - ***Additional options:*** time cards or records, regular direct deposits or transfers from a party other than the applicant, recurring cashing of paychecks and/or remittances related to earnings (bank statements, check cashing receipts), letter attesting that an applicant meets the hours and/or earnings requirement from the individual's employer or a community-based organization, or records from a payment app (such as Venmo or Zelle); employer communications that establish a work relationship including text messages, social media messages of other written communications relating to work history such as delivery order sheets, work invoices, work schedules, sign-in sheets, directions or instructions from employers

Setting the Earnings Amount

In addition to requiring applicants to submit proof of earnings, programs also need to set a level of minimum earnings required for eligibility. An excluded worker UI program can require reporting income from the base period or an alternate base period as defined by the state UI law, as in Colorado's proposed program. However, the UI system relies on an often outdated and cumbersome quarterly earnings method, and there are simpler options available. Excluded worker programs could have more straightforward requirements, such as requiring applicants to have worked a set number of hours and/or earn a set amount of income in the past year, while still requiring a similar amount of work as traditional UI. California's Excluded Workers Pilot Program, if passed as proposed, would require individuals to have worked at least ninety-three hours or earned a minimum of $1,300 dollars in three months (consecutive or nonconsecutive) within the twelve months preceding their application for benefits, similar to the state minimum for unemployment insurance.[22] New York's proposed program has a similar minimum of three months within the past twelve months, but requires that applicants earn a minimum of $4,050 (on par with New York's UI minimum: $2,700 in the high quarter and $1,350 in the rest of the base period year). Another option being considered is allowing workers to submit earnings information on a tax return from the prior calendar year, if more recent earnings information is not available.

Privacy Protections

To be successful, excluded worker programs must ensure that eligible individuals can seek assistance without fearing that their privacy will be compromised or that they or their family members could be placed at risk. The programs should include strong confidentiality provisions that protect workers and their families. Basic principles include limiting inquiries and documents collected or retained to whatever is strictly necessary to administer the program and prohibiting the use and disclosure of such information or documents for any other purpose. The program should ensure that any information collected or retained is exempt from disclosure under a state's public records law, and that the agency establishes safeguards that protect the data from unauthorized use. The fact that an individual has applied for or received assistance should not be disclosed to any person or entity (including employers) who are not charged with administering the program. To the extent possible, the program should rely on self-attestation of an applicant's information.

Some proposals have prohibited inquiries about certain information, such as an applicant's immigration status, ineligibility for a Social Security number, or place of birth. Some have prohibited specific uses, such as for immigration enforcement, in the absence of a court order. And some have included penalties and mechanisms for enforcing violations of the privacy rules.

Protecting Workers Against Retaliation

The precarious immigration status of immigrants without work authorization leaves them vulnerable to retaliation by employers, and employers may react negatively to being exposed to the government as employers of workers without work authorization. New York's Excluded No More proposal includes anti-retaliation provisions that would subject employers behaving this way to civil penalties and liquidated damages on par with other labor laws in the state. Having clear anti-retaliation provisions as part of excluded worker UI programs would make it easier for immigrants without work authorization applying to the program to feel comfortable reporting wage and hour violations, unsafe conditions, and tax evasions that are too common in many of the sectors in which undocumented immigrants work. In fact, such added protections might make workers more willing to stand up to other exploitative conditions such as those that undercut unions and decent work in the economy.

Strong privacy and anti-retaliation protections can ensure that excluded workers unemployment programs don't provide a free benefit to employers who rely on immigrants without work authorization but do not pay into UI, workers compensation plans, or other protections. The proposed Excluded No More program includes an approach that would allow the state's construction employment task force to use anonymous data from the excluded worker unemployment program to identify construction employers who have violated employment tax laws. The law would only allow that data to be shared on an annual basis to limit employers from retaliation against any recent claimants.

Key Considerations: Administration

Excluded worker unemployment programs must be administered carefully and effectively to reach a population that is often reticent about coming forward to government. The programs developed during the pandemic demonstrated that aid to individuals without work authorization can be rolled out accurately and with the intended impact. As states plan for the next stage of excluded worker unemployment programs, they need to consider a sound implementation strategy and also whether to deliver the benefits themselves or through a third party provider.

Implementation

As a previous joint report by The Century Foundation and Immigration Research Initiative has documented, the successful implementation of New York's Excluded Workers Fund during the pandemic should provide reassurance to state policymakers that future excluded worker unemployment insurance programs can be effectively implemented.[23] A key feature of successful implementation is close and ongoing consultation between community groups serving immigrants and state policymakers designing the processes of the program. This type of ongoing feedback is particularly important for the online application that is deployed, including translation of text into prevalent languages among immigrants and user-friendly mobile phone capture facilities. Several lessons from New York resonate in particular. The state was able to use geo-fencing and rate limits to prevent cases of identity theft and other types of improper payments that troubled the implementation of federal pandemic unemployment benefits.[24] The major problem facing pandemic-era programs did not come from individuals seeking to take advantage of programs, but from criminal rings, often from outside of the United States, who sought to take advantage of programs set aside for people who had lost their jobs due to COVID-19.[25] In addition to the above, states should consider expedited or enhanced authority to conduct confidential data matches within their departments of labor and other state agencies, such as tax and motor vehicles, to enhance identity verification and fraud prevention. Any contracts should also ensure strong accountability by vendors when fraud scams are perpetrated against legitimate beneficiaries, and strong customer service functions for benefit-related problems.

Public Delivery

Public delivery of an excluded worker UI program would mean a state agency would administer the fund, including responsibility for building or selecting a contracted IT infrastructure for processing applications, protections against improper payments, disbursement processes, and application support. This agency would run the program opening and disbursement itself or through private subcontractors. A public delivery model gives the agency discretion to interpret regulations that are not specifically laid out by the bill. These decisions must be made within the confines of state and federal law, regulations, and processes, in a less flexible manner than a nonprofit-run fund. An example of public delivery is New York's Excluded No More proposal, which is proposed to be run by New York State's Department of Labor, as was the state's one-time Excluded Workers Fund.

Specific considerations must be made to ensure the excluded worker UI program does not conflict with provisions around federally funded agencies supporting workers without work authorization. This is especially true with unemployment insurance, as its administration is 100 percent fully federally funded. There are strict guidelines stating that unemployment compensation is not to be paid to noncitizens who were not "lawfully present for purposes of performing such services"[26] or paid to an "alien unless the alien was legally authorized to work at the time services were performed."[27]

Although alternative programs available regardless of immigration status can be administered by the same state agency that administers UI (such as states with paid family leave programs available regardless of status), the funding for the benefits would need to be walled off from general UI funds, likely with a new financing mechanism (whether from a new employer tax, or the state's general fund, or other source of funds).

The staffing to administer the program must also be kept separate, through cost accounting or by hiring different staff. Time allocation accounting can be used to ensure the program is only funded by state money apportioned to the program. For instance, a state department of labor employee could bill some hours working on the excluded worker UI program and some hours on a task funded from a different source. As a result, an employee who might work through restricted funding could also do work for the excluded worker UI program through this cost allocation method. However UI agencies don't typically use cost accounting, so another option would be firewalling staff with certain employees, technology, and contractors 100 percent funded by the excluded worker UI fund. For the one-time Excluded Workers Fund, New York State relied heavily on private subcontractors, which allowed the state to bring on temporary employees quickly and to leave no question to whether federal dollars were being spent on the Excluded Workers Fund program. If a state were considering a long-term program, state agency staff would be more appropriate than contractors for quality service delivery and legal compliance with privacy and other sensitive matters.

Contracting to a Nonprofit Organization

This option would have the state administer the excluded worker UI program through a third-party nonprofit organization. The state would select an overall nonprofit to administer the fund and leave the rest of the implementation process to the chosen nonprofit(s). The state acts then primarily as a funder with oversight over the program and leaves managing and disbursing funds, outreach, application development, and assistance broadly to the third party nonprofits. Colorado's newly established Benefit Recovery Fund is a prime example of this approach. This strategy builds on the Colorado's Left Behind Workers Fund (as well as approaches in other states, such as Oregon and Washington), which demonstrated the viability of nonprofits to successfully and efficiently administer funds using in part public funding.[28] While the fund will be partially financed by employee premiums, it will be entirely separate from UI, with the purpose of paying one or more third-party administrators to handle the application and disbursement of the excluded worker UI program.

There are several platforms that nonprofits could utilize to administer excluded worker funds. For example, the Steady App, a financial empowerment fintech platform, has distributed pandemic relief and is distributing payments for municipal basic income programs through its app technology. Likewise the National Domestic Workers Alliance's tech platform distributed $30 million in pandemic relief aid.[29] Any nonprofit selected for this role must have demonstrated capacity for large scale distribution of funds, beyond what most small community groups can do. And, they need to abide by the same strict privacy requirements that a state agency would follow.

Outreach

Outreach includes publicizing the program in multiple languages, providing accurate information about how to apply, reaching out potential applicants, and providing application assistance. Outreach should include advertising through social media, TV advertisements, targeted marketing efforts on public transportation as well as in-person grassroot events, and partnerships with community based organizations.[30]

The Role of Community-Based Organizations

Community-based organizations (CBOs) play an indispensable role in the creation of excluded worker UI programs. CBOs can leverage their existing relationships with immigrant groups to build legitimacy and trust in a government run program, among a community that may have hesitancy coming forward. A strong partnership with CBOs would include the following aspects:

- **Application assistance and navigators**
    - Individuals can apply on their own through a well-designed direct portal, with clear instructions in multiple languages, ideally one that is accessible through cell phones (as the New York State Excluded Workers Fund application was).
    - CBOs can provide in-person and online application support. This can take the form of program "navigators," people who would assist individuals trying to apply to the program, screen them, and walk them through the process in their preferred language.
- **Communication and outreach materials**
    - CBOs can create multilingual resources to help applicants including fact sheets, document and eligibility checklists, frequently asked questions lists, and resources specific to the barriers faced by applicants.[31] They can also boost important deadlines and warnings about scams on social media and through email lists.
- **Providing key input and consulting**
    - Advocates from CBOs can work with program administrators on program design to ensure funds could meet targeted communities with minimal barriers and provide a voice for program applicants in the decision making process. Advocates were able to play a key role in the shaping of New York's Excluded Workers Fund with regular meetings where they were able to provide valuable feedback throughout the program implementation process.[32] Community-based organizations should be seen as key partners of administering agencies.

Funding CBOs and Grant Programs

Community-based organizations need funding to do this necessary outreach work, and states should build these grant funds into their design. Grants should be delivered several months before the program opening, to allow CBO recipients to hire staff and develop materials to better use funding to support program applicants. Application assistance is a more doable task for CBOs than being responsible for administering fund payments to individuals.

The Excluded Workers Fund Outreach and Assistance Program in New York awarded over $16 million in grants of between $50,000 and $300,000 each to seventy-five CBOs across the state to "provide direct application assistance and outreach to inform workers about the EWF."[33] Eligible grant activities included developing and communicating informative material about the program, canvassing, and conducting informational sessions.

Key Considerations: Benefit Levels

Traditional UI benefits are based on a calculation of documented wages, reported by employers each quarter. Since excluded workers don't have this information reliably on file, states need to take a different approach when constructing a program to cover them. States can either follow the calculation made for traditional UI but instead use wage or tax information collected from the applicant, or they can provide a flat amount.

Based on Traditional UI

A program can attempt to calculate the weekly benefit amount for a specific worker based on proof of earnings from the pre-layoff period, calculated for example at half of the prior weekly wage up to cap. This would make the program as close as possible to traditional UI, and would have few scenarios where the benefit amount would be different from the amount provided under traditional UI. This model would only be practical if the program limits eligibility to those who submit tax returns and/or have pay stubs, such that there is a reasonably accurate reflection of earnings over a set period of time. Even in that case, however, the calculation of benefits amount could be more difficult than under traditional UI, which relies on wage records submitted in advance of unemployment; excluded worker programs would have to collect this information anew from each applicant. Calculating individual benefit amounts per applicant would significantly increase the cost of administration and time for accurate pricing, as compared to a flat amount. The need for clear wage records means that the program cannot easily include undocumented workers without ITINs or cash earners (who should technically be eligible for UI).

Flat Amount

A flat amount for all applicants would model the excluded worker UI program most similarly to emergency pandemic funds. This option would be easier to administer and can allow for more flexible earning documentation and reporting from applicants, as income could be estimated and it is not required to calculate the exact weekly wage and benefit amount per applicant.

There could be political challenges in setting the flat excluded workers amount at a level that is similar to traditional UI benefits, because not all workers applying for the flat amount will have earned the same amount as those qualifying for the state's average amount under traditional UI. California proposed a flat rate of $300 a week, which is based on the average amount that workers without work-authorization in that state would receive if they were eligible for UI, and is less than the state average for traditional UI of $339.78.[34] This calculation was based on an estimate of average earnings of workers without work authorization in the state. Under any circumstances, the benefit must be sufficient to serve the aims of the program, allowing workers to make ends meet and take care of their families through a period of job loss. This is especially important as many immigrants without authorization cannot qualify for other income support programs like food stamps.

Benefit amounts could be tied to the poverty threshold for a family of four at $26,500, which would be about a $255 weekly benefit amount. Note that in Mississippi, maximum traditional unemployment benefits are so low that they fall below this threshold (and several other states top out just above this amount).[35] Considerations should be made to adjust the threshold, if the state or municipality offers a different threshold, as in New York City, where it is $36,262 for a family of four.[36] Alternatively benefit amounts could be tied to the wage of a minimum wage worker in the state; for instance, in California, where the minimum wage is $14 an hour for small employers, the weekly benefit amount would be $280 at a 50 percent replacement rate.[37]

Flat Benefit Tiers as a Compromise

Another alternative is creating two (or more) tiers of benefits that could be dependent on:

- **Applicant income level:** This could mean the applicant's previously earned income could be more on par for the benefit amount. This can also account for those with benefit claims for partial unemployment. For instance, one level could be on par with the state traditional UI average weekly benefit amount for a higher income range and one level that is half that amount for a lower income range or partial income loss.

- **Documents provided:** Tiers could be based on the number and kind of documents an applicant can provide (especially for earnings history). Offering different tiers can account for workers who are eligible but may have more trouble collecting documentation, such as undocumented workers without ITINs and informal economy workers. This was the approach taken by New York's Excluded Workers Fund.

Duration and Frequency of Benefits

Setting the maximum duration of benefits is related to the generosity of the benefit levels. While a duration at the standard twenty-six weeks (six months) may be ideal, a thirteen-week (three month) duration—half the standard duration—may be considered as a way to stretch limited funds and allow states to ease into covering this new population with benefits less extensive than traditional UI. Thirteen weeks of benefits was the approach taken by Colorado. Durations between the two may also be considered, such as the median duration of UI in the state or, if the data exists, the median total weeks of unemployment among noncitizen unemployed workers (what California's bill used for a twenty-week maximum duration; the duration in other states varies).

Weekly benefits can more precisely match the time a worker is unemployed, can also be delivered more quickly in a time of need, but pose more administrative burden. Monthly benefits may be a good compromise as it is simpler to administer and may reduce costs, while being relatively timely. A program may also consider retroactive benefits after a quarter long (three month) period of unemployment.

Benefit Taxability

New York's Fund for Excluded Workers treated UI as a taxable benefit, and withheld state taxes. Disaster benefits and other programs based on need are not taxable, and UI benefits were not taxable until the 1980s under this principle. IRS regulations define unemployment benefits as government programs based on prior earnings and paid for temporary unemployment,[38] and have decided that California paid family leave benefits are taxable, even though they were not specified as taxable by Congress.[39] Thus, it is likely the IRS would rule that excluded worker UI programs are taxable and states would offer recipients the option to withhold taxes.

Key Considerations: Paying for Excluded Worker Programs

Any consideration of revenues should start with a recognition that the traditional unemployment insurance system already receives unemployment insurance payments for about half of immigrants who lack work authorization. The estimated nationwide total of contributions to these funds is $1.3 billion per year, or $13 billion over the course of the past ten years (a ten-year horizon is appropriate since that was roughly the time between the last recession and the pandemic-related recession).[40]

These funds have been steadily subsidizing the traditional unemployment insurance system, since the money goes in on behalf of immigrants without work authorization, but those workers are not able to access benefits.

The revenue to be raised to cover the cost of an excluded worker UI program can, as a result, reasonably be considered as closing a gap, and making up only a portion of what is needed each year, before even considering the many years of subsidy that have already taken place.

In instances where states consider programs that cover more workers than those who lack work authorization, the contributions related to undocumented workers may make up a less than this expanded total. In states that cover workers who would qualify for traditional unemployment insurance but for their immigration status, the amount paid into the program would be a fair match to the amount of the subsidy, since the workers covered by the new program would be those working on the books and with employers likely already paying into the system for their employment.

The money being paid on behalf of immigrants without worker authorization into the UI system cannot be redirected, because of federal rules on use of unemployment insurance. But, without these funds, employers or the states would have to make up the difference.

How, then, can states raise the funds needed to continue this subsidy to the traditional unemployment system and cover the cost of a system that provides compensation to excluded workers?

In the short term, pilot programs to begin to test and refine excluded worker UI programs can sometimes be paid for with budget surpluses or federal funds, such as those available to states and localities under the American Rescue Plan Act (ARPA).

In the long run, there are two main approaches to funding for an excluded worker UI program: payroll taxes and general funds.

Payroll Taxes

The traditional unemployment system is financed through a payroll tax with joint state and federal components. While revenues from the traditional unemployment insurance tax cannot be used for a new fund, states are permitted to levy a surcharge on this tax that can be used flexibly. Many states already use a surcharge—sometimes called a piggy-back tax, to finance other programs, such as job training. A payroll tax surcharge has the advantage of being simple, and already connected with the idea of unemployment insurance. This is how the Colorado fund has been set up.

The payroll tax surcharge is particularly fair if the excluded worker UI program covers people who would qualify for unemployment benefits but for their immigration status, since the large majority of these workers have employers that already pay into the unemployment system. The surcharge in this case is effectively raising the rate for all employers evenly, both those that employ the newly covered workers and those who employ those covered under traditional unemployment insurance. This higher rate would, effectively, cover the subsidy provided by excluding some workers from traditional UI benefits. Put a different way, this is roughly equivalent to what would happen if the traditional UI system were expanded to cover these workers: the overall UI tax rate would have to go up to cover by about the same amount, since the current rate is artificially low since some workers are paid for but excluded from benefits. The rate increase—the piggy-back tax—should amount to a small share of the traditional UI tax. Immigrants without work authorization represent well under ten percent of the labor force in all states; in fact, undocumented workers make up between 1 percent and 6 percent of the labor force in all states but California, where they are 8.6 percent.[41]

General Funds

The state general funds are a logical place to turn for any new revenue needs, and are a particularly logical source of revenue for programs in states that opt to expand coverage of the excluded worker UI program to include all immigrants without work authorization—both those who would qualify for traditional UI if they had work authorization and those who wouldn't—and to include people who are not undocumented but are bona fide self-employed workers or people being paid off the books. Roughly half, or a little less than half, of these workers already have funds going into the system that they can't access, but the other half do not.

General fund revenue options will vary from state to state. States with an income tax may want to consider additional brackets for very-high income earners. A pied-à-terre tax might make sense in areas with a large number of people with second homes.[42] A tax on the income from wealth—also known as a mark-to-market tax—has gained traction in recent years, and has been proposed in Congress at the federal level and was proposed as a possible source of funding for the Excluded Workers Fund in New York State.[43] The logic of a tax that falls primarily on high-income individuals is not only that they can afford what would be a modest increase, but also that high-income individuals disproportionately benefit from the services of immigrants without work authorization who support their lifestyle working as landscapers, nannies, house cleaners, restaurant workers, nail salon workers, and more. Other progressive tax options include increasing corporate taxes, banking taxes, or the fee for starting Limited Liability Companies (LLCs).

Each state has a unique tax environment, and local advocates and legislators typically understand the best options available for raising general funds.

A particular opportunity for funding an excluded worker UI program may arise if, as often happens, a state is asked to step in to cover a deficit in the traditional unemployment insurance system. At this moment, the funding mechanism shifts, and money is generally transferred from the general fund—taxpayer dollars—to bail out a cost that would otherwise fall on employers.

Excluded worker UI programs have been contemplated as annual state appropriations. If there is less demand for the fund than anticipated, any remaining funds would typically be rolled over into the next year's budget. Ideally, there would be enough revenue in a year with low unemployment to begin to build up a rainy day fund, so that there would be more in a year with high unemployment.

Because excluded worker UI programs are funded through an appropriation, however, the fund does not risk incurring an unexpected expense for the state. In a sharp downturn, a state may of course choose to add to a fund in mid year. But if a fund runs out, there is no legal obligation for the state to pay workers who have not received benefits, even if they qualify. As a result, it would be wise to plan for the eventuality of a fund running out—for instance, by automatically reducing payments or limiting eligibility if a fund dips below a certain level.

Conclusion

Workers without work authorization contribute to our economy, especially in vital sectors such as construction, restaurants, and personal services. These workers contribute billions of dollars in taxes each year, including unemployment taxes based on their wages. Federal laws bar these workers from receiving traditional unemployment benefits. During the pandemic, states, localities, community organizations and philanthropies rushed to fill this gap, using state revenues or alternative sources of funding to create excluded worker relief funds, including New York's historic $2.1 billion Excluded Workers Fund. The temporary aid during the pandemic filled a critical need, and also showed that programs to serve unemployed immigrants without work authorization were workable and effective.

Today, a number of states are eager to draw the lessons from this experience to put in place a program that will serve the needs of immigrants without work authorization who lose their jobs today, and that will be ready when the next recession hits. Colorado leads the way, with a first-in-the-nation program to allow immigrants who would qualify for unemployment insurance but for their lack of work authorization to get alternative benefits. Advocates and key legislators in other states are pushing to follow close behind, and to expand on this model. While a full solution to this problem lies with federal action, states can and are leading the way.

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Notes

1 These include Pandemic Unemployment Assistance and Pandemic Unemployment Emergency Compensation.

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6 See Passel and Cohn, "U.S. Unauthorized Immigrant Total Dips to Lowest in a Decade," 77, for a list of detailed industries in which immigrants without work authorization are concentrated.

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10 Alice Cottingham and Althea Gonzalez, "Stand Together: Cash Assistance Funds for Undocumented Immigrants in a Time of Crisis," Grantmakers Concerned with Immigrants and Refugees, October 2021, https://www.gcir.org/resources/stand-together-cash-assistance-funds-undocumented-immigrants-time-crisis.

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13 *Concerning Unemployment Insurance*, Colorado Legislature, Senate Bill 22-234, May 25, 2022, https://leg.colorado.gov/bills/sb22-234. The funds come from a state authorized piggy-back tax that is included in UI tax bills but governed by state, not federal, law, and can come from other appropriations or philanthropy.

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18 "Excluded No More: Ending Unjust Gaps in Our Safety Net That Leave Workers Behind," Fund Excluded Workers Coalition, accessed August 24, 2022, https://fundexcludedworkers.org/wp-content/uploads/2021/12/FEW-Fact-Sheet-Excluded-No-More.pdf.

19 U.S. Department of Labor, UI Quarterly Data Summary, 1st Quarter 2022, https://oui.doleta.gov/unemploy/data_summary/DataSum.asp.

20 The term "excluded worker" can be used to describe a broader group, anyone excluded from unemployment insurance, not just due to work authorization but due to restrictions in the UI program (or barriers that make them unlikely to receive it). This includes several groups, such as independent contractors/freelancers, misclassified workers, sole proprietors, app-based workers, those without enough work history to qualify (including, for example, those recently released from incarceration, unpaid family caregivers, and people who face enormous obstacles to getting or keeping jobs due to widespread discrimination), part-time workers, and workers who lose work because of work/family conflicts. These groups can be part of an excluded worker UI program, like New York hopes to do, or included in alternative policy designs.

21 Rachel West et al., "Strengthening Unemployment Protections in America," Center for American Progress, June 16, 2016, https://www.americanprogress.org/article/strengthening-unemployment-protections-in-america/.

22 California advocates have proposed modifying the bill's language to relate to earnings in the twelve months prior to applying for benefits *or the previous calendar year*. This change would strengthen the possibility of using prior year tax records in documenting a claim.

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