



POLICY BRIEF

Washington's state-run Unemployment Trust Fund needs fraud protection and better management

Mark Harmsworth,
Director, Center for Small Business

October 2020

Key Findings

1. *The Washington Employment Security Department (ESD) has inadequate authentication and fraud protections against scams and individual fraudulent claims.*
2. *ESD officials have insufficient technical infrastructure and systems to handle benefit demand.*
3. *ESD needs to improve fund balance reporting accuracy, data timeliness and data availability.*
4. *ESD officials need to provide the public with more transparency into its internal policies.*
5. *Repayment responsibility of federally secured loans to keep the trust fund solvent is applied to employers that did not cause the depletion of the fund.*
6. *ESD is projecting that Washington will be at a sustained seven-to-ten percent unemployment average until 2024.*
7. *The increase in unemployment tax rates will result in lower wages, lost jobs, increased product and service prices and potentially business bankruptcy.*
8. *ESD is currently planning to double or triple employer unemployment tax rates in 2021.*
9. *The Unemployment Trust Insurance Fund has insufficient benefit flexibility for individual claimants.*
10. *Workers should be allowed to have Individual Unemployment Accounts to protect their benefits and to guard against repeated fraud.*



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Introduction

The COVID-19 crisis and economic shut-down has highlighted the failures of the state Employment Security Department (ESD) to manage the Unemployment Trust Investment Fund (UTIF). This clear failure in leadership and management demonstrates the need for significant reform in both the fund management and in ESD policy.

Specifically, the state-ordered shut-down of employment and business activity has shown that ESD does not have effective systems, procedures, and policies in place for a significant unemployment event. This failure resulted in department managers being unable to meet basic levels of service and to pay benefits in a timely fashion when the number of claims increased.

ESD systems were overwhelmed with a significant increase in benefit claims, which allowed Nigerian scammers and other individuals to take advantage of an inadequate benefit claimant identity verification process and steal at least \$650 million in benefits from the public.¹

Legitimate claimants were unable to contact ESD staff, or experienced long delays, when requesting new and managing existing unemployment claims due to phone and email systems being unable to handle increased volumes. In some cases, eligible Washington residents did not receive benefits for several months, while foreign nationals were able to steal money from the system quickly and easily.²

ESD leaders are unable to accurately report on the current UTIF balance, outstanding benefit claims, projected UTIF balance and have withheld basic

1 "Unemployment relief delayed weeks for some, state system overwhelmed," by Simone Del, *Q13 Fox News*, April 2, 2020, at <https://www.q13fox.com/news/unemployment-relief-delayed-weeks-for-some-state-system-overwhelmed>; and "The Employment Security Department fraud tops \$650 million and will grow higher" by Mark Harmsworth, Washington Policy Center, June 4, 2020, at <https://www.washingtonpolicy.org/publications/detail/the-employment-security-department-fraud-tops-650-million-and-will-grow-higher>.

2 "After hundreds of unanswered phone calls, some wait weeks for answers from Washington's overwhelmed unemployment department," by Samantha Wohfell, *Inlander*, April 30, 2020, at <https://www.inlander.com/spokane/after-hundreds-of-unanswered-phone-calls-some-wait-weeks-for-answers-from-washingtons-overwhelmed-unemployment-department/Content?oid=19535766>

information from the public.³ This is in despite of a \$44 million upgrade completed early in 2020 on ESD systems that was supposed to correct the system reporting deficiency and add additional fraud protections.⁴

The current financial funding structure of the UTIF does not provide a sufficient level of return on the money being collected through the unemployment security taxes levied on employers.

The process and criteria used to approve or deny claims is not well defined, not transparent to the public and has been changed frequently to meet arbitrary goals because of the COVID-19 fraud events.

Unemployment tax rates that are adjusted to fund replenishment of the UTIF during a large unemployment event, such as COVID-19, do not consider unemployment caused by government mandated layoffs. An employer that historically has a good employee retention rate and would normally have a low unemployment tax rate, is penalized with an increased rate because the state, not businesses, required employers to lay off employees.

The UTIF fund balance will need to be replenished with a loan from the Federal Government. This loan must be repaid by November 10th of the second year after the loan application was filed. State officials are planning to impose this repayment cost on employers by increasing the unemployment tax rate until at least 2024.⁵

Background

ESD system and procedure preparedness

When unemployment claims spiked in late March 2020 due to the governor's order to close the economy, ESD was overwhelmed by the increase in phone calls and emails for unemployment benefit claims.⁶ The ESD systems, policies and procedures could not handle the sudden increase in benefit requests, resulting in the inability of many legitimate claimants to start the claims process or gain access to existing benefits.

The lack of system preparedness is particularly troublesome, as the Pacific Northwest is an active earthquake zone and is expected to suffer

3 “The Governor’s Office knew they would run out of Unemployment Benefits in May and didn’t say anything about it,” by Mark Harmsworth, Washington Policy Center, July 22, 2020, at <https://www.washingtonpolicy.org/publications/detail/the-governors-office-knew-they-would-run-out-of-unemployment-benefits-in-may-and-didnt-do-anything-about-it>.

4 “Millions lost and no one has been fired? ESD is political cronyism at its worst,” by Dori Monson, *KIRO Radio*, May 28, 2020, at <https://mynorthwest.com/1894960/millions-lost-no-fired-esd-political-cronyism/>.

5 Association of Washington Business Employment Law Webinar, broadcast on July 8, 2020.

6 “A message from Commissioner LeVine on demand for agency’s services,” Washington Employment Security Department, March 18, 2020, at <https://esd.wa.gov/newsroom/demand-for-agency-services>.

a significant seismic event in the future.⁷ A natural event, such as an earthquake, in a similar fashion to a state-mandated ‘Stay-At-Home’ order, would likely create a large increase in unemployment claims and should be a critical component of emergency preparedness planning for ESD.

Washington experienced a major earthquake in 2001, yet 19 years later ESD is still unprepared for a surge in unemployment in the state. Had the planning, procedures and system design for similar events been completed years ago, the impact to the ESD system response could have been reduced or handled more effectively.

The Washington State Legislature allocated \$44 million to upgrade ESD systems, which was directed to address system efficiency and fraud protection. The upgrade was completed by ESD in 2017.⁸

Despite the \$44 million spent, ESD phone and communications systems are still unable to scale up to handle the large number of calls received. Many of the calls require human interaction for resolution. For some calls a person is required for resolution, but for many claimants an automated system would have been sufficient. This would have reduced the long delays, and in some cases, the complete inability of a claimant to reach and speak to an ESD representative.

The claims backlog prompted ESD to hire additional adjudicators, including 50 national guard troops to reduce the amount of time required to process the claims.⁹ The claims backlog created by the delay in processing claims was not cleared, in some cases, for four months.¹⁰

The December 2019 Monthly Employment Report, published on January 22, 2020, did not address, or consider the COVID-19 situation developing across the globe. This is despite the governor initiating emergency procedures on January 16 requiring all agency department heads to create

7 “Where the Pacific Northwest’s ‘Big One’ Is More Likely to Strike,” by Miles Bodmer and Doug Toomey, *The Conversation US, Scientific American*, August 5, 2018, at <https://www.scientificamerican.com/article/where-the-pacific-northwest-rsquo-s-ldquo-big-one-rdquo-is-more-likely-to-strike/>.

8 “Unemployment pay halts after fraudulent claims rush system,” by Jim Brunner, *The Seattle Times*, at <https://www.governing.com/work/Unemployment-Pay-Halts-After-Fraudulent-Claims-Rush-System.html>.

9 “Washington state’s jobless claims process further marred by delays, glitches and special access,” by Paul Roberts, *The Seattle Times*, June 19, 2020, at <https://www.seattletimes.com/business/economy/states-jobless-claims-process-marked-by-delays-glitches-and-special-access/>.

10 “Washington announces it has cleared unemployment backlog of over 81,000 claims,” by Nick Bowman, *MyNorthwest.com*, August 3, 2020, at <https://mynorthwest.com/2070714/washington-esd-unemployment-backlog-cleared/>.

emergency planning to deal with the pandemic.¹¹ In fact, as late as March 17, 2020, no adjustments to processes or preparations had been made by ESD for the pandemic. Data showed an obvious pending increase in benefit claimants caused by the state-mandated, ‘Stay-At-Home’ order which clearly should have been reflected in the unemployment projections published by ESD.¹² The pandemic ‘Stay-At-Home’ proclamation was issued by the Governor on March 24, 2020.¹³

ESD officials did not prepare or consider the increased benefit claimant load from a pandemic that would severely overwhelm their systems and procedures. Their ESD-managed systems are not sufficient to handle other natural disasters or man-made events that will significantly increase claims.

Unemployment trust fund insolvency

The UTIF is funded through employer unemployment tax payments and money received from the federal government. The funds are combined into a single budget. The fund typically carries a balance of \$1 billion for each one percent of projected unemployment. A five percent projected unemployment rate would result in an approximate \$5 billion average fund balance. The unemployment rate projection is updated regularly, and the unemployment tax rate adjusted to account for fluctuations in anticipated unemployment benefit payouts.

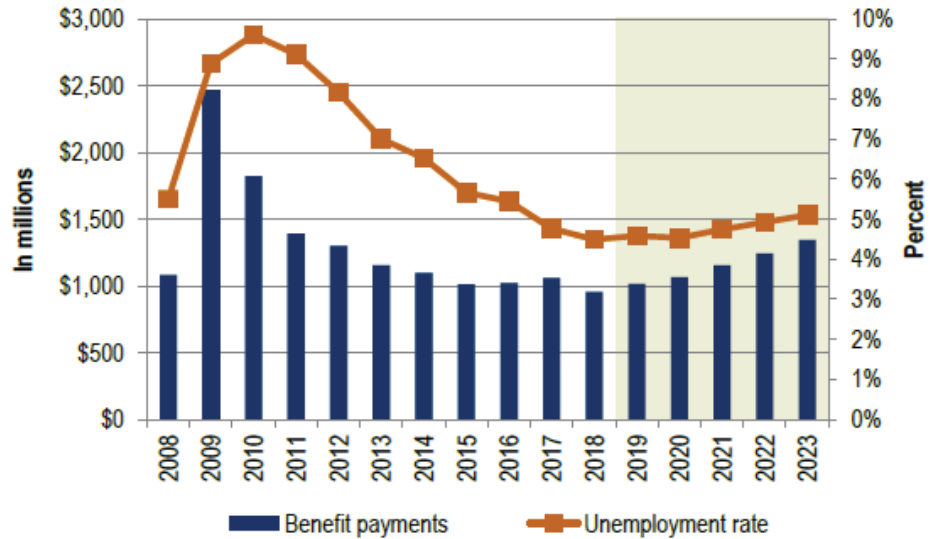
The UTIF account, as of November 2019 had a \$4.86 billion fund balance, which ESD officials say will provide about 15.5 months of benefit payments with an assumed five percent unemployment rate. The projected benefit payout, at the time, for 2020 was \$1.07 billion dollars with payroll and businesses taxes replacing the spent funds throughout the year.

In the first few months of 2020, due to the economic lockdown, the demand on the fund outstripped the incoming tax revenue. Exasperating downward financial pressure on the UTIF, tax revenues also fell due to businesses not operating and paying into the fund and unemployment benefit claims rising to record levels.

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- 11 “Monthly Employment Report December 2019,” Washington Employment Security Department, accessed on August 3, 2020, at <https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/labor-market-info/Libraries/Economic-reports/MER/MER-2019-12.pdf>; “First Covid-19 case happened in November, China government records show – report,” *The Guardian*, March 13, 2020, at <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>; Public Records Request PRR 2020-80, Washington Policy Center response indicating the Governor’s office January 16, 2020 requesting all department agencies emergency planning for a stay-at-home quarantine.
 - 12 “Monthly Employment Report for January 2020: Unemployment rate drops again, falls to record low,” Washington Employment Security Department, March 4, 2020, at <https://esd.wa.gov/newsroom/monthly-employment-report-for-january-2020-unemployment-rate-drops-again-falls-to-record-low>; “Monthly Employment Report for February 2020,” Washington Employment Security Department, March 17, 2020, at <https://esd.wa.gov/newsroom/monthly-employment-report-for-february-2020-unemployment-rate-bottoms-out-to-3-8-percent-employers-add-jobs>.
 - 13 “Gov. Inslee issues ‘stay at home’ proclamation for Washington state,” My Northwest.com, March 24, 2020, at <https://mynorthwest.com/1782819/inslee-washington-stay-at-home-order/>.

The state unemployment projection assumes an unemployment rate of 4.53 percent for 2020 based on the November 2019 data.¹⁴ ESD is now projecting that Washington will be at a sustained seven-to-ten percent unemployment average until 2024, twice the rate originally projected. ESD officials paid out over \$988 million for the week April 19-25 (an increase of \$811.2 million compared to the previous week). This is close to the \$1.07 billion ESD officials indicated would be the payout for the entire year of 2020.¹⁵

Figure 2. Benefit payments from state unemployment trust fund Washington state, 2008 through 2023
Source: Employment Security Department/LMEA/ETA 2112/UI Wage File



Note: Highlighted years reflect projected data.

Source: Employment Security Department unemployment projections accessed January 2020. (Pre-COVID)

While taxes are still being collected, revenues are significantly down and certainly will not be enough to refill the account to continue paying unemployment benefits at the current rate.

The fund depletion, at its peak, was \$1 billion per week, a portion of which is paid from federal dollars and included the \$600 direct payment for each claimant, funded through the federal Cares Act. The depletion for 2020 stabilized in August 2020 at around \$500 million per week.

The fund balance as of August 3, 2020 is projected to be approximately \$2

14 “Unemployment Insurance Initial Claims Weekly Dashboard - Washington State,” Washington Employment Security Department, accessed on August 3, 2020, at https://public.tableau.com/profile/jeff.robinson#!/vizhome/InitialClaimsapplicationsforUnemploymentInsurance-WA_ET539-/Story1.

15 “Unemployment Insurance Trust Fund Forecast June 2020,” Washington Employment Security Department, June 2020, at <https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/labor-market-info/Libraries/Economic-reports/Unemployment-benefits-and-trust-fund-reports/UI-TF-REPORT-June-2020.pdf>.

billion.¹⁶ The state will need to borrow money from the federal government to keep the fund solvent. This loan must be repaid within 24 months.

This loan will create a liability for the Washington state budget, a similar situation to California which borrowed money to cover its shortfall in previous years.¹⁷ ESD officials say that because of the cost of the loan repayment, ESD will impose significant increases in the unemployment tax on Washington employers.¹⁸ ESD officials plan to triple the unemployment tax rate in 2021 and will maintain a high tax rate until at least 2024.¹⁹

COVID-19 Nigerian Scam impact to the UTIF

ESD system fraud prevention problems existed prior to the COVID-19 pandemic, despite the \$44 million given by the legislature to specifically fix ESD's computer systems.²⁰

The security mechanism and identification procedures ESD has been using for the last few years are wholly inadequate to protect the security of the accounts and the privacy of the benefit claimants. The verification for accessing an account was a name, birth date and social security number, a policy that does not protect the system against widespread fraud.²¹

With data breaches at Equifax, Target, Washington State University and other high-profile cases, Washington residents' personally identifiable information has

16 The exact fund balance is estimated as ESD does not subtract outstanding benefit claims from fund balance statements.

17 "California has paid off its unemployment account loan balance to the federal government," Payroll Masters, November 14, 2018, at <https://www.payrollmasters.com/california-has-paid-off-its-unemployment-account-loan-balance-to-the-federal-government/>.

18 "Employers may face a big bill for unemployment benefits when they finally reopen," by Mark Harmsworth, Washington Policy Center, May 20, 2020, at <https://www.washingtonpolicy.org/publications/detail/employers-may-face-a-big-bill-for-unemployment-benefits-when-they-finally-re-open>.

19 "Unemployment taxes could nearly triple by 2022 in Washington due to COVID," by Paul Roberts, *The Seattle Times*, July 3, 2020, at <https://www.seattletimes.com/business/economy/unemployment-taxes-could-nearly-triple-by-2022-in-washington-due-to-covid/>.

20 "How missed 'red flags' helped Nigerian fraud ring 'Scattered Canary' bilk Washington's unemployment system amid coronavirus chaos," by Jim Brunner, Paul Roberts and Patrick Malone, *The Seattle Times*, June 4, 2020, at <https://www.seattletimes.com/seattle-news/times-watchdog/how-missed-red-flags-helped-nigerian-fraud-ring-scattered-canary-bilk-washingtons-unemployment-system-amid-coronavirus-chaos/>.

21 "Unemployment benefits application checklist," Washington Employment Security Department, accessed on August 3, 2020, at https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/Unemployment/COVID-19_Applications_CheckList.pdf.

been made public.²² It is probable that this information was used by criminals to break into the ESD systems, since no second level of authentication was implemented by officials to protect ESD systems.

In response to the \$650 million stolen by the Nigerian fraud scheme earlier in 2020, ESD added a photo requirement to verify claimant's identity and reduce the amount of fraud.²³ However, this verification is also flawed in its approach. Photos of identification documentation can be obtained or faked by unscrupulous individuals and uploaded.

The scam increased delays in benefit payments to legitimate benefit claimants, and in some cases, payments were stopped to legitimate claimants who were already receiving benefits.

This has prompted a series of lawsuits against ESD for halting benefit payments to legitimate benefit claimants as the department cannot easily differentiate between a fraudulent claim and a valid one.²⁴

With the help of the federal government, approximately \$300 million of the \$650 million was recovered.²⁵

The Nigerian scam will be not be charged back to Washington employers since the cap on the 1.22 percent social tax component of the unemployment tax rate, typically used for fraud, has already been met.²⁶ The underlying fraud issue, however, is not fully corrected and ESD needs to improve claimant authentication and identification processes to fix this.

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- 22 "Equifax Data Breach Settlement," Federal Trade Commission, January 2020, at <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>; "Target to pay \$18.5M for 2013 data breach that affected 41 million consumers," by Kevin McCoy, *USA Today*, May 23, 2017, at <https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/>; "Washington State University identifies and addresses security incident involving stolen hard drive," Washington State University, accessed on August 3, 2020, at <https://wsu.edu/security-incident/>;
- 23 "How missed 'red flags' helped Nigerian fraud ring 'Scattered Canary' bilk Washington's unemployment system amid coronavirus chaos," by Jim Brunner, Paul Roberts and Patrick Malone, *The Seattle Times*, June 4, 2020, at <https://www.seattletimes.com/seattle-news/times-watchdog/how-missed-red-flags-helped-nigerian-fraud-ring-scattered-canary-bilk-washingtons-unemployment-system-amid-coronavirus-chaos/>.
- 24 "Washington's Employment Security Department commissioner sued for halting benefits during fraud investigation," by Paul Roberts, *The Seattle Times*, June 5, 2020, at <https://www.seattletimes.com/seattle-news/washingtons-employment-security-department-commissioner-sued-for-halting-benefits-during-fraud-investigation/>; "State Halts Unemployment Payments for Two Days After Finding \$1.6M in Fraudulent Claims," by Jim Brunner, *The Seattle Times*, May 15, 2020, at http://www.chronline.com/community/state-halts-unemployment-payments-for-two-days-after-finding-1-6m-in-fraudulent-claims/article_02e03e40-96d0-11ea-af2d-a7432569b0b6.html.
- 25 "State recovers \$300M in stolen unemployment money, but many jobless still waiting for help," by Alfred Charles, *KOMO News*, May 28, 2020, at <https://komonews.com/news/local/state-has-recovered-300m-in-unemployment-benefits-stolen-by-scammers-esd-official-says>.
- 26 Association of Washington Business Employment Law Webinar, broadcast on July 8, 2020.

Rising unemployment tax rates

Washington is one of a handful of states that will likely require employers to pay increased unemployment taxes due to COVID-19 when businesses reopen. Despite most states waving the requirement to replenish their unemployment trust fund accounts, Washington officials have indicated that the increased unemployment tax rates caused by the layoffs will only be waived if the business can prove it had a COVID-19 infection at the business site.²⁷

As small businesses reopen, many will be grappling with re-stocking shelves, re-filling refrigerators and re-hiring staff and will struggle financially with expenditures due to increased payments to cover the COVID-19 unemployment insurance claims. Most of the layoffs are a direct result of the state ‘Stay at Home’ order the governor imposed in March and are beyond a business owner’s control.²⁸

For many small businesses, this may be the last financial straw and is likely to discourage re-openings. Current state policy is to make business owners pay to replenish the unemployment trust funds and repay any federal loans that are required to keep the trust fund solvent.

The unemployment tax, paid by the employer, is based on the taxable wage base (currently \$52,700) and is calculated using three rates.²⁹

Description	Rate
Experience rate tax	Business specific
Social tax	1.22%
Solvency surcharge	0.2%

The average unemployment tax rate for 2020 was estimated at 0.99 percent.³⁰

The policy to increase employer experience rate based on layoffs mandated by the state means officials plan to impose significantly higher employment taxes next year when ESD calculates the new rates.

Twenty-six states and the District of Columbia have cancelled the employer portion of the increased costs. These states will be at a competitive advantage when the economy starts to gain momentum.³¹

27 “More Than Half the States Will Protect Businesses from Certain COVID-19-Related Unemployment Insurance Tax Hikes,” by Katherine Loughhead, *The Tax Foundation*, May 19, 2020, at <https://taxfoundation.org/unemployment-insurance-tax-hikes-covid19/>.

28 “Inslee announces ‘Stay Home, Stay Healthy’ order,” State of Washington, March 23, 2020, at <https://www.governor.wa.gov/news-media/inslee-announces-stay-home-stay-healthy%C2%A0order>.

29 “Unemployment tax rates FAQ” Employment Security Department, accessed on August 16, 2020, at <https://esd.wa.gov/employer-taxes/tax-rate-faq>.

30 “Unemployment insurance taxes” Washington Security Department, access on August 16, 2020, at <https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/employer-Taxes/ESD-2015-tax-rate-table.pdf>.

31 “More Than Half the States Will Protect Businesses from Certain COVID-19-Related Unemployment Insurance Tax Hikes,” by Katherine Loughhead, *The Tax Foundation*, accessed on May 19, 2020, at <https://taxfoundation.org/unemployment-insurance-tax-hikes-covid19/>.

As Washington officials continue to restrict employment and job creation, sector by sector, there appears to be no consideration for the pending, second economic hit that will be imposed on business owners by increasing unemployment taxes. ESD officials have indicated that a federal bailout is preferable and have no other plans to replenish the UTIF other than imposing higher unemployment tax rates.³²

The increase in unemployment tax rates will result in lower wages, lost jobs, increased product and service prices and potentially business bankruptcy.

Reporting inconsistencies and lack of transparency

ESD has not been transparent about fund balance reporting, benefit claim payouts and process changes. ESD has obfuscated public reporting, which makes it difficult for the public to understand the true financial health of the UTIF.³³ The time lag between fund balance reporting and claim status reporting means calculating the fund balance is inaccurate and results in a lower-than-reported balance due to outstanding claims.

To maintain trust with the public, ESD officials should report current numbers within a 24-hour period, at a minimum.

ESD officials publish monthly and weekly unemployment statistics but fail to differentiate clearly between the claim types and benefit payment funding sources. As an example, the weekly report characterizes claims made against the state funds and claims made against federal funds as two separate claims. Payment amounts are combined, which hides how many state dollars and federal dollars are actually paid out in benefits. Hiding the data prevents the public from seeing the true financial state and unemployment situation of the UTIF.

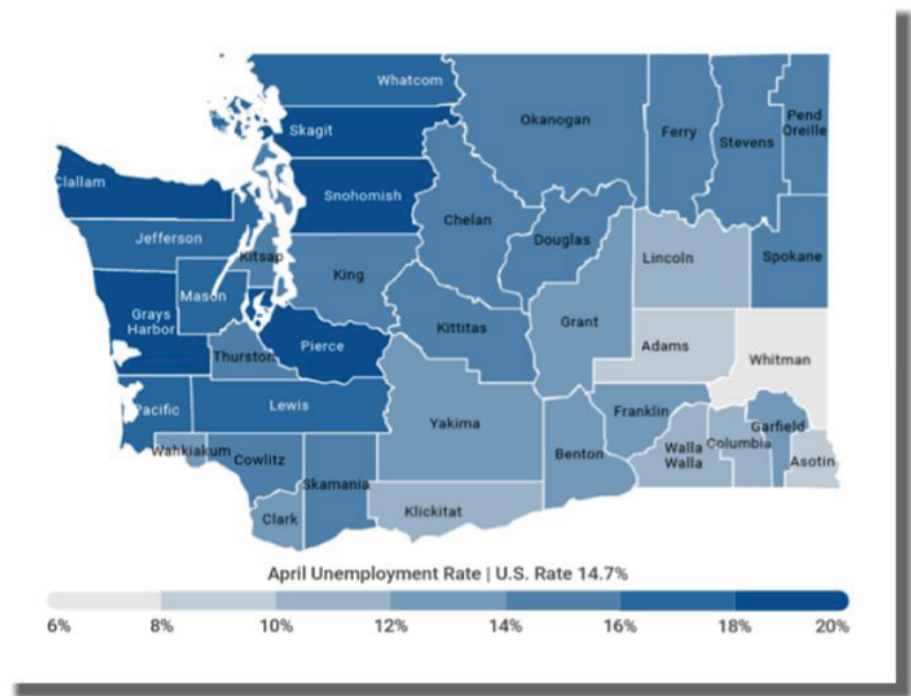
In May 2020, ESD officials changed the way county unemployment statistics are reported. By changing the scale and colors used to report the data, ESD managers altered the way in which the data could be interpreted, emphasizing smaller graduations with a larger color differential. At a glance, some counties now appear less affected by COVID-19 economic conditions than they really are.

The April unemployment statistics, published in early May by ESD, were based on a scale graduated in two percent increments.³⁴ The result is below, and it shows that while the largest unemployment was in Western Washington, Eastern Washington also has significant rise in unemployment. The darker blue areas show where the highest rise in unemployment was, the lighter areas reflect a lower rise in unemployment.

32 Association of Washington Business Employment Law Webinar, broadcast on July 8, 2020.

33 “Unemployment increases further reduce the unemployment trust fund balance” by Mark Harmsworth, Washington Policy Center, May 14, 2020, at <https://www.washingtonpolicy.org/publications/detail/unemployment-increases-further-reducing-the-unemployment-trust-fund-balance>.

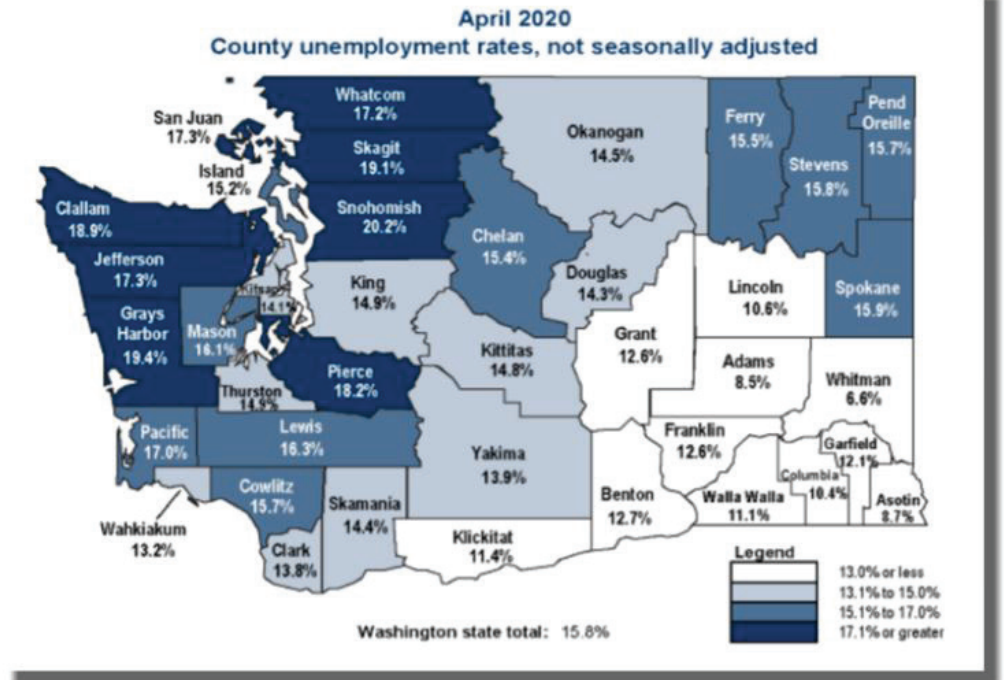
34 First month ESD changed the color scale of the reporting.



Posted on 4/7/2020 on the Employment Security Department website.³⁵

Later in May, ESD officials changed the county map to show the increased unemployment rates caused by the Governor’s ‘Stay Home Stay Safe’ COVID-19 order. ESD officials changed the scale, reducing the number of color bands from seven to four and the first band now starts at 12 percent. This change significantly emphasized Puget Sound unemployment numbers over Eastern Washington. The white area in Eastern Washington seems to show there was little or no unemployment where in fact, the unemployment in Grant County in May is as high as King County’s was in April.

³⁵ “Monthly employment report,” Washington Employment Security Department, accessed on August 3, 2020, at <https://esd.wa.gov/labormarketinfo/monthly-employment-report>.



Posted on 4/7/2020 on the Employment Security Department website.³⁶

Eastern Washington’s unemployment rate, on average, is only slightly lower than that in King County.

By changing reporting graphs month over month, state officials mislead readers and make it difficult for the public to predict trends and compare data.

ESD managers do not publish the Adjudication criteria used to approve claims, or when audits are required. Currently, ESD officials only publish the categories. The actual process a claimant needs to complete to get benefits is not shown.³⁷

ESD oversight and transparency

The COVID-19 crisis has exposed the underlying inadequacies of Washington’s unemployment system, which is badly in need of not just an audit, but significant structural reform. Without oversight and transparency, the public cannot call ESD to account for the management of the Unemployment Trust Fund and other processes they have implemented.

Additionally, federal government officials have reported that there are concerns about fraudulent unemployment benefit claims made to the Washington

³⁶ Ibid.

³⁷ “Unemployment benefits if you quit your job,” Washington Employment Security Department, accessed on August 16, 2020, at <https://esd.wa.gov/unemployment/quit>.

Employment Security Department (ESD) and how state officials handle claims.³⁸ The U.S. Secret Service notified ESD in May 2020 that state unemployment payments were going out of state and could be fraudulent.³⁹

With long delays in benefit payments, lack of trust fund balance reporting transparency and public confidence quickly deteriorating, it is time for lawmakers to reform how Washington manages its unemployment program.

Policy recommendations

Improve ESD systems and policy preparedness

ESD officials should update their computer systems to be more flexible by having both physical and software-based systems that use modern software architecture scaling and automation. In the event of a significant increase in call, email and claim volumes, the systems should be able to respond to most claimant requests in an automated fashion.

Many of the initial claims require human interaction for resolution. For some claims a person is required for resolution, but for many claimants an automated system would have been sufficient and would answer people's questions more quickly. This would reduce the delays and would enable claimants who need more help to reach and speak to an ESD representative.

For simple claims, including adjudication, the system should be set up online so claimants who are identified and pre-authenticated could start and complete legitimate claims without a personal ESD representative interaction.

Implement unemployment pre-registration

ESD officials struggled to verify benefit claimant registration because this process occurs at the point of claims being initiated. As part of system-wide improvement, ESD officials should register employees and complete identity verification when employees are hired. This advance registration would be completed by the employee.

While this would not eliminate claims when employees are laid off and have not registered, it could dramatically reduce the potential for backlogged claims and reduce fraud to the subset of cases filed at unemployment.

When Governor Inslee issued his lockdown order in March, if employees

38 "U.S. attorney urges Washington to fix 'vulnerabilities' that may have made state the top target for unemployment benefits theft," by Paul Roberts, *The Seattle Times*, May 15, 2020, at <https://www.seattletimes.com/seattle-news/crime/u-s-attorney-urges-washington-to-fix-vulnerabilities-that-may-have-made-state-the-top-target-for-unemployment-benefits-theft/>.

39 "Mind-bogglingly frustrating? U.S. says red flags missed in bogus state jobless claims," by Suzanne Phan, KOMO News, May 26, 2020, at <https://komonews.com/news/coronavirus/secret-service-says-esd-officials-may-have-missed-red-flags-leading-to-fraud-claims>.

had been pre-registered with ESD accounts, the claims process would have been verified and automated. That would have reduced the requirements for in-person adjudication, reduced or eliminated benefit claim delays, and sharply cut down on opportunities for fraud by foreign nationals infiltrating the state system.

Streamline employer reporting

The Employer Account Management System (EAMS) was launched by ESD early in 2020 and allows employers to file unemployment information. It does not, however, allow an employer to quickly file a notice of resignation or termination of an employee when that occurs. Tying this information back to the employee pre-registration would reduce adjudication efforts for approving more complex claims and would speed legal claim payouts.

Update and improve system security

ESD officials need to contract with either internal or external cyber-security experts to prevent additional wide-spread fraud. ESD should adopt a new streamlined, properly authenticated system to enable claims to be made efficiently, automatically, and securely.

Verification of identity should be easy, quick, and secure. Puget Sound is home to two of the largest cloud-hosting companies, Microsoft and Amazon, that are world leaders in cyber-security.⁴⁰ ESD officials should tap this nearby expertise to build a world class, secure and properly authenticated, employment benefit system.

In addition to state audits, state officials should contract with independent companies to conduct regular audits of the unemployment trust fund and improvements in transparency, along with creating a secure, authenticated system to restore public trust in ESD officials and managers.

State leaders should cancel the employer portion of increased taxes for COVID-19 costs

Washington state leaders should follow the example of 26 states in cancelling the employer portion of the increased unemployment costs for all businesses, not just ones that had COVID-19 infection cases at their job sites. This will prevent a significant increase to unemployment taxes to the businesses in the state.

Improve oversight and transparency

Regular audits of the unemployment trust fund and improvements in transparency are needed to restore public trust in the system. The Joint Legislative Audit and Review Committee (JLARC) should report to the legislature with a full analysis of the deficiencies in ESD systems with recommendations for additional process transparency and oversight

Longer term, regular in-depth legislative oversight of the UTIF is required.

40 “Securing the Cloud,” by Allison Linn, Microsoft, accessed on August 3, 2020, at <https://news.microsoft.com/stories/cloud-security/>; and “Amazon Cloud Security,” Amazon, accessed on August 3, 2020, at <https://aws.amazon.com/campaigns/cloud-security/>.

Improve public reporting

ESD officials have improved reporting with the deployment of an online reporting system (called Tableau) but ESD has not made system changes to refresh the data on a frequent basis. ESD officials should publish daily reports with the latest data on key fund balances and claims information. This data should be clear about funding sources and should include the number of pending claims

For its standard weekly and monthly reporting, ESD officials should use a consistent reporting methodology to be honest with the public by allowing consistent historical data comparisons.

Allow workers to have Individual Unemployment Accounts (IUAs)

State officials should reform the unemployment trust fund to minimize the volatility and fraud which has been clearly exposed in the last few months.⁴¹ Lawmakers should pass legislation to legalize the creation of individual unemployment accounts to help resolve this issue.

Under the current system, Washington workers receive no refund or benefit on retirement, and workers who have not been unemployed receive no benefits at all. A system based on individual accounts returns fairness and equity to the system. Personal accounts promote individual responsibility, provide workers with an added financial asset, encourage saving for retirement, and would relieve the state of most of the administrative cost and complication of the current system. Since workers would control their own benefits and would build individual assets, the system can be used whether workers are laid off or chose to leave the workforce before retirement.

Allowing workers to have individual accounts would reduce the cost and fraud of the existing, outdated system. If state officials had allowed workers to have an established system of funded Individual Unemployment Accounts (IUAs), foreign nationals would not have been able to steal hundreds of millions of dollars from Washington state by submitting thousands of fraudulent claims.

Conclusion

The COVID-19 crisis has uncovered the failures of Washington's government run unemployment system. With long delays in benefit payments, lack of accurate fund balance reporting, widespread fraud, lack of agency transparency and low public confidence, it is time for Washington leaders to change its unemployment program.

It is obvious ESD needs additional oversight and significant reform to prevent this situation from happening again. The fraud, mismanagement and payment problems are adding to the debt burden of the state because of the need to bring the

41 "The state unemployment fund continues to bleed money and state officials don't want to explain why," by Mark Harmsworth, Washington Policy Center, May 7, 2020, at <https://www.washingtonpolicy.org/publications/detail/the-state-unemployment-fund-continues-to-bleed-money-and-state-officials-dont-want-to-explain-why>.

fund balance back to solvency when it runs out of money.

The way the existing weak trust fund is managed needs to be reformed to minimize the volatility which has been clearly exposed in the last few months. The state should allow the creation of individual unemployment accounts to resolve this problem.

While events like the COVID-19 economic lockdown order are hopefully rare, Employment Security Department officials and state leaders should be better prepared to deal with the next long-term unemployment crisis.

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About the Author

Mark Harmsworth was elected in 2014 to the Washington State House of Representatives where he served two terms. His focus was on transportation and technology, including serving as the ranking member on the House Transportation Committee.

Prior to the legislature, Mark served two terms on the Mill Creek City Council and was elected Mayor Pro-Tem in his last year.

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Mark works in the technology industry and is an owner of a small business after completing a long career at Microsoft and Amazon.

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