

117TH CONGRESS
1ST SESSION

S. _____

To modernize the technology for delivering unemployment compensation, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself, Mr. BROWN, Mr. WARNER, and Ms. CORTEZ
MASTO) introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To modernize the technology for delivering unemployment
compensation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unemployment Insur-
5 ance Technology Modernization Act of 2021”.

6 **SEC. 2. MODERNIZATION OF TECHNOLOGY FOR DELIV-**
7 **ERING UNEMPLOYMENT COMPENSATION.**

8 (a) ESTABLISHMENT.—

9 (1) IN GENERAL.—Not later than 2 years after
10 the date of enactment of this section, the Secretary

1 shall develop, operate, and maintain a modular set
2 of technology capabilities to modernize the delivery
3 of unemployment compensation (in this section re-
4 ferred to as the “technology capabilities”).

5 (2) PURPOSES.—The purposes of developing
6 the technology capabilities are the following:

7 (A) For such capabilities to be utilized for
8 any Federal administrative function associated
9 with the provision of unemployment compensa-
10 tion.

11 (B) To provide States with modular, open
12 system technology capabilities and shared serv-
13 ices to administer their unemployment com-
14 pensation programs.

15 (3) CONSULTATION.—In developing, operating,
16 and maintaining the technology capabilities under
17 paragraph (1), the Secretary shall—

18 (A) coordinate with the Administrator; and

19 (B) consult, design, and conduct usability
20 testing with—

21 (i) current and former claimants;

22 (ii) employers that participate in un-
23 employment compensation programs;

24 (iii) employees of State workforce
25 agencies;

1 (iv) experts in technology and user ex-
2 perience;

3 (v) Federal administrators of unem-
4 ployment compensation;

5 (vi) any other potential user of the
6 technology capabilities; and

7 (vii) subject matter experts as deemed
8 appropriate by the Secretary.

9 (b) REQUIREMENTS.—

10 (1) IN GENERAL.—The technology capabilities
11 shall—

12 (A) incorporate a modular open systems
13 approach and include modular components for
14 each function necessary to administer an unem-
15 ployment compensation program, including—

16 (i) receiving, processing, and paying
17 claims for unemployment compensation, in-
18 cluding disaster benefits;

19 (ii) online claim filing;

20 (iii) the determination of claimant eli-
21 gibility;

22 (iv) the collection of unemployment
23 taxes;

24 (v) the submission of employer wage
25 records;

1 (vi) the appeals and adjudication
2 processes for claimants and employers;

3 (vii) sharing relevant data among
4 States and the Secretary; and

5 (viii) any other functionality that ad-
6 dresses the issues and goals identified dur-
7 ing the pre-development study described in
8 subsection (c)(1);

9 (B) comply with best practices and stand-
10 ards for privacy and cybersecurity, including
11 digital identity proofing services, identified in
12 consultation with the Director of the National
13 Institute of Standards and Technology (NIST)
14 and the Director of the Cybersecurity and In-
15 frastructure Security Agency (CISA);

16 (C) prioritize end-to-end user experience
17 for claimants, employers, and administrators of
18 unemployment compensation programs;

19 (D) include centralized Federal technology
20 capabilities that allow for the storage, exposure,
21 and exchange of data required by States to ad-
22 minister their unemployment compensation pro-
23 grams (with the respective States retaining pos-
24 session of such data without regard to the stor-

1 age, exposure, or exchange of such data in the
2 Federal technology capabilities);

3 (E) provide States with the option to use
4 only some of the modular components of the
5 Federal technology capabilities while continuing
6 to utilize State technology capabilities to store
7 any data required to administer their unemploy-
8 ment compensation program in a State data-
9 base, provided that the State database meets
10 any guidelines established by the Secretary that
11 enable machine-to-machine interfaces to facili-
12 tate communication among States and between
13 such State and the Federal Government;

14 (F) allow States to easily adapt the mod-
15 ular components of the Federal technology ca-
16 pabilities to meet the requirements of their
17 unique unemployment compensation programs;

18 (G) ensure the timely and accurate pay-
19 ment of benefits, including measures to mini-
20 mize susceptibility to attacks by organized
21 criminal networks seeking to defraud State or
22 Federal unemployment compensation programs;
23 and

24 (H) to the extent practicable, be made
25 available (along with any associated data pro-

1 duced under this section) to support other
2 interagency and intergovernmental activities as
3 appropriate.

4 (2) ACCESSIBILITY REQUIREMENTS FOR ON-
5 LINE CLAIM FILING.—With respect to the online
6 claim filing component described in paragraph
7 (1)(A)(ii), such component shall—

8 (A) ensure that the process of filing initial
9 and continuing claims for unemployment com-
10 pensation can be readily understood and accom-
11 plished by the vast majority of claimants, in-
12 cluding individuals with limited English pro-
13 ficiency, individuals with disabilities (in compli-
14 ance with section 508 of the Rehabilitation Act
15 of 1973 (29 U.S.C. 794d)), older individuals,
16 and individuals with literacy challenges;

17 (B) be available in any language spoken by
18 more than 1 percent of the national population
19 or any State’s population (with such trans-
20 lations completed by human translators rather
21 than translation software) and comply with the
22 requirements of the Plain Writing Act of 2010
23 (5 U.S.C. 301 note);

24 (C) be accessible and optimized for all
25 commonly used desktop computers, tablets, and

1 mobile devices and operating systems such that
2 any features of the online claim filing compo-
3 nent (such as the ability to upload documenta-
4 tion) that are available in the desktop version
5 of the online claim filing component are also
6 available in the tablet and mobile versions;

7 (D) allow for electronic submission of docu-
8 mentation required to support a claim, includ-
9 ing the ability of claimants to scan or photo-
10 graph and submit documentation using a tablet
11 or mobile device;

12 (E) be available 24 hours a day, 7 days a
13 week, with the exception of scheduled and emer-
14 gency maintenance that the State conducts, to
15 the extent practicable, at nonpeak hours;

16 (F) provide self-service account recovery
17 that can be completed online; and

18 (G) deploy multiple methods of commu-
19 nication with claimants, such as short message
20 service (SMS) message, email, postal mail, live
21 chat, or chatbots.

22 (3) REQUIREMENTS REGARDING HIGH-RISK
23 AUTOMATED DECISION SYSTEMS.—

24 (A) IN GENERAL.—The technology capa-
25 bilities shall not rely solely on a high-risk auto-

1 mated decision system to deny a claim for un-
2 employment compensation, reduce the amount
3 of unemployment compensation for which a
4 claimant is eligible, or deny the right of a
5 claimant to appeal an unemployment compensa-
6 tion decision.

7 (B) PARTIAL RELIANCE.—

8 (i) IN GENERAL.—If any of the tech-
9 nology capabilities rely on a high-risk auto-
10 mated decision system to determine that a
11 claimant is ineligible for unemployment
12 compensation, to reduce the amount of un-
13 employment compensation for which a
14 claimant is eligible, or to deny the right of
15 a claimant to appeal an unemployment
16 compensation decision, the Secretary
17 shall—

18 (I) require that an employee of a
19 State workforce agency review the de-
20 termination before—

21 (aa) the claim for unemploy-
22 ment compensation of such
23 claimant may be denied;

24 (bb) the amount of unem-
25 ployment compensation for which

1 such claimant is eligible may be
2 reduced; or

3 (cc) the right of such claim-
4 ant to appeal an unemployment
5 compensation decision may be de-
6 nied;

7 (II) consult with experts in the
8 Federal Government (including the
9 Director of the National Institute of
10 Standards and Technology and the
11 Director of the National Science
12 Foundation), regarding the potential
13 benefits and risks of partial reliance
14 on a high-risk automated decision sys-
15 tem;

16 (III) prior to utilizing such part
17 of the technology capabilities that re-
18 lies on a high-risk automated decision
19 system—

20 (aa) establish clear methods
21 to measure the accuracy of such
22 part of the technology capabili-
23 ties; and

24 (bb) ensure that such part
25 of the technology capabilities

1 minimizes the occurrence of bi-
2 ased results based on race, gen-
3 der, ethnicity, disability status,
4 income, occupation, or other per-
5 sonal characteristics as deter-
6 mined by the Secretary, and pre-
7 vents any increase in such bias;

8 (IV) develop algorithmic impact
9 assessments, incorporating public
10 feedback and expert agency review, to
11 proactively assess the necessity of ad-
12 ditional formal policies and safeguards
13 to mitigate risks; and

14 (V) establish transparency re-
15 quirements that include an annual
16 public disclosure of any use of a high-
17 risk automated decision system, a
18 plain language explanation of the de-
19 cision making structure of such high-
20 risk automated decision system, and
21 the details regarding such use and re-
22 lated outcomes.

23 (ii) TRAINING.—The Secretary shall
24 establish best practices for training any
25 relevant employee of the Department or a

1 State workforce agency to reduce the im-
2 pact of automation bias.

3 (C) MONITORING.—The Secretary shall
4 continuously monitor claim determinations that
5 rely, in part, on the use of a high-risk auto-
6 mated decision system to ensure that biased re-
7 sults based on the characteristics described in
8 subparagraph (B)(i)(III)(bb) do not occur.

9 (c) PRE-DEVELOPMENT STUDY AND REPORT.—

10 (1) STUDY.—Prior to the development of the
11 technology capabilities under subsection (a) or the
12 procurement of such technology capabilities under
13 subsection (g), the Secretary, in coordination with
14 the Administrator, shall conduct a study assessing
15 the technology needs of Federal and State unem-
16 ployment compensation programs. Such study shall
17 consider the following:

18 (A) The Federal and State capabilities
19 that need to be upgraded or replaced to ensure
20 the smooth administration of their respective
21 unemployment compensation programs.

22 (B) How to design and develop a Feder-
23 ally-maintained system that serves the needs of
24 both the Federal Government and each of the
25 State unemployment compensation programs.

1 (C) The features necessary to effectively
2 respond to rapid changes in volume in times of
3 emergency, including features that enable easy
4 adaptation of, and updates to, such technology
5 capabilities in order to implement new rules or
6 benefits.

7 (D) The features necessary to ensure the
8 technology capabilities have the capacity to han-
9 dle an increased number of claims during peri-
10 ods of high unemployment.

11 (E) How the technology capabilities can
12 prioritize claimant experience and ensure acces-
13 sibility, including by soliciting feedback from
14 claimants and claimant representatives during
15 the development process.

16 (F) How the technology capabilities can
17 ensure effective and equitable benefit delivery,
18 including the following:

19 (i) The standardization of data collec-
20 tion and reporting across States to facili-
21 tate administration and interoperability.

22 (ii) The features that will facilitate ac-
23 curate and timely delivery of benefits and
24 reduce the time from successful unemploy-

1 ment compensation claim to benefit deliv-
2 ery.

3 (iii) The features that will help to
4 identify and prevent organized fraud
5 schemes without causing unreasonable
6 delays for legitimate claimants or penal-
7 izing mistakes.

8 (iv) The appropriate level of ongoing
9 audit and analysis needed to evaluate the
10 effectiveness and equitability of benefit de-
11 livery.

12 (v) How privacy-protective data expo-
13 sure and exchange between government en-
14 tities and privacy-protective public report-
15 ing could be utilized to improve and ensure
16 effective and equitable benefit delivery.

17 (G) How the technology capabilities can
18 improve the employer experience, including tax
19 payment, the submission of wage information,
20 and the verification of claim information.

21 (H) How the technology capabilities can
22 improve processes for employees of State work-
23 force agencies.

24 (I) The information security measures nec-
25 essary to protect claimants' personal data while

1 enabling auditing and research, including rec-
2 ommendations for privacy-protective tech-
3 nologies, such as secure multi-party computa-
4 tion, that can enable such auditing and re-
5 search in a manner that does not involve shar-
6 ing data on individual claimants.

7 (J) How the technology capabilities can
8 improve data sharing among States and the
9 Federal Government with respect to reciprocity,
10 benefit levels, timeliness, and accuracy.

11 (K) How the technology capabilities can
12 minimize disparities in unemployment com-
13 pensation reciprocity by race, gender, ethnicity,
14 disability status, income, or occupation, and
15 prevent any increase in such disparities.

16 (L) Potential approaches for development
17 or procurement of the technology capabilities,
18 including, for each approach presented, range
19 estimates for development, implementation, and
20 operational costs, and range estimates of capa-
21 bility delivery schedules.

22 (2) REPORT.—Not later than 4 months after
23 the date of enactment of this section, the Secretary,
24 in coordination with the Administrator, shall submit
25 to Congress a report containing the results of the

1 study conducted under paragraph (1), together with
2 the Department's strategy for development and pro-
3 curement of the technology capabilities, including
4 any recommendations for such legislation and ad-
5 ministrative action as the Secretary determines ap-
6 propriate.

7 (d) DIGITAL SERVICES TEAM.—

8 (1) ESTABLISHMENT.—The Secretary, in co-
9 ordination with the Administrator, shall establish in
10 the Department a Digital Services Team (in this
11 section referred to as the “Team”).

12 (2) MEMBERSHIP.—The Team shall include—

13 (A) technology experts;

14 (B) user experience experts;

15 (C) an experienced technical team leader
16 with experience in human-centered design and
17 modern software development practices; and

18 (D) any other member deemed appropriate
19 by the Secretary.

20 (3) DUTIES.—The Team shall carry out the fol-
21 lowing duties:

22 (A) Assist the Secretary in the develop-
23 ment, operation, and maintenance of the tech-
24 nology capabilities under subsection (a).

1 (B) After the development and deployment
2 of the technology capabilities under subsection
3 (a) is complete, assist the Secretary in oper-
4 ating and overseeing the maintenance and con-
5 tinued improvement of the technology capabili-
6 ties, including by providing technological assist-
7 ance—

8 (i) to State workforce agencies; and
9 (ii) to States seeking to adapt their
10 State databases to interface with the Fed-
11 erally provided modular and open systems
12 technology capabilities described in sub-
13 section (b)(1)(E).

14 (C) Ensure the Department has sufficient
15 in-house technical expertise and procurement
16 support.

17 (D) Assist the Department with technology
18 needs.

19 (E) Engage in such other activities deemed
20 appropriate by the Secretary.

21 (4) STAFF AND RESOURCES.—The Secretary
22 shall ensure that the Team has such staff, resources,
23 and access to information as may be necessary to
24 carry out the duties of the Team.

1 (5) DIGITAL SERVICES TEAM FUNDING.—Out of
2 any money in the Treasury not otherwise appro-
3 priated, there are appropriated to the Secretary
4 \$5,000,000 to carry out this subsection. Amounts
5 appropriated under the preceding sentence shall re-
6 main available until expended.

7 (e) PILOT PROGRAM.—Prior to the deployment of the
8 technology capabilities to all States, the Secretary shall
9 select not fewer than 4 States to participate in a pilot pro-
10 gram to test the technology capabilities and demonstrate
11 that such technology capabilities meet the requirements
12 and end-to-end user experience needs established by this
13 Act, including those identified in the pre-development
14 study described in subsection (c)(1).

15 (f) DATA SHARING.—To enable the storage, expo-
16 sure, and exchange of data required by States to admin-
17 ister their unemployment compensation programs, the
18 Secretary shall—

19 (1) establish Computer Matching Agreements in
20 accordance with the Computer Matching and Pri-
21 vacy Protection Act of 1988 (5 U.S.C. 552a note)
22 to obtain information necessary to verify a claim-
23 ant’s eligibility for unemployment compensation;

24 (2) determine appropriate aggregate data to
25 share on a regular basis with the public through the

1 Data.gov internet website pursuant to the Founda-
2 tions for Evidence-Based Policy Making Act of 2018
3 (5 U.S.C. 101 note);

4 (3) establish appropriate controls and moni-
5 toring to make available only the data necessary for
6 States to administer their unemployment compensa-
7 tion programs; and

8 (4) establish a data retention policy for retain-
9 ing or archiving historical unemployment compensa-
10 tion program data as deemed appropriate.

11 (g) PROCUREMENT AND CONTRACTS WITH PRIVATE
12 VENDORS.—If the Secretary contracts with a private ven-
13 dor to procure or develop or assist with the development
14 of the technology capabilities under subsection (a), the
15 Secretary shall—

16 (1) ensure that any agreement with such pri-
17 vate vendor stipulates that the resulting technology
18 capabilities and associated research, applications,
19 automated processes, and associated metadata shall
20 be the proprietary information of the Federal Gov-
21 ernment;

22 (2) follow best practices for Government IT
23 procurement to de-risk projects; and

24 (3) provide funding based on program outcomes
25 rather than volume.

1 (h) OVERSIGHT.—

2 (1) OVERSIGHT.—During and after the develop-
3 ment of the technology capabilities under subsection
4 (a), the Secretary shall—

5 (A) respond to requests from Congress for
6 updates on the development of the technology
7 capabilities; and

8 (B) participate in oversight hearings and
9 demonstrations of the technology capabilities as
10 requested by Congress.

11 (2) PUBLICLY AVAILABLE STATUS.—Not later
12 than 6 months after the date of enactment of this
13 section, the Secretary shall establish and maintain
14 publicly available content, available on the internet
15 website of the Department, that provides the status
16 of—

17 (A) the technology capabilities being devel-
18 oped under this section;

19 (B) the metrics of success for such devel-
20 opment;

21 (C) the results from piloting and testing of
22 such technology capabilities; and

23 (D) deployment of such technology capa-
24 bilities in each of the States and the Federal
25 Government.

1 (i) TECHNOLOGY CAPABILITIES MODERNIZATION
2 FUNDING.—Out of any money in the Treasury not other-
3 wise appropriated, there are appropriated to the Secretary
4 \$500,000,000 to carry out this section (other than sub-
5 section (d)). Amounts appropriated under the preceding
6 sentence shall remain available until expended.

7 (j) DEFINITIONS.—In this section:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the United
10 States Digital Service.

11 (2) AUTOMATED DECISION SYSTEM.—The term
12 “automated decision system” means a computational
13 process, including one derived from machine learn-
14 ing, statistics, or other data processing or artificial
15 intelligence techniques, that makes a decision or fa-
16 cilitates human decision making that impacts claim-
17 ants.

18 (3) AUTOMATION BIAS.—The term “automation
19 bias” means the tendency for humans to over-rely on
20 the recommendation of an automated decision sys-
21 tem, to place overconfidence in such recommendation
22 based on perceived superiority to analog or human
23 processes, or to ignore evidence that would indicate
24 the automated decision system has made an error.

1 (4) CLAIMANT.—The term “claimant” means a
2 claimant for unemployment compensation.

3 (5) DEPARTMENT.—The term “Department”
4 means the Department of Labor.

5 (6) HIGH-RISK AUTOMATED DECISION SYS-
6 TEM.—The term “high-risk automated decision sys-
7 tem” means an automated decision system that—

8 (A) poses a significant risk—

9 (i) to the privacy or security of per-
10 sonal information of claimants; or

11 (ii) of resulting in or contributing to
12 inaccurate, unfair, biased, or discrimina-
13 tory decisions impacting claimants;

14 (B) makes decisions, or facilitates human
15 decision making, based on systematic evalua-
16 tions of current and historical claimant data,
17 including attempts to analyze or predict sen-
18 sitive aspects of claimants’ lives or characteris-
19 tics or activities that may affect their eligibility
20 for unemployment compensation, such as their
21 reason for separation from employment, avail-
22 ability for work, work search activities, work
23 performance, economic situation, health, per-
24 sonal preferences, interests, behavior, location,
25 or movements, that—

1 (i) alter legal rights of the claimants;

2 or

3 (ii) otherwise significantly impact the
4 claimants;

5 (C) involves the personal information of a
6 significant number of claimants regarding race,
7 color, national origin, political opinions, reli-
8 gion, trade union membership, genetic data, bi-
9 ometric data, health, gender, gender identity,
10 sexuality, sexual orientation, disability status,
11 criminal convictions, or arrests; or

12 (D) meets any other criteria deemed ap-
13 propriate by the Secretary.

14 (7) MODULAR OPEN SYSTEMS APPROACH.—The
15 term “modular open systems approach” means an
16 integrated business and technical strategy that—

17 (A) employs a modular design that uses
18 system interfaces between a system platform
19 and a system component, between system com-
20 ponents, or between system platforms;

21 (B) is subjected to verification to ensure
22 system interfaces comply with, if available and
23 suitable, widely supported and consensus-based
24 standards; and

1 (C) uses a system architecture that allows
2 severable system platforms or components at
3 the appropriate level to be incrementally added,
4 removed, or replaced throughout the life cycle
5 of a system platform or component while yield-
6 ing—

7 (i) significant cost savings or avoid-
8 ance;

9 (ii) schedule reduction;

10 (iii) opportunities for technical up-
11 grades;

12 (iv) increased interoperability; or

13 (v) other benefits during the
14 sustainment phase.

15 (8) SECRETARY.—The term “Secretary” means
16 the Secretary of Labor.

17 (9) SECURE MULTI-PARTY COMPUTATION.—The
18 term “secure multi-party computation” means a
19 computerized system that enables different partici-
20 pating entities in possession of private sets of data
21 to link and aggregate their data sets for the exclu-
22 sive purpose of performing a finite number of pre-
23 approved computations without transferring or oth-
24 erwise revealing any private data to each other or
25 anyone else.

1 (10) STATE.—The term “State” means each of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, and the United
4 States Virgin Islands.