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April 15, 2021

The Honorable Senate Majority Leader Mike Shirkey
P. O. Box 30036
Lansing, MI 48909

Dear Senate Majority Leader Shirkey,

At your request, the Senate Economic and Small Business Development Committee held hearings on the Michigan Unemployment Insurance Agency operations in 2020 to present. The Committee inquired about executive orders, rulemaking, and fraud management during COVID-19. I committed to the Michigan Senate that I would follow up with a summary of my findings and recommendations.

After reviewing the Deloitte audit commissioned by the agency and listening to lengthy testimony from UIA and the Department of Labor and Economic Opportunity, it is abundantly clear that lack of workload scalability, ad-hoc rulemaking, improper training procedures for temporary workers, rejection of third-party expert assistance; all led to an estimated hundreds of millions of dollars in fraud loss, and a total systems crash. Much of the loss and frustration were preventable.

To begin, the overly broad and extended shutdown of our economy caused an insurmountable surge of unemployment claims. The volume understandably overwhelmed the current system and delays were expected. But subsequent actions from the administration and then-UIA director Steve Grey were directly attributable to the suspension of well-established protections against fraud. In essence an off-switch was flipped, shutting down the fraud unit altogether.

In my opinion, the agency panicked under the volume of applicants. The acting director testified that extreme pressure was put on UIA; from claimants, legislative offices, and the executive branch to provide immediate relief for the jobless. After talking it over, the decision to effectively turn off all system controls fell to former director Steve Grey. This was part of the testimony.

Recognizing the new pressures of extraordinary theft and fraud losses, the UIA panicked a second time and flipped the switch back on. When the agency reset it's focus once again on fraud investigations, over 500,000 legitimate claims were frozen until applicants could newly submit further proof of identity, often multiple times, resulting in an additional jamming of the system.

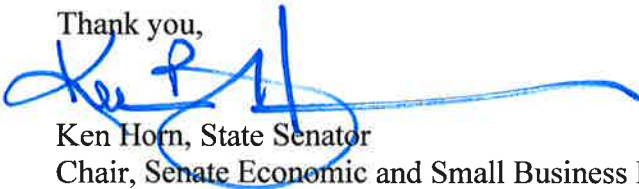
Legislative offices, both House and Senate, were overwhelmed by calls for help. In the beginning there was no process to sort through repeat claims from House and Senate offices where an individual had contacted us multiple times. Legislative staffers were forced to become experts in the UIA claims process which further emphasizes the lack preparedness to handle the volume.

Other critical errors were made in the attempt to staff-up to meet the volume of claims. As Deloitte found and the agency discussed with us, they did not have a system in place to properly vet third-party temporary employees. Committee testimony followed that one of these temporary employees is allegedly responsible for \$1.8 million in fraud. She didn't come in to help the system, she came in to steal from the system.

I am grateful that Acting Director Liza Estlund Olson was a willing partner in our hearings and fact-finding mission and appreciate her honesty and candor. However, when asked how we (the Legislature) could have assisted, it was stated to the committee that was that it was not the role of the legislature to regulate and manage decisions at the UIA. I strongly disagree and firmly believe if decisions had been made collaboratively, safeguards inherent in the system would have been protected, and fraud attempts would have been properly identified.

Following the audit, some policy improvements were put into place, but my report outlines other changes that need to be adopted and, in some cases, codified into law. I submit to you a number of findings and recommendations. Because these changes will require both administrative and legislative solutions, I'm forwarding a copy of this also to Governor Whitmer, Acting Director Liza Estlund Olson, and my colleagues in the House and Senate.

Thank you,



Ken Horn, State Senator
Chair, Senate Economic and Small Business Development Committee

CC: Governor Gretchen Whitmer
Acting Director Liza Estlund Olson
Members of the Michigan Senate
Members of the Michigan House of Representatives

UIA/MIOSHA RECOMMENDATIONS

In recent weeks, the Senate Economic and Small Business Development Committee held hearings with the Michigan Unemployment Insurance Agency and Michigan Occupational Safety and Health Administration to discuss their actions during COVID-19. As it relates to the UIA, the committee particularly wanted to dive into the audit by Deloitte on agency actions that led to the payout of hundreds of millions of dollars in fraudulent claims, and temporality shutoff legitimate claims payments to nearly 500,000 laid off Michigan workers.

As chair of the committee, I acknowledge the diligence of the department to request its own outside audit, which identified several decisions and actions which led to the breakdown in oversight. It is extremely important, however, to distill the findings of the audit into meaningful recommendations to ensure that Michigan workers and families are better protected in the future.

Therefore, I offer, for consideration, the following recommendations for statutory and administrative changes:

1. Immediately re-open offices for in-person visits.

Finding: This is an executive decision that must take place to accommodate our most vulnerable constituents, who lack the means to have their unemployment cases resolved online or by telephone. All claimants deserve to receive their benefit checks in an efficient and timely manner. While the UIA has indicated they are assisting more claimants working virtually rather than in-person, this does not account for those who have given up and walked away after weeks or months of trying to get a resolution or response from the agency.

Many claimants don't have access to the internet, cannot navigate computerized systems, or simply can't get anyone at the UIA to answer their calls. For these claimants, there is no better option than re-opening offices for in-person appointments.

Recommendation: It's clear that UIA offices can indeed re-open safely, with the proof being the successful in-person services provided by our Secretary of State branch offices. It is past time for the governor to order this critical function be restored for our constituents.

2. No agency head/director/governor can turn off provisions of statute or pre-existing policy.

Finding: The forensic audit by Deloitte found numerous critical decisions were made to suspend aspects of normal claim processing. These decisions included eliminating the 10-day hold period, good cause for backdating claims, and ID verification requirements. These critical factors led to a substantial number of payouts of fraudulent claims. Decisions of this magnitude should never be made unilaterally and without substantial review of established due process.

Just prior to the initial outbreak of COVID-19, the Legislature worked with the agency to amend work search qualifications to provide added flexibility for eligible claimants. This collaborative effort was the proper pathway to achieve adequate safeguards to the process.

Recommendation: We must seek permanent and indissoluble statutory protections to guarantee no future director, agency head, department or governor can ignore or disregard the law without proper review.

There is a need for a permanent division between the UIA investigations unit from the benefits unit.

Finding: Deloitte reported that numerous incidents of shifting divisions, personnel, and job responsibilities led to little or no oversight of the state's fraud manager system. The investigations unit was functionally ineffective for many weeks and when re-established on May 22, 2020, and the number of staff assigned to the unit was significantly reduced. We must apply the lesson learned; under no circumstance can we afford to eliminate the intense and thorough review of credible fraud threats from any source.

Recommendation: Legislation is required to draw a bright line between the Claims Unit of UIA and its Fraud Investigation Unit to prevent significant and avoidable fraud losses.

4. Develop a system for pre-approval and verification of third-party contractors and conduct cross-training for critical government functions.

Finding: Another critical error cited by the Deloitte study was the lack of proper oversight while contracting and utilizing subcontractors to process UIA claims. This included a bare minimum requirement of robust background checks and a true vetting of employees to be hired. The agency failed to clarify with any potential contractor who was responsible for background checks and ongoing supervision. Further, the agency failed to anticipate the necessary scalability and versatility of all UIA employees prior to the tsunami of claims it faced as the governor's executive/emergency stay at home orders.

Recommendation: Cross training every available employee within the department should become standard practice in order to minimize the need for contracting with outside vendors. Legislative offices should be consulted and trained to bridge communications between the agency and constituents. When outside vendors are needed, a pre-approved, qualified vendor list should be created and maintained, with a clear understanding of all required skills and qualifications.

5. Federal and state resources should be utilized to restore the health of Michigan's Unemployment Insurance Trust Fund.

Finding: While the Unemployment Insurance Trust Fund did not have to borrow money to pay claimants, the over \$4 billion fund is nearly depleted. The governor vetoed two supplemental appropriations designed to partially restore the fund's minimum balance, forcing employers to see rate increases for layoffs that were forced upon them by executive orders.

The acting director testified that she supported the gubernatorial vetoes, because it is unprecedented to direct general fund dollars to the trust fund. Michigan's employers worked hard to rebuild the fund following the last recession, and the agency's suggestion that because claims had not been assigned to employers meant there was no impact to them was false.

In early 2021, the statute triggered an across-the-board tax increase on employers because the trust fund dipped below \$2.5 billion. This led to employer contributions being based on the first \$9,500 of each employee's salary, up from \$9,000 prior to COVID-19. The impact is real and will be long lasting if we do not work to restore the balance of the fund through our employers, state resources, and federal relief dollars.

Recommendation: To reduce the burden on Michigan's employers, and as a matter of fairness, the governor should use all available state and federal resources approved by the Legislature to help bear the burden of restoring the minimum balance to reduce the quarterly contributions by Michigan's struggling businesses.

6. Communication with the Legislature and the public must improve.

Finding: As one lawmaker relayed during committee hearings, "Like it or not, our offices in effect became an extension of the UIA. We assisted hundreds of residents a week." While CRTIS was a great step in communication with the Legislature, it put legislative staff in a position to essentially act as UIA employees. This led to tough conversations with constituents without proper training or authority.

In early March, in the middle of a workday and with no advanced notice, MichiganWorks! agencies had their access revoked to assist with UIA claims. For several months prior, they were on the front lines processing basic claims, offering advice, and unlocking accounts for claimants who had lost access after simple clerical errors. Some MIWorks! offices were in the middle of a case when screens froze. Others had hundreds of appointments scheduled 10 days out. This was the result of insulated, non-transparent decision making and failure to communicate. The UIA withdrew this action a day later and reinstated MIWorks! access, which was the right choice to ensure as many claimants were being helped as possible.

Recommendation: Future CRTIS training should be a high priority for both the agency and the Legislature. The M.O.U. with MichiganWorks! should be extended through 2022 to bring certainty to the process on behalf of Michigan employees.

7. Final, comprehensive audit of true fraud losses.

Finding: Currently, there is no definitive number on fraudulent benefits paid out (state and federal). The acting director testified that some hundreds of millions of dollars in fraudulent claims were paid out during the period when the fraud investigation unit was essentially shut down. The administration chose to forgo its obligation to ensure accountability within the agency. I am calling for a revised, full-scope audit of claims paid out in 2020 under the period of emergency orders, no later than six months from now. While the state has had some success in retrieving a portion of the fraudulently paid benefits to the people it serves, an in-depth forensic/operational audit can act as an important tool in understanding how to correct mistakes, as Michigan begins to rebuild its Unemployment Insurance Trust Fund.

8. Restore work search and work registration requirements.

Finding: Many employers are currently looking to hire but are unable to find qualified applicants. Despite legislation restoring work search and work registration requirements, the agency is relying on an

administrative rule to keep these search requirement activities on “pause.” It appears that the administration is presuming that unemployed individuals cannot or should not be seeking work.

Recommendation: To change the agency paradigm to assume that unemployed workers should and do want to go back to work, and that legislation is passed to create exemptions for extenuating circumstances (e.g., immunocompromised, home with children whose school has not returned in-person, etc.), under emergency declarations. This would restore the original intent of the unemployment insurance system to allow benefits to be available to individuals who are unemployed due to no fault of their own and who are actively engaged in seeking work.

9. Emergency rules must be a last resort, have limited timelines and extensions, and never undermine the intent of well-established law without going through legislative process.

Finding: The Supreme Court ruled that the governor had no constitutional authority to continue extending her executive orders without legislative approval. The process and length by which emergency rules can be extended should have similar checks and balances. Setting aside existing rules, laws and internal safeguards, cost hundreds of millions of dollars in fraud loss. Over one million Michigan employees were stripped of their jobs and their income because of executive decisions beyond their control.

Those executive decisions to enforce stay-at-home orders, determine arbitrarily which jobs were essential and which were not, no matter how well intended, were made without consideration of the capacity and the frailty of the Unemployment Insurance Agency. As a result, mistake after mistake caused these catastrophic events, which will negatively impact our Michigan employers and employees for an unknown length of time.

Recommendation: Emergency rules should be evaluated more than every six months. I plan to introduce legislation to provide for a three-month rule making authority with a three-month extension, after which any extension must be made through the administrative rules process, allowing for meaningful public input. Major deviations in standard operating procedures should be department driven, but with the advice and consent of the Legislature. Temporary rules to accommodate emergencies should never be considered to be permanent without an agreement between the administration and the Legislature.

Conclusion: It is my sincere hope to seek collaboration with all stakeholders to work to streamline the UIA to be more consumer friendly and accessible to all Michigan workers, while hardening security systems against all criminal intent.