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1ST SESSION

S. 490

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

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2021

Mr. WYDEN (for himself, Mr. WARNER, Mr. BROWN, Ms. CORTEZ MASTO, Mr. BLUMENTHAL, Mrs. FEINSTEIN, Mr. SANDERS, Ms. SINEMA, Mr. VAN HOLLEN, Mr. KAINE, Ms. HIRONO, Mr. MENENDEZ, Mr. MERKLEY, Mr. BOOKER, Mr. MARKEY, Ms. ROSEN, Mr. DURBIN, Mrs. GILLIBRAND, Ms. KLOBUCHAR, Mr. BENNET, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on Finance

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.—

1 (1) IN GENERAL.—Not later than 2 years after
2 the date of enactment of this section, the Secretary
3 shall develop, operate, and maintain a modular set
4 of technology capabilities to modernize the delivery
5 of unemployment compensation (in this section re-
6 ferred to as the “technology capabilities”).

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

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

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

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

20 (A) coordinate with the Administrator; and

21 (B) consult, design, and conduct usability
22 testing with—

23 (i) current and former claimants;

24 (ii) employers that participate in un-
25 employment compensation programs;

- 1 (iii) employees of State workforce
- 2 agencies;
- 3 (iv) experts in technology and user ex-
- 4 perience;
- 5 (v) Federal administrators of unem-
- 6 ployment compensation;
- 7 (vi) any other potential user of the
- 8 technology capabilities; and
- 9 (vii) subject matter experts as deemed
- 10 appropriate by the Secretary.

11 (b) REQUIREMENTS.—

12 (1) IN GENERAL.—The technology capabilities
13 shall—

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

- 18 (i) receiving, processing, and paying
- 19 claims for unemployment compensation, in-
- 20 cluding disaster benefits;
- 21 (ii) online claim filing;
- 22 (iii) the determination of claimant eli-
- 23 gibility;
- 24 (iv) the collection of unemployment
- 25 taxes;

1 (v) the submission of employer wage
2 records;

3 (vi) the appeals and adjudication
4 processes for claimants and employers;

5 (vii) sharing relevant data among
6 States and the Secretary; and

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

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

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

21 (D) include centralized Federal technology
22 capabilities that allow for the storage, exposure,
23 and exchange of data required by States to ad-
24 minister their unemployment compensation pro-
25 grams (with the respective States retaining pos-

1 session of such data without regard to the stor-
2 age, exposure, or exchange of such data in the
3 Federal technology capabilities);

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

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

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

(H) to the extent practicable, be made available (along with any associated data produced under this section) to support other interagency and intergovernmental activities as appropriate.

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

(A) ensure that the process of filing initial and continuing claims for unemployment compensation can be readily understood and accomplished by the vast majority of claimants, including individuals with limited English proficiency, individuals with disabilities (in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d)), older individuals, and individuals with literacy challenges;

(B) be available in any language spoken by more than 1 percent of the national population or any State's population (with such translations completed by human translators rather than translation software) and comply with the requirements of the Plain Writing Act of 2010 (5 U.S.C. 301 note);

(C) be accessible and optimized for all commonly used desktop computers, tablets, and mobile devices and operating systems such that any features of the online claim filing component (such as the ability to upload documentation) that are available in the desktop version of the online claim filing component are also available in the tablet and mobile versions;

(D) allow for electronic submission of documentation required to support a claim, including the ability of claimants to scan or photograph and submit documentation using a tablet or mobile device;

(E) be available 24 hours a day, 7 days a week, with the exception of scheduled and emergency maintenance that the State conducts, to the extent practicable, at nonpeak hours;

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

(G) deploy multiple methods of communication with claimants, such as short message service (SMS) message, email, postal mail, live chat, or chatbots.

(3) REQUIREMENTS REGARDING HIGH-RISK

AUTOMATED DECISION SYSTEMS.—

1 (A) IN GENERAL.—The technology capa-
2 bilities shall not rely solely on a high-risk auto-
3 mated decision system to deny a claim for un-
4 employment compensation, reduce the amount
5 of unemployment compensation for which a
6 claimant is eligible, or deny the right of a
7 claimant to appeal an unemployment compensa-
8 tion decision.

9 (B) PARTIAL RELIANCE.—

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

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

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

1 (bb) the amount of unem-
2 ployment compensation for which
3 such claimant is eligible may be
4 reduced; or

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

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

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

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

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

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

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

1 (ii) TRAINING.—The Secretary shall
2 establish best practices for training any
3 relevant employee of the Department or a
4 State workforce agency to reduce the im-
5 pact of automation bias.

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

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

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

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

1 (B) How to design and develop a federally
2 maintained system that serves the needs of both
3 the Federal Government and each of the State
4 unemployment compensation programs.

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

11 (D) The features necessary to ensure the
12 technology capabilities have the capacity to han-
13 dle an increased number of claims during peri-
14 ods of high unemployment.

15 (E) How the technology capabilities can
16 prioritize claimant experience and ensure acces-
17 sibility, including by soliciting feedback from
18 claimants and claimant representatives during
19 the development process.

20 (F) How the technology capabilities can
21 ensure effective and equitable benefit delivery,
22 including the following:

23 (i) The standardization of data collec-
24 tion and reporting across States to facili-
25 tate administration and interoperability.

1 (ii) The features that will facilitate ac-
2 curate and timely delivery of benefits and
3 reduce the time from successful unemploy-
4 ment compensation claim to benefit deliv-
5 ery.

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

11 (iv) The appropriate level of ongoing
12 audit and analysis needed to evaluate the
13 effectiveness and equitability of benefit de-
14 livery.

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

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

1 (H) How the technology capabilities can
2 improve processes for employees of State work-
3 force agencies.

4 (I) The information security measures nec-
5 essary to protect claimants' personal data while
6 enabling auditing and research, including rec-
7 ommendations for privacy-protective tech-
8 nologies, such as secure multi-party computa-
9 tion, that can enable such auditing and re-
10 search in a manner that does not involve shar-
11 ing data on individual claimants.

12 (J) How the technology capabilities can
13 improve data sharing among States and the
14 Federal Government with respect to reciprocity,
15 benefit levels, timeliness, and accuracy.

16 (K) How the technology capabilities can
17 minimize disparities in unemployment com-
18 pensation reciprocity by race, gender, ethnicity,
19 disability status, income, or occupation, and
20 prevent any increase in such disparities.

21 (L) Potential approaches for development
22 or procurement of the technology capabilities,
23 including, for each approach presented, range
24 estimates for development, implementation, and

1 operational costs, and range estimates of capa-
2 bility delivery schedules.

3 (2) REPORT.—Not later than 4 months after
4 the date of enactment of this section, the Secretary,
5 in coordination with the Administrator, shall submit
6 to Congress a report containing the results of the
7 study conducted under paragraph (1), together with
8 the Department’s strategy for development and pro-
9 curement of the technology capabilities, including
10 any recommendations for such legislation and ad-
11 ministrative action as the Secretary determines ap-
12 propriate.

13 (d) DIGITAL SERVICES TEAM.—

14 (1) ESTABLISHMENT.—The Secretary, in co-
15 ordination with the Administrator, shall establish in
16 the Department a Digital Services Team (in this
17 section referred to as the “Team”).

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

19 (A) technology experts;

20 (B) user experience experts;

21 (C) an experienced technical team leader
22 with experience in human-centered design and
23 modern software development practices; and

24 (D) any other member deemed appropriate
25 by the Secretary.

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

3 (A) Assist the Secretary in the develop-
4 ment, operation, and maintenance of the tech-
5 nology capabilities under subsection (a).

6 (B) After the development and deployment
7 of the technology capabilities under subsection
8 (a) is complete, assist the Secretary in oper-
9 ating and overseeing the maintenance and con-
10 tinued improvement of the technology capabili-
11 ties, including by providing technological assist-
12 ance—

13 (i) to State workforce agencies; and

14 (ii) to States seeking to adapt their
15 State databases to interface with the Fed-
16 erally provided modular and open systems
17 technology capabilities described in sub-
18 section (b)(1)(E).

19 (C) Ensure the Department has sufficient
20 in-house technical expertise and procurement
21 support.

22 (D) Assist the Department with technology
23 needs.

24 (E) Engage in such other activities deemed
25 appropriate by the Secretary.

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

5 (5) DIGITAL SERVICES TEAM FUNDING.—Out of
6 any money in the Treasury not otherwise appro-
7 priated, there are appropriated to the Secretary
8 \$5,000,000 to carry out this subsection. Amounts
9 appropriated under the preceding sentence shall re-
10 main available until expended.

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

19 (f) DATA SHARING.—To enable the storage, expo-
20 sure, and exchange of data required by States to admin-
21 ister their unemployment compensation programs, the
22 Secretary shall—

23 (1) establish Computer Matching Agreements in
24 accordance with the Computer Matching and Pri-
25 vacy Protection Act of 1988 (5 U.S.C. 552a note)

1 to obtain information necessary to verify a claim-
2 ant's eligibility for unemployment compensation;

3 (2) determine appropriate aggregate data to
4 share on a regular basis with the public through the
5 Data.gov internet website pursuant to the Founda-
6 tions for Evidence-Based Policy Making Act of 2018
7 (5 U.S.C. 101 note);

8 (3) establish appropriate controls and moni-
9 toring to make available only the data necessary for
10 States to administer their unemployment compensa-
11 tion programs; and

12 (4) establish a data retention policy for retain-
13 ing or archiving historical unemployment compensa-
14 tion program data as deemed appropriate.

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

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

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

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

5 (h) OVERSIGHT.—

6 (1) OVERSIGHT.—During and after the develop-
7 ment of the technology capabilities under subsection
8 (a), the Secretary shall—

9 (A) respond to requests from Congress for
10 updates on the development of the technology
11 capabilities; and

12 (B) participate in oversight hearings and
13 demonstrations of the technology capabilities as
14 requested by Congress.

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

21 (A) the technology capabilities being devel-
22 oped under this section;

23 (B) the metrics of success for such devel-
24 opment;

1 (C) the results from piloting and testing of
 2 such technology capabilities; and

3 (D) deployment of such technology capa-
 4 bilities in each of the States and the Federal
 5 Government.

6 (i) TECHNOLOGY CAPABILITIES MODERNIZATION
 7 FUNDING.—Out of any money in the Treasury not other-
 8 wise appropriated, there are appropriated to the Secretary
 9 \$500,000,000 to carry out this section (other than sub-
 10 section (d)). Amounts appropriated under the preceding
 11 sentence shall remain available until expended.

12 (j) DEFINITIONS.—In this section:

13 (1) ADMINISTRATOR.—The term “Adminis-
 14 trator” means the Administrator of the United
 15 States Digital Service.

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

23 (3) AUTOMATION BIAS.—The term “automation
 24 bias” means the tendency for humans to over-rely on
 25 the recommendation of an automated decision sys-

tem, to place overconfidence in such recommendation based on perceived superiority to analog or human processes, or to ignore evidence that would indicate the automated decision system has made an error.

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

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

(6) HIGH-RISK AUTOMATED DECISION SYSTEM.—The term “high-risk automated decision system” means an automated decision system that—

(A) poses a significant risk—

(i) to the privacy or security of personal information of claimants; or

(ii) of resulting in or contributing to inaccurate, unfair, biased, or discriminatory decisions impacting claimants;

(B) makes decisions, or facilitates human decision making, based on systematic evaluations of current and historical claimant data, including attempts to analyze or predict sensitive aspects of claimants’ lives or characteristics or activities that may affect their eligibility for unemployment compensation, such as their reason for separation from employment, avail-

ability for work, work search activities, work performance, economic situation, health, personal preferences, interests, behavior, location, or movements, that—

(i) alter legal rights of the claimants;

or

(ii) otherwise significantly impact the claimants;

(C) involves the personal information of a significant number of claimants regarding race, color, national origin, political opinions, religion, trade union membership, genetic data, biometric data, health, gender, gender identity, sexuality, sexual orientation, disability status, criminal convictions, or arrests; or

(D) meets any other criteria deemed appropriate by the Secretary.

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

(A) employs a modular design that uses system interfaces between a system platform and a system component, between system components, or between system platforms;

1 (B) is subjected to verification to ensure
 2 system interfaces comply with, if available and
 3 suitable, widely supported and consensus-based
 4 standards; and

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

11 (i) significant cost savings or avoid-
 12 ance;

13 (ii) schedule reduction;

14 (iii) opportunities for technical up-
 15 grades;

16 (iv) increased interoperability; or

17 (v) other benefits during the
 18 sustainment phase.

19 (8) SECRETARY.—The term “Secretary” means
 20 the Secretary of Labor.

21 (9) SECURE MULTI-PARTY COMPUTATION.—The
 22 term “secure multi-party computation” means a
 23 computerized system that enables different partici-
 24 pating entities in possession of private sets of data
 25 to link and aggregate their data sets for the exclu-

1 sive purpose of performing a finite number of pre-
2 approved computations without transferring or oth-
3 erwise revealing any private data to each other or
4 anyone else.

5 (10) STATE.—The term “State” means each of
6 the several States, the District of Columbia, the
7 Commonwealth of Puerto Rico, and the United
8 States Virgin Islands.

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