

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON INSURANCE
Tom Daly, Chair
AB 56 (Salas) – As Amended April 12, 2021

SUBJECT: Benefits: outgoing mail: claim processing: reporting

SUMMARY: Codifies various recommendations from the State Auditor reports related to the Employment Development Department (EDD). Specifically, **this bill:**

- 1) Requires an annual corrective action plan to contain specified information and to be submitted to the Legislature by December 15 every year.
- 2) Requires EDD, after January 1, 2023, upon appropriation by the Legislature, to provide access to and pay for identity theft monitoring for any individual who receives outgoing United States mail from EDD that contains a full social security number (SSN).
- 3) Requires EDD, upon appropriation by the Legislature, to do the following, among other things:
 - a) Report on its website, at least once every six months, specified information, including: (1) the amount of benefit payments for which it must assess potential overpayments; (2) the amount for which it has issued overpayment notices; (3) the amount of overpayments waived; and (4) the amount repaid related to those overpayment notices.
 - b) Immediately perform a risk assessment of its deferred workloads, including deferred eligibility determinations and retroactive certifications, as specified.
 - c) Develop a workload plan that prioritizes its deferred workloads based on the risk assessment performed and determine the staffing and information technology resources needed to accomplish the work within expected time frames, as specified.
 - d) Immediately begin modeling workload projections that account for possible scenarios that would cause a spike in unemployment insurance claims, and plan its staffing around the likelihood of those scenarios, including having a contingency plan for less likely scenarios that would have a significant impact on its workload.
 - e) By June 1, 2022, determine how many of its temporary automation measures for claims processing it can retain and by September 1, 2022, make those a permanent feature of its claims processing.
 - f) By June 1, 2022, identify the elements of the Benefit Systems Modernization process that can assist in making timely payments and that it can implement incrementally, and prioritize implementing the elements most likely to benefit Californians.
- 4) Requires EDD, upon appropriation by the Legislature, to convene two working groups, including one to assess the lessons learned from claim surges, and one to coordinate the work needed to resolve each complaint of identity theft, make decisions about necessary staffing levels, and add staffing to accomplish the work in order to ensure that EDD provides appropriate assistance to victims of identity theft, as specified.

- 5) Requires any request for claimant personal identification information be made in accordance with the most recent federal National Institute of Standards and Technology (NIST) Special Publication 800-63 standards, as specified.
- 6) Requires the Director of EDD to report to the Assembly Committee on Insurance, the Assembly Committee on Labor and Employment, and the Senate Committee on Labor, Public Employment and Retirement by June 30 of each year about EDD's fraud deterrence and detection activities, including the effectiveness of cross matching claims against information about incarcerated individuals, as specified.

EXISTING LAW:

- 1) Establishes EDD which is responsible for administering the state's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemployment Insurance Code, Section 201 et seq.)
- 2) Prohibits any state agency from sending any outgoing United States mail to an individual that contains personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence. (Government Code Section 11019.7(a).)
- 3) Provides that, notwithstanding any other law, commencing on or before January 1, 2023, a state agency shall not send any outgoing United States mail to an individual that contains the individual's social security number unless the number is truncated to its last four digits. (Government Code Section 11019.7(b).)
- 4) Requires any state agency that cannot, in its own estimation, comply with 2), above, to submit an annual corrective action plan to the Legislature until that agency is in compliance. (Government Code Section 11019.37(b)(2)(B).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Purpose of this bill:** The Assembly Insurance Committee and the Joint Legislative Audit Committee held an informational hearing on two State Auditor reports on February 3, 2021. This hearing evaluated the audit reports and proposed State Auditor recommendations. This bill codifies those recommendations. More specifically, this bill seeks to implement comprehensive reforms at EDD to both accelerate payments to eligible applicants and prevent criminal fraud.

2) **Author's statement:** According to the author:

The Employment Development Department has been plagued by administrative and technical issues since March 2020, when the surge of unemployment insurance claims overwhelmed EDD's systems and resulted in millions of Californians being forced to wait months to receive the benefits they needed and resulted in the state giving billions of dollars to inmates and fraudsters in one of the biggest fraud scandals in California's

history. AB 56 institutes common sense reforms that have been recommended by the State Auditor and from the stories of those Californians who have had to suffer through EDD's failings.

- 3) **Bill seeks to increase data security for personal information:** AB 56 is one of many bills over the past decade that would seek to create improved data security standards and protocols for EDD's treatment of claimant personal information. Most recently, AB 499 (Mayes, Ch. 155, Stats. 2020) prohibits, beginning in January of 2023, any state agency from sending outgoing US mail to an individual that contains the individual's full SSN, unless federal law requires the inclusion of a full SSN. AB 499 also required, January 1, 2024, any state agency that, in its estimation, is unable to comply with the prohibition on mailing full SSNs to submit an annual corrective action plan to the Legislature until that agency is able to comply with the prohibition. AB 56 would now flesh out the requirements of the annual corrective action plans established by AB 499.

Specifically, this bill would require annual corrective plans to be submitted to the Legislature by December 15 of every year, and would require those plans to have, at a minimum, the following information:

- The steps the agency has taken to stop including full SSNs on outgoing mail.
- The number of documents sent as outgoing mail from which the agency has successfully removed full SSNs and the approximate mailing volume corresponding with those documents.
- The remaining steps that the agency plans to take to remove or replace SSNs it includes on documents sent as outgoing mail.
- The number of documents and approximate mailing volume associated with those documents that the agency has yet to address.
- The expected date by which the agency will stop sending documents that contain SSNs as outgoing mail to individuals.

Not only should these requirements ensure that the Legislature has adequate information to evaluate the progress agencies are taking to protect the SSNs of California residents, these elements will likely encourage agencies that continue to mail SSNs to realistically address shortcomings within their respective agencies and develop a plan to better protect the sensitive PI of California residents.

This bill would also require that EDD follow the most recent federal NIST Special Publication 800-63 standards whenever requesting personal identification information from a claimant. NIST creates security standards and guidelines, including minimum requirements for federal systems, and promotes the US economy and public welfare by providing technical leadership for the nation's measurement and standards infrastructure. Special Publication 800-63 specifically deals with identity proofing, registration, authenticators, management processes, authentication protocols, federation, and related assertions. In the executive summary for Special Publication 800-63, NIST notes:

Digital identity as a legal identity further complicates the definition and ability to use digital identities across a range of social and economic use cases. Digital identity is hard. Proving someone is who they say they are — especially remotely, via a digital service — is fraught with opportunities for an attacker to successfully impersonate someone. [...]

Identity proofing establishes that a subject is who they claim to be. Digital authentication establishes that a subject attempting to access a digital service is in control of one or more valid authenticators associated with that subject's digital identity. For services in which return visits are applicable, successfully authenticating provides reasonable risk-based assurances that the subject accessing the service today is the same as that which accessed the service previously. Digital identity presents a technical challenge because this process often involves proofing individuals over an open network, and always involves the authentication of individual subjects over an open network to access digital government services. The processes and technologies to establish and use digital identities offer multiple opportunities for impersonation and other attacks.¹

As described by the State Auditor, “one of the key ways that EDD attempts to prevent impostor fraud is by verifying the identities of prospective claimants as a condition to providing benefits, as federal law requires. Historically, this process has included basic automated verifications to ensure that the information that claimants submit to EDD, such as SSNs and driver's license numbers, match the information retained by the U.S. Social Security Administration and California Department of Motor Vehicles. If these verifications detect discrepancies, EDD activates a manual identity verification process to confirm whether the claimant is the true owner of the identity. When it activates the manual identity verification process, EDD's system suspends or stops payments to the affected claim while EDD attempts to verify the claimant's identity. EDD will pay eligible claimants whose identities it confirms for the weeks their payments were paused.”

The report continues, “[I]n October 2020, EDD introduced a new online identity verification tool, ID.me, as part of its efforts to process claims faster while preventing impostor fraud at the onset of a claim. EDD has indicated that ID.me makes it easier for claimants to verify their identities, reduces the amount of manual work by EDD staff necessary to process claims, and includes more robust protections against impostor fraud.”²

If ID.me works according to plan, it stands to improve EDD's outcomes by better preventing impostor fraud while at the same time speeding up the identity verification process for eligible applicants, ultimately resulting in the timely delivery of UI benefits. Requiring EDD to follow the NIST standards, which are routinely updated as technology evolves, when it requests PI from claimants for identity verification will create an important baseline protection for claimants as EDD works through its use of programmatic tools, old and new.

- 4) **Requires that identity theft prevention and mitigation services be offered to individuals whose SSN has been improperly disclosed:** This bill would require, upon appropriation by

¹ Grassi, Garcia, and Fenton, *NIST Special Publication 800-63 Revision 3, Digital Identity Guidelines* (June 2017) <https://doi.org/10.6028/NIST.SP.800-63-3> [as of Apr. 2, 2021].

² State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 6 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of Apr. 2, 2021].

the Legislature, EDD to pay for identity theft mitigation monitoring for any individual who receives mail from EDD that impermissibly contains the individual's SSN.

A similar requirement can be found within California's data breach notification law. Specifically, businesses or persons who own or license computerized data that includes PI are required to disclose data breaches to the persons whose PI was, or is reasonably believed to have been, acquired by an unauthorized person. Additionally, if the person or business providing the notification was the source of the breach, they must also offer to provide identity theft prevention and mitigation services to the affected person, as specified. (*See* Civ. Code Sec. 1798.82.) This requirement under existing law is imposed only on private actors, not state agencies.

This bill would additionally require EDD to convene a "working group to coordinate the work needed to resolve each complaint of identity theft, make decisions about staffing levels necessary, and add staffing to accomplish the work in order to ensure EDD provides appropriate assistance to victims of identity theft who report fraud through the department's online fraud reporting portal."

Presumably, this requirement should help ensure that EDD maintains an appropriate focus on the issue of identity theft while simultaneously addressing the variety of other pressing issues, such as unfreezing the accounts of eligible claimants, speeding up the process by which it verifies claimant identity, and addressing issues of fraud, among others.

- 5) **Related legislation:** AB 400 (Petrie-Norris) establishes the Unemployment Insurance Oversight Advisory Board within the Labor and Workforce Development Agency. This measure will be heard in the Assembly Insurance Committee on April 29, 2021.

AB 402 (Wicks) establishes the Office of Claimant Advocate (OCA) within EDD. This measure will be heard in the Assembly Insurance Committee on April 29, 2021.

- 6) **Prior legislation:** AB 499 (Mayes, Ch. 155, Stats. 2020) prohibited a state agency from sending any outgoing United States mail that contains an individual's SSN unless the number is truncated to its last four digits or in specified circumstances.
- 7) **Double-referral:** This bill passed out of the Assembly Privacy and Consumer Protection Committee with an 11-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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