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The Case for Continuing New York's History-Making Excluded Workers Fund

New York's \$2.1 billion Excluded Workers Fund was a great success but the fund was quickly exhausted and needs to be replenished so thousands of qualified excluded workers can receive payments on par to their neighbors.

By Samantha Wing, Andrew Stettner and David Dyssegaard Kallick

Last year, New York's Excluded Workers Fund (EWF) ambitiously set out \$2.1 billion to provide payments to workers who lost income during the pandemic but were not eligible for either regular unemployment insurance or the Pandemic Unemployment Assistance—primarily undocumented immigrant workers and some other low-income workers. The fund, resulting from a fervent campaign led by the Fund Excluded Workers Coalition, was a great success, serving 130,000 beneficiaries across New York State. Applications opened August 1, 2021 and closed on October 8, 2021, after the available funds had been allocated in full. Because of the overwhelming demand, advocates from the Fund Excluded Workers (FEW) coalition, are calling for an additional \$3 billion to replenish the fund and serve thousands of additional New Yorkers economically damaged by the pandemic. The Excluded Workers Fund is a historic accomplishment, not just for material changes in the lives of workers but also as a model for other states in how to develop a program to efficiently and safely deliver cash payments to a vulnerable group with heightened privacy concerns. Adding \$3 billion to the fund would still make the EWF a small portion of the \$80 billion paid out to other unemployed New Yorkers through the federal CARES Act.

Overview of the Excluded Workers Fund

Eligibility and Documentation

The Excluded Workers Fund was set up for excluded workers, which means individuals ineligible for regular unemployment benefits or Pandemic Unemployment Assistance. Applicants had to show that they are currently living in New York State and that they were also living in the state on March 27, 2020 or earlier. Beneficiaries must also have been working in New York State, and have lost 50 percent or more of wages or income at some point between February 23, 2020 and April 1, 2021. Individuals must have worked at least fifteen hours per week in the period prior to losing income or wages, and must have earned \$26,208 or less in total between April 19, 2020 and April 21, 2021. Families who lost a breadwinner due to a COVID-19-related death or disability could also receive the benefit.

The fund took the form of a one-time payment, and offered applicants two tiers of benefits based on the amount of documents they could provide. In the end, nearly all beneficiaries who qualified for the program—99 percent of the total—were able to qualify for Tier 1 benefits of \$15,600. A very small number of people—less than 1 percent of the total—received Tier 2 benefits of \$3,200 because they were not able to as firmly document their work history. For both payments, New York State withheld 5 percent of the benefit for state taxes, representing what New Yorkers would pay in state income taxes for this level of income. In addition, the fund provided Tier 1 benefits to families in which a breadwinner died or was disabled due to COVID-19. A total of 1,787 people received a benefit on that basis, including 1,495 due to disability and 292 due to death.

The architects of the fund had to devise an effective way to get benefits to a community that has been forced to live and work around the margins of official documentation as a result of a failed federal immigration system. Building on previous state and local policy innovations, such as allowing New York State (NYS) residents to apply for driver's licenses or state identification irrespective of immigration status, or local identification such as New York City's IDNYC, or Westchester's County ID, the fund was able to verify individuals' residency and identity and work history. The process for submitting wage theft claims gave precedent to the documents the EWF used to prove work history, including informal communication from employers such as emails and text messages.

For proving identity and work history, the fund's documentation system allotted each document a set point value and allowed applicants to fulfill each requirement with different combinations of documents as long as they met the total point value necessary. All applicants were required to provide the following:

- *Identity documents* (4 points), which could include an IDNYC card or a NYS driver's license for four points; a non-expired foreign passport or a college/university photo ID for three points; an Individual Taxpayer Identification Number (ITIN) authorization letter for two points; or an employer ID or marriage certificate for one point, among other documents.
- *Residency documents*, which could include a non-expired NYS driver's license, learner's permit, or non-driver ID; a valid IDNYC; or a state or federal tax return, all of which could be used to demonstrate both past and current residency. Alternatively, applicants could also submit two of the following: utility bill, bank or credit card statement, pay stub, employment offer, a lease, mortgage payment, property tax statement, medical statement, letter addressed to the applicant from New York City Housing Authority (NYCHA), or jury summons, among other documents.
- *Work history documents*, which have two tiers based on the documents provided for the work history requirement. To obtain Tier 1 benefits, an

applicant was required to submit documents equaling at least 5 points total; for Tier 2, an applicant had to submit documents equaling 3 or 4 points total.

- Documents worth 5 points included a letter from an employer proving work history and the reason the applicant is no longer employed, at least six weeks of pay stubs or wage statements from the six months prior to loss of work, a W-2 or 1099 form, a Wage Theft Prevention Act (WTPA) Wage Notice demonstrating employment in the last six months prior to loss of work, or a recently filed state tax return using a valid Individual Taxpayer Identification Number (ITIN) or Social Security Number (SSN).
- 3-point documents included evidence of regular direct deposits, transfers from a person unrelated to you (e.g. receipts from check cashing or transaction logs from a payment app), or an unpaid wages or other claim filed with a government agency.
- 1-point documents included an employer-issued ID badge; emails, text messages, social media posts, or other written communications between an applicant and a employer or hiring party; evidence of recurring cashing of paychecks; receipts showing a pattern of commuting to a work location, or a letter attesting to your employment history from a charitable (nonprofit) organization, among other documents.

Benefit Delivery and Administration

The Excluded Workers Fund was run by the New York State Department of Labor (DOL) and housed in their Worker Protection Unit, separate from the Unemployment Insurance program by design. Systems and firewalls were developed to ensure that the program was only funded by state money apportioned to the program; the need to allocate federally funded and state funded staff time did not prove to be a barrier to implementation. The fund was created as part of the New York State budget passed on April 19, 2021, with the program opening on August 1. Ten percent of the fund was allocated in the budget for administration and outreach, and less than that was used for those purposes—including building out technology and providing grants for community-based organizations.

Often when government agencies are asked to roll out a new initiative such as the EWF there is concern about the state's administrative capacity to properly deploy the program on a short timeline. The Excluded Worker Fund was able to overcome numerous hurdles to getting the program up and running quickly and effectively, in stark contrast to other pandemic programs such as the Emergency Rental Assistance Program.

Getting a program initiated so quickly required DOL to outsource the work. A longer timeline could have allowed permanent employees to be hired, but there were also lessons learned in the contracting that could be applied to a future system for the long term. DOL interviewed vendors and agencies in other states with related experience writing contracts,

and through a process of due diligence hired several vendors. Google was contracted to expeditiously set up a secure cloud-based infrastructure to process applications and to develop state-of-the-art anti-fraud protections. The application developed by Nuvalence allowed documents to be uploaded by taking photos using an applicant's mobile device camera. The fund application could be accessed through a 24/7 online application available in thirteen languages where applicants could check the status of their application, receive updates through email or text, and upload documents. Workers could receive application support in the language they preferred through Google's Call Center AI (CCAI) or from a live representative by scheduling a callback from a 600-person call center set up by New York State DOL. The swift implementation was a testament to the Department of Labor's prioritizing the effort, the use of emergency procurement powers, and coordination between state agencies.

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Through a "Communities First" approach, the DOL worked closely with community-based organizations (CBOs) in a variety of ways. The Excluded Workers Fund Outreach and Assistance Program awarded over \$16 million in grants of between \$50,000 and \$300,000 each to seventy-five CBOs across New York to provide application assistance, education, and training services. Applicants were able to search for a local CBO on DOL's website that would be able to help in applying for the program. This included local government actions that advertised the program through social media, TV advertisements, targeted marketing efforts on public transportation as well as in-person grassroots events.

Recognizing challenges other states have faced with smaller programs, FEW coalition advocates highlighted the importance of having DOL disperse money through a government agency rather than by non-profits, in order to create a more sustainable program. The partnership worked to further "recognize the responsibility [the state] has to look out for all New Yorkers regardless of immigration status." Advocates were consulted regularly and provided valuable feedback throughout the program implementation process to ensure funds could meet the communities targeted with minimal barriers.

Approved applicants received a prepaid card mailed to their address that could be used for cash withdrawals or with vendors wherever a debit card was accepted. The debit cards were highly secure, could be only sent to addresses within New York State, and required a unique PIN code to activate, all of which allowed the DOL to ensure funds went directly to applicants in the state.

Privacy and Fraud Protections

Strict privacy provisions were included in the Excluded Workers Fund legislation in order to protect the vulnerable personal information of excluded workers, and in particular to make sure to keep state aid information secure from Immigration and Customs Enforcement (ICE) inquiry. The law restricted disclosure of records except with a lawful court order, judicial warrant, or subpoena, ensuring applicant records were guarded with the utmost security and not made public record or disclosed.

Given recent concerns over fraud in the regular Unemployment Insurance system, the Department of Labor (DOL) took extensive security measures to protect the EWF program, on top of providing warnings and a portal to easily report fraud. This included measures like geofencing and rate limits to protect the application from artificial intelligence attacks by individuals outside of the United States. Similarity engines were also used to detect fraud to prevent potentially fraudulent applications that shared common information, like the same license or ITIN numbers. The DOL also did cross-checks with various state agencies to verify applicant's identity and transaction history. Special considerations were made to create a rigorous yet flexible system that could curtail fraud but not automatically reject legitimate applications. For instance, hundreds or thousands of applications from a single source may be tagged as potential fraud, yet could turn out to be CBOs or other partner organizations assisting with large numbers of applications, something encouraged by the program.

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Combating fraud was a significant priority for the DOL, which was able to create a strong program that weathered pressure from attacks. The program was not without its setbacks. One source of fraud that has been documented was not against the program but against recipients. A number of applicants experienced fraudulent withdrawals by third parties that drained their legitimately obtained cards and deprived them of urgently needed cash. This was the result of card skimming, a not uncommon scam where ATMs are tampered with to steal card information. The DOL was able to act promptly, suspending the option of withdrawing cash from ATMs for EWF card holders, and, out of an abundance of caution, limiting the cards to in-person teller withdrawals to cut off this fraud pattern.

Success of the Excluded Workers Fund

The Excluded Workers Fund approved claims for 130,000 excluded workers across New York State. Seventy-nine percent of beneficiaries came from New York City, with 21 percent dispersed to other regions of the state. As noted above, 99 percent of applicants received the higher Tier 1 benefits (\$15,600 pre-taxes). The high approval rates were a great achievement, as many advocates during the program rollout were concerned that the tiered system would lead to a significant number of applicants not having enough documents to qualify.

The fund made an enormous difference in the lives of New Yorkers, helping them get back on their feet and improve their financial security. Jessica Jimenez, whose life was upended by Hurricane Ida as well as the pandemic, wrote in an op-ed after receiving Tier 1 of the fund, “It felt like nothing less than a blessing from heaven. [...] The funding has transformed all of our lives. We’ve been able to finally get enough food to eat and make sure that my granddaughters don’t wake up hungry. We can get new furniture again after most of it grew moldy during the floods. My family’s especially excited for a new dining room table so that we can all eat together again.”

Other workers have used funds to pay off medical debt and expenses, reinvest in their businesses, participate in ESL classes, and pay for legal representation for their visa case. It has provided many families a safety net and reduced anxiety over finances by paying for food and utilities, back rent, and even down payments on a house. During the pandemic, EWF was able to fulfill the role that enhanced pandemic UI played for tens of millions of Americans—preventing the public health crisis from leading to economic catastrophe and poverty. Largely because of pandemic UI (and stimulus payments), poverty actually declined in 2020 compared to 2019. EWF is the type of intervention needed to bring at least some of these results to the undocumented community.

The New York’s Excluded Workers Fund and the organizing effort that led it also inspired activists across the country. After the passage of New York’s bill, excluded workers from New Jersey started a hunger strike, which also resulted in an excluded worker fund, though on a different scale than New York’s. The \$40 million Excluded New Jerseyans Fund was announced on May 7. There was also a push in a county in Iowa, and organizing from the seventeen-group Fund Excluded Workers Coalition which led to a \$2 million dollar fund for excluded workers in Johnson County. In addition, there were campaigns and a variety of funds for excluded workers in California, Washington, Colorado, and the District of Columbia.

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The Excluded Worker Fund was also able to start new conversations and provide potentially new ways to improve systems within New York's Department of Labor. This accomplishment was even more striking given the fact that the state DOL had never created such a program with planning meetings and administration only occurring virtually. Technology also improved how they were able to serve adversely affected populations with language and literacy barriers. This could have great implications in the future, for instance in responding to wage theft: allowing workers to use their own smartphones in their preferred language to submit documents could be a major step for wage theft and pay docking case intake.

The DOL is currently modernizing its outdated systems for processing unemployment insurance claims. The ability to start from scratch with this program allowed them to make improvements that prioritize addressing the barriers immigrant communities faced, and in the process learn things that can help in improving the delivery of unemployment insurance benefits as well. Designing the EWF application with user experience, new technology, and smartphones in mind contributed to discussions about modernizing systems. The fund also sparked new interest in surveying immigrant workers, looking at their obstacles to financial institutions, and building strategies for how to get money to these communities in the future. These issues might not have been brought up in the DOL without the Excluded Worker Fund.

The Work Is Not Over Yet

FEW coalition advocates are requesting the fund be replenished with \$3 billion more dollars of relief, citing that the money allocated to the fund was not enough to cover all excluded workers in New York State. The fund fully closed on October 8, 2021 only a few months after it opened on August 1, 2021 due to the overwhelming demand and funds nearing exhaustion. The Department of Labor was only able to guarantee funds for applications submitted before September 24, 2021, meaning it could only ensure funds for those able to apply within less than two months of the program opening. This meant that thousands of workers, applicants who already face barriers regarding language access and collecting documents, could not apply on time. The NYS Department of Labor reports that before the department stopped accepting applications 70,000 to 75,000 applications were submitted that appeared to be legitimate but were unable to be processed due to depletion of funds. Many more eligible workers may have been discouraged from applying as funds ran low. A \$3 billion ask would cover up to 170,000 workers including all who were denied plus many more who did not apply once the fund was closed.

The \$3 billion campaign is part of a larger coalition ask that includes a permanent \$800 million-per-year “Excluded No More” program that would provide compensation akin to unemployment insurance for excluded workers (undocumented, workers paid off the books, and certain low income freelance workers) while maintaining enforcement of key labor rights like the right to state UI. The proposed program would seek to provide a more consistent safety net, especially for workers who weren't able to receive EWF benefits

before the fund ran out. The Century Foundation and the Immigration Research Institute will profile Excluded No More and other efforts to permanently expand access to the safety net in future publications.

Looking Forward

New York's Excluded Workers Fund serves as a necessary model for how to develop a safety net that includes vulnerable groups like undocumented immigrants. As Governor Kathy Hochul said in her statement on the fund, "hundreds of thousands of low-wage immigrant workers delivered vital services to keep New York going during its darkest days. [...] New Yorkers always stand together during the most difficult of times. [...] The EWF exemplifies the values of compassion, fairness, and equality that define us as a state."

There is ample justification for the New York State Legislature to meet advocates' call to replenish the fund with \$3 billion more dollars in order to truly fulfill the state's promise to these essential workers. Additional funding can ensure it can serve all the workers that need it and can truly embody the program's values of compassion, fairness, and equality.

This commentary was written jointly by The Century Foundation and the Immigration Research Initiative.

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