

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



September 23, 2020

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JOHN PALLASCH 
Assistant Secretary for Employment and Training

SUBJECT: Response to the Office of Inspector General Draft Report No.
04-20-002-03-315 – *ETA Should Do More to Assist Vulnerable
States Prepare for Disaster Unemployment Assistance Program
Implementation*

Thank you for the opportunity to respond to the Office of Inspector General (OIG) draft report titled, *ETA Should Do More to Assist Vulnerable States Prepare for Disaster Unemployment Assistance Program Implementation*. The September 3, 2020, draft report provides the OIG's conclusions and recommendations with regard to the Employment and Training Administration's (ETA or the Agency) actions taken to oversee and support states' Fiscal Year 2017 efforts to implement the Disaster Unemployment Assistance (DUA) program in response to Hurricanes Harvey, Irma, and Maria.

While there are always opportunities for improvement, ETA strongly disagrees with the OIG's characterization of ETA's oversight of the DUA program in the context of Hurricanes Harvey, Irma, and Maria. ETA's response provides information that corrects and clarifies mischaracterizations in the report.

The draft report asserts, in multiple places, that ETA does not have specific policies and procedures in place related to administration and oversight of the DUA program. This is incorrect, as the Agency has outlined policies and procedures for states' operation and administration of the DUA program in *ETA Disaster Unemployment Assistance Handbook No. 365* (ET Handbook No. 365). ET Handbook No. 356 requires that "State agencies must develop necessary operating procedures, instructions, and forms." Chapter I, Section 11.f on page 1-7. In addition, Chapter I, Section 10.b.(10), establishes a state oversight requirement for ETA to conduct onsite visits to the states during the DUA initial application period. To reinforce these procedures, ETA conducts an annual meeting of Regional DUA Coordinators to review the processes, provide updates, and to ensure ETA staff are properly trained in the processes and well positioned to support state implementation of the DUA program. These meetings include an overview of the DUA program and available program oversight tools, including the DUA monitoring guide used to support Regional oversight and ETA's pre-disaster readiness checklist.

Since 2012, these program oversight tools have been available to ETA's Regional Offices (RO) and the states to assist in the startup, operation, and assessment of DUA programs. The DUA monitoring guide emphasizes the best practice of ensuring that ROs conduct oversight reviews during the Disaster Assistance Period (DAP), especially if the state or territory affected has particular challenges in administrating or implementing DUA.

In addition, most ETA ROs host routine DUA state coordinator meetings to provide training and to reinforce state capacity to implement DUA. For example, ETA's Atlanta RO conducted a DUA state coordinators' meeting, in which Florida participated, just three months prior to Hurricane Irma on May 16 – 17, 2017. During this meeting, states were advised to conduct annual DUA training for staff, to update DUA standard operating procedures, and to use the RO monitoring guide and pre-disaster readiness checklist to inform state administration of the program.

The draft report fails to detail and acknowledge the extensive and timely technical assistance and training provided to all three entities by the Agency to support their hurricane response. In addition, the draft report speaks to the devastation caused by the three hurricanes but fails to recognize the significant and sustained impact on the entities' ability to fully recover operations and ETA's limited ability to travel and provide technical assistance and oversight, particularly in the U.S. Virgin Islands (USVI).

ETA staff began working with Florida, Texas, and USVI far in advance of the impending hurricanes. Daily calls were conducted with states to ensure preparations were in place to immediately submit DUA applications for funding to the Federal Emergency Management Agency (FEMA), make press release announcements, and implement the DUA program. Despite all obstacles caused by the devastation (loss of communications and other infrastructure, travel challenges, etc.), ETA staff worked tirelessly to provide technical assistance and oversee the states' implementation of DUA following the hurricanes.

ETA's Atlanta RO communicated with and provided daily updates to the Florida Department of Employment Opportunity (FLDEO) in the aftermath of Hurricane Irma and provided technical assistance to address various DUA-related questions from the state agency. During the week of October 9, 2017, ETA's Atlanta RO staff also traveled to Florida to provide technical assistance to FLDEO on its administration of the DUA program. Additionally, ETA's Atlanta RO staff reviewed a sample of DUA eligibility determinations (approvals and denials) to confirm the Stafford Act provisions were being correctly applied.

Despite the severity of the hurricane damage to USVI, impacting all aspects of its infrastructure and the lives of the USVI staff responsible for delivering the DUA program, ETA worked for many months to support USVI in delivering DUA benefits to eligible citizens. ETA's Boston RO conducted daily and then weekly conference calls with USVI after restoration of telecommunication services. ETA provided extensive technical assistance to support DUA implementation from administration of the initial benefit claims to adjudication of appeals throughout the DAP and the extended DAP with communication by phone, email, and an onsite visit that included DUA subject matter experts from ETA's Office of Unemployment Insurance (OUI), the Boston RO, and the Dallas RO. The Boston RO also provided the Virgin Islands

Department of Labor (VIDOL) a DUA manual and customized form templates and facilitated the contractual technical assistance necessary to assist VIDOL in repairing and restoring its ability to take claims online so that DUA could be properly implemented and reported. In addition, the Boston RO assisted USVI with hiring additional staff, working through USVI's difficult procurement and approval process for using grant funds, and exploring options to establish interagency agreements with other states to provide USVI with program assistance both remotely and on the ground. USVI ultimately chose not to pursue assistance from other states.

The draft report also indicates, in multiple instances, that ETA did not provide timely or adequate oversight of the USVI's DUA operations; in other instances, it correctly notes that ETA made two timely visits to USVI—during the week of November 28, 2017, and the week of July 23, 2018. The OIG appears to conclude that these timely visits to USVI were ineffective or inadequate because USVI was unable to correct all the issues identified by ETA before the OIG's visit took place. This conclusion by the OIG does not fully acknowledge the devastating impact of the hurricanes on all residents of the USVI, including the VIDOL and its staff. Additionally, there is no acknowledgment of the impact of limited communication and infrastructure capabilities on the ability of VIDOL to operate the DUA program and provide services to impacted citizens across multiple islands.

The draft report also fails to acknowledge ETA's ongoing work to improve its capacity to support state implementation of the DUA program. While the draft report does mention ETA's new online DUA training modules provided for states, it does so in the context that it was not available prior to these hurricanes; the training modules were under development prior to the hurricanes. On November 9, 2018, ETA announced the availability of online DUA training for states to use, as outlined in Training and Employment Notice No. 8-18.¹ These online training modules are designed for new and existing DUA state coordinators and all other staff charged with accepting DUA claim applications, adjudicating DUA claims, and hearing DUA appeals. The training includes lessons on DUA background and history, administrative process, claims processing, determinations, overpayments, and appeals.

The draft report also does not mention that prior to the 2017 hurricanes, ETA announced its new Unemployment Insurance (UI) Benefit Operations State Self-Assessment Tool, which includes a section on DUA to ensure states are prepared for implementation of DUA in the event of a disaster, as outlined in UI Program Letter No. 18-17.² The DUA Self-Assessment Tool requires that states assess their policies and procedures concerning DUA program administration, including claims-taking operations policy, procedures, and forms; procedures for monetary determinations, non-monetary determinations, appeals, and overpayments; whether the state has written policies on DUA eligibility, compliance with the 30-day filing deadline, proof of earnings, and procedures for calculating the correct monetary entitlement; and the state's DUA training curriculum and written plan for training staff. States must take corrective action to address weaknesses in any areas of DUA readiness.

Finally, we note that the OIG's presentation, in several instances, has the potential to mislead the reader. For example, the draft report states that USVI did not commence taking claims for

¹ See https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3963

² See https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9282

extended DUA benefits until 18 months after the hurricanes occurred. The extended DUA benefits related to Hurricanes Irma and Maria were not enacted until October 2018 (over a year after the hurricanes). The extended benefits were all retroactive payments to cover benefits through September 2018. The use of the “18 months after the hurricanes” language creates a false impression that VIDOL waited a year and a half to begin administering claims.

In summary, as previously stated, while ETA agrees improvements to the DUA program can be made by the Agency, ETA is disappointed that the OIG’s draft report fails to include critical facts and information to provide a more complete and accurate representation of its actions in supporting states following Hurricanes Harvey, Irma, and Maria.

Please find below ETA’s responses to each of the OIG’s recommendations outlined in the draft report.

Recommendation 1: Establish policies, procedures, and controls to ensure states provide DUA staff annual training and have required written state DUA policies and procedures in place.

ETA Response: ETA agrees with this recommendation in part. ETA is committed to reviewing its policies, procedures, and oversight activities to identify and address areas for improvement.

Recommendation 2: Create a rapid response team consisting of federal and state officials capable of providing technical and other assistance to states impacted by major disasters.

ETA Response: ETA has implemented a model described by the OIG. While not a fixed rapid response team, ETA establishes and deploys teams made up of experts to assist on the ground in emergency situations/events, including major disaster events. These expert teams are comprised of knowledgeable and experienced individuals from OUI and RO offices with the requisite expertise to respond and assist as necessary. ETA utilized this model to support USVI following Hurricanes Irma and Maria.

Recommendation 3: Recover \$95,699 in questioned costs from the FLDEO and VIDOL for participants whose eligibility they could not substantiate.

ETA Response: ETA agrees with this recommendation. The Office of Grants Management’s Division of Policy Review and Resolution, specifically, the Audit Resolution Unit, will be tasked to resolve this recommendation. Following the issuance of the OIG’s final report, ETA respectfully requests the names of the claimants identified as having incorrect determinations of eligibility or lack of documentation to confirm eligibility. Initial and final determinations will be issued to the grant recipients in question, in accordance with Department of Labor Manual Series 8-300, to determine if there are disallowed costs and any amounts subject to repayment.