

Appendix C: U.S. Department of Labor Response

**U.S. Department of Labor
Response to Draft Report**

The agency's response to our draft report follows.



September 26, 2024

MEMORANDUM FOR:

CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM:

JOSÉ JAVIER RODRÍGUEZ

A handwritten signature in black ink, appearing to read "JJR".

SUBJECT:

Response to Draft Joint Report – *COVID-19: Data Sharing Project Finds Billions Paid to Same Likely Fraudsters Under Both the Unemployment Insurance and Economic Injury Disaster Loan Programs*, Report No. 19-24-XXX-03-315

The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the above-referenced draft joint report from the Department's Office of Inspector General (OIG) and the U.S. Small Business Administration (SBA) OIG. Below are some points the Department would like to share related to the themes discussed in the draft joint report, followed by the Department's responses to the OIG's recommendations.

ETA is actively demonstrating its commitment to align existing risk management efforts with the Government Accountability Office's (GAO) Fraud Risk Framework. The Department takes its oversight of federally funded programs very seriously. Strengthening Unemployment Insurance (UI) program integrity, by reducing improper payments and mitigating fraud risks, remains a top priority for the Department. In recent years, the Department implemented recommendations made by the GAO to help improve UI fraud risk management, which includes aligning existing risk management efforts with the leading practices in GAO's Fraud Risk Framework¹.

GAO's recommendations spurred the Department to develop a UI Fraud Risk Profile, supplementing and enhancing its robust payment integrity efforts, and further strengthening an organizational culture that views the creation, evaluation, monitoring, and evolution of risk mitigation strategies as an ongoing process. ETA also announced the release of a new UI Fraud Risk Management webpage for state workforce agencies (SWA) to access information on the Department's UI fraud risk management activities and to update states on new fraud risk mitigation strategies and initiatives.² GAO's leading practices are now well embedded in the daily UI program integrity work. The Department also agrees wholeheartedly with GAO that data analytics activities are a critical component of an overall antifraud strategy.

¹ GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP, issued July 2015, <https://www.gao.gov/assets/gao-15-593sp.pdf>.

² See Training and Employment Notice (TEN) No. 32-23, *Unemployment Insurance (UI) Fraud Risk Management Resources*, issued June 27, 2024, <https://www.dol.gov/agencies/eta/advisories/ten-32-23>.

UI data is owned by SWAs and its disclosure is governed under state laws. The OIG notes in their draft report that UI is “administered jointly by the federal and state governments.” To clarify, the UI program is a federal-state partnership program based upon federal law and administered by state workforce agencies (SWA) under state law. UI data is owned by SWAs and its access and use are governed by state laws that conform with certain requirements set forth in federal regulation.³ The Department generally does not have access to individual-level SWA UI data and the draft joint report suggests that ETA modify its current System of Record Notices (SORN) to accommodate the envisioned data exchange. However, as ETA indicated in discussions with the OIG, ETA does not have a SORN that could be modified to allow for the exchange of this data, nor does ETA have the authority to perform the suggested data matching. Each of the 53 SWAs that operate UI programs would need to enter into individual, state-level data sharing agreements with the SBA to conduct the type of data sharing suggested in the draft joint report.

ETA is actively demonstrating its commitment to strengthen data sharing with federal agencies. As part of the UI antifraud strategy, the Department is committed to pursuing access to necessary external data sources, including data sharing with other federal agencies and third parties that can provide support to SWAs in identifying potential fraud and improper payments, and helping with accurate determinations of UI eligibility.

These efforts include streamlining SWAs access to additional data sources through the National Association of State Workforce Agencies’ (NASWA) UI Integrity Data Hub (IDH), which is a key payment integrity tool to aid states in detecting and preventing UI fraud. Recently, the Department announced a new data sharing partnership between the U.S. Department of Treasury’s (Treasury) Bureau of the Fiscal Service (Fiscal Service) and NASWA to provide SWAs with access to Do Not Pay data sources and services through the IDH.⁴ Additionally, the Department worked with the Social Security Administration (SSA) to establish a data sharing agreement to provide SWAs with streamlined access to SSA’s Prisoner Update Processing System data through NASWA’s UI Interstate Connection Network.⁵ Furthermore, the Department maintains a data sharing agreement with the U.S. Department of Health and Human Services’ Office of Child Support Services to provide states with access to the National Directory of New Hires data.⁶ All these data sharing partnerships provide SWAs with access to important data sources to help reduce fraud and/or confirm UI program eligibility. Each of these

³ See 20 C.F.R. Part 603.

⁴ See TEN No. 28-23, *Announcement of a New Data Sharing Partnership Between the U.S. Department of Treasury’s (Treasury) Bureau of the Fiscal Service (Fiscal Service) and the National Association of State Workforce Agencies’ (NASWA) Unemployment Insurance (UI) Integrity Center to provide State UI Agencies Access to Do Not Pay Working System (DNP) Data Sources and Services through the UI Integrity Data Hub (IDH)*, issued May 2, 2024, <https://www.dol.gov/agencies/eta/advisories/ten-28-23>.

⁵ See Unemployment Insurance Program Letter (UIPL) No. 01-22, *Announcing the Availability of an Incarceration Data Exchange and Instructions to Access the Data Exchange between the Unemployment Insurance (UI) Interstate Connection Network (ICON) and the Social Security Administration (SSA) Prisoner Update Processing System (PUPS)*, issued October 29, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-01-22>.

⁶ See TEN No. 05-20, *National Directory of New Hires (NDNH), State Directory of New Hires (SDNH), and Other Improper Payment Prevention and Detection Resources, Tools, and Services Available to States*, issued September 24, 2020, <https://www.dol.gov/agencies/eta/advisories/training-and-employment-notice-no-05-20>.

data sharing partnerships support risk mitigation efforts to address the highest UI risks identified in the Department's UI Fraud Risk Profile.

The draft joint report suggests that data sharing between ETA and SBA could mitigate the risk of fraudulent UI payments and SBA disbursements, based on the data matching conducted by the OIG. Additionally, the draft joint report asserts that if data sharing and matching had existed, the agencies could have conducted a higher-level review by matching applicants across both programs to mitigate fraudulent payments. However, while the Department is committed to seeking data sharing opportunities to address the highest UI program risks, ETA disagrees with the OIGs' assessment regarding this data sharing partnership.

The OIG's analysis was based on an expired pandemic program. The OIG's analytics were based on cross-matching with data from an SBA program the OIGs jointly acknowledge ended in January 2022. The Department reiterates its commitment to identifying and pursuing data sharing initiatives that could support more accurate eligibility determination and reduce improper payments but will not allocate limited resources to pursuing a data sharing partnership based on analysis from an expired program.

ETA has limited resources and must prioritize its areas of focus. ETA has limited resources and relies on several factors, such as the priority level of the residual risk identified in the Department's recently developed UI Fraud Risk Profile, insight from its oversight bodies such as GAO and the OIG, and other evidence to make decisions on how these resources are allocated. This includes analyzing the highest residual risks to the UI program after evaluating the impact of existing antifraud controls.

The draft joint report identifies "\$1.3 billion in potentially fraudulent UI and Economic Injury Disaster Loan (EIDL) payments made to the same likely fraudsters." This assessment is based on individuals with Social Security Numbers from two groups: (1) those who filed in multiple states and (2) those using suspicious emails. However, the draft joint report fails to acknowledge that: (1) workers may be eligible to file in multiple states under certain conditions and (2) suspicious email addresses *may* be a flag, but the OIG does not define what they consider "suspicious" in this audit. Both issues are potential flags of suspicion, but, not conditions certain of fraud. The Supreme Court has found that payment must be made "when due" and may not be held merely on a program official or auditor's suspicions. Additionally, the draft joint report acknowledges that people may be potentially eligible for relief under both the UI and EIDL programs and receiving benefits under one of these two programs does not necessarily mean that involvement in the other program is potentially fraudulent.

ETA has already identified these two groups as fraud risks to the UI program and developed and/or strengthened existing mitigation strategies to address both risks. SWAs currently review claims for suspicious emails and multistate filings through different fraud detection tools, including the IDH. The IDH was specifically designed to cross-match suspicious data elements being used across UI claims, including, but not limited to suspicious email addresses. Additionally, the IDH has a multi-state cross-matching (MSCM) functionality to flag UI claims filed in multiple states. Matching UI data with SBA data would not help SWAs proactively identify UI claims filed across multiple states.

The Department has and continues to strongly encourage states to actively participate in the IDH on a regular basis, and IDH participation has increased significantly since the onset of the pandemic. For example, in March of 2020, only 34 states had an IDH Participation Agreement (PA), 21 states were using the Suspicious Actor Repository (SAR), which provides information on suspicious UI claims data elements, including suspicious email addresses, and three states were using the MSCM, which was quite new at the time, having only been live in the IDH production environment since November 2019 – about five months. ETA continues to support ongoing enhancements to the IDH by funding additional fraud prevention capabilities such as an identity verification (IDV) and risk scoring solution, which became available to states in July 2020, as well as a Bank Account Verification (BAV) service, which became available to states in February 2022. Currently, all 53 states have a signed IDH PA, 51 states are using the SAR, 51 states are using the MSCM, 46 states are using the IDV solution, and 43 states are using the BAV service. Furthermore, in the Department’s Fiscal Year 2025 President’s Budget and the UI Transformation Plan⁷, requiring the use of IDH is identified as a proposed legislative reform.

Without additional funding from Congress, ETA must continue to prioritize its areas of focus. The draft joint report has not demonstrated additional value for ETA to further pursue the exchange of these data elements with SBA.

Responses to the Recommendations

Please find below each of the recommendations contained in the draft joint report, followed by ETA’s proposed corrective actions to address the recommendations.

Recommendation 1: Evaluate its authority to share data and develop fraud prevention resources and controls with other federal entities, including SBA, that include data sharing mechanisms to detect and mitigate fraud.

ETA Response: ETA agrees with this recommendation and asserts that it has already taken such action through the development of a UI Fraud Risk Profile that aligns with GAO’s Fraud Risk Framework. Through the efforts of strengthening UI fraud risk management activities, building the UI Fraud Risk Profile, and analyzing the results, the Department has designed a risk response to identified risks. As noted by GAO in their Framework for Managing Fraud Risks in Federal Programs, effective managers of fraud risks use the program’s fraud risk profile to help decide how to allocate resources to respond to residual fraud risks, which may include actions to accept, reduce, share, or avoid the risk. Specifically, managers may allocate resources to prevent or detect fraud risks that exceed their risk tolerance, but they may decide not to allocate resources to further reduce unlikely, low-impact risks that fall within their risk tolerance.

To mitigate the highest residual risks to the UI program, the Department has identified and implemented data sharing mechanisms with other federal entities - most recently including SSA and Treasury. The Department continues to streamline access to important payment integrity data sources through the UI IDH since all 53 states have entered into agreements to share

⁷ See Unemployment Insurance Transformation Plan, *Building Resilience: A plan for transforming unemployment insurance*, issued April 2024, https://oui.doleta.gov/unemploy/transformation_plan.asp.

individual claims-level data with the IDH for the purposes of ensuring the accuracy of payments and preventing fraud and improper payments.

The Department has discussed this concept with SBA and determined that additional action is not warranted at this time, given other priorities for the UI program (such as expanding additional data sharing opportunities with Treasury) and the level of complexity and effort with existing authorities to share data, insofar as it would require SBA to enter into data sharing agreements with each individual state.

Recommendation 2: Collaborate with SBA to conduct a joint study to assess and identify the UI claim data elements that should be shared for data matching with disaster program data elements for the purpose of detecting potentially fraudulent activities under both the UI and disaster assistance programs.

ETA Response: ETA disagrees with this recommendation, given that ETA has limited resources and must prioritize its areas of focus. This draft joint report has not demonstrated how investing in an additional study specific to the UI and EIDL programs will improve fraud prevention and detection efforts in the UI program cost-effectively beyond existing practices and resources. Additionally, ongoing data sharing between the UI program and SBA will require SBA to enter into data sharing agreements with each of the 53 SWAs administering UI programs.

Instead of requesting ETA to invest in an additional study of two programs with eligibility criteria that are not mutually exclusive, ETA asks the OIG for help in navigating a government-wide resolution that provides for interagency collaboration. This type of data matching may be helpful to law enforcement when prosecuting cases involving fraud across multiple programs. The OIG's leadership on a broad-based interagency effort would be appreciated and be more cost-effective than a limited scope study based on expired programs.

As an alternative approach, ETA is committed to meeting with SBA to further explore the possibility of using SBA data to support UI program integrity. This activity will include determining if there is an appropriate return on investment for both the UI program and SBA and/or engaging with our partners in Treasury's Fiscal Service to assess the possibility of streamlining SWAs' access to SBA data sources through the Do Not Pay system. ETA, working in collaboration with the Department's Chief Evaluation Office and the Department's Office of the Chief Financial Officer, is responsible for this recommendation.

Appendix D: U.S. Small Business Administration Response

U.S. Small Business Administration Response to Draft Report

The agency's response to our draft report follows.



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

To: Hannibal “Mike” Ware
Inspector General
U.S. Small Business Administration

From: Jihoon Kim, Director, Office of Financial Program Operations,
Office of Capital Access

JI KIM

Digitally signed by JI KIM
Date: 2024.09.23 16:17:42
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Date: September 23, 2024

Subject: Response to OIG Draft Report – COVID-19: Data Sharing Project Finds Billions Paid to Same Likely Fraudsters Under Both the Unemployment Insurance and Economic Injury Disaster Loan Programs (Project 23801)

Thank you for providing the Office of Capital Access (OCA) the opportunity to respond to OIG’s Draft Report entitled, “COVID-19: Data Sharing Project Finds Billions Paid to Same Likely Fraudsters Under Both the Unemployment Insurance and Economic Injury Disaster Loan Programs.” The OIG’s audit objective for this draft report was to determine if “data sharing between ETA and SBA mitigate the risk of fraudulent UI benefit payments and SBA disaster program disbursements.”

We appreciate the role the Office of Inspector General (OIG) plays in working with management in ensuring that our programs are effectively managed, and for the feedback provided in this draft report. We offer the following response to the recommendations:

Recommendation 1: Evaluate its authority to share data and develop fraud prevention resources and controls with other federal entities, including DOL, that include data sharing mechanisms to detect and mitigate fraud.

SBA Response:

SBA agrees with this recommendation, however, will approach this not with DOL directly but as a collaborative, “whole of government” approach. SBA will collaborate with appropriate centralized federal entities to evaluate authorities to share data and will conduct a joint study with centralized entities to assess and identify program data elements that should be shared for

the purpose of detecting potentially fraudulent activities. SBA has discussed this approach with DOL and determined that it would be more beneficial to address this recommendation on a broader scale.

Recommendation 2: Collaborate with DOL to conduct a joint study to assess and identify the UI claim data elements that should be shared for data matching with disaster program data elements for the purpose of detecting potentially fraudulent activities under both the UI and disaster assistance programs.

SBA Response:

SBA agrees with this recommendation, however, will approach this not with DOL directly but as a collaborative, “whole of government” approach with appropriate centralized federal entities to evaluate authorities to share data and develop centralized fraud prevention resources and controls that include data sharing mechanisms to detect and mitigate fraud occurring in federal programs across the entire federal space. SBA has discussed this approach with DOL and determined that it would be more beneficial to address this recommendation on a broader scale.

Recommendation 3: Reevaluate eligibility for the 10,971 potentially fraudulent EIDLs and recover funds from ineligible recipients.

SBA Response:

SBA agrees. Once OIG provides SBA the additional DOL criteria regarding the identified population, SBA will perform a high-level review of a sample of the identified loans.