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REPORT TO THE EMPLOYMENT AND TRAINING ADMINISTRATION



COVID-19: ETA COULD HAVE DONE MORE TO ENSURE STATES HAD SUFFICIENT STAFFING TO DELIVER TIMELY PANDEMIC UNEMPLOYMENT BENEFITS

This report was prepared by GenTech Associates, Inc. under contract with the U.S. Department of Labor, Office of Inspector General.

A handwritten signature in cursive script, reading "Carolyn R. Hantry".

U.S. Department of Labor
Assistant Inspector General for Audit

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BRIEFLY...

COVID-19: ETA COULD HAVE DONE MORE TO ENSURE STATES HAD SUFFICIENT STAFFING TO DELIVER TIMELY PANDEMIC UNEMPLOYMENT BENEFITS

WHY WE DID THE AUDIT

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided expanded unemployment insurance (UI) benefits to workers unable to work due to the COVID-19 pandemic. Section 2106 of the CARES Act provided emergency hiring flexibility and other temporary actions to process unemployment claims quickly.

Our prior audit work found states' staffing was a concern in implementing emergency UI programs. Based on these risks, we contracted with GenTech Associates, Inc. (GenTech) to answer the following question:

Did the Employment and Training Administration (ETA) ensure states' staffing supported the implementation of UI programs under the CARES Act and its amendments?

To answer this question, GenTech assessed ETA's oversight, performed in-depth testing of 6 OIG-selected states, and surveyed an additional 47 state workforce agencies.

READ THE FULL REPORT

For more information, go to:

<https://www.oig.dol.gov/public/reports/oa/2025/19-25-002-03-315.pdf>.

WHAT WE FOUND

GenTech found ETA took several actions toward ensuring states' staffing supported the implementation of CARES Act UI programs. However, more actions were needed to ensure staffing levels were sufficient to afford timely benefits to eligible claimants. Specifically, ETA:

- provided states funding that could be used to improve staffing levels, but did not measure the impact of that funding nor determine the sufficiency of increased staffing levels in implementing the new UI programs;
- issued guidance for monitoring states' staffing support, but did not do so until October 2020, 6 months after Congress passed the CARES Act;
- monitored states' UI program performance, but did not recommend corrective actions to address states' staffing issues; and
- allowed states the flexibility to reassign Benefit Accuracy Measurement staff to claims processing, but did not evaluate the resulting impairments to measuring improper payments.

These deficiencies occurred because ETA did not prioritize the oversight of states' staffing during the COVID-19 emergency. Specifically, ETA: (1) did not establish a benefit payment timeliness standard for CARES Act UI programs; (2) did not recognize the need for urgency in issuing monitoring guidance for the temporary programs; (3) allowed monitoring personnel the discretion to classify staffing as an area of concern rather than a compliance issue requiring corrective action; and (4) prioritized processing the volume of UI claims over measuring the accuracy of UI payments, specifically improper payments when suspending the Benefit Accuracy Measurement system as a strategy to address states' staffing needs.

As a result, from April 2020 through September 2021, the 6 states were only able to pay 70 percent of initial claims (3.6 million of 5.2 million) within 21 days, compared to the 87 percent standard ETA applies to regular UI. The quarterly percentage of claims paid within 21 days ranged from 51 percent to 81 percent. Furthermore, ETA's suspension of the Benefit Accuracy Measurement system impaired ETA's ability to assess the integrity of the new UI programs with respect to improper payments, including fraud.

WHAT WE RECOMMENDED

GenTech made four recommendations to ETA to improve its oversight and support of states' staffing needs during an emergency event. ETA did not agree with the four recommendations; however, ETA's proposed corrective action met the intent of one recommendation.

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INSPECTOR GENERAL'S REPORT

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The U.S. Department of Labor Office of Inspector General contracted with the independent certified public accounting firm of GenTech Associates, Inc. (GenTech) to conduct a performance audit of the Employment and Training Administration's (ETA) oversight of states' use of staffing to support the implementation of unemployment insurance (UI) programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and its amendments.

The Office of Inspector General monitored GenTech's work to ensure it met professional standards and contractual requirements. GenTech's independent audit was conducted in accordance with generally accepted government auditing standards.

GenTech was responsible for the auditors' evaluations and the conclusions expressed in the report while the Office of Inspector General was responsible for reviewing GenTech's report and supporting documentation.

Purpose

UI is a joint federal-state program that provides temporary benefits to eligible workers who become unemployed through no fault of their own. ETA provides federal oversight of the UI program. On March 27, 2020, Congress passed the CARES Act, which provided expanded UI benefits to individuals who were unable to work due to the COVID-19 pandemic. Section 2106 of the CARES Act provided states with emergency hiring flexibilities limited to engaging temporary staff, re-hiring retirees or former employees on a non-competitive basis, and other temporary actions to process unemployment claims quickly.

We have long reported significant concerns with the Department and states' ability to deploy UI benefits expeditiously and efficiently while ensuring integrity

and adequate oversight. In our April 2020 UI advisory report,¹ we outlined areas of concern for ETA and states to consider while implementing CARES Act UI provisions. One of those areas was state preparedness, which specifically addressed concerns surrounding the sufficiency of states' staffing levels to administer emergency UI benefits. In a May 2021 follow-up report,² we found states struggled to implement the three key CARES Act UI programs—Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation—partially as a result of insufficient staffing.

Based on these risks, we contracted with GenTech to answer the following question:

Did ETA ensure states' staffing supported the implementation of UI programs under the CARES Act and its amendments?

To answer this question, GenTech conducted a performance audit covering the period from March 27, 2020, to September 6, 2021. Specifically, GenTech reviewed and assessed ETA's internal controls design for monitoring federal grants, states' staffing levels, administrative costs, and emergency UI program implementation. GenTech performed in-depth analyses of the States of: Arizona, Massachusetts, New York, North Carolina, Rhode Island, and Tennessee (6 states).

We judgmentally selected these states based on a risk assessment that considered: (1) Office of Inspector General investigative concerns; (2) the quantity of additional staffing funded by the CARES Act and stratified into the highest, middle, and lowest ranges; (3) the extent to which the states had not been selected in previous Office of Inspector General audits; and (4) whether states used a combination of new full-time equivalents, contractors, and staffing agencies to carry out the UI program provisions under the CARES Act, as amended. GenTech also surveyed the remaining 47 state workforce agencies.

Results

GenTech found ETA took several actions toward ensuring states' staffing supported the implementation of the CARES Act UI programs. However, more

¹ Advisory Report, CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

² COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

actions were needed to ensure staffing levels were sufficient to afford timely benefits to eligible claimants. Specifically, ETA:

- provided states funding that could be used to improve staffing levels, but did not measure the impact of that funding nor determine the sufficiency of increased staffing levels in implementing the new UI programs;
- issued guidance for monitoring states' staffing support, but did not do so until October 2020, 6 months after Congress passed the CARES Act;
- monitored states' UI program performance, but did not recommend corrective actions to address states' staffing issues; and
- allowed states the flexibility to reassign Benefit Accuracy Measurement staff to claims processing, but did not evaluate the resulting impairments to measuring improper payments.

These deficiencies occurred because ETA did not prioritize the oversight of states' staffing during the COVID-19 emergency. Specifically, ETA: (1) did not establish a benefit payment timeliness standard for CARES Act UI programs; (2) did not recognize the need for urgency in issuing monitoring guidance for the temporary programs, (3) allowed monitoring personnel the discretion to classify staffing as an area of concern rather than a compliance issue requiring corrective action; and (4) prioritized processing the volume of UI claims over measuring the accuracy of UI payments, specifically improper payments, when suspending the Benefit Accuracy Measurement system as a strategy to address states' staffing needs.

As a result, from April 2020 through September 2021, the 6 states were only able to pay 70 percent of initial claims (3.6 million of 5.2 million) within 21 days, compared to the 87 percent standard ETA applies to regular UI.³ The quarterly percentage of claims paid within 21 days ranged from 51 percent to 81 percent. Furthermore, ETA's suspension of the Benefit Accuracy Measurement system impaired ETA's ability to assess the integrity of new UI programs with respect to improper payments, including fraud.

We appreciate the cooperation and courtesies ETA extended us during this audit.



Carolyn R. Hantz
Assistant Inspector General for Audit

³ The regular UI program includes: Unemployment Compensation, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Service Members.

CONTRACTOR PERFORMANCE AUDIT REPORT



GenTech
— ASSOCIATES —

Independent Auditors' Performance Audit Report on the Employment and Training Administration's Staffing Support for the Implementation of Unemployment Insurance programs under the Coronavirus, Relief, and Economic Security Act and its Amendments

José Javier Rodríguez
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We were engaged by the U.S. Department of Labor Office of Inspector General (OIG) to conduct an independent performance audit of the state workforce agencies' (SWA)⁴ use of staffing to support unemployment insurance (UI) programs under the provisions of the Coronavirus Aid Relief and Economic Security (CARES) Act and its amendments from March 27, 2020, through September 6, 2021.⁵

On March 27, 2020, Congress passed the CARES Act, which provided expanded UI benefits to individuals who were unable to work due to the COVID-19 pandemic. The Employment and Training Administration (ETA) is responsible for federal oversight of the states' administration of UI programs, including three key CARES Act UI programs: Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation.

⁴ This report uses "state" or "SWA" to refer to the body that administers the UI program within the state, district, or territory. For the 50 states, as well as the U.S. Virgin Islands, Puerto Rico, and the District of Columbia, that administrative body is a SWA. There are, therefore, 53 SWAs.

⁵ The CARES Act expanded UI benefits through December 31, 2020. On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 extended the CARES Act UI programs through March 14, 2021. On March 11, 2021, the American Rescue Plan Act of 2021 further extended the CARES Act UI programs through September 6, 2021.

We conducted the audit to answer the following question:

Did ETA ensure states' staffing supported the implementation of UI programs under the CARES Act and its amendments?

To answer this question, we conducted procedures at the ETA and state levels to assess ETA's monitoring of the sufficiency of states' staffing levels. This included reviewing UI claims workload, grant monitoring guidance, state agreements, and administrative funding. We performed an in-depth analysis of Arizona, Massachusetts, New York, North Carolina, Rhode Island, and Tennessee (6 states), including an analysis of states' staffing levels and timeliness for initial payments. We surveyed the remaining 47 SWAs.

Administrative Grant Funding for States

Section 2106 of the CARES Act provided states with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to process unemployment claims quickly.⁶ SWAs received \$3.9 billion in Fiscal Year (FY) 2020 and FY 2021 to fund administrative costs, including but not limited to staffing. The administrative grants were available for all SWAs from April 1, 2020, through June 30, 2022, except the California SWA, for which the grant was available from April 1, 2020, through December 31, 2022. ETA officials stated they did not have the authority nor was it within policy to direct grantee expenditures.

According to ETA officials, prior to the pandemic, federal funds had been historically insufficient to support states' administrative activities. Although administrative activities are supposed to be fully supported with federal funds, ETA officials were aware states were using their own funding to support UI program administration. From FY 2017 to FY 2019, according to the National Association of State Workforce Agencies' FY 2019 State Supplemental Survey Report, approximately 52 SWAs used state funds ranging from \$365.6 million to \$424.4 million to supplement federal grants for UI administrative costs.⁷

The pandemic exacerbated the states' previous administrative funding shortfalls and had a profound impact on the UI system, presenting states with unprecedented challenges. According to ETA officials, these challenges included managing an unprecedented surge in claims volume, adapting to remote work environments, and implementing new temporary pandemic UI programs,

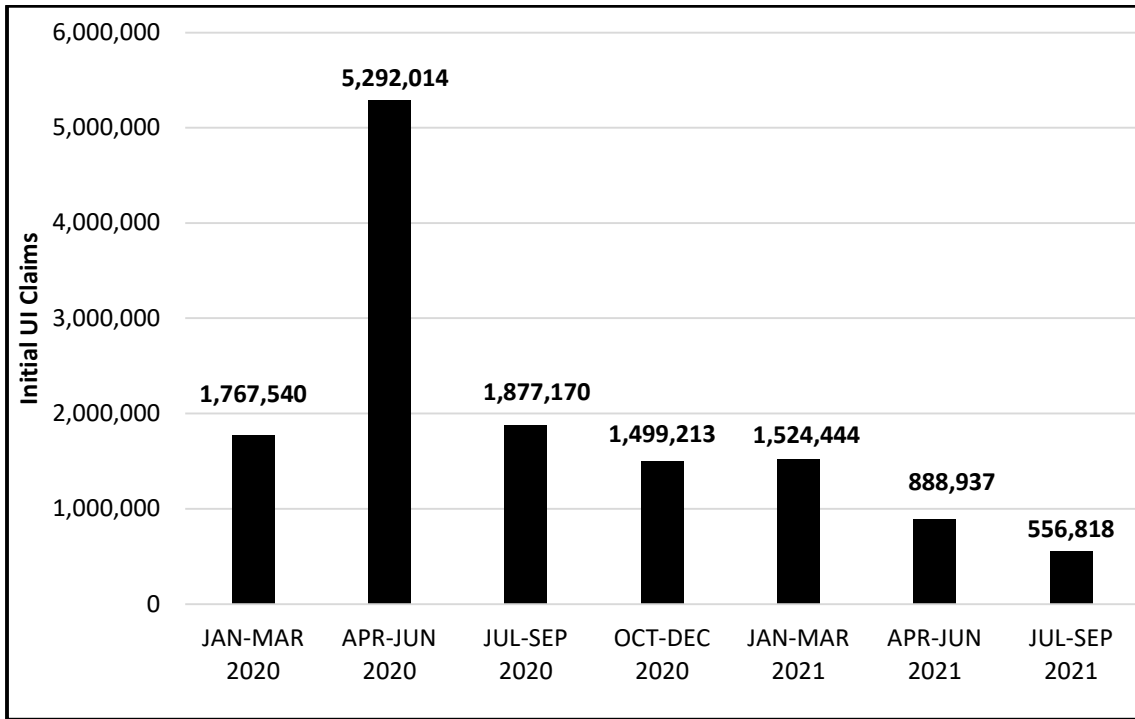
⁶ Section 2106 also allowed for states to hire contractors; however, for this audit, we did not assess the states' use of contractors.

⁷ Available at:

<https://www.naswa.org/system/files/2022-12/naswastatesupplementalfundingsurveyfy2019.pdf>

including the three largest programs: Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, and Pandemic Emergency Unemployment Compensation. The largest increase in UI claims occurred between quarters ending March 2020 and June 2020, when initial UI claims increased from approximately 1.8 million to almost 5.3 million (199 percent) for the 6 states (see Figure 1).

Figure 1: Total Number of Initial UI Claims for the 6 States, Quarters Ending March 2020–September 2021



Source: U.S. Department of Labor Unemployment Insurance Weekly Claims Data⁸

RESULTS

We found ETA took several actions toward ensuring states’ staffing supported the implementation of the CARES Act UI programs. However, more actions were needed to ensure staffing levels were sufficient to afford timely benefits to eligible claimants.

⁸ Available at: <https://oui.doleta.gov/unemploy/claims.asp>

Specifically, ETA:

- provided states funding that could be used to improve staffing levels, but did not measure the impact of that funding nor determine the sufficiency of increased staffing levels in implementing the new UI programs;
- issued guidance for monitoring states' staffing support, but did not do so until October 2020, 6 months after Congress passed the CARES Act;
- monitored states' UI program performance, but did not recommend corrective actions to address states' staffing issues; and
- allowed states the flexibility to reassign Benefit Accuracy Measurement (BAM) staff to claims processing, but did not evaluate the resulting impairments to measuring improper payments.

These deficiencies occurred because ETA did not prioritize the oversight of states' staffing during the COVID-19 emergency. Specifically, ETA: (1) did not establish a benefit payment timeliness standard for CARES Act UI programs; (2) did not recognize the need for urgency in issuing monitoring guidance for the temporary programs; (3) allowed monitoring personnel the discretion to classify staffing as an area of concern rather than a compliance issue requiring corrective action; and (4) prioritized processing the volume of UI claims over measuring the accuracy of UI payments, specifically improper payments. when suspending BAM as a strategy to address states' staffing needs.

As a result, from April 2020 through September 2021, the 6 states were only able to pay 70 percent of initial claims (3.6 million of 5.2 million) within 21 days, compared to the 87 percent standard ETA applies to regular UI.⁹ The quarterly percentage of claims paid within 21 days ranged from 51 percent to 81 percent. Furthermore, ETA's suspension of BAM impaired ETA's ability to assess the integrity of new UI programs with respect to improper payments, including fraud.

ETA Did Not Ensure States Had Sufficient Staffing to Deliver Timely Unemployment Benefits during Emergency Events

As of April 10, 2020, the Office of Management and Budget required agencies to prioritize expediency, defined as the rapid issuance of awards to meet crucial

⁹ The regular UI program includes: Unemployment Compensation, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Service Members.

needs.¹⁰ In the OIG’s April 2020 UI advisory report,¹¹ it highlighted the sufficiency of states’ staffing to administer emergency UI benefits as an area of concern for ETA and states to consider while implementing CARES Act UI provisions. In a May 2021 follow-up report,¹² the OIG found, from March 27, 2020, through July 31, 2020, states struggled to implement CARES Act UI programs and pay benefits promptly, partially because of insufficient staffing. Sufficiency of states’ staffing to support the timely delivery of UI benefits continued to be a challenge for the rest of the extended CARES Act period through September 2021.

ETA provides federal oversight of the UI program, including its internal control system. The Government Accountability Office’s Standards for Internal Control in the Federal Government states the oversight body oversees management’s design, implementation, and operation of the entity’s internal control system.¹³ However, we found four deficiencies with ETA’s oversight of states’ staffing support.

Specifically, ETA: (1) provided states funding that could be used to improve staffing levels, but neither measured the impact of that funding nor determined the sufficiency of states’ increased staffing levels in implementing the new UI programs; (2) issued initial guidance for regional offices to monitor states’ staffing needs for CARES Act UI programs, but not until October 2020, 6 months after Congress passed the CARES Act and 4 months after the surge of pandemic UI claims; (3) did not recommend corrective actions to address states’ staffing issues when identified; and (4) allowed states to reassign BAM staff to claims processing duties, which impaired ETA’s ability to assess the integrity of the new UI programs with respect to improper payments, including fraud.

ETA Did Not Measure the Impact of Federal Funding on Improving States’ Staffing nor Determine the Sufficiency of Staffing Levels

From April 1, 2020, through September 30, 2021, ETA awarded grant funds to the 6 states totaling \$766.9 million to support administrative expenses of the pandemic UI programs. However, ETA neither measured the impact of the

¹⁰ Office of Management and Budget Memorandum 20-21, Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (April 10, 2020)

¹¹ Advisory Report: CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

¹² COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

¹³ GAO-14-704G, Standards for Internal Control in the Federal Government (September 2014)

administrative grant funding it provided on improving staffing levels nor determined the sufficiency of states’ increased staffing levels in implementing the programs. The 6 states allocated \$540.7 million of the administrative grant funds to support staffing efforts (see Table 1).

Table 1: Administrative Grants Expenditures for the 6 States, April 2020–September 2021

State	UI Grant Obligated Funds	Staffing Costs	Percentage Used for Staffing
Arizona	\$154,049,022	\$83,016,093	54%
Massachusetts	\$94,489,965	\$53,179,446	56%
New York	\$339,902,173	\$323,290,271	95%
North Carolina	\$108,330,438	\$47,573,615	44%
Rhode Island	\$35,745,178	\$13,430,770	38%
Tennessee	\$34,429,493	\$20,258,168	59%
Totals	\$766,946,269	\$540,748,362	

Source: GenTech analysis of ETA’s funding and expenditure by state

The 6 states’ staffing levels increased from April 2020 through September 2021, with the largest increase in average staffing levels occurring between April and June 2020, just after the CARES Act passed. During this time, average state staffing levels increased from 873 to 2,060 positions (236 percent). However, 5 of the 6 states¹⁴ considered their staffing levels insufficient to process the volume of initial UI claims despite receiving administrative grant funds to implement the CARES Act UI programs.

Also, despite increases in staffing levels, 5 of the 6 states¹⁵ generally did not meet ETA’s first payment promptness standard (see Exhibit). This ETA UI Core Measures standard, used for measuring the timeliness of initial benefit payments, established the acceptable level of performance as at least 87 percent of regular UI payments being made within 14 or 21 days.¹⁶ However, ETA did not apply the

¹⁴ North Carolina responded its staffing levels were sufficient to implement CARES Act UI programs while Arizona, Massachusetts, New York, North Carolina, and Tennessee responded their staffing levels were insufficient.

¹⁵ Arizona, Massachusetts, New York, North Carolina, and Tennessee consistently did not meet the 87 percent first payment promptness standard. Rhode Island was the only state that generally met the standard. See Exhibit.

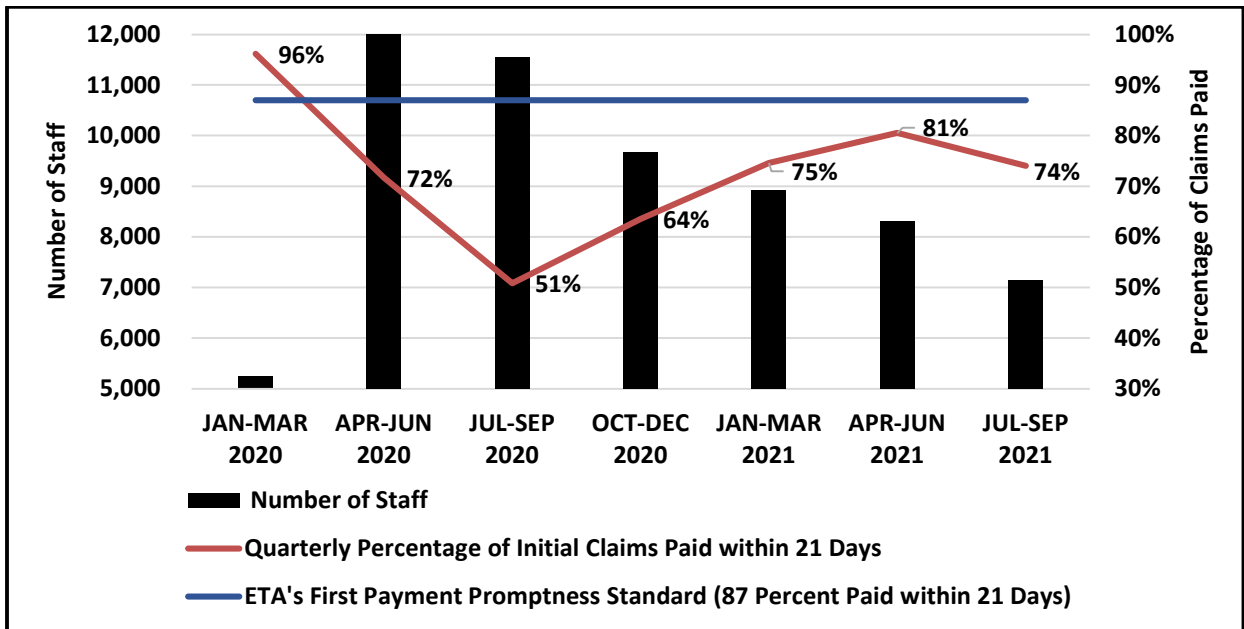
¹⁶ ETA requires states without a waiting week to pay 87 percent of claimants within 14 days and states with a waiting week within 21 days after the week ending date of the first compensable week in the benefit year.

first payment promptness standard to episodic claims, or claims submitted under temporary programs such as the CARES Act UI programs.

Absent a timeliness standard for the CARES Act programs, we used ETA’s first payment promptness standard in our analysis to provide context for performance of the 6 states during the pandemic. Our rationale for this is simple—there is no greater need for prompt payment of unemployment benefits than during an economic crisis. As such, a standard is needed to measure the states’ performance of delivering payments promptly during such emergencies.

Despite the increase in staffing levels, from quarters ending June 2020 through September 2021, the 6 states were only able to pay 70 percent of initial UI claims (3.6 million of 5.2 million) within 21 days, 17 percent less than ETA’s first payment promptness standard. The quarterly percentage of initial claims paid within 21 days ranged from 51 percent to 81 percent (see Figure 2).

Figure 2: The 6 States’ Staffing Levels and Initial UI Claim Payments Compared to ETA’s First Payment Promptness Standard, Quarters Ending March 2020–September 2021*



*ETA calculates initial payment promptness for each state monthly. However, for our testing of the 6 states, we calculated first payment promptness quarterly.

Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness¹⁷

¹⁷ Available at: <https://oui.doleta.gov/unemploy/btq.asp>

ETA Did Not Establish a Benefit Payment Timeliness Standard for CARES Act UI Programs

According to ETA’s response to a previous OIG report,¹⁸ most states had challenges meeting the 87 percent standard for regular UI programs due to high claims volume prior to the pandemic, let alone meeting such a performance standard for the new CARES Act UI programs. Therefore, ETA did not establish a benefit payment timeliness standard for CARES Act UI programs. We tested ETA’s assertion by analyzing the 6 states’ initial payments for regular UI programs before the pandemic. For quarters ending December 2019 through March 2020, Arizona, New York, Rhode Island, and Tennessee all met ETA’s first payment promptness standard (see Table 2).

Table 2: Pre-Pandemic Benefit Payment Timeliness for the 6 States, Quarters Ending December 2019 and March 2020

State	Percentage of Initial UI Claims Paid within 21 Days, Oct.-Dec. 2019	Percentage of Initial UI Claims Paid within 21 Days, Jan.-Mar. 2020	Met 87% First Payment Promptness Standard for Both Quarters?
Arizona	89%	89%	Yes
New York	93%	93%	Yes
Rhode Island	95%	95%	Yes
Tennessee	95%	96%	Yes
Massachusetts	84%	95%	No
North Carolina	73%	82%	No

Source: GenTech’s analysis using data from ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

Therefore, with 4 of the 6 states able to meet the standard, we did not find supportable justification for ETA not establishing a benefit payment timeliness standard for the CARES Act UI programs.

¹⁸ COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

ETA Did Not Issue Guidance for Regional Offices to Assess Risks and Monitor States' Staffing until 6 Months after Congress Passed the CARES Act

On February 21, 2020, ETA established guidance in Employment and Training Order 1-20 for oversight reviews of regular UI programs but did not provide timely guidance for regional offices to assess risks and monitor the states' administration of the CARES Act UI programs, including staffing support. The CARES Act authorized the temporary emergency UI programs on March 27, 2020. However, ETA did not issue the risk assessment and program monitoring guidance in Employment and Training Order 1-21¹⁹ until October 2, 2020, more than 6 months after the CARES Act passed.

We acknowledge the challenges faced with establishing guidance to monitor the performance of swiftly rolled-out new temporary UI programs; however, 6 months was too long. By the time ETA issued the guidance, the total initial UI claims for the 6 states had already peaked at almost 5.3 million as of June 2020. Regional offices needed monitoring guidance sooner to gather quality staffing information from SWAs to allow ETA to make informed decisions and evaluate the SWAs' performance in delivering benefits. According to the Government Accountability Office's Standards for Internal Control in the Federal Government, it is management's responsibility to obtain data on a timely basis so that they can be used for effective monitoring.

ETA Did Not Recognize the Need for Urgency in Issuing Monitoring Guidance Specifically for CARES Act UI Programs

ETA officials stated, while Employment and Training Order 1-21 was very important in ETA's oversight of CARES Act programs, ETA was already engaged in significant monitoring and oversight activities prior to its release. Thus, ETA did not recognize the need for urgency in issuing such guidance. According to ETA officials, ETA actively tracked states' implementation of the programs and identified issues and required corrective actions of states as early as May 2020.

In addition, in response to a previous OIG report,²⁰ ETA officials stated, during the period that the new CARES Act UI programs were initiated, ETA had to issue guidance and provide technical assistance to states and states needed time to

¹⁹ Employment and Training Order 1-21 requires regional offices to conduct quarterly desk reviews in the grant management system to assess potential risk for each states administration of grants for programs including Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation.

²⁰ COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

stand up these major new programs. ETA officials stated it was unrealistic to expect ETA to immediately identify all issues with state operations. According to ETA, initial oversight activity included gathering information on states' implementation of the programs and, in May 2020, starting to provide states with information on incidents where states did not properly implement the programs. ETA officials asserted ETA was engaged with states throughout the pandemic, calling out problems with states' implementation and operation of the programs and providing guidance and technical assistance to address problems as they were identified.

ETA's assertion that its monitoring activities were sufficient—absent specific guidance on monitoring CARES Act UI programs—is questionable. If it considered the monitoring activities performed before October 2020 sufficient, ETA may not have determined it needed to later issue guidance specifically for monitoring the CARES Act UI programs.

ETA Did Not Recommend Corrective Actions to Address States' Staffing Issues

ETA's monitoring reviews are a core aspect of its state oversight framework for regular UI. These reviews can lead to ETA providing states technical assistance in identified areas of concern for non-compliance issues and recommending corrective actions for compliance issues that lead to findings. However, for 5 of the 6 states, ETA's oversight did not result in technical assistance to states nor recommendations for corrective actions related to staffing issues identified during its monitoring reviews.

In annual State Quality Service Plans (SQSP)²¹ and quarterly desk reviews, the 6 states informed ETA of challenges with staffing shortages, insufficiently trained staff, workload increases, and timeliness concerns associated with UI benefit payments. However, ETA regional offices did not consider the states' issues with staffing as indicators of compliance concerns and therefore did not recommend any corrective actions. Details regarding the five states' staffing concerns and the respective ETA regional office actions follow.

ETA Region 1 Office

ETA's Region 1 office did not document any corrective actions to address the following staffing-related concerns that the Massachusetts, New York, and Rhode Island SWAs noted in their SQSPs:

²¹ The annual SQSP is the principal vehicle that state UI programs use to plan, record, and manage improvement efforts. The SQSP serves as the programmatic plan portion of the grant document through which states receive federal UI administrative funding.

- Massachusetts SWA officials noted in their FY 2019-FY 2020 and FY 2021 SQSPs the state did not meet the ETA first payment performance standard due to the claimant versus staff ratio. The surge in UI claims as a result of the COVID-19 pandemic had a dramatic impact on the state's ability to address workflow volume.
- New York SWA officials noted in their FY 2020 SQSP the state was experiencing challenges with effectively administering the UI programs due to FY 2020 federal budget shortfalls of \$183 million for all states. According to New York UI benefit officials, in FY 2020, states in the aggregate received \$567 million less than what states spent in FY 2019. The New York SWA relied on administrative funding for staffing expenses.
- Rhode Island SWA officials noted in their FY 2021 SQSP that adjudication staff (those traditionally assigned to BAM) were reassigned to assist in processing claims. The state anticipated it would not meet the first payment performance standard as a result of staffing resources and the increase in workload as a result of the pandemic.

According to ETA Region 1 officials, corrective actions occur when ETA conducts monitoring and makes a finding. A finding is a violation of legislation, regulation, and/or departmental guidance. Regarding the three states under the oversight of ETA's Region 1 office (Massachusetts, New York, and Rhode Island), ETA recommended no corrective actions.

ETA Region 3 Office

ETA's Region 3 office did not document any recommended corrective actions to address the staffing-related concerns the Tennessee SWA noted in its SQSPs.

In SQSPs for FY 2020 and FY 2021, the Director of Employer Accounts noted the accounting office had a shortage of staff and inexperienced supervisors and staff, which resulted in inaccurate billing statements. Further, the SWA's director noted the need to take a more active role in ensuring errors were resolved before issuing monthly billing statements. In a June 30, 2020, desk review, Tennessee SWA officials noted the state was experiencing significant delays due to a shortage of staff and an unprecedented number of claims.

According to ETA's Region 3 office, corrective action plans the Tennessee SWA provided each quarter included progress updates regarding hiring, training, and promoting staff. Also, Region 3 indicated it held regular meetings with the Tennessee SWA to obtain program updates and discuss staffing. However, Region 3 did not provide documentation to support this statement.

ETA Region 6 Office

ETA's Region 6 office did not document any corrective actions needed to address the staffing-related concerns the Arizona SWA noted in its SQSPs.

In the FY 2020 SQSP, the Arizona SWA noted it did not meet ETA's first payment promptness performance standard due to loss of experienced staff. It reported it had 34 adjudicators working a full caseload but needed 54.

We reviewed the SQSPs and quarterly desk reviews for FY 2020 and did not identify any corrective actions recommended by Region 6 to address Arizona's staffing deficiencies. According to Region 6 officials, corrective action recommendations and follow-up are required when matters of noncompliance are identified. Accordingly, Region 6 officials did not identify staffing as a noncompliance issue because ETA had not established performance metrics or goals for the state's administrative grant related to staffing.

ETA's Guidance Allowed Reviewers Discretion to Classify Staffing as an Area of Concern rather than a Compliance Indicator that Required Corrective Action

ETA's Core Monitoring Guide (August 2018)—a tool for an ETA reviewer to assess grant recipients' core activities—allowed reviewers discretion to classify staffing as an area of concern rather than as a compliance indicator, excusing reviewers from developing findings and recommending corrective actions.

Core activities assessed during these monitoring reviews included Service Design and Delivery (Core Activity 1). The objective of Core Activity 1 is to ensure the grant recipient has implemented service design and delivery activities to accomplish all grant activities and goals. ETA reviewers use Designating Personnel, Staff, and Hiring as an indicator of whether the objective of Core Activity 1 is being met. Specifically, the grant recipient's ability to have the necessary staff to successfully conduct its administrative and operational duties under the grant is an indicator the objective is being met. For Core Activity 1, reviewers have the discretion to determine whether an indicator is either a compliance indicator, effectiveness indicator, or both. Compliance indicators must be met, and findings of noncompliance require condition, cause, criteria, and corrective action. ETA's Core Monitoring Guide does not require corrective action for areas of concern but instead suggestions for improvements.

Program effectiveness is determined by the extent to which program objectives are achieved and the positive changes they bring about in the target community or sector. This encompasses various dimensions, including impact, efficiency, relevance, sustainability, and adaptability. Although an effectiveness indicator

may not be a compliance violation but rather an area of concern, it may have a negative impact on the program or could lead to a finding in the future. For example, insufficient staffing levels for 5 of the 6 states generally had a negative impact on the timeliness of benefit delivery—almost 1.6 million claimants waited longer than 21 days for their first UI payment. If ETA reviewers had developed a finding and recommended corrective action to more timely address the states' staffing needs, more claimants would likely have received benefit payments sooner.

ETA Allowed States to Reassign BAM Staff to Claims Processing, Impairing ETA's Ability to Assess Integrity of New UI Programs with Respect to Improper Payments, Including Fraud

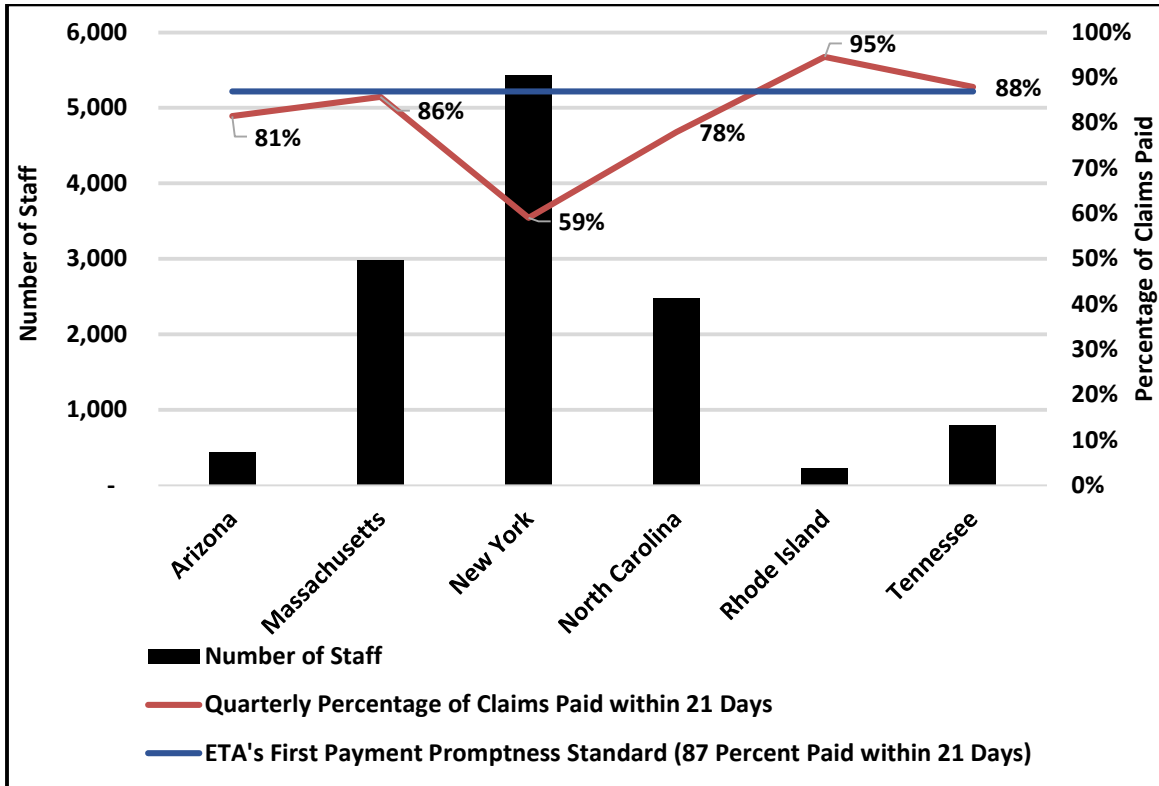
The primary objectives of ETA's BAM program are to: assess the accuracy of UI payments, assess improvements in program accuracy and integrity, and encourage more efficient administration of the UI program. BAM provides the basis for assessing the accuracy of UI payments, specifically the improper payment rate. The improper payment rate is an estimate based on the results of states' representative samples of paid and denied claims for regular UI. ETA and SWA staff also use BAM as a diagnostic tool to identify errors and their causes and correct and track solutions to these problems.

According to ETA, upon the President declaring the COVID-19 outbreak as a national emergency, many states started experiencing increased levels of claims. As a result, states proactively requested flexibility to move all available staff, including BAM personnel, to perform claims processing duties. On March 18, 2020, with Office of Management and Budget approval, ETA issued guidance allowing states, with written justification, to request temporary suspension of BAM from April 1, 2020, through June 30, 2020. According to the 6 states' justifications, they needed all available staff resources to process the high level of initial UI claims during the peak of the pandemic. ETA approved the requests to suspend accuracy processing in BAM for paid and denied claims.

Although ETA provided states operational flexibilities, including the suspension of BAM to reassign staff from BAM program integrity duties to UI claims processing duties, these actions were not sufficient to address the high volume of claims. SWAs still struggled to pay UI benefits in a timely manner. During the BAM suspension period for the quarter ending June 2020, we identified 4 of the 6 states—Arizona, New York, North Carolina, and Massachusetts—did not meet ETA's 87 percent first payment promptness standard. The percentages of initial UI benefits paid within 21 days ranged from 59 to 86 percent. Rhode Island and

Tennessee exceeded the standard by paying 95 percent and 88 percent of initial UI benefits within 21 days (see Figure 3).

Figure 3: The 6 States’ Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Promptness Standard during BAM Suspension, Quarter Ending June 2020



Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

ETA’s Emergency Response Prioritized Processing Claims rather than Assessing UI Program Integrity

ETA officials stated ETA identified the temporary suspension of BAM operations as one of several strategies to address states’ needs for adequate staffing to process the increase in claims.

When ETA decided to suspend BAM, its emergency response prioritized processing UI claims rather than assessing UI program integrity. While ETA’s interest in addressing the states’ needs to process the massive volume in claims was commendable, ETA did not develop a business case analysis to justify that suspending BAM would effectively assist states with managing the claims surge

while maintaining ETA's ability to sufficiently assess the integrity of the new UI programs.

According to ETA officials, in January and February 2020, the UI claims volume was the lowest in decades and administrative funding was also historically low. ETA officials stated an exponential increase in new claims from March 2020 through June 2020 created a large staffing deficit in states. According to ETA, the largest incremental increase was 17.6 million claims. In addition, ETA officials stated, based on BAM investigators' knowledge and experience with fact-finding and assessing states' UI program compliance, BAM investigators were generally able to seamlessly step into the claims processing role and adjudication roles to support the SWAs during the pandemic. Although expeditious delivery of UI benefits was critical during the claims surge, ETA's assessments of the CARES Act UI programs' integrity were also necessary as the UI claims and risk of fraudulent payments increased.

In December 2021, ETA reported a FY 2021 estimated improper payment rate of 18.9 percent,²² which was applied to Federal Pandemic Unemployment Compensation. ETA was unable to calculate an estimated improper payment rate for Pandemic Unemployment Assistance until August 2023; Ultimately, ETA reported a FY 2023 improper payment rate of 35.9 percent.²³ Further, for the 6 states, the OIG previously identified²⁴ almost \$3.2 billion in potentially fraudulent Pandemic Unemployment Assistance and Federal Pandemic Unemployment Compensation benefits paid to individuals with Social Security numbers: (1) filed in multiple states, (2) of deceased persons, and (3) used to file UI claims with suspicious email accounts (see Table 3).

²² This rate includes an overpayment rate of 17.9 percent, an underpayment rate of 0.8 percent, and a 0.2 percent rate for benefits whose classification—whether valid, overpaid, or underpaid—could not be determined.

²³ This rate includes an overpayment rate of 17 percent, an underpayment rate of 1.5 percent, and a 17.4 percent rate for benefits whose classification—whether valid, overpaid, or underpaid—could not be determined.

²⁴ COVID-19: Pandemic Unemployment Assistance for Non-Traditional Claimants Weakened by Billions in Overpayments, Including Fraud, Report No. 19-23-015-03-315 (September 27, 2023), <https://www.oig.dol.gov/public/reports/oa/2023/19-23-014-03-315.pdf>

Table 3: OIG-Identified Potential Fraud for the 6 States, April 2020–September 2021

State	Total PUA* and FPUC** Benefits	OIG-Identified Potentially Fraudulent Benefits	Percentage of Potentially Fraudulent Benefits
Arizona	\$7,970,139,262	\$1,376,330,363	17.3%
Massachusetts	\$9,463,400,031	\$311,247,869	3.3%
New York	\$36,959,767,657	\$1,264,572,705	3.4%
North Carolina	\$2,001,465,064	\$80,275,568	4.0%
Rhode Island	\$1,214,504,366	\$93,440,983	7.7%
Tennessee	\$792,679,589	\$50,470,868	6.4%
Totals	\$58,401,955,969	\$3,176,338,356	

*Pandemic Unemployment Assistance **Federal Pandemic Unemployment Compensation
Source: OIG analysis of claims data

As demonstrated by the magnitude of potentially fraudulent benefits paid in the 6 states, sufficient staffing resources to implement and protect the integrity of the new UI programs with respect to improper payments, including fraud, was critical.

CONCLUSION

Through provisions of CARES Act Section 2106, Congress provided states with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to process unemployment claims quickly during the pandemic. To this end, ETA awarded \$3.9 billion to SWAs in FY 2020 and FY 2021 to fund administrative costs associated with the pandemic UI programs, including but not limited to staffing. However, given the exponential increase in UI claims and associated risks of improper payment, including fraud, coupled with OIG’s long-standing concerns about state preparedness—specifically staffing—ETA needed to do more.

ETA took several actions toward ensuring states’ staffing supported the implementation of the CARES Act UI programs, but those actions were not enough, resulting in the 6 states paying only 70 percent of initial UI claims (3.6 million of 5.2 million claims) within 21 days. This is 17 percent less than ETA’s first payment promptness standard.

Striking a balance between ensuring states have sufficient staff to deliver the necessary aid to people facing hardships while having measures in place to assess UI program integrity against improper payments, including fraud, is a challenge. Before the next disaster or mass unemployment event, ETA must be prepared to do both without compromise or tradeoff.

RECOMMENDATIONS

We recommend the Assistant Secretary for Employment and Training:

1. Develop performance standards for prompt payment of UI benefits under temporary UI programs using lessons learned from the pandemic.
2. Establish policy that requires officials to issue guidance timely for ETA regional offices to monitor and measure the effectiveness of states' use of staffing to support the implementation of temporary UI programs.
3. Establish policy that requires states to develop corrective action plans to address staffing insufficiencies that negatively impact permanent and temporary UI programs, as identified by regional offices during monitoring reviews.
4. Establish policy that requires ETA officials to develop a business case analysis and supporting justification when considering suspension of any UI program integrity functions.

Analysis of ETA's Comments

In response to the draft of this report, ETA did not agree with our four recommendations to improve ETA's oversight and support of states' staffing needs during an emergency event. ETA also expressed concerns regarding the findings of our report. We carefully reviewed ETA's response in full; our report was accurate as stated, thus the agency's response did not result in any changes material to our reported results or conclusions. Synopses of ETA's comments on our recommendations and findings along with our corresponding responses follow:

- ETA disagreed with Recommendation 1 and stated it is extremely challenging to develop standards for a program that does not exist and for which the Department does not know its duration or the program's requirements. ETA also stated the Department intends on capturing lessons learned from the pandemic experience in the temporary programs to help inform actions for similar future programs. ETA stated this

approach allows the Department to be proactive in a more meaningful way since it cannot speculate on requirements for any program(s) Congress may authorize and appropriate funding for in the future. Last, ETA stated it is not in a position to commit to developing performance standards for temporary programs in the future.

- Although ETA disagreed with Recommendation 1, we determined ETA's proposed corrective action, to capture lessons learned regarding staffing to help inform actions for similar future programs, meets the intent of our recommendation.
- ETA disagreed with Recommendation 2. The agency stated the premise for the recommendation was predicated on a lack of understanding of the situation within which states and ETA were operating during the pandemic and that the report did not consider the complexities. ETA stated it was imperative to first issue guidance and technical assistance to states on how to implement the new programs before developing monitoring guidance for ETA's Regional Offices. In addition to issuing guidance and providing technical assistance, ETA stated it delivered timely monitoring tools during the pandemic. Finally, ETA stated it did not have an alternative approach to address the recommendation and suggested it be excluded from the final report.
 - We agree states needed guidance on how to implement new programs. ETA's efforts to develop implementation guidance for newly authorized programs during an unprecedented pandemic is commendable. In the draft report, we acknowledged the challenging circumstances in which states and ETA were operating during the pandemic:

The pandemic exacerbated the states' previous administrative funding shortfalls and had a profound impact on the UI system, presenting states with unprecedented challenges. According to ETA officials, these challenges included managing an unprecedented surge in claims volume, adapting to remote work environments, and implementing new temporary pandemic UI programs.

Despite these circumstances, ETA had disbursed almost \$340 billion in pandemic-related UI benefits through those new

programs from April through September 2020.²⁵ Given the magnitude of benefits disbursed and Office of Management and Budget's requirement for agencies to prioritize expediency, it was critical to issue guidance for monitoring the performance of those new programs in a more timely fashion. Our recommendation remains.

ETA also provided a comment to the finding. The agency stated the draft report fails to adequately acknowledge the reality of balancing the establishment of new programs and monitoring compliance with such programs. The agency stated programs must first be operational before they can be monitored, and, in 2020, the UI system was intensely focused on implementing and administering programs.

- We agree states need guidance on how to implement new programs, but ETA regional offices also need timely guidance on how to monitor the performance of those new programs.
- ETA disagreed with Recommendation 3 and suggested an alternative approach. Specifically, it had proposed legislation in the Department's FY 2025 budget submission that would provide the Secretary of Labor with new enforcement authority. Such authority, ETA stated, would create a new remedy so the Secretary of Labor could require a state that fails to meet performance measures or achieve minimum technology standards to use a portion of its administrative grant to correct failing performance and/or require the state to participate in technical assistance activities offered by the Department.

ETA stated the Secretary currently has limited authority to require state UI agencies to take actions to respond to poor performance and high improper payment rates. Given ETA already pursued this matter through the budget process, which can now only be addressed by Congressional action, ETA requested that its action be considered sufficient to address and close this recommendation.

- We disagree that ETA's proposed corrective action meets the intent of our recommendation. We commend ETA for proposing legislation that grants the Secretary of Labor new enforcement authority to require states to use a portion of its administrative grant to correct failing performance. However, to remedy instances of

²⁵ Total disbursements were downloaded on November 6, 2024, from: <https://oui.doleta.gov/unemploy/DataDownloads.asp>. The \$340 billion in disbursements included FPUC-\$273.6 billion, PEUC-\$9.6 billion, and PUA-\$56.7 billion.

grant recipients' failure to meet performance standards, such performance standards must first be established and measured. ETA did not convey how states' staffing levels would be factored into measuring program performance. Therefore, our recommendation remains.

- ETA disagreed with Recommendation 4. The agency stated the premise for the recommendation was predicated on a lack of understanding of the situation within which states and ETA were operating during the pandemic and a complete misunderstanding of the role of BAM.

ETA specified that allowing states to temporarily suspend BAM operations for one quarter permitted states to repurpose BAM staff with high-level of UI experience to help process the huge claims volume at the start of the pandemic while new staff could be onboarded and trained. ETA stated this action was one of the most logical and common sense actions that could have been taken at the time and did not impact fraud prevention activities, which are performed by Benefit Payment Control staff outside of a state's BAM operations.

The agency also stated it has already met the essence of the recommendation by issuing very clear guidance in UIPLs 23-20 and 11-23,²⁶ which required states to continue to use, operate, and maintain the required integrity controls and the required overpayment recovery activities at all times, including during times of mass unemployment events, absent specific statutory authorization allowing suspension of such controls or activities. Based on the issuance of the guidance, ETA requested this recommendation be closed and excluded from the final report.

- ETA's issuance of UIPLs 23-20 and 11-23 does not meet the intent of our recommendation. In the draft report, we did not imply ETA's suspension of BAM resulted in the suspension of integrity control activities designed to detect or prevent fraud. Rather, we stated the

²⁶ DOL, ETA, UIPL No. 23-20, Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Program (May 11, 2020), available at: https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_23-20.pdf; and DOL, ETA UIPL No. 11-23: Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA) (July 13, 2023), available at: <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>

action impaired ETA's ability to assess the integrity of the new UI programs with respect to the improper payments, including fraud.

The improper payment rate serves as an indicator for the assessment of the accuracy and integrity of the UI program. ETA's suspension of BAM also suspended the requirement for states to submit representative samples of paid and denied claims for regular UI, results of which are used to estimate the improper payment rate. While the temporary CARES Act UI claims would be excluded from the sample, the improper payment rate was applied to all claims, including temporary programs, as an indicator of UI program accuracy and integrity. Therefore, the recommendation remains.

ETA also expressed two primary concerns regarding the draft report.

- ETA's first concern was that the draft report did not offer actionable items to improve the UI system nor recognize the constraints that were put on the system during the pandemic. The agency stated, given the unprecedented spike in UI claims by 3,000 percent in a relatively short time period and the creation of several new and temporary pandemic-related unemployment compensation programs under the CARES Act, any level of staffing would have been insufficient to handle this significant workload. Simply adjusting staffing levels alone would not have been enough to address the unprecedented increase in workload.

Also, ETA stated, as noted in its responses to similar reports from the oversight community, but not fully acknowledged in this draft report, that states were dealing with the largest UI claims increase in the history of the program, while also implementing and administering new temporary, pandemic-related unemployment programs. ETA stated the draft report recognized that, on April 10, 2020, the Office of Management and Budget issued OMB Memorandum 20-21 requiring agencies to prioritize expediency, which was defined as the rapid issuance of awards to meet crucial needs. The agency stated it is important to reiterate the states' remarkable accomplishments, despite challenging circumstances, including helping to ensure nearly \$880 billion of unemployment benefits were provided to over 53 million workers. Furthermore, ETA opined that states' ability to provide benefit payments within 1 to 2 months on average for new, temporary UI programs was an impressive achievement given the extensive complex requirements and activities that were necessary for implementation.

- We disagree that the draft report did not offer actionable recommendations to improve the UI system nor recognize the constraints that were put on the system during the pandemic. In the draft report, we acknowledged the states' administrative funding shortfalls exacerbated by the pandemic and the unprecedented increase in UI claims:

The pandemic exacerbated the states' previous administrative funding shortfalls and had a profound impact on the UI system, presenting states with unprecedented challenges. According to ETA officials, these challenges included managing an unprecedented surge in claims volume, adapting to remote work environments, and implementing new temporary pandemic UI programs, including the three largest programs: Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, and Pandemic Emergency Unemployment Compensation. The largest increase in UI claims occurred between quarters ending March 2020 and June 2020, when initial UI claims increased from approximately 1.8 million to almost 5.3 million (199 percent) for the 6 states.

In addition, we acknowledge ETA's and states' efforts to disburse \$888 billion in pandemic UI benefits under these challenging circumstances; however, the OIG estimated that at least \$191 billion (22 percent) could have been paid improperly, with a significant portion attributable to fraud. With acknowledgement of these extenuating circumstances, our recommendations for performance standards and policy were forward-looking and actionable based on lessons learned from the unprecedented pandemic.

- ETA's second concern was about the validity and soundness of the analysis. The agency stated there were numerous factual inaccuracies throughout the report that created a false impression about the UI program, noted as particularly problematic, considering the realities facing states and ETA during the pandemic. ETA summarized this concern as follows.

ETA stated the draft report failed to recognize the distinct roles of the Department and Congress in supporting the UI program. ETA noted the report included the fact that administrative activities are supposed to be

fully supported with federal funds. However, ETA noted, it was aware states were using their own state funding. ETA also stated the draft report implied ETA failed to take action and did not acknowledge the Department has asserted that funding provided by Congress has been insufficient to support UI program administration.

- We disagree that the report failed to recognize roles. We included in the draft report ETA's assertion that federal funds had been historically insufficient to support states' administrative activities. See draft report section titled, Administrative Grant Funding for States.

According to ETA officials, prior to the pandemic, federal funds had been historically insufficient to support states' administrative activities. Although administrative activities are supposed to be fully supported with federal funds, ETA officials were aware states were using their own funding to support UI program administration. From FY 2017 to FY 2019, according to the National Association of State Workforce Agencies' FY 2019 State Supplemental Survey Report, approximately 52 SWAs used state funds ranging from \$365.6 million to \$424.4 million to supplement federal grants for UI administrative cost.

ETA stated the draft report failed to adequately recognize the foundations of a program operated through a federal-state partnership and added little value to program performance during the pandemic by evaluating states based on pre-pandemic performance standards.

- We disagree with ETA's assertion. We did not evaluate the performance of the temporary programs based on regular UI performance standards. In the draft report, we stated we used ETA's first payment promptness standard in the analysis to provide context for the need to measure performance during emergencies.

ETA stated the draft report noted that while Employment and Training Order No. 01-21 addresses monitoring of PUA, PEUC, and FPUC, ETA did not issue guidance with respect to monitoring states' administration of other CARES Act provisions that were identified in a footnote to the draft report. ETA stated including this statement within the scope of the draft report was inappropriate, as monitoring these additional provisions was not part of the auditors' scope or questions, and the OIG has conducted separate audits on each of these other CARES Act provisions. Further,

ETA stated most of these other pandemic-related provisions provided federal reimbursements of payments under previously existing programs and did not involve establishing new programs to administer.

- We acknowledge the additional four CARES Act provisions were not part of our scope or questions. Therefore, we have removed the following statement from the final report:

In addition, Employment and Training Order 1-21 was limited to monitoring Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation. ETA did not issue guidance for its regional offices to monitor states' administration of the remaining four CARES Act UI programs.

ETA stated the draft report attempted to answer a question about state staffing that supported implementation of the temporary pandemic-related unemployment compensation programs but ignores the hiring flexibility afforded by Congress, allowing states to temporarily suspend the merit staffing requirements set forth in the Social Security Act²⁷—a major policy change. This action allowed states to onboard “temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.” The agency stated the premise of the draft report was whether ETA ensured states' staffing supported implementation of the temporary pandemic-related unemployment compensation programs but offers no assessment of this major policy change in the area of staffing.

- We disagree with ETA's assertion. In the draft report, we discussed CARES Act Section 2106, which authorized the temporary, limited hiring flexibilities and other temporary actions to process UI claims quickly. In doing so, we acknowledged ETA obtained Office of Management and Budget approval to suspend BAM as part of the other temporary actions authorized under Section 2106.

While ETA's responses lacked a clear plan of action to fully address the recommendations, the OIG looks forward to working with ETA to ensure the intent of each recommendation is addressed. ETA's response is included in its entirety in Appendix B.

²⁷ Section 303(a)(1), SSA (42 U.S.C. § 503(aa)(1))

We appreciate the cooperation and courtesies that ETA extended us during this audit.

Juan A. Lasanta Camacho

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GenTech Associates, Inc.
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November 22, 2024

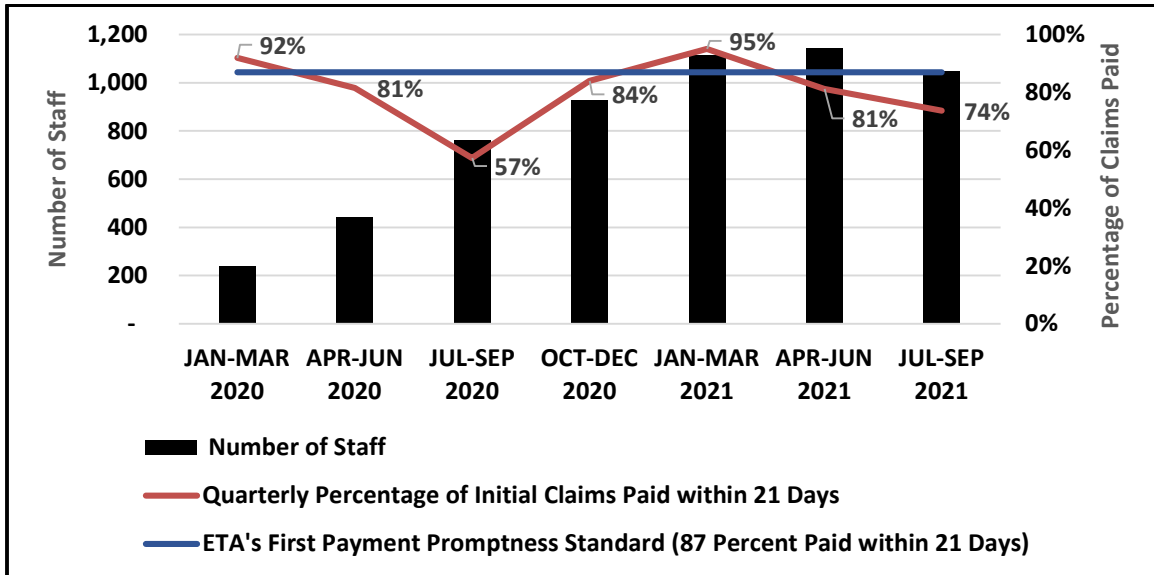
EXHIBIT: DETAILS ON THE 6 STATES' PERFORMANCE FOR ETA'S 87 PERCENT FIRST PAYMENT PROMPTNESS STANDARD

Arizona

For quarters ending March 2020 through June 2021, Arizona staffing levels increased from 238 to 1,141 full-time equivalents (FTE). Staffing levels decreased to 1,049 FTEs in the quarter ending September 2021. Despite overall increased staffing levels, for 6 quarters ending from June 2020 through September 2021, Arizona was only able to pay 80 percent of initial UI claims within 21 days, 7 percent less than ETA's first payment promptness standard.

Also, for quarters ending June through December 2020, Arizona's percentage of initial UI claims paid within 21 days ranged from 57 to 84 percent. While Arizona paid 95 percent of initial UI claims within 21 days for the quarter ending March 2021, the state again fell below ETA's standard from quarters ending June through September 2021, with percentages ranging from 74 to 81 percent (see Figure 4).

Figure 4: Arizona Staffing Levels and Initial UI Claim Payments Compared to ETA's First Payment Promptness Standard, Quarters Ending March 2020–September 2021

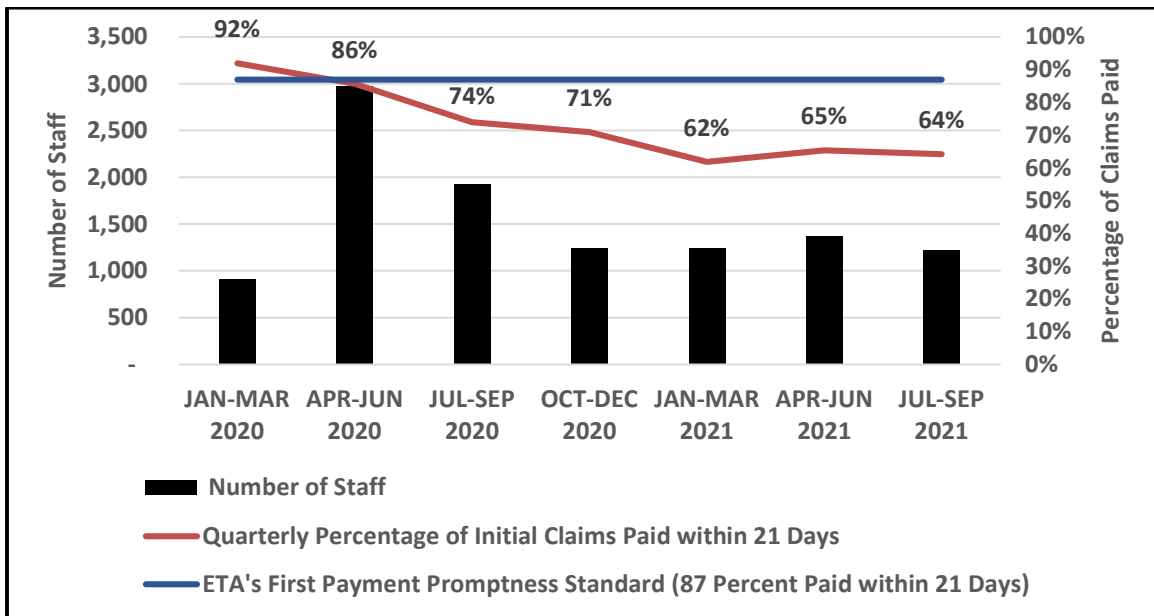


Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

Massachusetts

For quarters ending March through June 2020, Massachusetts staffing levels increased from 910 to 2,981 FTEs. Staffing levels decreased to 1,218 FTEs from quarters ending September 2020 through September 2021. Despite overall increased staffing levels, for the 6 quarters ending from June 2020 through September 2021, Massachusetts was only able to pay 78 percent of initial UI claims within 21 days, 9 percent less than ETA’s first payment promptness standard. For quarters ending June 2020 through September 2021, Massachusetts’ percentage of initial UI benefits paid within 21 days continued to decrease from 86 to 62 percent, generally trending downward (see Figure 5).

Figure 5: Massachusetts Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Standard, Quarters Ending March 2020–September 2021

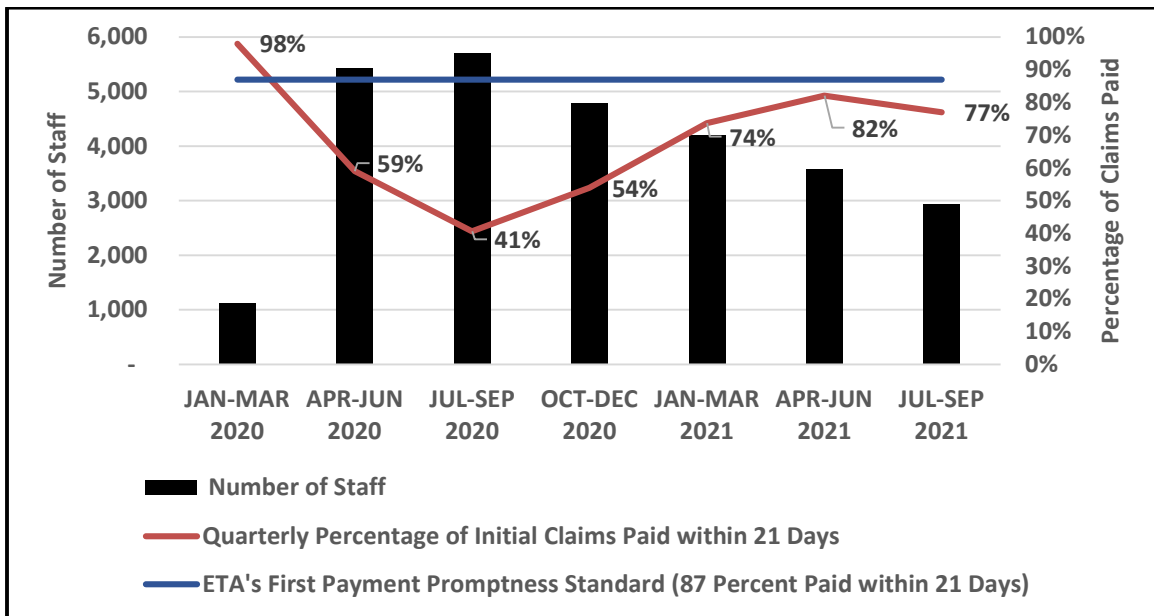


Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

New York

For quarters ending March through September 2020, New York staffing levels increased from 1,118 to 5,702 FTEs. Staffing levels decreased to 2,944 FTEs from quarters ending December 2020 through September 2021. Despite overall increased staffing levels, for the 6 quarters ending June 2020 through September 2021, New York was only able to pay 65 percent of initial UI benefits within 21 days, 22 percent less than ETA’s first payment promptness standard. For quarters ending June 2020 through September 2021, New York’s percentage of initial UI claims paid within 21 days ranged from 41 to 82 percent (see Figure 6).

Figure 6: New York Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Promptness Standard, Quarters Ending March 2020–September 2021

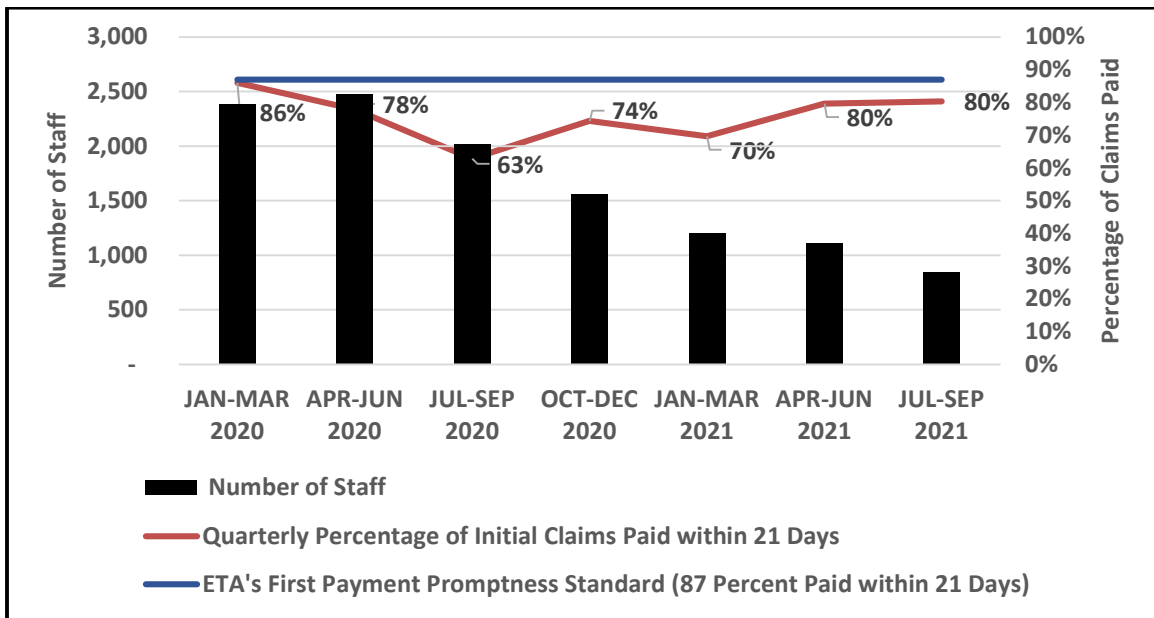


Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

North Carolina

For quarters ending March through June 2020, North Carolina staffing levels increased from 2,385 to 2,475 FTEs. Staffing levels subsequently decreased to 844 FTEs for the 5 quarters from quarters ending September 2020 through September 2021. Despite North Carolina responding that its staffing levels were sufficient, the SWA was only able to pay 76 percent of initial UI claims within 21 days, 11 percent less than ETA’s first payment promptness standard. For quarters ending June 2020 through September 2021, North Carolina’s percentage of initial UI claims paid within 21 days ranged from 63 to 80 percent (see Figure 7).

Figure 7: North Carolina Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Promptness Standard, Quarters Ending March 2020–September 2021

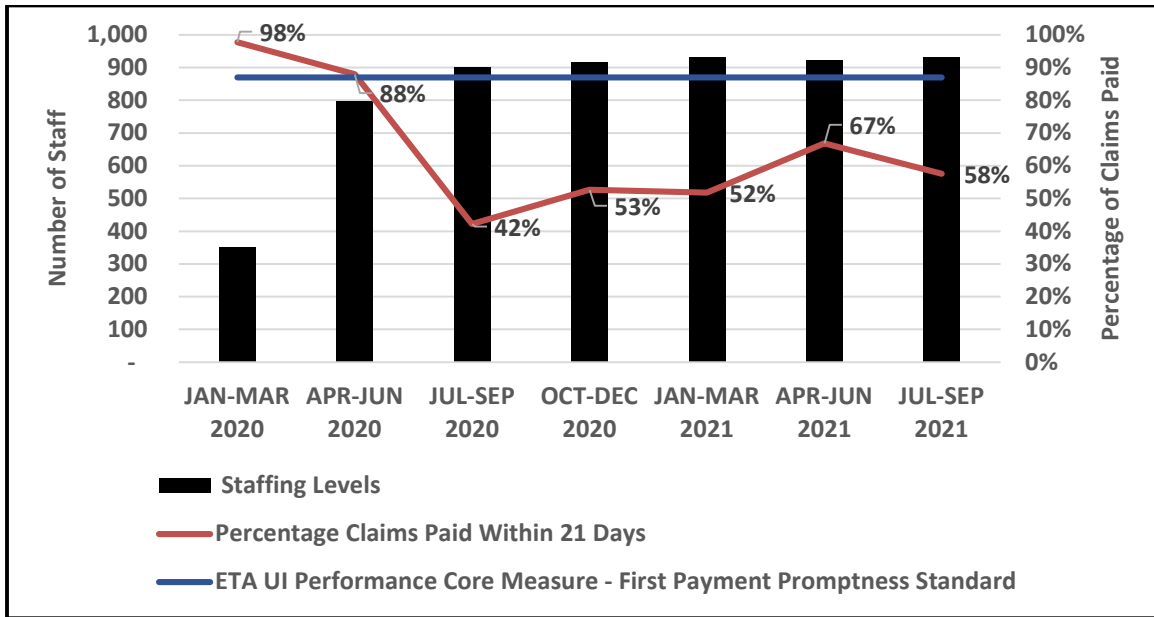


Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

Tennessee

For quarters ending March 2020 through March 2021, Tennessee staffing levels increased from 350 to 930 FTEs. Staffing levels decreased to 922 FTEs for the quarter ending June 2021 and increased to 932 FTEs for the quarter ending September 2021. Despite overall increased staffing levels, for the 6 quarters ending June 2020 through September 2021, Tennessee was only able to pay 78 percent of initial UI claims within 21 days, 9 percent less ETA’s first payment promptness standard. For the quarter ending June 2020, the state’s percentage of initial UI claims paid within 21 days was 88 percent. For quarters ending September 2020 through September 2021, Tennessee’s percentage of initial UI claims paid within 21 days ranged from 42 to 67 percent (see Figure 8).

Figure 8: Tennessee Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Promptness Standard, Quarters Ending March 2020–September 2021

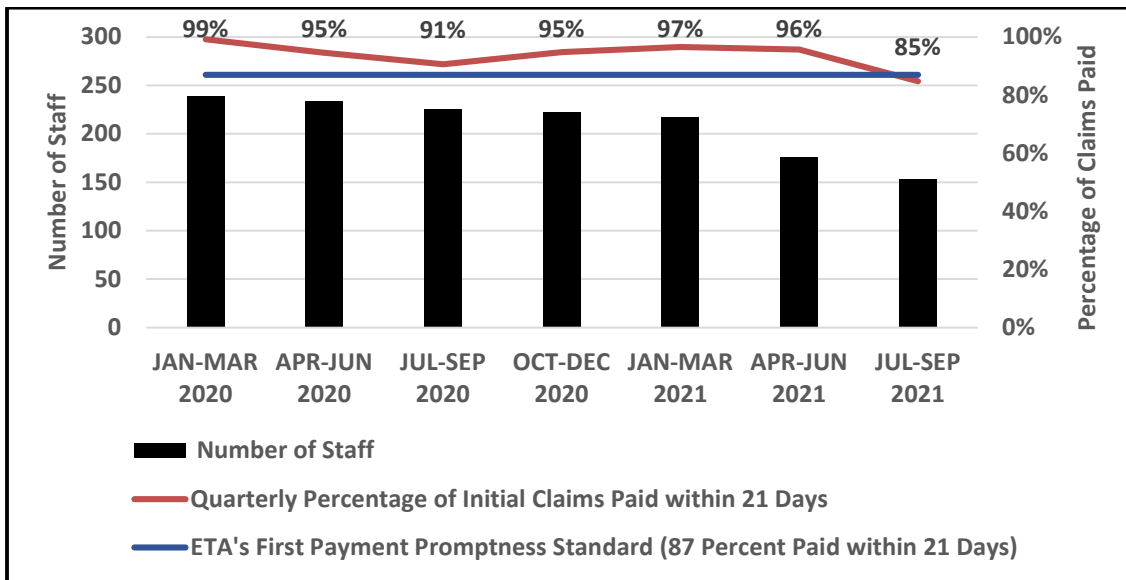


Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

Rhode Island

For the quarters ending March 2020 through September 2021, Rhode Island staffing levels decreased from 239 to 153 FTEs. However, the state paid 95 percent of initial UI claims within 21 days, which exceeded ETA’s 87 percent first payment promptness standard. For the 5 quarters ending from June 2020 through June 2021, Rhode Island’s percentage of initial UI claims paid within 21 days ranged from 91 to 97 percent. For the quarter ending September 2021, the state’s percentage of initial UI claims paid within 21 days was 85 percent, which was the only quarter that Rhode Island fell below the standard (see Figure 9).

Figure 9: Rhode Island Staffing Levels and Initial UI Claims Payments Compared to ETA’s First Payment Promptness Standard, Quarters Ending March 2020–September 2021



Source: Analysis using staffing data from the 6 states and ETA - Benefits: Timeliness and Quality Reports / All First Payment Timeliness

APPENDIX A: SCOPE AND METHODOLOGY

Scope

The audit covered ETA's oversight of states' staffing to support the implementation of UI programs under the CARES Act and its amendments from March 27, 2020, to September 6, 2021. To perform this audit, we reviewed states' staffing levels and UI claim workloads for CARES Act UI programs from March 27, 2020, to September 6, 2021. We performed an in-depth analysis for six states: Arizona, Massachusetts, New York, North Carolina, Rhode Island, and Tennessee. We also surveyed the remaining 47 SWAs to gain an understanding of staffing level capabilities during the COVID-19 pandemic.

Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To accomplish our objective, we obtained an understanding of ETA's process for monitoring the sufficiency of SWAs' staffing levels as related to the implementation of CARES Act UI programs. We also reviewed federal laws and regulations, reviewed ETA's policies and procedures, interviewed key management and support personnel at ETA, and analyzed and identified key control processes for monitoring and reporting staffing sufficiency.

The OIG selected Arizona, Massachusetts, New York, North Carolina, Rhode Island, and Tennessee for review based on a risk assessment that considered: OIG investigative concerns; the quantity of additional staffing funded by the CARES Act stratified into the highest, middle, and lowest ranges; the extent to which the states had not been selected in previous OIG audits; and whether states used a combination of new FTEs, contractors, and staffing agencies.

Reliability Assessment

We did not rely on computer-processed data to conduct this audit. Therefore, we did not assess its reliability.

Internal Controls

In planning and performing our audit, we considered ETA's internal controls relevant to our audit objective by obtaining an understanding of those controls and assessing control risks to achieve our objective. The objective of our audit was not to provide assurance of internal controls; therefore, we did not express an opinion on ETA's internal controls. Our consideration of internal controls for overseeing the administrative grants provided to the states by ETA would not necessarily disclose all matters that might be significant deficiencies. Because of the inherent limitations on internal controls, misstatements, or noncompliance may occur and not be detected.

Criteria

- Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136 (March 27, 2020)
- Consolidated Appropriations Act, 2021, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (December 27, 2020)
- American Rescue Plan Act of 2021, including Title IX, Subtitle A, Crisis Support for Unemployed Workers, Public Law 117-2 (March 11, 2021)
- GAO-14-704G, Standards for Internal Control in the Federal Government (September 2014)
- ETA Core Monitoring Guide (August 2018)
- Office of Management and Budget Memorandum 20-21, Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (April 10, 2020)
- Employment and Training Order No. 1-21, National and Regional Office Responsibilities in Managing, Monitoring, and Overseeing State Grants for the Unemployment Insurance (UI) Programs Created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (October 2, 2020)

Prior Relevant Coverage

During the last 4 years, the OIG has issued 6 reports of significant relevance to the subject of this report, as follows:

1. Advisory Report, CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-15 (April 21, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>;

2. COVID-19: States Struggled to Implement Cares Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at:
<https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>;
3. Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs, Report No. 19-22-004-03-315 (August 2, 2022), available at:
<https://www.oig.dol.gov/public/reports/oa/2022/19-22-004-03-315.pdf>;
4. Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at:
<https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>;
5. COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022),
<https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>; and
6. COVID-19: ETA Needs a Plan to Reconcile and Return to the U.S. Treasury Nearly \$5 Billion Unused by States for a Temporary Unemployment Insurance Program, Report No. 19-23-015-03-315 (September 28, 2023), available at:
<https://www.oig.dol.gov/public/reports/oa/2023/19-23-015-03-315.pdf>.

APPENDIX B: ETA'S RESPONSE TO THE REPORT

ETA's response to our report follows.



October 2, 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 Report – *COVID-19: ETA Could Have Done More to Ensure States Had Sufficient Staffing to Deliver Timely Pandemic Unemployment Benefits*, Report No. 19-XX-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 report. Below are the Department's observations on the draft report, followed by responses to the draft report's recommendations.

Overall, ETA believes that this report does not offer actionable items to improve the Unemployment Insurance (UI) system, nor recognizes the constraints that were put on the system during that time.

Given the unprecedented spike in UI claims by 3,000 percent in a relatively short time period and the creation of several new and temporary pandemic-related unemployment compensation (UC) programs set forth in the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020, any level of staffing would have been insufficient to handle this significant workload. Simply adjusting staffing levels alone would not have been enough to address the unprecedented increase in workload.

As stated in ETA's responses to similar reports from the oversight community, but not fully acknowledged in this draft report, states were dealing with the largest increase in UI claims volume in the history of the program, while also implementing and administering new temporary, pandemic-related unemployment UC programs. The draft report recognizes that, on April 10, 2020, the Office of Management and Budget (OMB) issued OMB Memorandum 20-21, requiring agencies to prioritize expediency, which OMB defined as the rapid issuance of awards to meet crucial needs. It is important to reiterate the states' remarkable accomplishments, despite challenging circumstances. States helped ensure that nearly \$880 billion of unemployment benefits were provided to over 53 million workers. Further, states' ability to provide benefit

payments within one to two months on average for new, temporary UI programs.¹ was an impressive achievement given the extensive, complex requirements and activities that were necessary for implementation. For comparison purposes, a swift rollout of a new government benefit program – including the policy, product, and operations – would be 30 to 48 months.²

States entered the pandemic after experiencing the lowest level of administrative funding in 50 years, impacting resources and staffing levels. Simply put, ongoing underinvestment in the UI program put states at an incredible disadvantage in responding to the pandemic and its subsequent workload impacts.

ETA was aware of the challenges for states in staffing up to meet the unexpected workloads, as well as the impact of delayed benefits for families experiencing COVID-19 job loss and sought to support states with the available tools. ETA provided technical assistance and flexibility, where permitted by statute, to address the unprecedented conditions of the pandemic. For example, the decision to suspend BAM during the summer of 2020 allowed states to put experienced staff into claims processing. At this time, states were desperately short of experienced staff. The forces that drove the declines in timeliness during this period defied easy solutions or standard approaches.

As described below, ETA did not get any additional resources to assist states with these unique challenges. As soon as the American Rescue Plan Act (ARPA) provided such funds in March 2021, ETA prioritized assistance to states to work through backlogs, especially through the Tiger Team initiative, alongside combatting fraud and promoting equitable access. Access to such resources would have enabled ETA to do more earlier in the CARES Act program period.

In recognition of the UI system's challenges both before and during the pandemic, the U.S. Government Accountability Office (GAO) placed the UI system on its High-Risk List³ in June 2022,⁴ recommending that the Department develop and implement a plan to transform the UI system. In response to GAO's report, the Department published a plan to build a more resilient UI program (*i.e.*, UI Transformation Plan).⁵ As the first action area identified, the plan highlights the importance of adequately funding UI program administration and includes proposed legislative reforms.

¹ Office of Inspector General (OIG) Report Number 19-21-004-03-315, *COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs*, issued May 28, 2021, <https://www.oig.dol.gov/public/reports/oa/viewpdf.php?r=19-21-004-03-315&y=2021>. The OIG's final report notes the average number of days states took on pages 3 and 4. ETA's response to the OIG's draft report (Appendix B) describes the impressive achievement.

² OIG Report Number 19-22-006-03-315, *COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or From Payment Delays*, issued September 30, 2022, <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>.

³ GAO High Risk List: <https://www.gao.gov/high-risk-list>.

⁴ GAO-22-105162, *Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks*, published June 2022, <https://www.gao.gov/assets/gao-22-105162.pdf>.

⁵ UI Transformation Plan, *Building Resilience: A plan for transforming unemployment insurance*, issued April 2024, https://oui.doleta.gov/unemploy/transformation_plan.asp.

Although not included in the draft report, ETA believes it important to note the UI program's forward momentum supported through recent one-time investments under ARPA.⁶ The Department invested over \$780 million in ARPA-funded grants to states to prevent and detect fraud, promote equitable access to UI benefits, and improve the timely payment of benefits. States, with the support of the Department's Tiger Team initiative,⁷ have leveraged these grants to make critical system changes, improve processes, and, where appropriate, hire and train new employees.⁸ However, this one-time investment is not an adequate replacement for sustainable, annual funding. Without legislative support and funding from Congress, the Department and states will continue to be hamstrung with limited resources and be unable to truly build a resilient UI program.

Based on review of the draft report, ETA has strong concerns about the validity and soundness of the analysis. Throughout the draft report, there are numerous factual inaccuracies that create false impressions about the UI program, which is particularly problematic, considering the realities facing states and ETA during the pandemic. Below is a summary of these concerns.

- ***The draft report fails to recognize the distinct roles of the Department and Congress in supporting the UI program.*** The draft report indicates that “administrative activities are supposed to be fully supported with federal funds,” but ETA was aware that states were using their own state funding.⁹ The draft report implies ETA failed to take action and does not acknowledge that the Department has asserted that funding levels provided by Congress have been insufficient to support UI program administration. The chart below reflects the declining impact of state UI administrative funding over the past 30 years.

⁶ Congress allocated \$2.0 billion to the Department with enactment of ARPA in March 2021. This amount was later reduced to \$1.0 billion with enactment of the Fiscal Responsibility Act in June 2023.

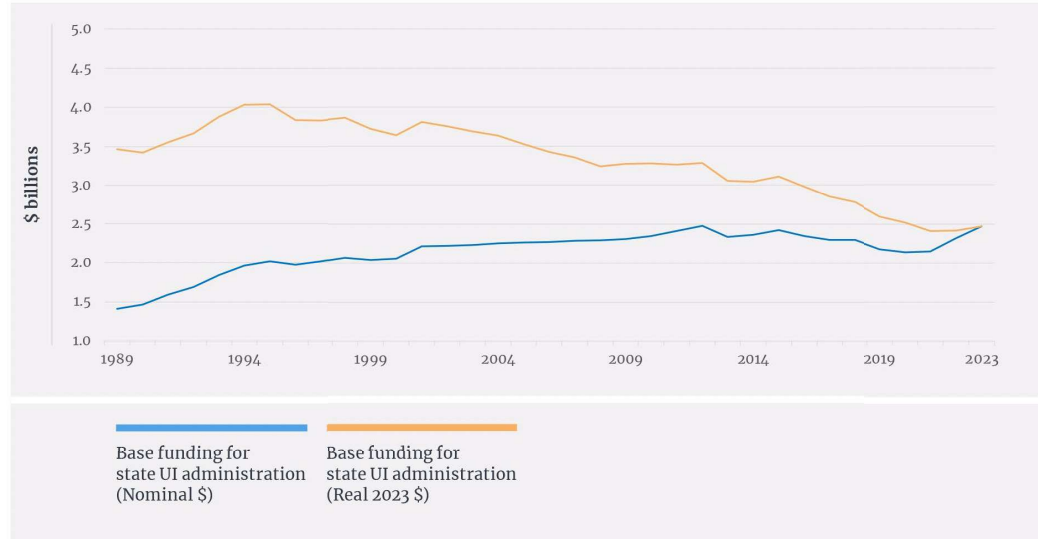
⁷ Using ARPA funds, the Department provided cross-functional teams of experts to partner with states and recommend state-specific solutions that include activities such as workflow adjustments, process improvements, technology updates, and communication revisions. Additional funds (included in the \$780 million figure) were provided to states to implement these recommendations. See Unemployment Insurance Program Letter (UIPL) No. 02-22, *Grant Opportunity to Support States Following a Consultative Assessment for Fraud Detection and Prevention, Promoting Equitable Access, and Ensuring the Timely Payment of Benefits, including Backlog Reduction, for all Unemployment Compensation (UC) Programs*, issued November 2, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-02-22>.

⁸ The Department published a report detailing the use of this ARPA investment and highlighting specific state projects included under these grants. See *Insights and Successes: American Rescue Plan Act Investments in Unemployment Insurance Modernization*, published November 2023, <https://www.dol.gov/agencies/eta/ui-modernization/arpa-success-stories>.

⁹ See discussion “Administrative Grant Funding for States” starting on page 9 of the draft report.

Notes:
Values inflation-adjusted using the Consumer Price Index for All Urban Consumers (CPI-U).

Source:
U.S. Department of Labor internal calculations.



- The draft report fails to adequately recognize the foundations of a program operated through a federal-state partnership.*** The draft report’s analysis appears to advocate for the Department to take a more aggressive stance by establishing a timeliness standard for the temporary pandemic-related UC programs¹⁰ and requiring states to perform staffing-related corrective actions.¹¹

The Department disagrees with the characterization of these actions as available or realistic solutions. Simply setting a performance measure is not an effective tool for states to then achieve that measure during a crisis. The draft report quotes ETA as saying that most states had challenges with timeliness due to the high claim volume and then dismisses this statement by comparing states’ timeliness performance from a pre-pandemic period of historically low claims (see Table 2 in the draft report). This comparison fails to acknowledge the administrative lift required of ETA and the states in the midst of a global pandemic. Evaluating states in comparison with pre-pandemic performance standards adds little value to the discussion of performance during the pandemic. States struggled with timeliness because of a confluence of factors resulting from an unprecedented increase in workload, simultaneously implementing several new programs, and ramping up staffing and information technology (IT) systems, while also transitioning to largely remote operations – it is incorrect to report that states struggled with timeliness because there were no measures established for these newly created pandemic-related programs which had no precedence.

Table 1 of the draft report provides a summary of state grant obligations, and the percentage used for staffing. This table and the surrounding discussion reflect the variation in state administrative practices but does nothing to inform the discussion on how such funds were used or could have been used effectively in lieu of additional

¹⁰ See discussion “ETA Did Not Establish a Benefit Payment Timeliness Standard for CARES Act UI Programs” starting on page 14 of the draft report.

¹¹ See discussion “ETA Did Not Recommend Corrective Actions to Address States’ Staffing Issues” starting on page 17 of the draft report.

staffing (e.g., through updating/implementing IT systems, processes, and communications). Further, the auditors cross-reference ETA's response to a prior OIG audit about challenges in providing timely benefit payments.¹² As of July 29, 2021, the OIG resolved all four recommendations from this prior audit report. To date, two of these four recommendations have been closed. This new draft report provides no additional actionable insight on these previous findings to help improve the UI program beyond reporting on information already covered in prior OIG audit reports.

With respect to corrective actions, requiring states to take corrective action to address staffing levels is another example of the draft report ignoring ETA's repeated assertions regarding insufficient funding for UI program administration.

Given the appropriated level of funding from Congress in recent years, ETA has only been able to provide states with about 50 percent of funding for earned above-base funding based on states reported workload. It would have been unreasonable for ETA to require states to hire more staff as a corrective action when ETA itself was not provided with the means to fully fund states' operations of the program. Also, as stated above, without legislative support and funding from Congress, the Department and the states will continue to be hamstrung with limited resources that restrain the ability to truly build a resilient UI program.

Additionally, the draft report did not include the basis for the statement regarding administrative grant periods of performance, as described on page 9 of the draft report.¹³ As such, ETA is unable to validate the information.

- ***The draft report fails to adequately acknowledge the reality of balancing the establishment of new programs and monitoring compliance with such programs.*** The draft report asserts that ETA did not adequately perform monitoring activities for temporary, pandemic-related UC programs.¹⁴ However, the analysis fails to consider that the programs must first be operational before they can be monitored. In 2020, the UI system across the country was intensely focused on implementing and administering programs.

The CARES Act was enacted on March 27, 2020, and ETA published its initial guidance on April 2, 2020.¹⁵ Over the next eight days, ETA published additional guidance specific to implementing each of the three key programs: Pandemic Unemployment Assistance

¹² See footnote 18 on page 14 of the draft report.

¹³ Page 9 of the draft report includes: "SWAs received \$3.9 billion in Fiscal Year (FY) 2020 and FY 2021 to fund administrative costs, including but not limited to staffing. The administrative grants were available for all SWAs from April 1, 2020, through June 30, 2022, except the California SWA, for which the grant was available from April 1, 2020, through December 31, 2022."

¹⁴ See discussion "ETA Did Not Recognize the Need for Urgency in Issuing Monitoring Guidance Specifically for CARES Act UI Programs" starting on page 16 of the draft report.

¹⁵ UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-14-20>.

(PUA),¹⁶ Pandemic Emergency Unemployment Compensation (PEUC),¹⁷ and Federal Pandemic Unemployment Compensation (FPUC).¹⁸ As states implemented and began administering the new programs, new and novel questions were raised and ETA continued to be responsive in updating its guidance. Additional and significant changes to the programs occurred in December 2020, with enactment of the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) and in March 2021, with the enactment of ARPA. These additional enactments required the creation of additional updated guidance, changes to state systems and processes, and resources across ETA and the states to implement.

The draft report notes that ETA issued guidance for monitoring states' staffing support in October 2020 and gives no appreciation to the fact that ETA engaged in extensive oversight activities in the early months of the pandemic gathering information from states and identifying areas where specific states improperly implemented elements of the new programs. The draft report notes that if ETA considered monitoring activities performed before this time to be sufficient, later guidance would not be necessary. This dismissive statement fails to acknowledge the dynamic situation that ETA and the states were operating in at this time, the many issues ETA needed to address in a short time and assumes that publishing guidance means that prior activities were generally insufficient. Between March and October 2020, ETA issued 25 guidance documents and hosted 16 webinars specific to states' administration of the temporary pandemic-related UC programs. ETA's regional offices also provided significant technical assistance and support as states established these new programs. All of these efforts sought to ensure that states were supported in establishing and operating these new temporary programs.

The draft report also notes that while Employment and Training Order (ETO) No. 01-21 addresses monitoring of PUA, PEUC, and FPUC, ETA did not issue guidance with respect to monitoring states' administration of other CARES Act provisions that were identified in a footnote to the draft report.¹⁹ Including this statement within the scope of the draft report is inappropriate, as monitoring these additional provisions was not part of the auditors' scope or questions, and the OIG has conducted separate audits on each of these other CARES Act provisions. Further, most of these other pandemic-related provisions provided federal reimbursements of payments under previously existing programs and did not involve establishing new programs to administer.

It is important and relevant to note that much like the states, ETA entered the pandemic with very low staffing levels and ETA was not provided additional funding to support

¹⁶ UIPL No. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 5, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20>.

¹⁷ UIPL No. 17-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions*, issued April 10, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-17-20>.

¹⁸ UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued April 4, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-15-20>.

¹⁹ See footnote 20 on page 16 of the draft report.

implementation or monitoring of the pandemic programs until enactment of ARPA in March 2021. The creation of the guidance, the delivery of technical assistance to states, and the initial monitoring and oversight related to these new pandemic UC programs were all accomplished by the same level of staffing that ETA had prior to the pandemic.

- ***Providing a one-quarter suspension of the Benefit Accuracy Measurement (BAM) program was necessary for responding to the demands of the workload.*** The draft report incorrectly asserts that ETA’s temporary suspension of the BAM program impaired ETA’s ability to assess the integrity of the new UI programs. The narrative in the draft report demonstrates an unfamiliarity with the purpose of the BAM program.²⁰ BAM is a quality control program that reviews a sample ranging from 360 regular UI cases per year in the 10 states with the smallest UI workloads to 480 regular UI cases in the remainder of the states each year after they have been processed to validate whether the state took correct action in line with state law and policy. BAM only conducts crossmatches or investigates potential fraud for this small sample of already-processed claims. The results of these case samples are used to create an estimated improper payment rate for the regular UI program. In addition, the BAM program does not sample claims from episodic programs, such as the temporary pandemic-related UC programs.²¹

The draft report claims that when ETA decided to suspend BAM, its emergency response prioritized processing UI claims rather than assessing UI program integrity and that ETA did not develop a sufficient business case.²² ETA’s operational decision to suspend BAM from April to June 2020 – implemented after consulting with and receiving OMB’s support – was one of the few flexibilities available to help states with the huge influx of claims and was frankly a matter of commonsense.²³ BAM staff are highly trained UI program staff that could most reasonably transition to supporting claims intake and whose expertise was urgently needed – rather than having such staff continue, during this critical three-month period at the start of the pandemic, to sample and conduct investigations of a limited number of claims after they had already been processed. During this crisis, it was of paramount importance to get benefits out as quickly and

²⁰ See discussion “ETA Allowed States to Reassign BAM Staff to Claims Processing, Impairing ETA’s Ability to Assess Integrity of New UI Programs with Respect to Improper Payments, Including Fraud” starting on page 20 of the draft report.

²¹ ETA later elected to apply the BAM estimates to program outlays for the PEUC and FPUC program. However, due to the structural differences between the regular UI program and the PUA program, BAM estimates could not be applied to PUA. ETA developed a separate methodology to estimate PUA improper payments. See the OIG Report Number 19-20-008-03-315, *COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation under the CARES Act*, issued August 7, 2020, <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf> and see *PUA Improper Payment Rate Report* at: https://oui.doleta.gov/unemploy/pdf/Pandemic_Unemployment_Assistance_Improper_Payment_Rate_Report.pdf.

²² See discussion “ETA’s Emergency Response Prioritized Processing Claims rather than Assessing UI Program Integrity” starting on page 21 of the draft report.

²³ ETA was fully transparent in this decision with the publication of UIPL No. 25-20, *Benefit Accuracy Measurement (BAM) Program Operations in Response to the Coronavirus Disease of 2019 (COVID-19) Pandemic*, issued June 15, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-25-20>. This document was also reviewed by OMB prior to publication. ETA also provided communications to states twice regarding operational flexibilities, both of which are publicly available at: <https://oui.doleta.gov/unemploy/pdf/pandemicflexibilities2.pdf> and https://oui.doleta.gov/unemploy/pdf/pandemicflexibilities_06122020.pdf.

accurately as possible. ETA considers this a meaningful and necessary operational decision.

Further, the draft report appears to confuse BAM with staff performing integrity controls and investigations, often referred to as Benefit Payment Control (BPC) in states' operations. ETA did not suspend BPC activities, and in fact, issued several communications, including guidance,²⁴ to states advising of the importance to continue integrity activities.

- ***The draft report attempts to answer a question about state staffing that supported implementation of the temporary pandemic-related UC programs but ignores a major flexibility afforded by Congress to support states' implementation.*** Congress took the unprecedented step of allowing states to temporarily suspend the merit staffing requirement set forth in the Social Security Act²⁵ – a major policy change. This action allowed states to onboard “temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.”²⁶

The premise of this draft report is whether ETA ensured that states' staffing supported implementation of the temporary pandemic-related UC programs. However, the draft report ignores this flexibility afforded by Congress and offers no assessment of this major policy change in the area of staffing. Instead, this flexibility is mentioned in a passing footnote that the use of such flexibility is not within the scope of this analysis, with little to no actional value on the topic of staffing.²⁷

Responses to the Recommendations

Please find below each of the recommendations contained in the draft report, followed by ETA's response to each of the recommendations.

Recommendation 1: Develop performance standards for prompt payment of UI benefits under temporary UI programs using lessons learned from the pandemic.

ETA Response: ETA disagrees with this recommendation. It is extremely challenging to develop standards for a program that does not exist and for which the Department does not know its duration or the program's requirements.

²⁴ UIPL No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued May 11, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-23-20>.

²⁵ See Section 303(a)(1), SSA (42 U.S.C. § 503(a)(1)).

²⁶ See Section 2106 of the CARES Act, as well as further amendments under Section 205 of the Continued Assistance for Unemployed Workers Act of 2020 and Section 9015 of the American Rescue Plan Act.

²⁷ See footnote 6 on page 9 of the draft report.

The Department intends to capture lessons learned from the pandemic experience in the temporary programs to help inform actions for similar future programs. This approach allows the Department to be proactive in a more meaningful way, since it cannot speculate on requirements for any program(s) Congress may authorize and appropriate funding for in the future. ETA is not in a position to commit to developing performance standards for temporary programs in the future.

Recommendation 2: Establish policy that requires officials to issue guidance timely for ETA regional offices to monitor and measure the effectiveness of states' use of staffing to support the implementation of temporary UI programs.

ETA Response: ETA disagrees with this recommendation. The premise for this recommendation is predicated on a lack of understanding of the situation within which states and ETA were operating during the pandemic. The draft report does not take into account the complexities of an unprecedented pandemic. It was imperative that ETA first issue guidance and technical assistance to states on how to implement these new programs before monitoring guidance for ETA's Regional Offices was developed. ETA delivered timely monitoring tools during the pandemic in addition to issuing guidance and providing technical assistance regarding temporary pandemic-related UC programs.

ETA does not have an alternative approach to address this recommendation and suggests this recommendation be excluded from the final report.

Recommendation 3: Establish policy that requires states to develop corrective action plans to address staffing insufficiencies that negatively impact permanent and temporary UI programs, as identified by regional offices during monitoring reviews.

ETA Response: ETA disagrees with this recommendation. This recommendation is predicated on a lack of understanding of the UI program and does not account for longstanding factors, such as the insufficient funding for UI program administration.

As an alternative to this recommendation, ETA notes that it has been seeking legislation to provide the Secretary of Labor (Secretary) with new enforcement authority. This proposal would create a new remedy so that instead of withholding a state's entire administrative grant for failing to meet the performance measures or achieve minimum technology standards, the Secretary can require a portion of the state's administrative grant be used to correct failing performance and/or have the state participate in required technical assistance activities offered by the Department. Currently, the Secretary has very limited options to require state UI agencies to take actions to respond to poor performance and high improper payment rates. This proposal is part of the UI Integrity legislative package included in the Department's Fiscal Year 2025 budget submission.

Given that ETA already pursued this matter through the budget process, which can now only be addressed by Congressional action, ETA requests that this be considered sufficient action to address and close this recommendation/this recommendation be excluded from the final report.

Recommendation 4: Establish policy that requires ETA officials to develop a business case analysis and supporting justification when considering suspension of any UI program integrity functions.

ETA Response: ETA disagrees with this recommendation. The premise for this recommendation is predicated on a lack of understanding of the situation within which the states and ETA were operating during the pandemic and a complete misunderstanding of the role of BAM. Allowing states to temporarily suspend the BAM operations for one quarter permitted states to repurpose BAM staff with a high-level of UI experience to help process the huge claims volume at the start of the pandemic while new staff could be onboarded and trained. It was one of the most logical and commonsense actions that could have been taken at the time. Such action did not impact fraud prevention activities, which are performed by BPC staff outside of a state's BAM operations.

Moreover, ETA has already met the essence of this recommendation. ETA issued very clear guidance that states must continue to use, operate, and maintain the required integrity controls and the required overpayment recovery activities at all times, including during times of mass unemployment events, absent specific statutory authorization allowing suspension of such controls or activities.²⁸ Based on the issuance of these UIPLs, ETA requests that this be considered sufficient action to address and close this recommendation/this recommendation be excluded from the final report.

²⁸ See page 10, Section 4.b.ii of UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>. ETA also issued similar guidance early in the pandemic. See UIPL No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Program*, issued on May 11, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-23-20#:~:text=Purpose.%20To%20remind%20states%20of%20program%20integrity%20functions%20required%20for>, pages 8-10.

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