

*U.S. Department of Labor
Office of Inspector General*

Congressional Testimony



**Testimony before the U.S. Senate Committee on Homeland Security and
Governmental Affairs**

Hearing Title:

**“Pandemic Response and Accountability: Reducing Fraud and Expanding Access
to COVID-19 Relief through Effective Oversight”**

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Good morning, Chairman Peters, Ranking Member Portman, and distinguished members of the Committee. Thank you for the opportunity to testify on the important work of the U.S. Department of Labor (DOL or Department) Office of Inspector General (OIG). Although the OIG is responsible for overseeing all DOL programs and operations, I will focus my testimony today on the OIG's oversight of the unemployment insurance (UI) program during the COVID-19 pandemic.

The OIG has remained committed to meeting the challenges created by the COVID-19 pandemic and to assisting DOL and Congress in improving the efficiency and integrity of the UI program. As my testimony will show, strengthening the UI program to prevent fraud before it occurs and to detect it when it does are key objectives to ensure that unemployed workers expeditiously receive much needed benefits, while safeguarding tax dollars directed toward that goal.

The OIG is an independent agency within DOL. The views expressed herein are based on the independent findings and recommendations of the OIG's work and are not intended to reflect DOL's positions.

Overview of the Unemployment Insurance Program

The UI program is a joint federal-state program that is the first economic line of defense against the collective impact of unemployment. The program acts as a safety-net for individuals who lose their jobs through no fault of their own. The UI program is required to make timely weekly benefit payments to provide needed assistance to unemployed workers. It is equally important that the program have sufficient controls in place to quickly determine that benefits are or were paid to the right person in the correct amount. Each state workforce agency¹ (SWA or state):

- administers a separate UI program under its laws, but follows uniform guidelines established by federal law;
- establishes requirements for eligibility, benefit amounts, and the length of time that benefits can be paid; and
- manages the personnel and system resources to administer their respective programs.

UI benefits are generally funded by state employer taxes with administrative costs funded by the federal government. The UI program requires states to make weekly benefit payments while ensuring claimants meet eligibility requirements. Extensions and expansions of coverage and benefits, such as those provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation, are also normally funded by the federal government.

¹ State Workforce Agencies (53): The 50 states and the U.S. Virgin Islands, Puerto Rico, and the District of Columbia. The Coronavirus Aid, Relief, and Economic Security Act also provided certain UI benefits to American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Marshall Islands, and the Republic of Palau, provided the territory signs an agreement with the Department.

DOL's Employment and Training Administration (ETA) is the federal agency responsible for providing program direction and oversight. The OIG conducts independent oversight of the UI program through audits to strengthen the integrity and efficiency of the program and criminal investigations to detect and deter large-scale fraud. The OIG's federal criminal investigations are time- and resource-intensive, and one of the last lines of defense in safeguarding the UI program from fraud.

OIG Significant Concerns

The OIG has repeatedly reported significant concerns with DOL and SWA's ability to deploy program benefits expeditiously and efficiently while ensuring integrity and adequate oversight, particularly in response to national emergencies and disasters. The OIG reiterated these concerns following the economic downturn created by the pandemic and the unprecedented levels of federal funding allocated to the UI program, currently estimated at approximately \$872.5 billion. Less than a month after the CARES Act passed, we published an Advisory Report outlining areas of concern that ETA and the states should consider as they implemented the UI provisions included in the CARES Act. Our identification of these areas represents years of work relating to DOL's UI program, including the use of prior stimulus funds and response to past disasters.

Deploying Benefits Expeditiously and Efficiently

Rapid deployment of CARES Act funding was critical in helping workers in need. However, anticipating and addressing the increased risk that came with the expanded funding was also vital to meeting the intent of the Act. As the OIG's prior audit work has shown, quickly deploying funds can result in shortcomings in the effective and efficient implementation of stimulus programs. For example, a 2010 OIG audit of Recovery Act funding found that the \$7 billion DOL provided to states to modernize legacy systems for processing UI claims was not always used for this purpose, and \$1.3 billion would likely not have been spent before their period of availability expired. In addition, states took over a year to spend most of the funding available for emergency staffing, and at least 40 percent of funding for this purpose was unspent after 15 months.

To implement the new UI programs authorized by the CARES Act in March 2020, states needed sufficient staffing and system resources to manage the extraordinary increases in the number of claims and payments further discussed in this testimony. Since the start of the pandemic, our audit work confirmed that the Department and states continued to face challenges in these areas as they endeavored to implement the new temporary UI programs authorized by the CARES Act. State preparedness through staffing and systems was one of the six areas we reported in April 2020 as a continued challenge for the Department and states. Furthermore, we also reported on the program that posed the greatest risk to the UI system, the Pandemic Unemployment Assistance (PUA) program. PUA's expanded coverage for a population of claimants who were

traditionally ineligible to receive UI benefits² presented significant challenges to states as they designed and implemented processes to determine initial and continued program eligibility. The OIG reported the risk of fraud and improper payments was even higher under PUA because claimants could self-certify their eligibility for UI and alerted ETA to establish methods to detect fraud and recover improper payments.

Our subsequent reports identified continued programmatic weaknesses in each of these same areas. For example, the OIG had audited the Disaster Unemployment Assistance (DUA) program and found the Department had not established adequate controls to ensure benefits were paid timely. Similarly, for PUA, we identified that it took, on average, 38 days for the first payment after the CARES Act passed. Also, we identified delays in payments for two other new programs: it took 25 days for the Federal Pandemic Unemployment Compensation (FPUC) program and 50 days for the Pandemic Emergency Unemployment Compensation (PEUC) program.³ Continued programmatic weaknesses led to workers unemployed through no fault of their own suffering lengthy delays in receiving benefits.

History of Improper Payments, Including Fraud

For more than 20 years, the OIG has reported on the Department's challenges to measure, report, and reduce improper payments in the UI program. Indeed, the UI program has experienced some of the highest improper payment rates across the federal government. The reported improper payment estimate for the regular UI program has been above 10 percent for 14 of the last 18 years.

The UI program requires states to make weekly benefit payments while ensuring claimants meet eligibility requirements. An SWA may determine a payment is improper after a claimant receives benefits based on new information that was unavailable when the SWA approved the benefit payment or as a result of the requirement that claimants be provided with due process prior to stopping payment of benefits. Improper payments often occur as a result of four leading causes:

- Claimants Do Not Meet Work Search Requirements⁴ – Claimants who fail to demonstrate they meet state requirements for work search;

² The new PUA program extended unemployment benefits to self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who were unable to work as a direct result of COVID-19.

³ Also, the 12 states we selected for in-depth analysis were generally unable to demonstrate they met the payment promptness standard ETA established for regular UI payments, which is to pay 87 percent of claimants within 14 or 21 days.

⁴ The Middle Class Tax Relief and Job Creation Act of 2012, requires that individuals receiving UI benefits must be able to work, available to work, and actively seeking work, as a condition of eligibility for regular compensation for any week. Accordingly, states generally require that unemployed workers demonstrate they were actively seeking work. Work search overpayments occur when states pay UI claimants who do not demonstrate that they were actively seeking work.

- Benefit Year Earnings – Claimants who continue to claim benefits after they return to work, or who misreport earnings during a week in which benefits are claimed;
- Employers Do Not Timely Report Employees' Separation – Employers or their third-party administrators who fail to provide timely and adequate information about why individuals separated from their employment; and
- Fraud – Claims based on fraudulent schemes, such as those perpetrated during the pandemic.

A Perfect Storm

Following the start of the pandemic in the U.S. in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels. Prior to the pandemic, numbers of UI claims were low: on March 14, 2020, the Department reported 282,000 initial claims. Within 2 to 3 weeks, initial claims rose to 10 times pre-pandemic levels, far higher than state systems were designed to handle. Within 5 months, through August 15, 2020, the Department reported 57.4 million initial claims, the largest increase since the Department began tracking UI data in 1967.

The CARES Act provided significant funding to the state-federal UI program, which resulted in hundreds of billions of dollars in additional payments. New UI programs under the CARES Act meant more workers qualified,⁵ all unemployed workers received a supplement per week in addition to their regular benefit amount, and individuals who exhausted their regular unemployment benefits were provided additional weeks of unemployment compensation. Also, UI claims could be backdated to the beginning of the eligibility period. With the legislative extensions, claimants could receive up to 79 weeks of UI payments.

In June 2020, the OIG provided a member briefing⁶ and a statement for the record⁷ to Congress highlighting challenges DOL and SWAs faced in administering and overseeing the UI program as well as the substantially increased fraud risk. The expanded coverage offered under the PUA program posed significant challenges to states as they implemented processes to determine initial and continued program eligibility for participants. The reliance solely on claimant self-certifications without evidence of eligibility and wages during the program's first 9 months rendered the PUA program extremely susceptible to improper payments and fraud.

⁵ The PUA program covered workers not typically covered by UI, who could self-certify that they were able to and available for work but unemployed due to COVID-19 related reasons.

⁶ "Subcommittee on Government Operations Briefing with the Inspector General for the Department of Labor." Statement of Scott S. Dahl, Inspector General, U.S. Department of Labor House Committee on Oversight and Reform; Subcommittee on Government Operations (June 1, 2020). Available at: <https://www.oig.dol.gov/public/testimony/20200601.pdf>

⁷ "Unemployment Insurance During COVID-19: The CARES Act and the Role of Unemployment Insurance During the Pandemic." Statement for the Record of Scott S. Dahl, Inspector General, U.S. Department of Labor Senate Committee on Finance (June 9, 2020). Available at: <https://www.oig.dol.gov/public/testimony/20200609.pdf>

As the OIG reported, the unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit. That, combined with easily attainable stolen personally identifiable information and continuing UI program weaknesses identified by the OIG over the last several years, allowed criminals to defraud the system. Because many states were not prepared to process the volume of new claims under completely new UI programs, many internal fraud controls that had been traditionally used or recommended for the processing of UI claims were not initially implemented. This created a situation where fraudsters had a high-reward target where an individual could make a fraudulent claim with relatively low risk of being caught, at least initially, due to the lack of basic anti-fraud measures. As time went on, one fraudster could have been issued several UI debit cards, with tens of thousands of dollars on each card.

Estimating the overall improper payment rate for the pandemic UI programs is critical for the efficient operation of the program. The OIG maintains that ETA and the SWAs, under their program operating responsibilities, must determine the improper payment rate, including the fraud rate, for pandemic UI programs. The Inspector General Act of 1978 prohibits the OIG from undertaking program operating responsibilities. In August 2020, we recommended that ETA estimate the improper payment rate for pandemic UI programs. In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent. The OIG notes this estimate is based on the regular UI program and has been applied to two of three key pandemic UI programs, PEUC and FPUC. ETA states it will report the third program, PUA, in 2022.

Applying the 18.71 percent to the estimated \$872.5 billion in pandemic UI payments,⁸ at least \$163 billion in pandemic UI benefits could have been paid improperly, with a significant portion attributable to fraud. Based on the OIG's audit and investigative work, the improper payment rate for pandemic UI programs is likely higher than 18.71 percent.

OIG Pandemic Investigative Work

The volume of UI investigative matters currently under review is unprecedented in the OIG's history. Prior to the pandemic, the OIG opened approximately 120 UI investigative matters annually. Since the pandemic started, the OIG has received more than 143,000 UI fraud complaints from the U.S. Department of Justice's (DOJ) National Center for Disaster Fraud (NCDF) and has independently opened more than 38,000 investigative matters concerning UI fraud. That is an increase of more than 1,000 times in the volume of UI work that we are facing. UI investigations now account for approximately 94 percent of the OIG investigative case inventory, compared to approximately 11 percent prior to the pandemic.

⁸ ETA's reported improper payment rate estimate of 18.71 percent does not include the PUA program. However, it is the most current improper payment rate from ETA. Furthermore, PUA had control weaknesses that may have facilitated comparable or greater improper payments. Therefore, applying ETA's rate to all of the estimated \$872.5 billion in CARES Act UI payments including PUA would equate to at least \$163 billion in improper payments.

In response to the extraordinary increase in oversight demands, the OIG hired additional criminal investigators; increased the caseload of investigators already on-board; deployed federal and contract staff to review DOL and SWAs' efforts; and strengthened our data analytics program. In addition, we took several other actions to augment our efforts, including the following:

- initiated the development of a National UI Fraud Task Force (NUIFTF)⁹, alongside DOJ;
- collaborated with DOJ on the strategic assignment of 12 term-appointed Assistant United States Attorneys assigned solely to prosecute UI fraud;
- established a multi-disciplinary Pandemic Rapid Response Team within the OIG;
- appointed a National UI Fraud Coordinator to manage our national investigative response to UI fraud;
- appointed seven Regional UI Fraud Coordinators to partner with SWAs and federal, state, and local law enforcement on UI fraud matters in their geographic areas of responsibility;
- leveraged resources from the Council of the Inspectors General on Integrity and Efficiency, Pandemic Response Accountability Committee (PRAC);
- collaborated with states' auditors to help develop their audit strategies for the CARES Act UI programs; and
- implemented an extensive outreach and education program targeted to SWAs, the Department, financial institutions and their associations, law enforcement agencies, and the public to inform and raise awareness regarding fraud trends, best practices, red flags, and more.¹⁰

When the OIG identifies anti-fraud measures that may help the program detect and stop fraud, we share them with the Department and SWAs as appropriate. For example, in alert memoranda issued in February¹¹ and June 2021,¹² our investigators, auditors, and data scientists collaborated to identify nearly \$17 billion of potentially fraudulent UI benefits paid in four high risk areas: to individuals with social security numbers 1) filed in multiple states, 2) of deceased persons, 3) of federal inmates, and 4) used to file for UI claims with suspicious email accounts. We shared our methodology and the underlying

⁹ National Unemployment Insurance Fraud Task Force. Available at:

<https://www.justice.gov/coronavirus/national-unemployment-insurance-fraud-task-force>

¹⁰ The OIG has issued or assisted in issuing: UI fraud consumer protection guide; UI fraud investigations guide; UI fraud alert for state/local law enforcement; UI text message phishing alert; UI fraud and phishing alert; UI fraud and identity theft alert; and UI detection and mitigation alert for financial institutions.

Available at: https://www.oig.dol.gov/OIG_Pandemic_Response_Portal.htm

¹¹ Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas Report No. 19-21-002-03-315 (February 22, 2021). Available at:

<https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>

¹² Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General Report No. 19-21-005-03-315 (June 16, 2021). Available at:

<https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>

data with the Department and the SWAs, and we recommended they establish effective controls to mitigate fraud and other improper payments to ineligible claimants, including the four high-risk areas identified in the memoranda. The data provided to DOL and the states included more than 3 million suspicious claims. We are currently in the process of updating our UI dataset. Once that process is complete, we plan to examine whether SWAs took effective measures to address these four high-risk areas.

As of February 2022, our UI investigations have resulted in: the execution of more than 450 search warrants; 749 UI fraud related indictments; and over \$830 million in investigative monetary results. We have also referred over 8,000 fraud matters that do not meet federal prosecution guidelines back to the SWAs for further action.

In one recent OIG investigation, 11 members and associates of the Brooklyn-based Woo Gang were charged with a multi-million-dollar pandemic UI fraud scheme.¹³ In another recent OIG investigation, a one-time California Employment Development Department employee was sentenced to more than 5 years in prison for fraudulently obtaining nearly \$4.3 million in pandemic relief funds.¹⁴

Working with Domestic and International Law Enforcement Partners

Early in the pandemic, the OIG worked with the DOJ to create the NUIFTF, a nine -agency federal task force focused on law enforcement intelligence sharing, deconfliction, joint national and regional messaging, and the effective use of



Items seized by OIG agents during the execution of a UI fraud search warrant. Agents recovered approximately 30 UI debit cards, over \$500,000 in cash, and several notebooks containing personally identifiable information.

¹³ 11 Members and Associates of the Brooklyn-Based Woo Gang Charged with Multi-Million Dollar COVID (February 17, 2022). Available at: https://www.oig.dol.gov/public/Press%20Releases/11_Members_and_Associates_of_the_Brooklyn-Based_Woo_Gang_Charged_with_Multi-Million_Dollar_COVID.pdf

¹⁴ One-Time EDD Employee Sentenced to More Than 5 Years in Prison for Fraudulently Obtaining Nearly \$4.3 Million in COVID Relief Funds (February 4, 2022). https://www.oig.dol.gov/public/Press%20Releases/One-Time_EDD_Employee_Sentenced_to_More_Than_5_Years_in_Prison_for_Fraudulently_Obtaining_Nearly.pdf

investigative and prosecutorial resources. The NUIFTF has also worked closely with partners at the International Organized Crime Intelligence and Operations Center (IOC--2) to develop a deconfliction process to coordinate investigative information across federal law enforcement agencies. Through data analytics and a leads generation process, the NUIFTF and IOC-2 partner agencies have identified significant fraud being committed against the UI program by domestic and international criminal organizations. Many of these include street-level criminal organizations with ties to illegal guns and drugs. These investigations are ongoing and actively being investigated through the NUIFTF.

The OIG has also been very engaged on DOJ's COVID-19 Fraud Enforcement Task Force (CFETF). We also have representation on CFETF subcommittees involving communication, forfeiture, and data, and co-chairs the task force's criminal enterprise subcommittee.

The OIG has also participated in other initiatives that have fallen outside the framework of the NUIFTF and CFETF. For example, in 2020 and 2021, the OIG supported DOJ's annual Money Mule Initiative,¹⁵ which aimed to raise awareness about and suppress money mule activity. The OIG conducted extensive internal and external outreach regarding money mules and identified and targeted money mules in coordination with DOJ and other partner agencies.

In addition, the OIG issued alerts to financial institutions about UI fraud both on its own and jointly with its partners, such as U.S. Secret Service (USSS), Financial Crimes Enforcement Network (FinCEN), and NUIFTF. One such joint OIG/USSS alert, "Detection and Mitigation of Unemployment Insurance Fraud Guidance to Financial Institutions," served as a framework for the recovery of millions of dollars of fraudulent UI funds being held by financial institutions. Later, in 2021, the OIG authored a NUIFTF alert that was issued through FinCEN to financial institutions requesting that they identify funds they froze due to suspicion of fraud. The OIG created a process with DOJ and the USSS to collect that data and work with those financial institutions to return fraudulent funds to SWAs. The OIG and its law enforcement partners are working with more than 350 financial institutions in response to our request.

The PRAC has also played a pivotal role in amplifying the ability of OIGs to share information and conduct internal and external outreach to stakeholders that have been impacted by pandemic fraud. For example, the OIG worked with the PRAC on social media tool kits related to money mule activity and erroneous Forms 1099-G that were issued to victims of UI fraud. The OIG has also worked with the PRAC, DOJ, and USSS to create a web-based survey where financial institutions can more broadly report UI and other types of pandemic fraud. This information is being collected by the PRAC, analyzed by its partners, and, if appropriate, sent to field personnel for further action.

¹⁵ Additional information about DOJ's Money Mule Initiative available at: <https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative>

The OIG, through its membership in IOC-2, has also been engaged with several allied national police agencies to strategize about pandemic related fraud and how to best establish practices to share information. The issue of pandemic fraud has not only been an issue for the U.S., but it has also negatively impacted our foreign partners' pandemic entitlement programs. We have conducted outreach and education related to pandemic fraud, including UI fraud, with our five eyes partner countries as participants on the International Public Sector Fraud Forum.¹⁶

The OIG, IOC-2, and our federal law enforcement partners have identified numerous instances of international organized criminal groups engaged in UI fraud. We will continue to work with our domestic and international law enforcement partners on these matters.

OIG Pandemic Oversight Work

In April 2020, shortly after CARES Act enactment, we published our Pandemic Response Oversight Plan detailing how the OIG would conduct its pandemic oversight, with a significant focus on the UI program. We designed our four-phased pandemic response oversight plan to provide recommendations to DOL to address current and emerging vulnerabilities with the pandemic response and to prevent similar vulnerabilities from hampering preparedness for future emergencies. Phases 1 and 2, which are complete, focused on DOL's plans, guidance, and initial implementation of administration and oversight activities. Phase 3 audit work, assessing program results and more, is ongoing. Our Phase 4 work plans include reporting on lessons learned for UI, worker safety and health, and employment and training.

At the start of the pandemic, we examined past audits including those related to the American Recovery and Reinvestment Act of 2009 and the DUA program, and we assessed comparable lessons learned as applicable to the UI program. As a result, in April 2020, we issued the previously noted advisory report¹⁷ identifying six initial areas of concern for ETA and the states to consider while implementing CARES Act UI provisions: state preparedness (including staffing and systems), initial eligibility determination, benefit amount, return to work, improper payment detection and recovery, and program monitoring. Our identification of these areas represents at least 16 years of work relating to DOL's UI program, including the use of prior stimulus funds and response to past disasters. The advisory report summarized dozens of OIG recommendations to implement corrective action in these areas.

¹⁶ The five eyes countries include Australia, Canada, New Zealand, the United Kingdom and the United States. The International Public Sector Fraud Forum consists of representatives from organizations from the five eyes countries, whose collective aim is to share best and leading practices in fraud management and control across public borders.

¹⁷ Advisory Report: CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020). Available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

We have issued nine subsequent reports, including alert memoranda for urgent concerns, involving the UI program. For example:

- In May 2020, we issued an alert memorandum¹⁸ describing our concerns regarding claimant self-certification in the PUA program. In our view, reliance on such self-certifications rendered the PUA program highly vulnerable to improper payments and fraud. Subsequent to our work identifying fraud risks associated with self-certification in the PUA program, including this alert memorandum and the next two described reports, Congress took action to require supporting documentation to improve SWAs' abilities to ensure proper claimant eligibility and to mitigate fraud.
- In August 2020, we reported¹⁹ states did not use existing tools effectively to combat fraud and other improper payments. We also stated ETA should work with the OIG to obtain access to state claimant data that could be used to identify and disrupt fraudulent schemes that threaten the integrity of UI programs, including those under the CARES Act.
- In October 2020, we reported²⁰ where states confirmed our concerns about fraud in the UI program. Specifically, states cited the PUA self-certification requirement as a top fraud vulnerability. Despite states' deployment of strategies and tools for mitigating fraud, 53 percent of respondents still cited fraud vulnerabilities within the PUA program. States reported inherent vulnerability in the PUA self-certification process, systems issues, and inadequate fraud screening tools.
- In February 2021, we issued²¹ an alert memorandum that identified more than \$5.4 billion of potentially fraudulent UI benefits paid in specific high-risk areas as previously mentioned—to individuals with social security numbers: filed in multiple states, of deceased persons, of federal inmates, and with suspicious email accounts. In June 2021, we issued a subsequent alert memorandum²²

¹⁸ Alert Memorandum: The Pandemic Unemployment Assistance Program Needs Proactive Measures to Detect and Prevent Improper Payments and Fraud, Report No. 19-20-002-03-315 (May 26, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-002-03-315.pdf>

¹⁹ COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under The CARES Act Report No. 19-20-008-03-315 (August 7, 2020). Available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

²⁰ COVID-19: States Cite Vulnerabilities in Detecting Fraud While Complying with The CARES Act UI Program Self-Certification Requirement Report No. 19-21-001-03-315 (October 21, 2020). Available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-001-03-315.pdf>

²¹ Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas, Report No. 19-21-002-03-315 (February 22, 2021). Available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>

²² Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of the Inspector General, Report No. 19-21-005-03-315 (June 16, 2021). Available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>

where we increased that identification to almost \$17 billion in potential fraud in these same four high-risk areas. The potentially fraudulent UI payments we identified occurred during a limited time period, from March 2020 to October 2020, and covered only the four noted high-risk areas.

- In May 2021, we reported²³ that DOL and states struggled to implement the three key new UI programs that posed the greatest risk for fraud, waste, and abuse: PUA, PEUC, and FPUC. Specifically, DOL’s guidance and oversight did not ensure states: implemented the programs and paid benefits promptly; performed required and recommended improper payment detection and recovery activities; and reported accurate and complete program activities. This occurred primarily because states’ information technology (IT) systems were not modernized, staffing resources were insufficient to manage the increased number of new claims, and, according to state officials, ETA’s guidance was untimely and unclear.
- In September 2021, we reported²⁴ on our assessment of DOL and states’ strategies to reduce UI overpayments related to work search—the leading cause of improper payments prior to the pandemic. We found ETA and state strategies did not consistently reduce UI overpayments related to work search. The agency was unable to consistently reduce these overpayments mainly because states had varying work search laws and requirements, with some more stringent than others. For example, in one state, we determined that, on average during Program Year (PY) 2018,²⁵ a claimant could complete one valid work search contact in as few as 11 seconds. In addition, ETA inappropriately excluded certain types of overpayments from improper payment estimates for the UI program. As a result, UI improper payment rates were considerably understated for FYs 2017 through 2020.
- In November 2021, we reported²⁶ the Department’s first-in-25-years qualified opinion on its consolidated financial statements and one material weakness related to UI COVID-19 funding. This was due to the Department being unable to provide sufficient evidence for \$47.3 billion it estimated for UI claims for unemployed weeks that occurred prior to the expiration of the UI pandemic programs that were still in appeal or had not yet been processed as of September 30, 2021. This was also due to unreliable reporting of \$4.4 billion in UI benefit overpayments due to certain states non-reporting of UI overpayment activity.

²³ 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>

²⁴ Unemployment Insurance Overpayments Related to Work Search Underscore the Need for More Consistent State Requirements, Report No. 04-21-001-03-315 (September 29, 2021). Available at:

<https://www.oig.dol.gov/public/reports/oa/2021/04-21-001-03-315.pdf>

²⁵ PYs start July 1 and end June 30 each year; PY 2018 started July 1, 2018, and ended June 30, 2019.

²⁶ FY 2021 Independent Auditor’s Report on the DOL Financial Statements, Report No. 22-22-003-13-001 (November 19, 2021). Available at: <https://www.oig.dol.gov/public/reports/oa/2022/22-22-003-13-001.pdf>

OIG Recommendations

The OIG has made several recommendations to DOL and Congress to improve the efficiency and integrity of the UI program. Key recommendations follow.

OIG Recommendations to DOL

OIG Access to Claim and Wage Data

- Facilitate the OIG's access to UI claim data for audit and investigative purposes
- Take immediate action to require the National Association of State Workforce Agencies (NASWA) to refer information to ETA and the OIG on suspected fraud, waste, abuse, mismanagement, or misconduct

Staffing and Systems for Prompt Payments during Emergencies

- Continue to work with states to develop, operate, and maintain a modular set of technological capabilities (i.e., staffing and replacing IT legacy systems) to modernize the delivery of UI benefits that is sufficient to manage and process sudden spikes in claims volume during emergencies or high unemployment
- Create a rapid response team consisting of federal and state officials capable of providing technical and other assistance to SWAs impacted by major disasters
- Conduct a study to assess: the technological needs of the UI programs to determine the capabilities that need to be upgraded or replaced; the features necessary to effectively respond to rapid changes in the volume of claims in times of emergency or high unemployment; the capabilities needed to ensure effective and equitable delivery of benefits; and the capabilities to minimize fraudulent activities
- Develop standards for providing clear and reasonable timeframes to implement temporary programs to establish expectations for prompt benefit payments to claimants

Controls for Improper Payments

- Establish effective controls, in collaboration with SWAs, to mitigate fraud and other improper payments to potentially ineligible claimants, including multi-state claimants, claimants who used social security numbers of deceased individuals and federal inmates, and claimants with suspicious email accounts
- Develop and implement cause-level reduction targets to gauge and monitor the effectiveness of strategies implemented by states to reduce work search overpayments
- Include in the UI improper payment estimate: (1) overpayments related to work search formal/ informal warnings; and (2) payments to claimants who provide no or insufficient documentation to support eligibility with respect to work search
- Incorporate the impact of UI improper payments related to temporary programs, such as those created by the CARES Act, into the traditionally estimated improper payment rate calculations

- Develop policies and procedures to coordinate with SWAs to obtain the necessary UI program information needed (for DOL financial statements) to support related balances and assumptions, and to perform benchmarking and/or other analyses to validate new assumptions

Guidance and Assistance to States

- Assist states with claims, overpayment, and fraud reporting to create clear and accurate information, and then use the overpayment and fraud reporting to prioritize and assist states with fraud detection and recovery
- Examine the effectiveness of Benefit Accuracy Measurement's²⁷ contact verification process to ensure it reflects the current methods claimants use to seek work
- Inform states that formal and informal warnings are not permissible under Federal work search law

Coordination with Congress

- Work with Congress to establish legislation requiring SWAs to cross-match in high-risk areas, including to individuals with social security numbers: filed in multiple states, of deceased persons, of federal inmates, and with suspicious email accounts

DOL Recommendations to Congress

In addition, Congress should consider legislative proposals included in prior DOL budget requests and pass legislation to improve UI program integrity. The DOL proposals include the following:

- allow the Secretary of Labor greater authority to require SWAs to implement UI corrective actions related to performance and integrity;
- require SWAs to use the NASWA's Integrity Data Hub (IDH) and the State Information Data Exchange System;
- require SWAs to cross-match UI claims against the National Directory of New Hires;
- require SWAs to cross-match UI claims with the U.S. Social Security Administration's prisoner database and other repositories of prisoner information;
- allow SWAs to retain 5 percent of UI overpayment recoveries for program integrity purposes; and
- require SWAs to use UI penalty and interest collections solely for UI administration.

²⁷ Benefit Accuracy Measurement (BAM) is a quality control statistical survey used to identify errors and support corrective action in the state UI system. It usually focuses on the three major UI programs—regular UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-service members. The BAM data are an estimate of the total improper payments in the UI program, in each state and the nation as a whole, based on a statistically valid examination of a sample of paid and denied claims.

These legislative proposals are consistent with previous OIG findings and recommendations to improve the UI program.

DOL's Progress

While concerns persist within the UI program, DOL has instituted efforts to focus on program integrity when implementing the CARES Act and other pandemic-related UI programs. These efforts include establishing agreements with states to comply with all applicable requirements to receive funds, issuing operating guidance, and providing technical assistance to SWAs individually and through webinars. DOL has included requirements for SWAs to focus on program integrity in guidance relevant to pandemic-related UI funds. In addition, DOL has reinforced the need for SWAs to actively work with the OIG to address fraud in the UI program.

The Department has facilitated OIG's access to UI data for audits and evaluations only to CARES Act UI and other temporary UI programs enacted in response to the pandemic that expired in September 2021, but it has not for all UI programs. In addition, ETA has required grant recipients to share state UI data with the OIG as a condition of the fraud prevention grants offered under the American Rescue Plan (ARP) Act, which will provide such access through December 31, 2023. However, not all states will receive the grants and the data provided to the OIG will be incomplete. The OIG needs access to all UI program data to effectively do its job.

Further, the UI Integrity Center, established by DOL through a grant and operated by NASWA, has continued to develop the IDH to serve as a secure portal for SWAs to cross-match public and private sources of data, including new tools that will help prevent improper payments. DOL is working with NASWA's Integrity Center to further enhance SWA participation in and use of NASWA's IDH through additional guidance and regular communication with SWAs.

On August 31, 2021, the Department announced the establishment of the Office of Unemployment Insurance Modernization to provide oversight and management of the \$2 billion allotted to UI initiatives by the ARP Act of 2021. The funding is aimed at preventing and detecting fraud, promoting equitable access, ensuring timely benefits payments, and reducing backlogs. Of this \$2 billion in funding, two grant programs have been set up: (1) a \$140 million program for fraud grants to be awarded to states to cover subscription costs for identity verification tools, establishment and expansion of data analytics, and implementation of cybersecurity defense strategies; and (2) a separate \$260 million program for equity grants to be awarded to states to improve customer service and claimant outreach, reduce claims backlogs, and improve access for workers in communities that may have historically experienced barriers to access.

OIG Challenges Overseeing the UI Program

Data Access

The power and use of data and predictive analytics enables OIG auditors and investigators to continuously monitor DOL programs and operations to prevent, detect, and investigate fraud. Continuous monitoring serves as a deterrent to fraud, allows the OIG to promptly discover areas of weakness, and enables DOL management to timely correct problems. However, the OIG's ability to proactively detect UI fraud through our audit and investigative activities continues to be significantly hampered by the OIG's lack of direct access to UI and wage data.

Prior to the pandemic, DOL asserted that it lacked the authority to require states to provide UI data to the OIG for audits and investigations. As a result, the OIG was forced to take the unprecedented step of using Inspector General subpoenas to obtain this critical data. That process took many months and delayed our ability to detect fraud early in the pandemic. The Department revisited its position and on August 3, 2021, issued an Unemployment Insurance Program Letter (UIPL) advising SWAs they must provide UI data to the OIG for benefits paid during the pandemic. However, this was a temporary measure that sunsetted on September 6, 2021. Once the authority in the UIPL expired in September, the OIG was back to the Office of Audit not having access due to the Department's interpretation of their own regulation that it lacked the authority to require states to provide UI data to the OIG for audits and investigations.

The OIG needs access to all UI program data to effectively do its job. In our June 16, 2021, alert memorandum, we recommended that ETA amend 20 CFR 603.5 and 603.6(a) through the rulemaking process and that ETA meet with the OIG to develop a permanent approach for the OIG to access to UI data. We were optimistic that the Department would work on their regulation prior to the expiration of the August 3, 2021, UIPL, which did not happen. ETA has required sharing of state UI data as a condition of the fraud prevention grants offered under the ARP Act of 2021, which will provide such access through December 31, 2023. However, the grants provide the OIG access only for those states who choose to participate and only for the grant period. Given that all states are not receiving grants, the data provided to the OIG will be incomplete; additional subpoenas may be necessary.

Congress should consider legislative action to allow DOL and the OIG to have direct access to UI claimant data and wage records for our oversight responsibilities. Real-time direct access to SWA UI claimant data and wage records systems would further enable the OIG to quickly identify large-scale fraud and expand its current efforts to share emerging fraud trends with ETA and SWAs in order to strengthen the UI program and likely prevent fraud before it occurs.

In addition, the data analytics based on the direct access would further enable our auditors to identify program weaknesses and recommend corrective action that will

improve the timeliness of UI benefit payments and the integrity of the UI program. To underscore this point, based on the data that was provided to the OIG, our data scientists in our Offices of Investigations and Audit worked collaboratively to identify billions of dollars in potential UI fraud paid in specific high-risk areas.

Resource Limitations

The OIG received a total of \$38.5 million in supplemental funding during the pandemic to help oversee the expanded DOL programs and operations. The OIG greatly appreciates the \$38.5 million in additional funding appropriated by Congress. However, additional funding is needed to oversee an estimated \$872.5 billion in UI program funds. Today, the OIG has 109 field agents to investigate over 8,500 investigative matters currently assigned to our field offices and triage team. That is an average of 87 investigative matters per agent. This does not include the more than 140,000 additional UI fraud complaints that we are vetting from the NCDF. Similarly, the OIG has less than 100 auditors to oversee nearly \$549 billion²⁸ in DOL programs in FY 2021.

The OIG focuses the vast majority of its limited investigative efforts on the most egregious UI offenders. Due to the magnitude of fraud and our limited resources, our efforts to thoroughly evaluate complaints and initiate additional investigations on potentially actionable, high-impact investigations have been hampered. In addition, based on past oversight experience of federal UI disaster aid, the OIG expects to be actively investigating UI fraud relating to the pandemic for several years. Given the statute of limitations for most violations charged in UI fraud type prosecutions, and the extension of pandemic UI benefits under the ARP Act, the OIG will likely be conducting these investigations through at least September 2026. Finally, although the OIG has focused the majority of its investigative resources on UI benefit programs, the OIG has a vast investigative jurisdiction covering other high-risk DOL programs that continue to warrant significant investigative oversight.

In light of the unexpected FY 2022 appropriation for the OIG, which held the OIG to its FY 2021 funding levels, additional funding would allow the OIG to deploy more audit and investigative resources to address the ongoing fraud and provide oversight of the Department's efforts to manage the unprecedented level of funding in the UI program and ensure that we have sufficient funds to support our efforts past FY 2023. Also, additional funds would assist the OIG in maintaining and enhancing an IT infrastructure and data analytics program that would ensure that we can efficiently and effectively use the large amounts of data being generated by the extensive use of the UI program. Absent these additional funds, combined with the flat line budget for FY 2022, the OIG will find it difficult to maintain future staffing levels to continue to address our oversight requirements.

²⁸ FY 2022 Department of Labor Budget in Brief. Available at: <https://www.dol.gov/sites/dolgov/files/general/budget/2022/FY2022BIB.pdf>

Asset forfeiture²⁹ is another area where the OIG needs legislative authority to enable it to effectively investigate UI fraud and recover fraudulently obtained funds. Asset forfeiture is a critical legal tool that serves a number of compelling law enforcement purposes. Asset forfeiture is designed to deprive criminals of the proceeds of their crimes, to break the financial backbone of organized criminal syndicates, and to recover property that may be used to compensate victims and deter crime. The OIG is currently not a participant in the Treasury or DOJ forfeiture funds. The lack of authority to participate in these funds limits the OIG's ability to effectively recover ill-gotten proceeds of UI fraud. Statutory authority to seize illicit funds and forfeit them through participation in the Treasury and DOJ forfeiture funds would ensure that the OIG can effectively and efficiently combat UI fraud in the future.

OIG Ongoing and Planned Work

The OIG's efforts to strengthen and protect the UI program continue. In addition to working with our law enforcement partners to combat fraud in the program, we will be issuing additional audit reports covering critical areas of concern and opportunities for improvement in the UI program. Planned and in-progress³⁰ Phase 3 audit work includes:

- ETA's efforts to ensure UI program integrity;*
- state efforts to ensure claimant eligibility;*
- DOL's oversight of emergency UI administrative transfers to states;*
- ETA and state efforts to detect and recover overpayments;*
- adequacy of state IT resources;*
- adequacy of state staffing resources;*
- effectiveness of programs for nontraditional claimants;*
- effectiveness of the Temporary Full Federal Funding program;*
- effectiveness of the Short-Time Compensation program;*
- effectiveness of the Mixed Earners Unemployment;*
- effectiveness of the Emergency Unemployment Relief for Governmental Entities and Non-Profit Organizations program;*
- states' compliance with CARES Act UI reporting requirements;*
- ETA and states' efforts to address multi-state claimants;
- ETA and states' efforts to address claimants using deceased persons' social security numbers;
- ETA and states' efforts to address claimants using prisoners' social security numbers;
- ETA and states' efforts to address claimants with suspicious email accounts;

²⁹ According to DOJ, forfeiture "is the legal process by which title to an asset is transferred to the government...because that asset was derived from, used to facilitate, or involved in criminal conduct in a manner that subjects it to forfeiture under an applicable asset forfeiture statute." Department of Justice, Asset Forfeiture Policy Manual (2021). Available at: <https://www.justice.gov/criminal-afmls/file/839521/download>

³⁰ Audits in progress are marked with an asterisk (*).

- ARP Act Equity Grants; and
- impact of waivers on UI overpayments and fraud investigations.

Conclusion

Mr. Chairman, the OIG remains committed to providing vigilant oversight of the UI program. As I discussed today, keeping fraud out of the UI program through prevention efforts and controls and quickly rooting it out when it occurs are requisite undertakings to ensure that unemployed workers receive much needed benefits without delay, while protecting tax dollars directed towards sustaining the UI system. We will continue to work closely with Congress, DOL, and our law enforcement partners to keep these important benefits available for workers in need.

Beyond our UI work, the OIG's pandemic oversight will involve a substantial focus on other essential programs operated by DOL, including worker safety and health, and employment and job training programs. We will also continue oversight over numerous other areas including: combatting threats to the integrity of foreign labor certification programs; addressing the opioid crisis by fighting fraud against the Federal Employees' Compensation Act program; and overseeing the efficiency and integrity of other important DOL programs and operations.

Thank you for the opportunity to testify at today's hearing. I would also like to take a moment to thank the dedicated employees of the OIG, who continue to work tirelessly in support of the agency and our essential oversight mission.

I would be pleased to answer any questions you or the other members of the Committee may have.