

U.S. Department of Labor

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

June 15, 2021

MEMORANDUM FOR: CAROLYN R. HANTZ  
Assistant Inspector General for Audit

FROM: SUZAN G. LEVINE *[Signature]*  
Principal Deputy Assistant Secretary

SUBJECT: Response to the Office of Inspector General 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*

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The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) greatly appreciates the opportunity to respond to the Office of Inspector General's (OIG) Alert Memorandum and its recommendations. The detection and prevention of fraud in the Unemployment Insurance (UI) programs is of the utmost importance and priority for the Biden-Harris Administration. The Department understands that the topic of OIG access to unemployment insurance (UI) program data is an unresolved issue from the prior Administration. This Administration is very committed to solutions to help fight fraud.

This Administration inherited an enormous amount of fraud in these programs, including as a result of a new wave of criminal syndicates using stolen personally identifiable information (PII) to access UI benefits, and since the beginning has shown a serious commitment to fighting fraud, supporting robust oversight of relief programs, and finding solutions as quickly as possible. That is why the Administration worked with Congress to allocate \$2 billion in the American Rescue Plan Act (ARP) to prevent and detect fraud, promote equity, and ensure timely payments to legitimate claimants. We are committed to this goal, and are providing new solutions aimed at reversing problems from the past Administration.

The Biden-Harris Administration is dedicated to working with the OIG and State Workforce Agencies (SWAs) to support the sharing of data with the OIG as permitted by law and, as detailed below, is taking a number of significant new steps to provide UI program data to the OIG. In a substantial change in policy from the prior Administration, ETA will issue an Unemployment Insurance Program Letter (UIPL) mandating that State Workforce Agencies (SWAs) provide UI data to the OIG for the entirety of the pandemic relief period as authorized by the CARES Act and the ARP. This will help the Department continue to build upon a constructive and productive relationship with the OIG.

### **ETA Commits to Revised/New Guidance**

Recognizing the urgency of taking immediate action to prevent fraud in the UI program, ETA has committed to issuing new guidance to facilitate the OIG obtaining UI information.

First, ETA intends to issue guidance under the authority of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requiring states to share UI data with the OIG for the purpose of audits (This would be in addition to ETA's already active guidance which requires disclosing this information for fraud investigations). Because the CARES Act specifically provides ETA with the authority to implement the CARES Act UI programs via guidance instead of rulemaking, ETA will issue an Unemployment Insurance Program Letter (UIPL) to require states to disclose data to the OIG for audit purposes for weeks of unemployment beginning after January 27, 2020, through weeks of unemployment ending before September 6, 2021, the period of time covered by the CARES Act, as amended by ARP. The guidance will make clear that states are not required by Federal law to enter into data sharing agreements before sharing data with the OIG for audits.

Second, ETA will revise UIPL 04-17, which currently requires states to disclose information for fraud investigations and requires that, before doing so, states must enter into data sharing agreements with the OIG. ETA will revise this UIPL to make it clear that states are not required by Federal law to enter into such agreements when sharing data with the OIG for fraud investigations. ETA has also committed to continuing to work with the OIG to find ways to help the OIG obtain the data it needs to conduct audits and fraud investigations of the UI program after the conclusion of the UI programs authorized by the CARES Act, as amended by ARP.

### **ETA Offers Clarifications Regarding Elements of this Alert**

ETA would also like to provide clarification with regard to several statements in the OIG's Alert Memorandum regarding current legal requirements.

First, ETA wishes to note that the Alert Memorandum does not acknowledge or account for the many efforts states have undertaken since the early months of the COVID-19 pandemic to improve the ability of state UI agencies to detect and prevent fraud in the UI programs. Many states have taken significant and successful actions to implement additional integrity controls and tools and have deployed staff to conduct fraud investigation activities. For example, many states have implemented and started using identity proofing solutions offered by private vendors, especially since the requirement for identity verification was added to the Pandemic Unemployment Assistance program with the enactment of the Continued Assistance to Unemployed Workers Act on December 27, 2020. In terms of utilizing a system for doing cross-state evaluation for fraud, states have significantly increased their usage of the resources to combat UI fraud available through the UI Integrity Center's Integrity Data Hub (IDH).

Second, Consistent with its statutory authority under the SSA, ETA issued the regulations at 20 CFR part 603 through notice and comment rulemaking to set forth the confidentiality and disclosure requirements derived from the "methods of administration" requirement of Section 303(a)(1) of the SSA. Therefore, under Federal UI law, the regulation at 20 CFR 603.5(i) is the

current controlling authority with respect to the disclosure of Unemployment Compensation (UC) confidential information for UC program oversight and audits. While the Alert Memorandum states that ETA's current guidance to SWAs contradicts the IG Act, ETA must go through notice and comment rulemaking to change that regulation.

**Third**, the Alert Memorandum states that ETA's position contradicts 20 CFR 603.5(i), which provides that "[t]he confidentiality requirement does not apply to any disclosure to a Federal official for purposes of UC program oversight and audits, including disclosures under 20 CFR part 601 and 29 CFR parts 96 and 97." 20 CFR 603.5 contains the exceptions to the confidentiality requirements that are permissive disclosures, that is, disclosures SWAs are permitted to make, but are not required to make under Federal UI law. The introduction to 603.5 provides: "Disclosure of confidential UC information is *permissible* under the exceptions in paragraphs (h) and (i) of this section without such restrictions." (emphasis added). Thus, 603.5 means that where a state makes a permissive disclosure for purposes of UC program oversight and audits, the confidentiality requirements do not apply to that disclosure. ETA is unable to change this provision absent notice and comment rulemaking.

**Finally**, at the onset of the COVID-19 pandemic (i.e., as of March 20, 2020), 21 states were officially signed up to use the Suspicious Actor Repository (SAR) and only three states were using the recently developed Multistate Cross-Match (MSCM). These tools allow states to increase their investigative abilities by sharing information across state lines about suspected UI fraud. As of July 3, 2020, the usage of the SAR grew to 23 states and 13 states were using MSCM. Also, in July 2020, the IDH added an identity verification dataset (IDV) for state use. As of April 26, 2021, usage had risen to 43 states using the SAR, 39 states using MSCM, and 29 states using IDV. ETA continues to identify, prioritize, and expand the datasets available through the IDH and actively promotes the use of the UI Integrity Center resources by states. ETA has also heard from some states that, because of the states' increased anti-fraud measures, most of the OIG data leads they recently received, which came from the previously subpoenaed data, overlapped with the leads received from their own systems and had already been identified as potentially fraudulent.

Again, ETA thanks the OIG for the opportunity to provide feedback. We also reiterate our continuing interest and willingness to collaborate with the OIG to combat imposter fraud and improper payments and to strengthen and improve the UI program.

#### **Responses to OIG Recommendations**

Below, please find ETA's responses to the OIG's recommendations in the Alert Memorandum and the proposed action steps to address them.

**Recommendation 1**: Amend 20 CFR 603.5 and 603.6(a) through the rulemaking process to reinforce that UI information must be provided to DOL OIG for all IG engagements authorized under the IG Act, including audits, evaluations, and investigations.

**ETA Response**: As stated above, ETA is committed to working with the OIG on finding a longer-term solution regarding access to state UI data. ETA is keeping all options open in

finding a long-term approach, which may include changes to existing regulations through notice and comment rulemaking.

**Recommendation 2:** Issue a new UIPL within 15 days of this memorandum to instruct SWAs that disclosure of information to the OIG for audits, evaluations, and investigations is mandatory without need for a subpoena, and that the OIG will notify SWAs directly of current and future information disclosure requirements, to include data elements.

**ETA Response:** ETA concurs and reaffirms the proposed action plan it made to the OIG, specifically its plan to issue new guidance pursuant to the authority provided in the CARES Act and as set out in the body of the OIG's Alert Memorandum as well as reflected in ETA's response above. ETA will work diligently to publish the new and updated guidance as quickly as possible; however, issuing guidance within 15 days may not be possible given the many factors that will need to go into the development of this new guidance and the need to make sure the direction given to states is accurate and viable.

**Recommendation 3:** Ensure the new UIPL guidance advises SWAs that they may not require the OIG to enter into data sharing agreements as a prerequisite to disclosure of information to the OIG for audits, consistent with the IG Act and federal law.

**ETA Response:** ETA will include language in the UIPL that advises SWAs that Federal law does not require data sharing agreements when sharing UI claim and wage data with the OIG for audits.

**Recommendation 4:** Ensure revisions to UIPL 04-17 advise SWAs that data sharing agreements are not required when sharing UI claim and wage data with the OIG for fraud investigations. The revised UIPL should make clear that SWAs shall share UI claim and wage data with the OIG for fraud detection and investigative purposes, not limiting the sharing to investigations into a particular instance of suspected UI fraud.

**ETA Response:** ETA will issue guidance explaining that agreements are not required when sharing UI claim and wage data with the OIG for fraud investigations. ETA will also issue guidance making it clear that, under the authority of the CARES Act for weeks of unemployment after January 27, 2020 through weeks of unemployment ending before September 6, 2021, SWAs must share UI claim and wage data with the OIG for fraud detection and investigative purposes, not limiting the sharing to investigations into a particular instance of suspected UI fraud.

**Recommendation 5:** Continue to work with the OIG, and within 30 days of the memorandum, meet with the OIG to develop a permanent approach for OIG access to UI data.

**ETA Response:** ETA concurs with this recommendation and will continue to work with the OIG on a path forward.