

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

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



September 23, 2022

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

FROM: BRENT PARTON   
Acting Assistant Secretary

SUBJECT: COVID-19: *ETA and States Did Not Protect Pandemic-Related Unemployment Insurance (UI) Funds from Improper Payments, Fraud, or Payment Delays*,  
Report Number: 19-22-00X-03-315

The Department of Labor's (Department) Employment and Training Administration (ETA) appreciates this opportunity to respond to the above-referenced Office of Inspector General (OIG) draft report.

ETA recognizes the OIG's crucial role under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, in helping to combat fraud and abuse within the Unemployment Insurance (UI) programs. Additionally, ETA will continue to explore, research, identify, and provide states with new tools, resources, strategies, and guidance, as warranted, to help states combat the continually changing and new types of sophisticated fraud impacting the UI system. Similarly, in June 2022, the Government Accountability Office (GAO) published multiple reports that provided a thoughtful account of the struggles and challenges that faced the UI system during the COVID-19 pandemic.

The OIG's draft report primarily focuses on a review of activities and claims during the first few months of the pandemic (March 28, 2020 to September 30, 2020) and repeats many of the same observations made by the OIG in an alert memorandum issued on February 22, 2021,<sup>1</sup> and OIG reports issued on August 7, 2020,<sup>2</sup> and on May 28, 2021.<sup>3</sup> ETA has taken many actions since the time of these earlier OIG reports.

***ETA's Specific Concerns Regarding the Content of the OIG's Draft Report.*** As stewards of taxpayers' money, ETA works in partnership with the OIG to improve the success and

<sup>1</sup> 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.

<sup>2</sup> COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act, Report No. 19-20-008-03-315.

<sup>3</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315.

effectiveness of its programs, policies, and services. However, during the OIG’s inquiries leading to this draft report, ETA expressed concerns regarding the OIG’s audit and provided extensive technical assistance and comments to ensure that any recommendations accurately represent struggles within the UI system. ETA is disappointed that some of this earlier input is not reflected in the draft report. It is also unfortunate that ETA does not feel that it was given adequate time to provide meaningful technical comments on this draft report before its issuance.<sup>4</sup> As a result, ETA notes areas that merit comment as well as identifies errors and concerns regarding the content of the draft report, before responding to the recommendations.

- *The draft report includes a purported improper payment rate based on the review of 214 cases reviewed from only four states, which is not statistically valid for reporting a national rate.* ETA understands the OIG used case files from four states to develop its own improper payment rate for the UI program and the pandemic UI programs, which contradict ETA’s statistically valid, and Office of Management and Budget (OMB)-approved, Benefit Accuracy Measurement (BAM) improper payment estimates. Throughout the draft report, the OIG makes questionable comparisons between the OIG-developed pandemic era improper payment data and the pre-pandemic BAM data. The OIG compares BAM data (which does not include the Pandemic Unemployment Assistance [PUA] program) to the OIG’s own estimates (which do include the PUA program) and draws conclusions that appear to be stated as facts based on the OIG’s case analysis. As noted, the PUA program had different eligibility requirements from the regular UI program and so causes of improper payments would likely be different between the programs. Further, ETA is uncertain if any of the cases evaluated by the OIG were investigated or adjudicated by states to confirm the conclusions reached by the OIG’s interpretation of an improper payment and/or identification of potential fraud.<sup>5</sup> Without proper investigation and determination on each of the cases selected by the OIG, the OIG’s identified improper payments and potential fraud in this report are unconfirmed and not comparable to ETA’s BAM improper payment estimates. ETA is also extremely concerned that the OIG’s methodological approach will misrepresent the PUA improper payment rate. Even if the OIG’s reviewers had sufficient knowledge of all of the complex PUA eligibility requirements and how the requirements changed over time, it does not appear that the OIG’s sample of claims is sufficient to yield a

---

<sup>4</sup> In May 2022, ETA provided substantive feedback consisting of approximately 80 comments to a document the OIG referred to as a “messaging document,” which was 15 pages in length. On August 30, 2022, the OIG provided ETA with this draft report, which was significantly longer and contained different content than the earlier “messaging document” and did not reflect much of the input ETA previously provided. The OIG instructed ETA to provide any technical comments within 24 hours. When ETA conveyed that 24 hours was inadequate to provide meaningful comments, the OIG decided to issue the draft report “as is.” Consequently, there are discrepancies and inaccurate statements in the draft report that ETA must detail in this response, as it is the only avenue available to correct these inaccuracies. Regrettably, this approach is contrary to historical practice, and with sufficient time and collaboration, the OIG and ETA could have worked together to improve the draft report, and correct inaccurate statements prior to its publication. ETA stands ready to work in partnership with the OIG to ensure future publications accurately portray the successes and challenges of the UI programs.

<sup>5</sup> Throughout the draft report, the OIG uses the term “likely fraudulent” to describe some of the 214 cases reviewed from the four states. ETA is not sure what the OIG means when using the term “likely fraudulent.” It implies that these are cases that were flagged as needing additional investigation, but an ultimate determination was not made on whether the claim was fraudulent.

statistically valid estimate of a PUA improper payment rate. It is inappropriate to publish data that may inaccurately represent the actual PUA improper payment rate.

- ETA offers a number of technical comments regarding the OIG’s conclusions about the purported five common causes of the high level of improper payments, including fraud, discussed by the OIG on pages 12 – 22 of the draft report.
  - First, the draft report discusses that states did not perform some basic required eligibility determinations and suspended some payment control procedures. ETA identified these issues early in the pandemic. ETA issued guidance on May 11, 2020, reminding states that certain benefit payment control procedures must continue and were applicable to the CARES Act Unemployment Compensation (UC) programs, as well. See Unemployment Insurance Program Letter (UIPL) No. 23-20. ETA also reviewed state operations and in June 2020, notified many states of the need to continue to implement essential eligibility requirements such as weekly certifications by claimants.
  - Second, the draft report applies an unrealistic standard in evaluating ETA’s implementation of the CARES Act UC programs. For example, the draft report indicates that ETA failed to provide timely oversight and monitoring of the states’ operations of the CARES Act UC programs. Specifically, page 14 of the draft report recognizes that ETA’s oversight actions started as early as May 10, 2020 (regarding Kentucky), June 15, 2020 (regarding Michigan) and July 2020 (regarding California). However, the OIG concludes these actions were untimely and too late. The programs were enacted on March 29, 2020. During this period, ETA also had to issue guidance and provide technical assistance to states and states needed time to stand up these major new programs. It is unrealistic to hold ETA to a standard of immediately finding all issues with state operations. ETA was gathering information on states’ implementation of the programs and began providing states with information on incidences where states did not properly implement the programs beginning in May and June of 2020 (six to ten weeks after the programs were enacted). 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 the problems as they were identified.

ETA also notes that many other factors contributed to the high incidences of fraud in these programs, including the sheer unprecedented volume of claims and workload, antiquated state systems, the low level of staffing and funding prior to the pandemic, the need to on-board new staff quickly with minimal training, and sophisticated fraud attacks on a scale which the UI system had not previously encountered. It is also important to note the structure of the PUA program as contributing to these incidences of fraud – including the PUA self-certification provision and no requirement to substantiate prior self-employment until January 2021 – and the statutory allowance of extensive backdating. These statutory provisions contributed to a historic level of fraud as sophisticated domestic and international criminal organizations exploited program vulnerabilities.

- Third, the draft report repeats content from an earlier OIG report about how the self-certification requirements for PUA eligibility made the program susceptible to fraud. The Department agreed with the OIG about this concern, but the clear and unambiguous statutory language set out in the original CARES Act enactment created these requirements. The Department worked with Congress and provided legislative technical assistance to modify the requirement in a later enactment on December 29, 2020, by adding a requirement that PUA claimants substantiate their prior self-employment.
- Fourth, the draft report erroneously describes the temporary one-quarter suspension of BAM during the COVID-19 pandemic as a cause of negative impacts on ETA’s fraud prevention and detection efforts. This is not accurate. The BAM program is primarily an after-the-fact quality control diagnostic program that is also used to estimate improper payment rates. The BAM program is not a benefit payment control program for detecting, preventing, or combating fraud in the UI system. BAM was not designed to prevent improper payments because it is a review of payments after they are already made. Also, states had to make difficult decisions and allocate scarce resources to ensure claimants received pandemic-related UI funds as quickly as possible, including diverting BAM staff to perform these more urgent and necessary tasks. ETA only allowed for the suspension of the BAM program for the quarter ending June 30, 2020. This was at the very start of the COVID-19 pandemic and resulting labor market shut down and was when states were experiencing the most significant increases in claims and had not yet had time to add additional staff. It was a pragmatic and practical action to use the BAM staff, who are highly trained in the UC program, to help address the influx of claims. It is unfortunate the OIG erroneously calls this action out as a cause of improper payments.
- Fifth, the draft report raises the issue of the OIG’s access to state UI data for audit purposes, in addition to the current access for investigative purposes. This issue has been thoroughly discussed in prior OIG reports and alert memoranda and the Department has been working collaboratively with the OIG to find an appropriate path to address the issue. ETA is concerned that the OIG’s mischaracterization of the Department’s efforts to provide the OIG access to state UI data portrays ETA as opposing or obstructing the effort to provide such access. This characterization is unreasonable and is not reflective of ETA’s actions. ETA has acted to provide the OIG the requested access and continues to pursue efforts in good faith to do so. However, the Administrative Procedure Act (APA) limits the actions that can be immediately taken. In the Department of Labor’s Spring 2022 regulatory agenda, ETA announced that it is considering an update to the regulations that may, among other things, require states, as a condition of receiving their UI administrative grant under the Social Security Act, to provide the OIG with ongoing access to UI data for audit purposes, in addition to investigative purposes, and that ETA intends to publish a Request for Information concerning this matter in November 2022.

Until the existing regulations can be revised, ETA has been taking interim actions to support the OIG having access to UI data for both purposes. In August 2021, using authority provided under the CARES Act, ETA issued guidance to states requiring states to provide the OIG access to UI data for investigations and audits for weeks of unemployment through the expiration date of the CARES Act programs. The Department relied on its authority under the CARES Act to issue implementing guidance without going through notice and comment rulemaking. In addition, and separate from the CARES Act, the guidance reiterated an ongoing requirement to disclose such data to the OIG for fraud investigations and rescinded prior guidance to make clear that such disclosures do not require any written agreement between the state and the OIG.

Also, in August 2021, ETA made available to states an opportunity to seek fraud prevention grants and conditioned these grants on states providing the OIG access to state UI data. Fifty states have been awarded these grants, which currently have a performance period through December 2023. ETA has committed to the OIG that it is actively exploring future opportunities to continue the requirement for states to provide the OIG access to data until the regulations can be revised. Finally, as mentioned above, the Department has begun the process of pursuing a change in the regulations set forth at 20 CFR Part 603, potentially including requiring states to provide UI data for audits.

- *The draft report repeats findings from prior OIG reports and alert memoranda but does not acknowledge actions taken by the states and Department to address these concerns.* ETA has taken many actions, including a number of actions recommended by the OIG, to support states in addressing the categories of fraud discussed by the OIG in the time since the period of claims reviewed by the OIG in this draft report had passed. Specifically, ETA has taken the following actions on the identified types of potential fraud:
  - *Claims filed in multiple states* – The number of states using the UI Integrity Center’s Integrity Data Hub’s (IDH) Multi-State Cross Match (MSCM) functionality has significantly increased. Using this database, the IDH can identify if the same UI claims data elements are being used across multiple states (i.e., flagging a Social Security number that is being used in more than one state). Page 13 of the draft report discusses the IDH and states that “...the multistate cross-match only flags Social Security numbers that are used across four different states.” This is inaccurate as the IDH’s multistate cross-match flags every occurrence where a Social Security number is used in more than one state. Also, the MSCM provides a lookback capability to identify after-the-fact matches based on new claims or fraud activity data submitted to the IDH.
  - *Claims filed in the name of deceased individuals* – In addition to other identity (ID) verification components, the IDH’s Identity Verification (IDV) solution includes a cross match to the Death Master File to identify claims filed using identities of deceased individuals. The IDV solution became available in the IDH in July 2020, and provides an advanced, centralized ID verification resource

enabling states to assess whether an individual is using a false, stolen, or synthetic ID.

- *Claims using suspicious email accounts* – The IDH has a resource that allows participating states to cross match their claims against a database of suspicious email domains that have been associated with fraudulent activity. The IDH flags claims with suspicious email domains for further investigation by the submitting state.
- *Claims filed by people who are incarcerated* – The Department, in partnership with the Social Security Administration (SSA), established a secure incarceration data exchange between the Interstate Connection Network (ICON) and the SSA’s Prisoner Update Processing System (PUPS). The incarceration data exchange provides state UI agencies with the ability to cross match UI claims information with SSA’s prisoner data to aid states in determining if an individual meets UI eligibility requirements. States are also encouraged to use other cross matches to identify incarcerated individuals. *See* UIPL No. 01-22.
- *Claims using suspect bank accounts* – The IDH recently implemented a Bank Account Verification (BAV) service, which provides states with access to near real-time information to proactively identify and authenticate bank account information provided by the UI claimant by validating the account’s status and ensuring the individual identified as the claimant is the account owner and/or authorized user prior to initiating the UI benefit payment.

However, under the APA, the Department must exercise this authority through notice and comment rulemaking because it would be a new interpretation of the statute that would affect the rights and obligations of the regulated community.

- *The draft report fails to appropriately consider the realities of the challenges facing states and ETA during the pandemic, especially in the first few months.* The draft report makes some passing mentions of the challenges facing states during the pandemic, but it fails to factor in these challenges in making its findings and observations. State UI agencies entered the pandemic after experiencing the lowest claims workload, and thus lowest administrative funding, in 50 years, which significantly impacted resources and staffing levels. In addition, ETA’s UI-related staffing was at low levels at the start of the pandemic and ETA received no new funding for staffing until the enactment of the American Rescue Plan Act (ARPA) in March 2021. As the pandemic shutdowns started impacting the nation’s labor market, states had to ramp up staffing quickly to respond to the unprecedented increase in claims volume and add new staff with minimal time for proper training. Also, during this time, states and ETA had to quickly transition to all-remote operations to mitigate the spread of COVID-19. Moreover, significant new programs had to be implemented at the same time as other UI programs dealt with record workloads. The UI programs created by the CARES Act are complex and it was essential that the Department have sufficient time to properly analyze the requirements and develop appropriate guidance. In particular, the PUA program covered a previously ineligible population of unemployed individuals (self-employed and gig workers). This

meant that the existing UI program requirements and systems could not be leveraged for PUA implementation. The requirements, systems, and related procedures had to be created “from the ground up” by ETA and the states. Despite these challenges, ETA published the initial guidance to states for implementing three key programs (the Federal Pandemic Unemployment Compensation [FPUC] program, the Pandemic Emergency Unemployment Compensation [PEUC] and the PUA program) within 14 days of the enactment of the CARES Act. This guidance was further amplified through training and outreach, such as webinars conducted to explain the guidance and responses to questions from states. Also, as states began implementing these programs, new issues required revisions to existing program operating instructions, as well as the development of additional guidance.

ETA recognizes the important work performed by individuals in the state UI agencies. They are responsible for delivering over \$870 billion in UC to over 53 million workers during the pandemic, which played a major role in mitigating the pandemic’s negative impact on the U.S. economy during very volatile times. These individuals worked long hours and had to be creative in implementing new programs quickly to meet the highest demand for UC in the history of the program. All this considered, the achievements of states and ETA are noteworthy. This is not to say that the Department does not recognize the very real impact that implementation delays had on unemployed workers and their families. The pandemic highlighted problems in the UC programs that led to customer service suffering, benefits being delayed, and criminals attacking the system and perpetrating unacceptable fraud. To ensure states are better prepared for future economic downturns, the Department is building on investments, such as using funding appropriated under ARPA, to provide states with grants, resources, and strategies to detect and prevent fraud, promote equitable access, and improve the timely payment of UC, while actively working to help states modernize their information technology (IT) systems.

ETA believes that the draft report could have provided a more balanced view when assessing the implementation of the UC programs during the COVID-19 pandemic. Specifically, it is important to acknowledge that states took, on average, 50 days to implement the PEUC program, 38 days to implement the PUA program, and 25 days to implement the FPUC program. The ability of states to provide benefit payments within one to two months for a new, temporary UI program is a very impressive achievement given the extensive, complex requirements and activities that were necessary for implementation.

***ETA's Efforts to Combat Fraud in the UI Program.*** The bulk of the draft report focuses on an analysis of a small number of cases in four states occurring between March 28, 2020 and September 30, 2020. As stated earlier, the draft report restates many of the findings and observations covered in earlier OIG reports and alert memoranda, especially the alert

memorandum issued on February 22, 2021.<sup>6</sup> ETA has taken many actions since February 2021 to actively and aggressively address fraud in the UC programs, including a number of actions recommended by the OIG, to support states. UI program integrity remains a top agency priority. ETA's efforts to improve integrity in the UC programs include providing extensive guidance, technical assistance, and funding to states to support them in combatting fraud and reducing improper payments; this includes strengthening fraud prevention and detection and improving overpayment recovery activities. ETA has invested in new tools, datasets, and resources and made these available to states to aid states in more quickly identifying potential fraud. ETA continues to develop and oversee implementation of fraud mitigation strategies to address emerging and evolving fraud risks. Since the publication of the February 2021 alert memorandum, ETA has taken the following actions to support states' efforts to address fraud in the UI programs:

- ETA continues providing guidance and resources to states in the form of UIPLs and Training and Employment Notices (TENs) that alert states regarding new UI program requirements, important program trainings, UI integrity resources, and operational recommendations. ETA has included a focus on fraud prevention and program integrity in the majority of its recent guidance documents and has issued a total of 21 program integrity-related UIPLs and TENs since February 2021. A list of these guidance documents is provided as Attachment I of this response.
- ETA continues to provide fraud prevention grant opportunities to states to strengthen their efforts. Prior to February 2021, ETA announced the availability of up to a total of \$200 million in fraud prevention grants and awarded states a total of \$199.7 million in funding to prevent and detect fraud and recover overpayments in the PUA and PEUC programs. Since February 2021, ETA has announced the availability of up to an additional \$465 million (a total of up to \$665 million) in funding available to states for fraud prevention and detection and overpayment recovery activities. *See* UIPL No. 28-20, Change 2, issued August 11, 2021; UIPL No. 28-20, Change 4, issued July 22, 2022; and UIPL No. 22-21, issued August 11, 2021.
- Since July 2021, the Department has been deploying multidisciplinary technical assistance teams ("Tiger Teams") to states to conduct consultative assessments to address state-specific, unique challenges and to collect best practices on preventing and detecting fraud, promoting equitable access, reducing backlogs, and ensuring timely payment of benefits. To date, the Department's "Tiger Teams" have worked with 24 states to address immediate needs and issues to achieve improvements in operational processes and customer experiences, while also proposing solutions to address fraud and support more equitable access for legitimate claimants.

ETA also provided a grant opportunity under UIPL No. 02-22, making available to states up to \$200 million to support states in improving UC systems and processes following a

---

<sup>6</sup> 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.



“Tiger Team” consultative assessment for fraud detection and prevention, promoting equitable access, and ensuring the timely payment of benefits, including backlog reduction, for all UC programs. Trends from the “Tiger Teams” recommendations are found at: [https://oui.doleta.gov/unemploy/pdf/TigerTeamCohortTrendsJune\\_2022.pdf](https://oui.doleta.gov/unemploy/pdf/TigerTeamCohortTrendsJune_2022.pdf).

- ETA has included combatting UI fraud, in addition to reducing UI improper payment rates, as a National Priority for state UI agencies as part of the annual State Quality Service Plan (SQSP) process for Fiscal Years (FY) 2022 and 2023 (*see* UIPL No. 24-21 issued August 20, 2021, and UIPL No. 17-22 issued July 22, 2022). ETA also increased states’ SQSP Integrity Action Plan (IAP) reporting requirements for the FY 2022 SQSP IAP by requiring states to begin providing a six-month IAP update to their integrity strategies. Furthermore, ETA developed a new IAP template for states’ use in developing their FY 2023 SQSP IAP submissions and is requiring states to submit more comprehensive and detailed IAPs that address specific integrity topics, including fraud prevention and detection and overpayment recovery strategies in FY 2023.
- On March 22, 2021, the Department launched [www.dol.gov/fraud](http://www.dol.gov/fraud), a website created for people to understand UI identity fraud, how to report it, and to provide resources to help victims. ETA worked closely with other federal and state agencies to consolidate the necessary steps to help victims of UI identity fraud and conducted victim testing to confirm the website’s instructions were clear and easy to understand.
- Following the OIG’s data analysis of UI claims data obtained from subpoenas and discussed in the alert memorandum issued on February 22, 2021, ETA developed a process to receive data from the OIG and share encrypted files with states that included the results of the OIG’s analysis. ETA coordinated and oversaw delivery of this data to the states to aid state efforts in preventing fraud and in pursuing investigations on these claims. This was completed at the end of April 2021.
- ETA continues to provide funding and support to the UI Integrity Center to enhance existing tools and develop new resources for states to use to combat fraud, strengthen fraud prevention and detection of improper payments, enhance fraud management operations, and improve overpayment recovery efforts. ETA has strongly encouraged states to take advantage of the UI Integrity Center’s resources, specifically the IDH. State participation in the IDH has increased significantly since February 2021, at which time only 39 states were using the Suspicious Actor Repository (SAR), 32 states were using the MSCM, and 21 states were using the IDV solution. To date, all 53 states have executed an IDH Participation Agreement, 50 states are using the SAR, 48 states are using the MSCM, and 41 states are using the IDV solution. ETA continues to work with all states to strengthen the robustness and frequency of how they are using these tools. In addition, the UI Integrity Center has made extensive enhancements to IDH functionally and developed new tools and resources to support states with UI integrity and fraud prevention activities. A list of these enhancements and resources is provided in Attachment II to this response.

- ETA continues to strengthen our partnership with the OIG by meeting regularly with the OIG to discuss emerging UI fraud issues, streamline communication with states, and coordinate fraud prevention and overpayment recovery efforts. ETA's activities occurring in partnership with the OIG are set out in Attachment III to this response.
- ETA has worked with states, federal law enforcement, and banks to facilitate conversations and aid in the recovery of fraudulently obtained and overpaid UI funds. ETA has provided guidance, technical assistance, coordination, and educational opportunities to state UI programs to help states navigate the complexities of the Automated Clearing House (ACH) network, banking regulations, law enforcement initiatives, and the many other challenges associated with overpayment recovery. These efforts are reflected in Attachment IV to this response.
- The Department continues to encourage states to strengthen ID verification processes and procedures and is exploring options to provide states with additional support in this area. The "Tiger Teams" have made recommendations to eight states to improve ID verification. The recommendation notes that the Department strongly encourages states to adopt an array of solutions and techniques to detect and fight fraud and to have robust strategies in place to verify the identity of individuals applying for UI benefits. On April 13, 2021, ETA issued guidance to highlight the importance of ID verification in ensuring the proper payment of unemployment benefits and to provide guidance to states on required administrative procedures when processing claims and determining UI eligibility in cases where an individual's identity is questionable. *See* UIPL No. 16-21. The Department is currently engaged with the General Services Administration (GSA) to explore the ID verification services available through GSA's login.gov. On March 31, 2022, an initial pilot began with a state UI agency to evaluate login.gov as a potential ID proofing solution for state UC programs. The Department is continuing to evaluate the pilot to examine how login.gov might be implemented in ways that best support equitable access and program integrity goals, as well as how the Department might extend the solution to other states.

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

Given the above observations, there are concerns that some of the OIG's recommendations, as written, will not result in the most effective contributions to improve the UI system. ETA has and continues to work with states to implement recommendations made by the oversight community, including but not limited to the OIG. Below, please find each of the OIG's recommendations contained in the draft report followed by ETA's proposed action steps to address them.

**Recommendation 1: Use data collected from monitoring and BAM reports to identify the areas of highest improper payments including fraud and create a plan to prevent similar issues in future temporary UI benefit programs.**

ETA Response: ETA has historically used, and will continue to use, the results from monitoring and the BAM program to identify top improper payment root causes. Although BAM does not

review episodic programs such as the CARES Act programs, identifying root causes for improper payments and their solutions in the regular UI program is one of the key purposes of the BAM program. ETA maintains an integrity strategic plan that is updated quarterly and the plan continuously evolves to address new and emerging risks to the UI program by incorporating integrity strategies focused on improper payment root cause reduction and fraud prevention, detection, and overpayment recovery. Also, ETA requires states to develop an IAP each year as part of the SQSP process and report improper payment reduction strategies for their top root causes of improper payments. ETA began requiring a six-month update to the IAP with the development of the FY 2022 SQSP. Furthermore, ETA is in the process of assessing fraud risks in the UI program using GAO's Fraud Risk Framework and documenting a UI fraud risk profile. Lastly, ETA notes future temporary UI programs are dependent on mass layoff events and are each the result of unique legislative enactments with their own eligibility requirements. It is difficult to anticipate how Congress will respond to future layoff events or structure new UI programs to meet an unforeseen emergency in the future. ETA stands ready to provide legislative technical assistance to Congress upon request to respond to future events or to develop some permanent emergency UC program(s).

ETA requests removal of this recommendation as it reflects activities already conducted by ETA.

**Recommendation 2: Require states to have written policies and procedures, which apply lessons learned during the COVID-19 pandemic, to continue eligibility testing and BPC procedures during emergencies or other times of increased claims volume. These policies and procedures should include strategies to pay claimants timely.**

ETA Response: ETA agrees in part with this recommendation and proposes an alternate approach to accomplish the result. ETA agrees with the principle that states must continue to conduct fundamental eligibility assessments (except where the law allows a specific waiver of a requirement, such as work search during the pandemic) and continue benefit payment control efforts in times of mass layoff events. ETA notes that when states were processing claims during the pandemic, ETA never approved the discontinuance of compliance with statutory eligibility requirements or the discontinuance of the benefit payment control operations. In fact, ETA issued guidance early on (May 11, 2020) stressing the importance of states continuing to use essential payment controls during the pandemic. See UIPL No. 23-20. ETA believes a more effective approach to ensuring states continue eligibility assessments in future mass layoff events is to issue new guidance, making clear these are not activities that can be suspended in future mass layoff events absent explicit statutory authorization to do so. The guidance would also reiterate the guidance set out in UIPL No. 23-20 about the requirement to continue required benefit payment control activities and procedures. ETA has and will continue collecting, assessing, and sharing lessons learned from the pandemic experience with the states. ETA intends to use such information to guide future program improvements as part of the implementation of the UI provisions under ARPA and future UI reform proposals.

Additionally, in the Biden-Harris Administration's FY 2023 budget, ETA notes that UI reform is needed from Congress. This is, in part, because the pandemic served to expose the limitations in benefit access, adequacy, and eligibility that exist for far too many workers. Standing up new programs effectively overnight would not have been necessary if the regular UI system were

updated to cover all workers in the modern labor force, to be easily scalable and automatically responsive to economic downturns, and to provide adequate benefit levels in every state to meet the essential needs of individuals and families during periods of unemployment. ETA is available to work with Congress on reforms to the permanent UI program to strengthen the program overall and improve its responsiveness during economic downturns.

**Recommendation 3: Work with NASWA to update the IDH Participant Agreement to require state to submit the results of their UI fraud investigations.**

ETA Response: ETA does not agree with this recommendation and offers a more workable alternative. ETA contends that a better approach is to revise certain required ETA reports to capture the tools or interventions used by a state to detect potential fraud issues (including the IDH) and include the aggregated data for outcomes (e.g., determination, overpayment amounts) of the issues detected by these tools or interventions. This approach would be more effective and would allow ETA to gather information on IDH outcomes to track the results of investigations/determinations based on the use of IDH and other information.

**Recommendation 4: Work with NASWA to ensure the IDH cross matches are effective at preventing the types of fraud that were detected during the pandemic and regularly update using the results of state fraud investigations.**

ETA Response: ETA concurs with this recommendation and will work with NASWA to achieve this result. ETA regularly monitors the NASWA UI Integrity Center's operations and IDH functionality enhancements. Recently, the UI Integrity Center has substantially increased IDH functionality to help states prioritize and analyze IDH results and to obtain outcomes data from states. As discussed in Attachment II, the UI Integrity Center has completed two IDH Results Management projects, which includes IDH Results Prioritization that went live on June 22, 2021, and IDH Results Sorting, Filtering, and Outcomes that went live on May 5, 2022. IDH Results Prioritization allows states to receive IDH results in order of priority level to help states more quickly identify emerging UI fraud schemes. IDH Results Sorting, Filtering, and Outcomes allows states to analyze and manage IDH results quickly and easily. It also allows states to provide outcomes data to the IDH team which helps the IDH team better understand how states are utilizing the IDH to continuously improve the effectiveness of the IDH cross matches and datasets. ETA has supported the recently added Bank Account Verification functionality to the IDH.

ETA suggests revising this recommendation to state that ETA should work with the UI Integrity Center to ensure the IDH cross matches and functionalities are effective at detecting and preventing the types of fraud that were detected during the pandemic and in addressing emerging fraud schemes. ETA will work with NASWA to ensure appropriate evaluations are conducted regarding the effectiveness of the IDH tools and functionalities.

**Recommendation 5: Work with the OIG and states to recover the greatest practicable amount of the \$7,092,604 paid to claimants connected to likely fraudulent claims.**

ETA Response: ETA agrees in part with this recommendation. As stated earlier in this response, ETA has and continues to work with the OIG, other federal law enforcement, state UI agencies, and banks to facilitate and aid the recovery of fraudulently obtained and overpaid UI funds. ETA will continue to provide states guidance and technical assistance regarding their efforts to investigate fraud, issue determinations, and establish overpayments, and the recovery of improper payments, including fraudulent overpayments.

However, as discussed earlier in this response, ETA is unsure what the OIG means by “likely fraudulent” claims. Until a state has conducted an investigation and a determination is made that the claim is improper or fraudulent, it cannot pursue recoveries for these specific cases. Actual determinations of overpayments must first be established before recoveries can be pursued.

Again, ETA is committed to continuing to help states with the recoveries of appropriately established overpayments. From April 2020 through June 2022, states have reported \$818,820,337 in total fraud overpayment recoveries.

**Attachment I**

**Integrity-Related Unemployment Insurance Program Letters (UIPL) and Training and Employment Notices (TEN) issued since February 2021**

**UIPLs**

- UIPL No. 28-20, Change 4, *Support for States to Resolve Outstanding Items from the Expired Coronavirus Aid, Relief, and Economic Security (CARES) Act Unemployment Compensation (UC) Programs, Including Additional Funding to Assist States with Reporting and Detection and Recovery of Overpayments*, issued July 22, 2022
- UIPL No. 17-22, *Additional Planning Guidance for the Fiscal Year (FY) 2023 Unemployment Insurance (UI) State Quality Service Plan (SQSP)*, issued July 22, 2022
- UIPL No. 16-22, *Announcement of the Pandemic Unemployment Assistance (PUA) Improper Payment Estimate Reviews and the Cancellation of the 2022 Benefit Accuracy Measurement (BAM) Paid Claims Peer Reviews*, issued July 14, 2022
- 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
- UIPL No. 01-22, *Announcing the Availability of an Incarceration Data Exchange and Instructions to Access the Data Exchange between the Unemployment Insurance (UI) Interstate Connection Network (ICON) and the Social Security Administration (SSA) Prisoner Update Processing System (PUPS)*, issued October 29, 2021
- UIPL No. 16-20, Change 6, *Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued September 3, 2021
- UIPL No. 24-21, *Additional Planning Guidance for the Fiscal Year (FY) 2022 Unemployment Insurance (UI) State Quality Service Plan (SQSP)*, issued August 20, 2021
- UIPL No. 22-21, *Grant Opportunity to Support States with Fraud Detection and Prevention, Including Identity Verification and Overpayment Recovery Activities, in All Unemployment Compensation (UC) Programs*, issued August 11, 2021
- UIPL No. 28-20, Change 2, *Additional Funding to Assist with Strengthening Fraud Detection and Prevention Efforts and the Recovery of Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs, as well as Guidance on Processes for Combatting Identity Fraud*, issued August 11, 2021
- UIPL No. 04-17, Change 1, *Requirement for States to Refer Allegations of Unemployment Compensation (UC) Fraud, Waste, Abuse, Mismanagement, or Misconduct to the Department of Labor's (Department) Office of Inspector General's*

**Attachment I**

*(DOL-OIG) and to Disclose Information Related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to DOL-OIG for Purposes of UC Fraud Investigation and Audits, issued August 3, 2021*

- UIPL No. 20-21, *State Instructions for Assessing Fraud Penalties and Processing Overpayment Waivers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended*, issued May 5, 2021
- UIPL No. 19-21, *Benefits Held by Banks and Financial Institutions as a Result of Suspicious and/or Potentially Fraudulent Activity and the Proportional Distribution Methodology Required for Recovering/Returning Federally Funded Unemployment Compensation (UC) Program Funds*, issued May 4, 2021
- UIPL No. 16-21, *Identity Verification for Unemployment Insurance (UI) Claims*, issued April 13, 2021

**TENs**

- TEN No. 01-22, *Adjudications Virtual Training and Conference*, issued July 20, 2022
- TEN No. 24-21, *Encouragement for States to Use the Integrity Data Hub (IDH) available through the Unemployment Insurance (UI) Integrity Center*, issued May 5, 2022
- TEN No. 23-21, *Unemployment Insurance Interstate Benefits and Federal Programs Training*, issued March 14, 2022
- TEN No. 22-21, *2022 Unemployment Insurance (UI) State Information Data Exchange System (SIDES) Seminar*, issued March 3, 2022
- TEN No. 16-21, *Announcing Grant Awards Made to States Selected to Participate in the Unemployment Insurance (UI) Information Technology (IT) Modernization Project - Claimant Experience Pilot*, issued December 2, 2021
- TEN No. 15-21, *Announcing the National Association of State Workforce Agencies (NASWA) Unemployment Insurance (UI) Integrity Center's Behavioral Insights Toolkit*, issued November 17, 2021
- TEN No. 06-21, *Accessing Unemployment Insurance (UI) Identity Verification and Fraud Protection (Identity Proofing) Services using the U.S. Department of Labor's (Department) Blanket Purchase Agreements (BPA)*, issued September 15, 2021
- TEN No. 19-20, *2021 Unemployment Insurance (UI) State Information Data Exchange System (SIDES) Seminar*, issued March 15, 2021

**Attachment II**

**Unemployment Insurance (UI) Integrity Center Enhancements and Resources  
(Since February 2021)**

- Implementation of a Bank Account Verification (BAV) service. The BAV service provides states with access to near real-time information to proactively identify and authenticate bank account information provided by the UI claimant by validating the account's status and ensuring the individual identified as the claimant is the account owner and/or authorized user prior to initiating the UI benefit payment. The BAV service went into IDH production on February 15, 2022, and to date, 31 states are using the BAV service.
- Completion of two IDH Results Management projects, which includes IDH Results Prioritization that went live on June 22, 2021, and IDH Results Sorting, Filtering, and Outcomes that went live on May 5, 2022. IDH Results Prioritization allows states to receive IDH results in order of priority level to help states more quickly identify emerging UI fraud schemes. IDH Results Sorting, Filtering, and Outcomes allows states to analyze and manage IDH results quickly and easily. It also allows states to provide outcomes data to the IDH team which helps the IDH team better understand how states are utilizing the IDH.
- In October 2021, the UI Integrity Center launched the Behavioral Insights (BI) toolkit which brings together practices from the field of behavioral science to promote UI integrity and reduce UI improper payments. The BI Toolkit offers a collection of resources to help UI agencies improve integrity and customer compliance through targeted changes to program communications and processes. The BI toolkit includes a sub-collection of resources, articles, templates, and how-to information housed within the online Knowledge Exchange Library. On November 17, 2021, ETA issued Training and Employment Notice No. 15-21, announcing the availability of the BI toolkit.
- Conducted 10 webinars for states on fraud prevention and detection strategies, including webinars on UI identity fraud, internal security, fictitious employers, identity verification, overpayment recoveries, and IDH results management and prioritization.
- Presented to states on fraud prevention, detection, and overpayment recovery strategies and effective integrity tools during multiple events in Calendar Year 2021 and 2022, including the 2022 National Association of State Workforce Agencies' (NASWA) UI Interstate Benefits (IB) and Federal Programs Training Conference, the State Information Data Exchange (SIDES) Seminar, and the 2021 NASWA Summit.
- Convened monthly regional integrity workgroups with state UI integrity management and field staff to provide states an opportunity to share and discuss specific integrity strategies and share promising practices, recent fraud activities and countermeasures, and innovative operational enhancements on integrity topics with the broader UI community.

II-1



**Attachment II**

- Continued adding to the UI collection in the Knowledge Exchange Library (Library), which is an online, searchable, knowledge-sharing platform that includes a repository of all UI Integrity Center resources including, model state operational processes, promising state practices, and recommendations to strengthen UI program integrity. The Library currently contains over 2,600 UI integrity-related resources.
- The UI National Integrity Training Academy (Academy) continues to develop and provide rigorous and relevant training programs and materials to states, offering program integrity training for state UI staff via online, eLearning modules and virtual instructor-led trainings that lead to credentials and certification. Current all-time enrollments in Academy trainings are up to 13,690 learners, which represent all 53 states.

**Attachment III**

**Employment and Training Administration (ETA) Activities in Partnership with the Office of Inspector General (OIG) (Since February 2021)**

- On May 12, 2021, ETA coordinated a call with states and the OIG to provide updates on OIG activities and to encourage states to partner with the OIG to combat fraud.
- On August 3, 2021, ETA issued Unemployment Insurance Program Letter (UIPL) No. 04-17, Change 1, which outlined requirements for states to refer allegations of Unemployment Compensation (UC) fraud, waste, abuse, mismanagement, or misconduct to the OIG and to disclose information related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to the OIG for purposes of UC fraud investigation and audits. ETA also reminded states of their requirements to share information requested by the OIG for both audits and investigations for the period of performance of the grants that otherwise would not be required of states.
- On August 11, 2021, ETA issued UIPL No. 22-21, announcing the availability for fraud prevention grant funding and conditioned the award of the grant on states agreeing to information disclosure with the OIG.
- ETA updated the Unemployment Insurance (UI) Integrity Center's cooperative agreement to include Integrity Data Hub (IDH) data sharing with the OIG. ETA and the UI Integrity Center are actively engaged in a substantial data extract project to share IDH data with the OIG and have completed several actions to advance this effort. A new IDH Participation Agreement was developed, to include a provision for sharing state IDH information with the OIG. ETA announced Version 5.0 of the IDH Participation Agreement in Training and Employment Notice No. 24-21 on May 5, 2022. In addition, the UI Integrity Center provided an estimated timeline and budget to ETA for the OIG IDH Data Extract project on April 15, 2022.
- ETA worked with the OIG to develop and refine a process for states to submit fraudulent Facebook pages directly to Facebook to facilitate the quick removal of the fake social media pages.
- ETA engaged with the OIG and other Federal agencies on a workgroup to identify strategies to mitigate text message phishing schemes. As part of this effort, ETA's Regional Offices obtained information for the workgroup about the scope of the fraudulent text messaging issue by asking states to provide examples/screenshots of known text messaging schemes. ETA's Regional Offices also gathered information from states on their current text messaging practices to inform public outreach regarding fraudulent text messaging.
- ETA disseminates National Unemployment Insurance Fraud Task Force (NUIFTF) alerts to its Regional Offices and states.

III-1

**Attachment III**

- ETA held a national “meet and greet” meeting between ETA’s Regional Offices and the OIG’s Regional Offices on December 6, 2021, to strengthen the Regional Office relationships and to begin developing reoccurring joint ETA/OIG Regional Office calls with states to share fraud trends and analysis, provide recommendations for responding to emerging fraud schemes, offer updates on prosecution efforts, and facilitate sharing of UI fraud and integrity-related challenges and best practices among states. ETA’s Regional Offices began hosting the joint quarterly conference calls with the OIG and the states in the first quarter of Calendar Year 2022 and continue to hold calls each quarter.
- On August 25, 2022, ETA and the OIG presented to over 1,200 UI adjudicators during the closing plenary on the adjunction training conference. ETA presented on national UI integrity efforts and the OIG presented on their case work in the UI fraud space. The presentations outlined the need for ETA, state UI agencies, and the OIG to work together to prevent, detect, and recover UI fraud through enhanced collaboration and data sharing.

**Attachment IV**

**Overpayment Recovery Efforts**

- Ongoing participation on banking workgroup calls to discuss ongoing recovery efforts and improve communication between banking organizations, federal government agencies, and law enforcement agencies.
- ETA issued Unemployment Insurance Program Letter (UIPL) No. 19-21 on May 4, 2021, providing guidance to states on the proportional distribution methodology for recovering federally funded Unemployment Compensation (UC) benefits, which are held by banks and financial institutions as a result of suspicious and/or potentially fraudulent activity.
- Required states to include recovery strategies, such as working directly with financial institutions and/or law enforcement agencies to recover UC funds held by banks and financial institutions, in their Integrity Action Plans as part of the annual State Quality Service Plan process.
- At the request of the Department of Justice (DOJ), the Office of Inspector General (OIG) developed a form for states to complete to compile a list of state contacts for forfeiture/seizure efforts and gather insight into state practices in this area. The Employment and Training Administration (ETA) facilitated states responses to this request and provided the responses to DOJ and the OIG.
- On June 11, 2021, ETA coordinated a call between state Unemployment Insurance (UI) agencies, the OIG, and DOJ to provide states with information on law enforcement's forfeiture and seizure efforts.
- On July 13, 2021, ETA coordinated a call with state UI agencies and the National Automated Clearing House Association (Nacha) to discuss the ACH network, the Nacha opt-in changes, and to educate states on banking rules and opportunities for engagement with the state's Originating Depository Financial Institution.
- ETA has connected numerous states with banks attempting to return overpaid UC benefits. ETA continues to coordinate with states and banking partners to address overpayment recovery questions and concerns.