


U.S. Department of Labor

Employment and Training Administration
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Washington, D.C. 20210



March 29, 2023

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

FROM: BRENT PARTON 
Acting Assistant Secretary

SUBJECT: Response to Draft Alert Memorandum: *ETA and States Need to Ensure that Identity Verification Contractors Provide Equitable Access to Unemployment Insurance Benefits and Secure Storage and Destruction of Biometric Data*, Report Number: 19-23-00X-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 alert memorandum.

ETA appreciates your study of states' use of facial recognition technology as part of their identity (ID) verification efforts. ID verification is an area that ETA believes the federal government can play a larger role in supporting the Unemployment Insurance (UI) system and helping states in the administration of the UI program. As noted in the Alert Memorandum, the Department is currently pursuing pilot projects to explore a possible national solution to be made available for use by states. As with any integrity and fraud prevention efforts, ETA must promote solutions that does not have unintended negative impacts on equitable access to UI benefits. Again, ETA welcomes the OIG's input on this topic as it remains committed to ensuring UI program integrity and equitable access to benefits continue to be top agency priorities.

States faced significant challenges combatting the substantial increase in sophisticated ID fraud that targeted state UI programs across the nation during the pandemic. In response, many states rapidly contracted with service providers to implement new technologies and services aimed at preventing and detecting fraud, including solutions to strengthen state ID verification processes. Prior to the pandemic, these were often manual processes. ETA recognized that many of these ID verification service provider solutions used biometric data, and some used facial recognition technology. While states have been aggressively addressing fraud and implementing these solutions for the UI programs, ETA included reminders in its guidance that program integrity efforts aimed at preventing fraudulent activity must also ensure eligible individuals with legitimate claims have equitable access to receive the benefits they are entitled to when they are due.

ETA notes that one statement in the Alert Memorandum does not fully convey actions already taken by states to address potential bias using facial recognition technology. The Alert

Memorandum states that ETA did not identify examples of steps states had taken to mitigate any potential bias. However, on December 29, 2022, ETA responded to the OIG's information request and shared with the OIG at least 11 examples of steps taken by states to mitigate potential bias. Additionally, ETA notes that many states are aware of the issue and are working to address it.

ETA's efforts to strengthen UI program integrity includes providing funding to states, guidance, and technical assistance to support improvements to their UI program operations to better fight fraud while also ensuring equitable access to benefits.

Funding for States. The Department has made available to states up to \$525 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to assist states with efforts to prevent and detect fraud and to recover fraud overpayments in certain CARES Act Unemployment Compensation (UC) programs (*see* Unemployment Insurance Program Letter (UIPL) Nos. 28-20; 28-20, Change 1; 28-20, Change 2; and 28-20, Change 4). The Department has also provided \$600 million through the following American Rescue Plan Act (ARPA) funding opportunities:

- Up to \$140 million to assist states with fraud prevention and detection, including ID verification and overpayment recovery activities, in all UC programs (*see* UIPL No. 22-21).
- Up to \$260 million to assist states with activities that promote equitable access to all UC programs (*see* UIPL No. 23-21).
- Up to \$200 million to support states with implementation of recommendations made following a Tiger Team consultative assessment for fraud prevention and detection, promoting equitable access, and ensuring the timely payment of benefits, including backlog reduction, for all UC programs (*see* UIPL No. 02-22).

ETA anticipates offering states additional funding opportunities to continue strengthening fraud risk mitigation efforts and reducing improper payments, evaluate the effectiveness and equity of ID verification and fraud preventions solutions, and help states modernize their UI Information Technology (IT) systems.

ETA's Guidance on Equitable Access and UI Program Safeguards. ETA has issued guidance on ensuring equitable access to UI programs, including requirements for states to provide alternative options for ID verification and requirements to analyze and evaluate demographic data to address potential equity issues. ETA has also provided guidance to states outlining requirements to have safeguards in place to protect against unauthorized use and disclosure of data and protect claimants personally identifiable information (PII).

The Department's regulations at 29 CFR §38.51 requires UI program administrators to conduct statistical or other quantifiable data analyses of demographic records and data to determine whether their UI programs and activities are being conducted in a nondiscriminatory way. As described in UIPL No. 11-14, the Department's regulations also require state compliance with the U.S. Office of Management and Budget guidelines on the collection of data based on race or ethnicity (*see* 29 CFR § 38.41(d)). ETA issued UIPL No. 02-16, which articulates requirements

under federal law to ensure access to UI benefits and provides guidance to assist states to meet those requirements. This guidance requires state UI agencies to ensure that use of new technologies and systems for administering UI programs and providing services do not create barriers (*e.g.*, procedural, technological, or informational) that may prevent individuals from accessing UI benefits, such as by denying them a reasonable opportunity to establish their eligibility. UIPL No. 02-16, Change 1, highlights additional state responsibilities regarding access to UI benefits. Furthermore, UIPL No. 16-21, discussed how states may use a variety of mechanisms to verify an individual's ID (*e.g.*, submit documents on-line, report in-person, or complete a questionnaire) and required states to provide alternative mechanisms for individuals with access barriers. The fundamental importance of equitable access is further emphasized as one of the three pillars under Section 9032 of ARPA¹ and as a national priority in the Fiscal Year 2023 State Quality Service Plan Additional Planning Guidance (*see* UIPL No. 17-22).

Regulations related to confidentiality and disclosure of state UC information are published at 20 CFR Part 603. States may disclose confidential UC data when necessary for the proper administration of the UC program. ETA has also provided guidance to states regarding the use of data contract protections. This guidance was addressed in Section 5 of UIPL No. 12-01, Change 2, where states were advised that contractors acting directly on behalf of the state agency are subject to the same requirements as state employees to maintain the confidentiality of the UC data. States must ensure a written, enforceable, and terminable agreement with contractors, that provides basic safeguards, including a provision for safeguarding information against unauthorized access or redisclosure as described in 20 C.F.R. 603.9. ETA provided states with an updated version of the UI IT security guide and highlighted information on IT security guidance from the National Institute of Standards and Technology (NIST) and Federal Information Processing Standards (FIPS), including standards on protecting PII in state UI IT systems and biometric specifications for person ID verification (*see* UIPL No. 04-21).

Investments in UI Program Integrity. ETA continues to invest in developing new and enhancing existing tools, datasets, and resources and making these available to states to aid states with quickly identifying potential fraud and improving ID verification in UC programs. In the Alert Memorandum, the OIG acknowledges the Department's ongoing pilot work with the General Services Administration's Login.gov to provide an online ID verification option and its recent work with the U.S. Postal Service to provide an in-person ID verification for UI services. The Department plans to expand the availability of these service to other states.

Response to the OIG Recommendations

ETA is committed to continuing its work with states to ensure equitable access to UI programs and will implement the OIG's recommendations by specifically addressing challenges with facial recognition technology in UI programs. Below, please find each of the OIG's recommendations contained in this Alert Memorandum followed by ETA's response and proposed action steps to address them.

¹ Section 9032 of ARPA provides a \$2.0 billion appropriation to the Secretary of Labor to: (1) detect and prevent fraud; (2) promote equitable access; and (3) ensure the timely payment of benefits with respect to unemployment compensation (UC) programs.

Recommendation 1: Provide guidance that ensures [State Workforce Agencies (SWAs)] provide upfront, clear, consistent, and fair alternatives to services that rely on facial recognition technology.

ETA Response: ETA concurs with this recommendation and will issue additional guidance requiring states to provide at least one timely, effective, and accessible non-digital alternative to online ID verification. ETA will emphasize that the non-digital option should not be overly burdensome to applicants, and limit access to public benefits programs or the timely receipt of benefits to eligible individuals. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation. ETA anticipates completion of the correction actions by September 30, 2023.

Recommendation 2: Require SWAs that use facial recognition technology to test the system for biases and design procedures to mitigate those effects. SWAs need to report findings from bias testing to ETA regarding implementation or use of identity verification services that rely on facial recognition technology.

ETA Response: ETA concurs with this recommendation. As mentioned above, the Department's regulations and guidance already require state UI programs to collect and analyze claimant demographic data for possible indications of systemic discrimination and investigate any such indications of potential discrimination that the analyses provide.

ETA will issue additional guidance highlighting that states should work with their service providers to identify and resolve any barriers or equitable access impacts resulting from ID proofing practices. ETA will explore options to have states that use facial recognition technology in their ID verification process provide information on the results of their evaluations and the actions they took to mitigate equity issues. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation. ETA anticipates completion of the correction actions by September 30, 2023.

Recommendation 3: Provide guidance to SWAs to help ensure that contracts with identity verification service providers include requirements on the secure storage of data, destruction of the data once the contract is concluded, and purging of any large datasets collected by identity verification service providers on a regular basis.

ETA Response: ETA concurs with this recommendation. As outlined above, rules regarding confidentiality and disclosure of state UC information are outlined in federal regulation (*see* 20 CFR Part 603). Also, ETA has provided guidance to states regarding contractors and safeguarding information against unauthorized access or redisclosure and protecting PII. ETA will issue additional guidance to states that includes recommended contract provisions states should consider concerning service providers delivering ID proofing solutions and services. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation. ETA anticipates completion of the correction actions by September 30, 2023.