U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE EMPLOYMENT AND TRAINING ADMINISTRATION

COVID-19: PANDEMIC UNEMPLOYMENT ASSISTANCE FOR NON-TRADITIONAL CLAIMANTS WEAKENED BY BILLIONS IN OVERPAYMENTS, INCLUDING FRAUD

This report was prepared by Key & Associates, P.C. under contract to the U.S. Department of Labor, Office of Inspector General, and, by acceptance, it becomes a report of the Office of Inspector General.

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

DATE ISSUED: SEPTEMBER 27, 2023
REPORT NUMBER: 19-23-014-03-315

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

BRIEFLY…

COVID-19: PANDEMIC UNEMPLOYMENT ASSISTANCE FOR NON-TRADITIONAL CLAIMANTS WEAKENED BY BILLIONS IN OVERPAYMENTS, INCLUDING FRAUD

SEPTEMBER 27, 2023

WHY OIG CONDUCTED THE AUDIT

The Pandemic Unemployment Assistance program (PUA) was one of several new unemployment insurance (UI) programs created under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to address the economic emergency resulting from the COVID-19 pandemic. PUA provided UI benefits to workers who were not traditionally eligible.

The U.S. Department of Labor's Employment and Training Administration (ETA) was responsible for ensuring implementation and program monitoring of PUA. Based on audits of previous emergency UI program implementation, we were concerned with ETA's ability to effectively and efficiently deploy PUA funding, which totaled over $130 billion.

WHAT OIG DID

We contracted with the independent certified public accounting firm of Key & Associates, P.C. (Key & Associates) to conduct an audit to answer the following question:

> Did non-traditional claimants receive PUA benefits as intended under the CARES Act and subsequent legislation?

Key & Associates' audit procedures included assessing ETA's oversight, performing in-depth testing for 10 state workforce agencies (SWA or state), and surveying 43 other states.

WHAT OIG FOUND

Key & Associates found non-traditional claimants received necessary PUA benefits as intended under the CARES Act and subsequent legislation. However, allowing claimants to self-certify their eligibility—coupled with states' difficulties with implementing new UI programs and the substantial increase in claims volume—led to significant overpayments, including fraud.

PUA quickly became the second largest pandemic-related UI program. From April 1, 2020, through September 30, 2021, the 53 SWAs provided over $130 billion for PUA benefits. By comparison, SWAs provided about $153 billion for the regular UI program. However, providing benefits to non-traditional claimants came at the cost of significant overpayments.

From April 1, 2020, to March 31, 2023, the 53 SWAs reported nearly $35 billion in established PUA overpayments. This included PUA benefits and Federal Pandemic Unemployment Compensation benefits, the supplement that was attached to each UI claim paid. In total, states reported that over 15 percent of all PUA benefits paid were overpayments and approximately 61 percent of all Federal Pandemic Unemployment Compensation overpayments occurred when PUA was the underlying benefit.

Key & Associates, in collaboration with the OIG, found that 10.8 percent of PUA claims exhibited potentially fraudulent activity, including instances of benefits paid to individuals with Social Security numbers used to file UI claims in multiple states or of deceased persons. While these indicators—previously reported by the OIG—do not measure the full extent of PUA fraud, they indicate the vulnerability of the program.

WHAT OIG RECOMMENDED

Key & Associates made three recommendations to ETA to improve oversight of the UI program. ETA agreed with our recommendations.

READ THE FULL REPORT

http://www.oig.dol.gov/public/reports/oa/2023/19-23-014-03-315.pdf

TABLE OF CONTENTS

U.S. Department of Labor Office of Inspector General
Washington, DC 20210

INSPECTOR GENERAL'S REPORT

Brent Parton
Principal Deputy Assistant Secretary
for Employment and Training
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

The U.S. Department of Labor, Office of Inspector General (OIG) contracted with the independent certified public accounting firm of Key & Associates, P.C. (Key & Associates) to conduct a performance audit of the Employment and Training Administration (ETA) and states' delivery of unemployment insurance (UI) benefits to non-traditional claimants under the Pandemic Unemployment Assistance (PUA) provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation. Additionally, Key & Associates analysis included Federal Pandemic Unemployment Compensation benefits as these benefits supplemented PUA payments.

The OIG monitored Key & Associates' work to ensure it met professional standards and contractual requirements. Key & Associates' independent audit was conducted in accordance with generally accepted government auditing standards.

Key & Associates was responsible for the auditors' evaluation and the conclusions expressed in the report while the OIG reviewed Key & Associates' report and supporting documentation.

PURPOSE

As the OIG has previously reported,[1] we are concerned with ETA and states' ability to deploy UI benefits expeditiously and efficiently while ensuring integrity and adequate oversight, particularly in response to national emergencies and disasters. These concerns were magnified by the PUA program, given its high-risk nature and the OIG's past work on expansions of UI programs, such as the American Recovery and Reinvestment Act of 2009.

The UI program is a joint federal-state program that provides temporary benefits to workers who become unemployed through no fault of their own. The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic, including providing temporary unemployment compensation—PUA—to individuals not eligible for other unemployment compensation.

Specifically, Section 2102 of the CARES Act authorized unemployment coverage to claimants who were not eligible for regular UI, extended benefits, or Pandemic Emergency Unemployment Compensation.[2] Claimants also were required to self-certify they would otherwise be able to and available for work but were unemployed, partially unemployed, or unable or unavailable for work due to 1 of 11 COVID-19 related reasons. These non-traditional claimants included self-employed workers, independent contractors, those with a limited work history, and others. See Exhibit 1 for the list of COVID-19-related reasons an individual could receive PUA.

Created by the CARES Act on March 27, 2020, PUA was later extended and modified[3] by the Continued Assistance to Unemployed Workers Act of 2020 and the American Rescue Plan Act of 2021, and ended on September 6, 2021.

[1] See Prior Relevant Coverage in Appendix A.
[2] The CARES Act, Section 2102(a)(3)(A)(i), defines a "covered individual" as "an individual who is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107."
[3] The PUA program underwent modifications with the enactment of the Continued Assistance to Unemployed Workers Act of 2020. Key changes encompassed mandatory documentation of employment or self-employment earnings, restrictions on backdating of claims, introduction of overpayment waivers, and implementation of mandatory identity verification processes for new PUA applications.

Based on the risks associated with previous expansions of the UI program, we contracted with Key & Associates to conduct a performance audit to answer the following question:

> Did non-traditional claimants receive PUA benefits as intended under the CARES Act and subsequent legislation?

To answer this question, Key & Associates conducted a performance audit that covered the period March 27, 2020, to September 30, 2021.[4] To examine the impact of self-certification on PUA benefit payments, Key & Associates tested claims from March 27, 2020, to April 6, 2021. Specifically, Key & Associates assessed the impact of CARES Act requirements, which allowed claimants to self-certify their eligibility, and of the Continued Assistance to Unemployed Workers Act of 2020, which required claimants to provide documentation to substantiate their employment or self-employment. Additionally, Key & Associates extended the scope to March 31, 2023, for the purpose of reviewing the most current UI overpayment data.

The audit included procedures at both ETA and state levels to determine compliance with program requirements. Key & Associates' audit procedures included assessing ETA's oversight, performing in-depth testing for 10 state workforce agencies (SWA or state),[5] and surveying 43 other states. The 10 SWAs examined were in the Commonwealth of Puerto Rico and in the States of: Colorado, Illinois, Kansas, Maryland, Massachusetts, New York, Pennsylvania, Texas, and Utah.

For the period April 1, 2020, to September 30, 2021, the 53 SWAs reported receiving over $130 billion in PUA funding to pay non-traditional claimants. Of over $130 billion, approximately $53 billion (41 percent) was provided to the 10 SWAs tested.

[4] Although the PUA program officially concluded on September 6, 2021, 26 states provided DOL notification to terminate their pandemic-related UI programs prior to this date. However, claims and drawdown data are reported by SWAs on a monthly basis. Therefore, to ensure comprehensive data representation, the claims and benefit drawdown information in this report reflects data as of September 30, 2021.

[5] This report uses "state" or "SWA" to refer to the administrative body that administers the UI program within the state, district, or territory. There are 53 SWAs, including the 50 states, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the District of Columbia.

RESULTS

Key & Associates found non-traditional claimants received necessary PUA benefits as intended under the CARES Act and subsequent legislation. However, the combination of several factors led to significant overpayments, including fraud, in the PUA program. Specifically, these factors were: (1) the PUA program's initial reliance on self-certification that offered states limited data to detect or prevent overpayments, (2) a tenfold increase in UI claims that overwhelmed state UI systems, and (3) states' struggles to implement the new pandemic-related UI programs.

PUA quickly became the second largest[6] pandemic-related UI program. From April 1, 2020, through September 30, 2021, the 53 SWAs provided over $130 billion for PUA benefits. By comparison, SWAs provided about $153 billion for the regular UI[7] program. However, providing benefits to non-traditional claimants came at the cost of significant overpayments.

Specifically, from April 1, 2020 to March 31, 2023, the 53 SWAs reported[8] nearly $35 billion in established PUA overpayments—benefit payments that SWAs investigated[9] and found were improper. These overpayments included $20 billion in PUA benefits and approximately $15 billion in Federal Pandemic Unemployment Compensation benefits, which was the supplement that was attached to each UI claim paid. In total, states reported that over 15 percent of all PUA benefits paid were overpayments and approximately 61 percent of all

[6] The only larger pandemic-related UI program was Federal Pandemic Unemployment Compensation. From March 27, 2020, to July 31, 2020, the Federal Pandemic Unemployment Compensation program provided supplemental payments of $600 per week to individuals with at least one dollar ($1) of underlying benefits from designated unemployment compensation programs. Under CAA and the American Rescue Plan Act of 2021, the supplemental payments were $300 per week.
[7] Regular UI, also known as state UI, is a program administered by SWAs in the United States to provide temporary financial assistance to eligible workers who have lost their jobs through no fault of their own.
[8] Overpayment and recovery amounts are based upon publicly available state reporting on ETA 227 reports and the ETA 902P report. Information found at: https://oui.doleta.gov/unemploy/DataDownloads.asp, last accessed August 27, 2023
[9] Per Unemployment Insurance Program Letter 01-16, overpayments may be identified through cross-matches, fraud hotlines, or a variety of other methods. States must conduct an investigation before issuing an official determination that an overpayment has been made. In so doing, states must ensure that investigators gather all relevant information, which may include supporting documents and statements from either the individual to whom the payment was made or others. In addition, an individual must be given an opportunity to be heard, timely notice of the interview, and an opportunity to present evidence.

Federal Pandemic Unemployment Compensation overpayments occurred when PUA was the underlying benefit.

Finally, Key & Associates, in collaboration with the OIG, found that 10.8 percent of PUA claims exhibited potentially fraudulent activity, including instances of benefits paid to individuals with Social Security numbers used to file claims in multiple states or of deceased persons. While these indicators—previously reported by the OIG—do not measure the full extent of PUA fraud, they indicate the vulnerability of the program.[10]

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

Carolyn R. Hantz
Assistant Inspector General for Audit

[10] For example, see: Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to $45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf. Payments with potentially fraudulent claims previously reported in alert memoranda by the OIG were referred to ETA. According to ETA, the OIG's assessment of payments was provided to SWAs for action if deemed necessary.

CONTRACTOR PERFORMANCE AUDIT REPORT

Key&Associates, P.C.

Independent Auditors' Performance Audit Report on the Unemployment Insurance Benefits Provided to Non-Traditional Claimants and Compliance with the Coronavirus Aid, Relief, and Economic Security Act and Subsequent Legislation

Brent Parton
Principal Deputy Assistant Secretary
for Employment and Training
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

We were engaged by the U.S. Department of Labor (DOL or the Department) Office of Inspector General (OIG) to conduct a performance audit of the Employment and Training Administration (ETA) and states' delivery of unemployment insurance (UI) benefits to non-traditional claimants under the Pandemic Unemployment Assistance (PUA) provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation. The program was created to mitigate the economic effects of the COVID-19 pandemic for non-traditional claimants, such as self-employed workers, independent contractors, and those with a limited work history.

We conducted the audit to answer the following question:

> Did non-traditional claimants receive PUA benefits as intended under the CARES Act and subsequent legislation?

To answer this question, we performed procedures at ETA and State Workforce Agency (SWA or state) levels to determine compliance with program requirements. The OIG selected the Commonwealth of Puerto Rico and the States of: Colorado, Illinois, Kansas, Maryland, Massachusetts, New York, Pennsylvania, Texas, and Utah (10 SWAs) for in-depth analysis and testing. The OIG selected these 10 SWAs based on a risk analysis, including, but not limited to, funding amounts, law enforcement intelligence, congressional interest, and media reports.

We also sent surveys to the remaining 43 SWAs that signed an agreement to participate in PUA to obtain related key information about the program.[11] In addition, we reviewed the states' implementation of the CARES Act and related legislation, preparedness, initial eligibility determinations, continued eligibility determinations, overpayment detection, and the states' compliance with ETA's oversight requirements. Furthermore, our review included an examination of state data sets on overpayments and claim denials.

This audit covered DOL and states' PUA programs from March 27, 2020, to September 30, 2021, coinciding with the COVID-19 pandemic. To examine the impact of self-certification on PUA benefit payments, we tested claims from March 27, 2020, to April 6, 2021. Specifically, we assessed the impact of CARES Act requirements, which allowed claimants to self-certify their eligibility, and the Continued Assistance to Unemployed Workers Act of 2020 (CAA), which required claimants to provide documentation to substantiate their employment or self-employment. Additionally, we extended the scope of the audit to March 31, 2023, for the purpose of reviewing the most current UI established overpayment data.

INCREASE IN UI PROGRAM CLAIMS AND THE PANDEMIC RESPONSE FOR NON-TRADITIONAL CLAIMANTS

The pandemic presented ETA and states with unprecedented challenges. ETA officials have highlighted these challenges,[12] including the daunting task of managing an overwhelming surge in claims volume.

After the pandemic's emergence in early 2020, there was a drastic increase in unemployment compensation claims across the United States. Within a span of 2 to 3 weeks, initial claims surged to 10 times the pre-pandemic levels, overwhelming the capacity of state systems. By August 15, 2020, a period of 5 months, DOL recorded more than 57 million initial claims, the largest increase since the Department started tracking UI data in 1967. Consequently, state officials reported their primary focus had shifted to providing assistance to individuals who found themselves jobless due to the pandemic, necessitating the

[11] Of 43 SWAs, 21 responded to the survey request. Therefore, this report reflects 31 of 53 SWAs' experiences (58 percent) during the audit period.
[12] ETA's statements can be found in the report: "COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs," Report No. 19-21-004-03-315 (May 28, 2021), https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf.

participation of all UI staff members in aiding claimants even if this was typically outside of their customary job duties.

PUA was the first temporary UI program to provide benefits to non-traditional claimants. The introduction of the PUA program posed a unique challenge as it was implemented without a lengthy preparation period and under new eligibility requirements. ETA officials stated that a swift rollout of a new government benefit program, including policy formulation, product development, and operational procedures, typically requires a timeframe of 30 to 48 months. However, as the OIG previously reported, given the nature of emergency situations, states would be unlikely to have a lengthy rollout period for emergency programs. Consequently, the challenges associated with the PUA program had to be resolved in real-time, while states grappled with an extraordinary tenfold increase in claims volume.

ETA officials stated that, both during and after the pandemic-related UI program period, ETA and states have launched several initiatives to combat overpayments, including fraud. Measures like secure sign-in services, in-person identity verification, and a new identity fraud reporting website were introduced to mitigate fraud. Additionally, ETA stated it had made available up to $765 million in fraud prevention grants, and expert Tiger Teams provided states with assessments and improvement recommendations for UI processes.

ETA also stated it facilitated the secure availability of incarceration data to cross-reference UI claims against prisoner information. Further, ETA reported it continued to provide oversight and technical assistance through the State Quality Service Plans, the Integrity Action Plan, the UI Integrity Center, and information provided by the Department's OIG. ETA also stated it is working with the Office of the Chief Financial Officer to develop a UI fraud risk profile in line with the Government Accountability Office's Fraud Risk Framework.

IMPORTANCE OF ESTABLISHING IMPROPER PAYMENT ESTIMATES AND FRAUD RATE FOR EMERGENCY UI PROGRAMS, INCLUDING PUA

As of January 23, 2023, ETA reported that states paid $130.9 billion in PUA benefits from March 27, 2020 to September 6, 2021 (see Table 1).

Table 1: Total Benefits Paid by the 53 SWAs for Pandemic-Related UI Programs, from March 27, 2020, to September 6, 2021[13]

Pandemic-Related UI Program	Total Drawdowns
Federal Pandemic Unemployment Compensation	$443,100,000,000
Pandemic Unemployment Assistance	$130,900,000,000
Pandemic Emergency Unemployment Compensation	$90,500,000,000
Temporary Full Federal Funding of First Week of Regular Compensation Provision	$7,500,000,000
Emergency Unemployment Relief for State and Local Governmental Entities, Certain Nonprofit Organizations, and Federally Recognized Indian Tribes	$6,300,000,000
Short-Time Compensation Program	$1,200,000,000
Mixed Earners Unemployment Compensation	$90,200,000
Total	**$679,590,200,000**

Source: Key & Associates analysis of information reported by ETA

ETA requires states to report established overpayments to the Department on ETA Form 227 and ETA Form 902P. In addition, the Office of Management and Budget requires[14] federal agencies to develop improper payment[15] estimates (including overpayments) for any programs that agencies identify as susceptible to significant improper payments and to report those estimates at PaymentAccuracy.gov.

Established UI program overpayments reported by states have generally been much lower than the estimates developed by the Department. During Fiscal Year 2021, ETA determined PUA was susceptible to significant improper payments. In Unemployment Insurance Program Letter 16-22, ETA published its plan to calculate an estimated improper payment rate for the PUA program. However, according to ETA officials, the small-scale review outlined in

[13] ETA provided these amounts as of January 23, 2023. Please note that, throughout the report, we use different sources of information based on the availability of data and the requirements of our analysis.
[14] Office of Management and Budget, "Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement," Memorandum (March 5, 2021), last accessed June 27, 2023, https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf
[15] Improper payments refer to both underpayments and overpayments inclusive of fraudulent activity. For ETA in Program Year 2020, the regular UI program estimated an improper payment rate of 9.17 percent, with 8.72 percent constituting overpayments and 0.45 percent being underpayments. The primary focus of our audit was on overpayments, given that they made up the majority of improper payments and thus posed a greater risk to the integrity of the UI program.

Unemployment Insurance Program Letter 16-22, intended to minimize the burden on states while meeting the improper payment reporting requirements, could not be used to estimate the PUA fraud rate.[16]

For further contrast, ETA estimates the fraud rate for the regular UI program as part of the Benefit Accuracy Measurement program.[17] ETA stated it is not required to publicly report the fraud rate. However, it does gather sufficient data to estimate the fraud rate, which is then included in the annual Benefit Accuracy Measurement analytical report, from the required improper payments reporting.[18]

On August 21, 2023, ETA published a PUA improper payment report[19] with an estimated PUA improper payment rate of 35.9 percent. This rate includes an overpayment rate of 17 percent, an underpayment rate of 1.5 percent, and a 17.4 percent rate for benefits whose classification—whether valid, overpaid, or underpaid—could not be determined. The report also shed light on the numerous challenges encountered by both ETA and states. Notably, it underscored the PUA program's significant benefit of preventing 5 million Americans from falling into poverty. Concerning fraud within the PUA program, the report states:

> While fraud due to weakened controls in 2020 may have contributed to overpayments, this analysis focuses on the broader universe of improper payments, does not isolate fraud, and should not be considered a fraud estimate for the PUA program.

Although ETA is not required to identify the fraud rate for regular or emergency UI programs, the DOL Inspector General has testified[20] on the importance of assessing the overall improper payment rate, including the fraud rate, for the

---

[16] On July 26, 2023, ETA officials provided this feedback in their technical response to the draft version of this report.
[17] According to ETA, the Benefit Accuracy Measurement program 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. Benefit Accuracy Measurement data is used to estimate the total improper payments in the UI program, in each state and in the nation as a whole, based on a statistically valid examination of a sample of paid and denied claims.
[18] ETA typically publishes the Benefit Accuracy Measurement Annual Report by the conclusion of the year following the respective program year. For example, the 2022 report was published on September 5, 2023.
[19] ETA, "Pandemic Unemployment Assistance Improper Payment Rate Report" (August 21, 2023), https://oui.doleta.gov/unemploy/improp_pay.asp#
[20] "Pandemic Response and Accountability: Reducing Fraud and Expanding Access to COVID-19 Relief through Effective Oversight," March 17, 2022, Hearing of the U.S. Senate Committee on Homeland Security and Governmental Affairs, Statement of Larry D. Turner, Inspector General, Office of Inspector General, U.S. Department of Labor, Report No. 19-22-003-03-315, https://www.oig.dol.gov/public/testimony/20220317.pdf

efficient operation of pandemic UI programs. However, ETA's disclosure of the PUA improper payment rate estimate occurred almost 2 years after the program's conclusion and did not include a fraud rate.

Given the delay in reporting the estimated improper payment rate and the absence of a corresponding fraud rate, various third-parties have produced their own estimates of the extent of pandemic UI fraud. This situation has the potential to create confusion both among the general public and within Congress, particularly when discrepancies exist. To uphold transparency and effective governance of the program, it is imperative that ETA produce standardized and timely metrics.

RESULTS

We found non-traditional claimants received necessary PUA benefits as intended under the CARES Act and subsequent legislation. However, the combination of several factors led to significant overpayments, including fraud, in the PUA program. Specifically, these factors were: (1) the PUA program's initial reliance on self-certification that offered states limited data to detect or prevent overpayments, (2) a tenfold increase in UI claims that overwhelmed state UI systems, and (3) states' struggles to implement the new pandemic-related UI programs.

PUA quickly became the second largest pandemic-related UI program. From April 1, 2020, through September 30, 2021, the 53 SWAs provided over $130 billion for PUA benefits. By comparison, SWAs provided about $153 billion for the regular UI program. However, providing benefits to non-traditional claimants came at the cost of significant overpayments.

Specifically, from April 1, 2020, to March 31, 2023, the 53 SWAs reported nearly $35 billion in established PUA overpayments—benefit payments that SWAs investigated and found were improper. These overpayments included $20 billion in PUA benefits and approximately $15 billion in Federal Pandemic Unemployment Compensation (FPUC) benefits, which was the supplement that was attached to each UI claim paid. In total, states reported that over 15 percent of all PUA benefits paid were overpayments, and approximately 61 percent of all FPUC overpayments occurred when PUA was the underlying benefit.

Finally, in collaboration with the OIG, we found that 10.8 percent of PUA claims exhibited potentially fraudulent activity, including instances of benefits paid to individuals with Social Security numbers used to file claims in multiple states or of deceased persons. While these indicators—previously reported by the OIG—

do not measure the full extent of PUA fraud, they indicate the vulnerability of the program.

EFFECTIVENESS OF PANDEMIC RESPONSE FOR NON-TRADITIONAL CLAIMANTS WEAKENED BY SIGNIFICANT OVERPAYMENTS, INCLUDING FRAUD

One of the primary objectives of the CARES Act was to alleviate the economic repercussions caused by the COVID-19 pandemic. As part of this effort, the PUA program was introduced as the first-ever temporary emergency unemployment compensation program designed to provide UI benefits to non-traditional claimants. Between April 1, 2020, and September 30, 2021, over $130 billion was allocated to the 53 SWAs to pay non-traditional claimants through the PUA program. However, as PUA claimants did not have to provide documentation of their prior work or earnings for the benefits during the first 9 months of the program, PUA was highly susceptible to overpayments, including fraud.

Specifically, under the CARES Act, PUA claimants could receive up to 39 weeks of their state's minimum weekly benefit amount if they were found ineligible for regular UI, extended benefits, or Pandemic Emergency Unemployment Compensation (PEUC).[21] Claimants were also required to self-certify that they would otherwise be able and available for work but were unemployed, partially unemployed, or unable or unavailable for work due to 1 of 11 COVID-19-related reasons (see Exhibit 1 for the list of reasons an individual could receive PUA). Therefore, PUA claimants did not have to provide evidence of earnings and states relied upon self-certifications to determine initial and continued eligibility. States officials expressed that this approach created program integrity challenges, including difficulties in preventing improper payments, and that PUA was targeted by criminals.

[21] The CARES Act, Section 2102(a)(3)(A)(i), defines a "covered individual" as "an individual who is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107."

PUA PROVIDED BILLIONS IN BENEFITS TO INTENDED AND UNINTENDED CLAIMANTS

Section 2102 of the CARES Act specifically outlined the eligibility criteria for PUA. Eligible individuals included those that were self-employed,[22] advised by a health care professional to self-quarantine or self-isolate due to COVID-19, had caregiving responsibilities for a family or household member with COVID-19, were unable to work due to a lack of childcare caused by pandemic-related closures, or experienced temporary business closures or significantly reduced hours directly attributable to COVID-19.

The 10 SWAs reported that the implementation of PUA necessitated the recruitment of extra personnel, IT system modifications, and the development of training materials. They also indicated that they struggled to handle the volume of claims, implement new pandemic-related UI programs, and prevent overpayments, including fraud. Despite these obstacles, PUA provided billions in benefits to millions of non-traditional workers.

Between April 1, 2020, and September 30, 2021, the 53 SWAs paid approximately 30 million initial PUA claims.[23] In March 2020, the Bureau of Labor Statistics estimated there were nearly 16 million self-employed individuals in the United States. PUA was not limited to the self-employed. However, the level of funding and number of initial claims paid indicated that PUA proved to be a vital source of financial support to individuals who would have otherwise been left without income support during the pandemic.

CAA was signed into law on December 27, 2020. Section 241 of CAA introduced a new requirement for PUA claimants to provide documentation supporting their employment, self-employment, or planned commencement of employment or self-employment generally within 21 days after submitting their PUA application.[24] The American Rescue Plan Act of 2021, which extended the PUA program to September 6, 2021, continued the requirement for claimants to provide supporting documentation.

---

[22] These included freelancers, independent contractors, gig workers, or sole proprietors.

[23] An initial claim is a claim filed by an unemployed individual after separation from an employment.

[24] The documentation requirement and the 21-day deadline did not uniformly apply to all PUA claims. Specifically, only those who received a PUA payment after December 27, 2020, were required to submit documentation. For applicants who filed a new PUA claim on or after January 31, 2021, a 21-day deadline for document submission was set. However, for those who applied for PUA prior to January 31, 2021, and received a payment after December 27, 2020, a 90-day window was provided for document submission.

STATES CHALLENGED IN PREVENTING PUA PAYMENTS TO UNINTENDED CLAIMANTS

All 10 SWAs indicated being challenged in preventing overpayments, including fraud, in the PUA program. Allowing claimants to self-certify their eligibility meant states did not have non-traditional claimants' information on prior work and earnings as they were outside the federal-state UI taxation system. As a result, states enrolled tens of millions of non-traditional workers without the ability to independently access earnings data and with no ability to confirm continued weekly eligibility except through self-attestation. State officials reported the following challenges with allowing claimants to self-certify their eligibility:

- **Lack of proof of employment separation**: State officials expressed that the self-certification process did not require claimants to provide evidence or proof of separation from employment. This lack of verification made it challenging for officials to identify or prevent overpayments.

- **Attractive target for criminals**: State officials noted that the program's eligibility criteria were oversimplified to an extent to attract fraud. Consequently, states found themselves investing a significant amount of time in detecting and addressing fraudulent activities.

- **Inability to deny benefits for disqualifying reasons**: The self-certification process prevented states from denying PUA benefits to claimants, even if those claimants had been denied regular UI benefits due to disqualifying factors such as misconduct or voluntary separation unrelated to the pandemic. This suggests that self-certification may have inadvertently allowed ineligible claimants to receive benefits.

Both publicly reported data and state claims data supported that states faced challenges in preventing overpayments, including fraud, in the PUA program. As of March 31, 2023, the 53 SWAs reported nearly $35 billion in established overpayments for non-traditional claimants under the PUA program, comprised of $20 billion in PUA established overpayments and approximately $15 billion in FPUC benefits. Established overpayments are state-identified overpayments that states have confirmed to be improper. The process for identifying established overpayments entails states conducting an investigation, gathering relevant information, and providing the claimant an opportunity to be heard.

States reported established overpayments for PUA amounted to $20 billion, which included $875 million in established fraudulent payments (see Table 2).

See Exhibit 2 for a breakdown of reported PUA funding, overpayments, and recoveries by state.

Table 2: Total Reported Established Overpayments Reported by the 53 SWAs from April 1, 2020, to March 31, 2023

Program	Total Benefits for Pandemic Program Period[25]	Established Overpayments	Established Fraudulent Payments	Established Overpayment Rate
PUA	$130,900,000,000	$20,039,284,550	$875,667,946	15.3%
UCFE/UCX[26]	$897,800,000	$85,523,465	$22,654,338	9.5%
Regular UI	$165,400,000,000	$12,505,893,308	$1,376,059,868	7.6%
MEUC[27]	$90,200,000	$6,760,827	$269,369	7.5%
FPUC	$443,100,000,000	$24,088,937,545	$2,059,259,861	5.4%
PEUC	$90,500,000,000	$3,163,115,448	$248,377,907	3.5%
Total	**$830,888,000,000**	**$59,889,515,143**	**$4,582,289,289**	n/a

Source: Key & Associates analysis of public overpayment data, retrieved June 26, 2023

In total, states reported that established overpayments for FPUC amounted to $24 billion, including $2 billion in established fraudulent payments (see Table 3). Specifically, the FPUC program generated approximately $15 billion in overpayments attributable to the PUA program—$1 billion of which was reported as established fraudulent overpayments.

[25] ETA provided these amounts as of January 23, 2023. For this analysis, these figures were used instead of publicly reported drawdowns to ensure a more accurate comparison between the pandemic-related UI programs (operational from March 27, 2020, to September 6, 2021) and the permanent UI programs.

[26] Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX) are permanent UI programs for federal employees and ex-servicemembers.

[27] Mixed Earners Unemployment Compensation

Table 3: Total FPUC Established Overpayments by Program for the 53 SWAs from April 1, 2020, to March 31, 2023

Program	Established Overpayments	Established Fraudulent Payments
PUA	$14,668,456,113	$1,026,851,852
Regular UI	$7,297,599,139	$748,949,237
PEUC	$1,833,589,655	$232,199,546
Extended Benefits	$219,524,966	$4,045,806
UCFE/UCX	$67,642,695	$47,159,036
Disaster Unemployment Assistance	$1,120,740	$31,500
Trade Readjustment Allowances	$1,004,237	$22,884
Total	**$24,088,937,545**	**$2,059,259,861**

Source: Key & Associates analysis of public overpayment data, retrieved June 26, 2023

To put the $35 billion in established overpayments into perspective, that amount is equivalent to more than 30 years of regular UI established overpayments in a pre-pandemic year. Such a sum could have substantially advanced other key government initiatives. For instance, it exceeded the 2023 budget for the National Aeronautics and Space Administration[28] and could provide support for over 1 million students in the Job Corps program as indicated by a 2020 DOL-sponsored study.[29] This underscores the magnitude of the amount lost as well as the challenges ETA and states faced in operating and managing a program that provided billions in benefits to millions of claimants during a time of national crisis. Further, the substantial amount of overpayments raised valid questions about the preparedness of the UI system to provide this level of benefits in similar situations.

In April 2020, within a month after CARES Act passage, the OIG highlighted the risk associated with permitting claimants to self-certify their eligibility for PUA benefits.[30] Subsequently, Congress took action by modifying the PUA program to

[28] National Aeronautics and Space Administration (NASA) Agency Profile (data through March 30, 2023), last accessed June 9, 2023, https://www.usaspending.gov/agency/national-aeronautics-and-space-administration?fy=2023
[29] DOL, Office of the Assistant Secretary for Policy, Chief Evaluation Office, website: https://www.dol.gov/agencies/oasp/evaluation/completed-reports/estimating-job-corps-cost-per-enrollee-and-cost-per-graduate, last accessed September 27, 2023
[30] Advisory Report: CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf

require documentation when the program was extended on December 27, 2020, by the CAA. However, 81 percent of all approved PUA claims were filed prior to December 31, 2020.[31]

On July 31, 2020, ETA provided a response to an OIG report[32] that included the following:

> ETA's guidance with regard to self-certification is based on the current statutory framework for the PUA program. The risk for fraud is found in the statute itself, not in the Department's interpretation of the statute. The Department cannot unilaterally change policy decisions made by Congress.

In light of ETA's response indicating its lack of control over the self-certification aspect of the PUA program, it is imperative for ETA to proactively prepare to mitigate the risk involved with future emergency programs that may allow for participants to support eligibility with self-certifications. For example, as shown by the OIG's identification of millions of PUA claims with easily detectable fraud indicators, fraud testing and data analytics can be greatly beneficial in unveiling identity theft within UI programs.

PUA PROGRAM TARGETED BY CRIMINALS

The DOL Inspector General has testified[33] that the pandemic-related UI programs were targeted by organized criminal groups. The unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit, thus providing incentive to commit fraud.

---

[31] The PUA program's documentation requirement became effective on December 27, 2020. However, given that claims are reported on a monthly basis, the claims information was reported as of December 31, 2020.

[32] 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), https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf

[33] "Pandemic Response and Accountability: Reducing Fraud and Expanding Access to COVID-19 Relief through Effective Oversight," March 17, 2022, Hearing of the U.S. Senate Committee on Homeland Security and Governmental Affairs, Statement of Larry D. Turner, Inspector General, Office of Inspector General, U.S. Department of Labor, Report No. 19-22-003-03-315, https://www.oig.dol.gov/public/testimony/20220317.pdf

According to state officials, states faced challenges in mitigating fraud within the PUA program despite implementing various countermeasures. These countermeasures included the following:

- identity verification service contractors;
- Social Security Administration database verification;
- multi-factor authentication;
- report fraud portals;
- claimant call-in lines;
- additional fraud coding, such as suspense codes;
- manual file reviews;
- artificial intelligence-powered virtual assistance;
- CAPTCHA[34] testing;
- foreign internet protocol checks;
- deceased person checks;
- multistate alerts;
- data analytics;
- predictive modeling;
- new hire/incarceration/earnings cross-matches; and
- fraud indicators for multiple phone numbers, emails, physical addresses, and bank account numbers.

Despite these countermeasures, officials reported that the program's vulnerability to fraudulent activity persisted, mainly due to a lack of comprehensive safeguards and the substantial volume of claims. For example, according to state officials, the increased level of UI claims meant that Benefit Payment Control[35] staff had to assist with processing claims. Additionally, state officials reported that the level of identity theft affected state efforts to detect other types of overpayments. Furthermore, Social Security Administration validation did not prevent fraud because certain fraudsters used stolen information to file claims.

This susceptibility was evident nationally as 10.8 percent of PUA claims filed between April 1, 2020, and September 30, 2021, showed potential fraud

[34] CAPTCHA stands for "Completely Automated Public Turing Test to Tell Computers and Humans Apart," which is a type of challenge-response test used in computing to determine whether the user is human.
[35] SWAs' Benefit Payment Control units are responsible for promoting and maintaining the integrity of the regular UI program through prevention, detection, investigations, establishment, and recovery of overpayments.

indicators contrasted with the PEUC program's 0.8 percent.[36] These potentially fraudulent claims were determined through data analytics and have not undergone investigation, adjudication, or been confirmed to be fraudulent by a state agency. Although these markers can identify suspicious transactions, they cannot directly quantify the fraud rate in a specific program.

For context, approximately 10.8 percent of the over 12 million UI claims submitted[37] by the 53 SWAs to the OIG for testing raised red flags in three specific high-risk areas. These areas relate to individuals with Social Security numbers: (1) used to file UI claims with suspicious email accounts, (2) filed in multiple states, and (3) of deceased persons (see Table 4).[38] In total, $16.9 billion in PUA and FPUC benefits paid to PUA claimants was associated with these indicators of potential fraud. See Exhibit 3 for more details on potentially fraudulent payments by state.

Table 4: Potentially Fraudulent PUA Claims Submitted from April 1, 2020, to September 30, 2021

Fraud Indicators	PUA Claims with Fraud Indicators	Fraud Indicators as % of Claims Submitted	PUA and FPUC Funds Associated with Potentially Fraudulent Claims
Suspicious Email	774,343	6.2%	$9,377,103,284
Multistate	764,694	6.1%	$9,891,441,015
Deceased	35,021	0.3%	$314,002,198
Total[39]	**1,357,745**	**10.8%**	**$16,931,494,609**

Source: OIG analysis of claims data for pandemic-related UI programs submitted by the 53 SWAs

[36] The OIG collaborated with Key & Associates for the analysis of fraud indicators. This was an effort to validate the trends in fraudulent activity as identified through statements provided by state officials.
[37] As part of a data disclosure process required to obtain information about pandemic-related unemployment insurance programs, such as the PUA and PEUC programs, SWAs submitted pandemic relief program claims data to the OIG.
[38] Fraud indicators were created by the OIG to flag potential incidents of fraud. Claimants with suspicious emails used the same email for multiple applications, used a temporary email address, or an email address with a common fraud technique. Multistate claimants applied for benefits in multiple states. Also flagged were claimants with Social Security numbers of a deceased persons.
[39] For awareness, claimants can be classified into several fraud categories at once. As a result, the aggregate of suspicious email fraud indicators, multistate fraud indicators, and deceased persons fraud indicators will not correspond to the total, given that certain cases might be included in multiple categories.

In contrast, when the OIG tested claims from the PEUC program, which required documentation to support employment status, 0.8 percent included fraud indicators (see Table 5).

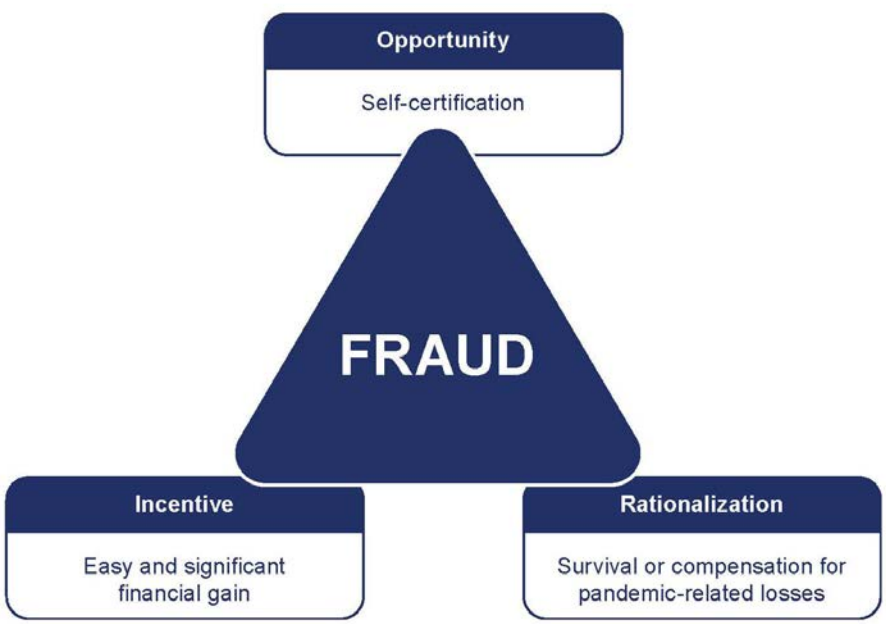
Table 5: Potentially Fraudulent PEUC Claims Submitted from April 1, 2020, to September 30, 2021

Fraud Indicators	PEUC Claims with Fraud Indicators	Fraud Indicators as % of Claims Submitted	PEUC and FPUC Funds Associated with Potentially Fraudulent Claims
Suspicious Email	50,671	.6%	$926,707,464
Multistate	5,626	.1%	$98,342,794
Deceased	11,183	.1%	$191,707,634
Total[39]	**64,295**	**.8%**	**$1,166,066,804**

Source: OIG analysis of claims data for pandemic-related UI programs submitted by the 53 SWAs

The elevated levels of fraud that the PUA program experienced can likely be partially explained by the fraud triangle. The fraud triangle suggests that, when all three components—opportunity, incentive, and rationalization—are present, individuals are more likely to engage in fraudulent activities. A review of the PUA program indicates exposure to all three components (see Figure).

Figure: Fraud Triangle for the PUA Program



Source: Key & Associates analysis of the PUA program

While not all individuals who commit fraud are influenced by every element of the fraud triangle, the presence of these components can create a high-risk environment for fraudulent activities. More detail on the components of the fraud triangle related to the PUA program follows:

- **Opportunity**: The self-certification aspect of the PUA program provided an opportunity for individuals to exploit the system and fraudulently obtain benefits. By allowing claimants to self-certify their own eligibility, the PUA program created a vulnerability of which some individuals took advantage.

- **Incentive**: The PUA program, along with the FPUC supplement, provided a significant financial incentive for claimants, which could have increased motivation for fraudulent activity, attracting individuals who saw it an opportunity for easy financial gain.

- **Rationalization**: The pandemic created a unique circumstance that could be rationalized by claimants as a reason to defraud the government. The economic downturn, job losses, and financial hardships experienced during the pandemic could have influenced individuals to justify their fraudulent actions as a means of survival or as compensation for their losses.

Given the high rate of fraudulent activity and resultant fiscal impact, a more robust and comprehensive approach to safeguarding such programs, along with rigorous verification measures, is essential for future crisis-related unemployment assistance initiatives.

MORE IS NEEDED TO ADDRESS CONTINUED PROGRAM VULNERABILITY AND HOLD CRIMINALS ACCOUNTABLE

ETA and state officials stated that organized crime continues to focus on UI programs. They noted that the pandemic turned UI into a lucrative target for fraud, a trend that persists despite no longer being as prevalent as during the pandemic. These criminal groups adapt to countermeasures, shifting tactics and locations to exploit systemic weaknesses.

OIG Office of Investigation officials reinforced ETA and states' observations that organized criminal groups continue to target UI programs. Specifically, OIG officials stated:

> From April 2020 through June 2023, the Office of Investigations (OI) opened more than 200,000 investigative matters involving pandemic UI fraud. In response, during the same period, OI's Special Agents have executed over 750 search warrants, supported the charging of over 1,350 defendants, and worked to secure over 700 convictions related to those matters. OI's work in this area has shown that many of the perpetrators that exploited the UI program were sophisticated cyber-enabled bad actors and criminal enterprises who misused stolen personally identifiable information to commit fraud. As evidenced by recent SWA reporting and OI case activity, fraud in the traditional federal-state UI programs has continued even after the expiration of pandemic-related UI programs. OI continues to see the same fraud typologies being committed by sophisticated cyber-enabled bad actors and criminal enterprises that it combatted during the pandemic.

The threat level, while lower than at the peak of the pandemic, remains significant. Therefore, the regular UI program continues to be at risk, underscoring the urgent need for improved security measures and fraud prevention strategies.

ETA has provided states guidance on methods to strengthen the integrity of the UI system. On July 13, 2023, ETA issued Unemployment Insurance Program Letter 11-23, which embedded guidance on both mandatory and recommended strategies, tools, and services for mitigating UI fraud within an announcement of grant opportunities for states. The program letter states:

> The Department encourages states to employ different fraud prevention and [identity] verification strategies at different points throughout the life of the claim…States must prioritize the investigation of claims having the greatest risks, and where appropriate, require the completion of evidence-based [identity] verification.

Our review of the PUA program's fraud indicators showed potential fraud of over $16.9 billion, significantly more than the $1.9 billion established and reported by the 53 SWAs (see Table 2 through Table 4).

It is critical that states identify the additional PUA fraud soon given the most common statutes used to prosecute UI fraud have a 5-year limitation. As a result, the statute of limitations related to the majority of pandemic-related UI fraud cases will start to expire in early 2025, significantly limiting the recovery of UI funds and rendering unlikely the ability to hold the fraud perpetrators accountable.

CONCLUSION

The states' implementation of the PUA program played a significant role in providing crucial support to non-traditional claimants during the challenging period of the pandemic. The inclusion of self-certification as a means for claimants to establish their eligibility allowed states to streamline the payment process and deliver assistance to those in need. However, it is important to acknowledge that this approach came at a considerable cost to the federal government and taxpayers.

Although the PUA program provided needed assistance to eligible claimants, it also empowered criminal organizations. Further, the level of overpayments could erode the public trust in continuing DOL programs. Finally, the funds misappropriated through fraud could have been used to support other vital programs or infrastructure projects.

Striking a balance between providing necessary aid to people facing hardship and implementing safeguards to mitigate fraud and other financial losses presents a complex challenge. Prior to the next disaster or other mass unemployment event, DOL must prepare to provide timely benefits while simultaneously safeguarding taxpayer dollars. Furthermore, it is imperative that ETA collaborates with state authorities to counteract the criminals who continue to exploit the UI system.

RECOMMENDATIONS

We recommend the Principal Deputy Assistant Secretary for Employment and Training:

1. Develop a document that captures lessons learned from the implementation of the pandemic-related UI programs that can be used to provide legislative technical assistance and operational guidance to Congress and states on any future emergency UI programs, including an assessment of fraud and fraud prevention methods in programs that allow for self-certification.

2. Provide guidance to states regarding the criminal statute of limitations, which could impact the ability to criminally charge individuals that engaged in pandemic-related UI fraud. Guidance should recommend that states identify and promptly refer pandemic-related UI fraud cases for criminal investigation. This directive should also emphasize the importance of cooperation between states and law enforcement agencies, making

specific reference to Unemployment Insurance Program Letter 04-17, Change 1 - Attachment I, concerning activity that must be reported to the OIG.

3. Work with Congressional stakeholders to inform them of the urgency of the statute of limitations concerning pandemic-related UI fraud.

ANALYSIS OF MANAGEMENT'S RESPONSE

In response to the report, ETA agreed with the recommendations and detailed its plans for corrective action. In addition, ETA provided technical clarifications, highlighted mitigating circumstances, and provided explanations about statements made by state officials. ETA's response did not alter the report's findings or conclusions. ETA also stated it was providing clarity for some statements in the draft report. For example, ETA stated "it would be clearer and more accurate to note that the CARES Act included a statutory provision that claimants self-certify their eligibility." The report included detailed information on self-certification, including Congressional action, such that no related changes to the report were needed. However, we appreciate ETA's efforts to ensure clarity of the report content.

Further, ETA objected to the inclusion of information on the National Aeronautics and Space Administration and Job Corps that was provided in an effort to exemplify the magnitude of the $35 billion in established PUA overpayments, which, by definition, are improper. The inclusion of this information was not intended to criticize the design of the emergency UI programs or other federal initiatives but rather to spotlight the importance of ETA and states being prepared to distribute UI benefits during a surge in claims while simultaneously mitigating overpayments. We maintain that, with proper planning and preparation by ETA and states, overpayments are not inherently inevitable for emergency unemployment assistance programs, which offer critical support to American workers.

In reviewing ETA's response to recommendation 3, we found the agency's claim that they lack authority over criminal statutes and statutes of limitations to be inadequate. A significant component of the criminal investigative process is the ordering and collection of restitution, aiming to restore the integrity of the affected program. As the primary agency managing this program, ETA should be at the forefront, urging Congress to extend the statute. This is crucial not only for deterring future fraudulent activities but also for reclaiming misappropriated funds. We believe that ETA must take proactive measures to ensure maximum recovery of fraud and guarantee appropriate criminal prosecutions.

Management's response to the draft report is included in its entirety in Appendix B.

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

Key & Associates, PC

Key & Associates, P.C.
Washington, DC

September 27, 2023

EXHIBIT 1: COVID-19-RELATED REASONS THAT AN INDIVIDUAL COULD RECEIVE PUA[40]

1. The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
2. A member of the individual's household has been diagnosed with COVID-19.
3. The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19.
4. A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.
5. The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.
6. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
7. The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.
8. The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19.
9. The individual has to quit their job as a direct result of COVID-19.
10. The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.
11. The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

[40] The CARES Act, Section 2102(a)(3)(A)(ii)(I), allowed PUA claimants to self-certify that they are otherwise able and available to work, except that the individual is unemployed, partially unemployed, or unable and unavailable to work based upon certain COVID-19-related reasons.

EXHIBIT 2: REPORTED FUNDING, OVERPAYMENTS, AND RECOVERIES BY STATE

Table 6: Reported Funding, Overpayments, and Recoveries by State from April 1, 2020, to March 31, 2023[41]

State	PUA Funding to State[42]	Established Overpayments[43]	Established Overpayments from Fraud	Overpayment Recoveries
National Total	**$131,656,637,328**	**$20,039,284,550**	**$875,667,946**	**$1,533,056,225**
Alabama	$353,520,500	$35,837,674	$3,063,420	-
Alaska	$73,913,860	$24,390,256	$2,481,031	$14,970,254
Arizona	$2,715,224,586	$72,626,716	$40,036,337	$1,659,349
Arkansas	$462,241,429	$88,083,179	$116,195	$27,886
California	$32,242,817,895	$16,543,528	$2,450,371	$1,587,224
Colorado	$2,584,579,368	$1,141,765,798	$378,143,963	$32,886,367
Connecticut	$659,781,789	-[44]	-	-
Delaware	$128,152,500	$686,508	$161,771	$58,811
District of Columbia	$180,229,335	$1,736,730	$2,211,288	$537,934
Florida	$3,088,174,690	$2,161,910,145	$31,092	$51,443,671
Georgia	$2,938,063,789	$3,707,699	$3,024,451	$8,263
Hawaii	$735,274,045	$333,287	$10,888	$8,127
Idaho	$129,682,509	$15,860,897	$1,883,155	$3,943,348
Illinois	$4,558,661,678	$1,056,913,552	$16,219,546	$19,081,566
Indiana	$1,403,467,209	$318,129,995	$2,985,026	$17,892,329

[41] A hyphen (-) is applied in cells where states reports did not include required overpayment reporting.
[42] As reported on ETA's website, "Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through March 31, 2023," last accessed April 19, 2023, https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html.
[43] Overpayment and recovery amounts are based upon publicly available state reporting on the ETA 902P report. Information found at: https://oui.doleta.gov/unemploy/DataDownloads.asp.
[44] The OIG has previously reported that certain states have not completed required overpayment reports. See: COVID-19: States Struggled to Implement Cares Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf; and Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs, Report No. 19-22-004-03-315 (August 2, 2022), https://www.oig.dol.gov/public/reports/oa/2022/19-22-004-03-315.pdf.

State	PUA Funding to State[42]	Established Overpayments[43]	Established Overpayments from Fraud	Overpayment Recoveries
Iowa	$342,431,529	$3,176,943	$751,201	$821,686
Kansas	$210,932,546	-	-	-
Kentucky	$139,238,494	$7,236,538	$4,982,999	$147,285
Louisiana	$1,007,173,411	$35,013,277	$468,659	$1,757,409
Maine	$279,636,833	$35,030,485	$181,043	$919,409
Maryland	$3,953,293,349	$2,279,729,894	$3,840,009	$1,243,168
Massachusetts	$5,914,833,708	$1,203,722,785	$20,169,785	$73,218,515
Michigan	$6,101,379,676	$4,418,295,222	$3,369,124	$44,362,902
Minnesota	$1,009,678,400	$18,563,013	$1,773,779	-
Mississippi	$408,799,689	$71,296,150	$2,261,399	$5,614,709
Missouri	$542,384,156	$79,771,116	$2,713,468	$3,830,577
Montana	$165,029,600	$27,803,604	$450,896	$1,977,852
Nebraska	$81,903,329	$13,419,425	$146,730	$1,853,827
Nevada	$1,381,205,279	$544,659,269	$7,090	$11,248,203
New Hampshire	$184,235,029	$39,984,733	$595,500	$1,140,727
New Jersey	$6,151,398,494	$107,187,386	$20,677	$2,192,073
New Mexico	$483,292,087	$188,633,143	$3,978,799	$24,256,055
New York	$17,920,959,415	$96,275,805	$68,050,894	$25,612,801
North Carolina	$1,450,054,000	$173,961,885	$12,543,539	$7,144,002
North Dakota	$71,754,513	$11,762,913	$124,628	$1,253,898
Ohio	$5,126,853,237	$2,638,823,176	$168,955,042	$108,069,961
Oklahoma	$263,937,191	$11,819,369	$294,096	-
Oregon	$1,073,878,816	$35,815,287	$20,037,643	$525,490
Pennsylvania	$10,982,000,310	$1,184,932,327	$53,984,863	$78,181,785
Puerto Rico	$1,119,353,209	$104,929,461	-	$3,461,750
Rhode Island	$670,672,965	$10,891,297	$461,514	-
South Carolina	$548,233,738	$27,661,556	$9,717,158	$5,969,022
South Dakota	$20,970,908	$4,837,447	$263,276	$934,590
Tennessee	$676,050,130	$9,571,221	$4,925,662	$1,719,912
Texas	$5,731,111,531	$1,264,885,235	$9,960,508	$884,628,237
Utah	$85,780,985	$4,445,540	$1,299,135	$1,901,222
Vermont	$191,809,617	-	-	-
Virginia	$1,992,260,601	$43,621,885	$18,136,278	$51,459,950
Virgin Islands	$33,573,461	$2,583,562	$698,037	-

State	PUA Funding to State[42]	Established Overpayments[43]	Established Overpayments from Fraud	Overpayment Recoveries
Washington	$2,538,174,647	$346,178,549	$1,190,217	$35,483,332
West Virginia	$168,264,113	$22,177,588	$110,777	$1,767,079
Wisconsin	$353,803,222	$26,531,062	$6,298,430	$6,008,339
Wyoming	$26,509,928	$5,530,438	$86,557	$245,329

Source: Key & Associates analysis of public overpayment and recovery data, retrieved June 26, 2023

EXHIBIT 3: POTENTIALLY FRAUDULENT BENEFITS INDICATORS BY STATE

Table 7: Submitted Claims Data by State Associated with Fraud Indicators from April 1, 2020, to September 30, 2021[45]

State	PUA and FPUC Benefits Reported by SWA	Potentially Fraudulent Benefits	Percent of Benefits Potentially Fraudulent
National Total	**$224,858,725,838**	**$16,931,494,609**	**7.5%**
Alabama[46]	-	-	-
Alaska[47]	-	-	-
Arizona	$7,970,139,262	$1,376,330,363	17.3%
Arkansas	$115,568,138	$15,038,157	13.0%
California	$67,869,154,548	$6,414,869,424	9.5%
Colorado	$1,713,932,921	$170,408,221	9.9%
Connecticut	$1,326,740,008	$46,630,048	3.5%
Delaware	$109,951,861	$7,902,008	7.2%
District of Columbia	$254,563,108	$20,952,735	8.2%
Florida	$6,875,828,882	$335,899,799	4.9%
Georgia	$4,471,063,612	$324,044,079	7.2%
Hawaii	$1,400,606,841	$20,564,602	1.5%
Idaho	$218,726,347	$4,366,020	2.0%
Illinois	$1,199,368,129	$128,448,289	10.7%
Indiana	$3,384,607,778	$245,809,858	7.3%
Iowa	$244,994,590	$11,349,296	4.6%
Kansas	$493,820,572	$85,362,967	17.3%
Kentucky	$442,895,361	$30,194,595	6.8%
Louisiana	$2,167,913,465	$204,781,849	9.4%
Maine	$865,644,791	$35,589,996	4.1%
Maryland	$6,828,460,702	$687,730,998	10.1%
Massachusetts	$9,463,400,031	$311,247,869	3.3%
Michigan	$16,339,540,751	$1,027,852,252	6.3%

[45] A hyphen (-) is applied in cells where the OIG does not have data.
[46] The State of Alabama submitted claims data that did not include PUA payments.
[47] The State of Alaska submitted claims data as required but did not break down the data by program.

State	PUA and FPUC Benefits Reported by SWA	Potentially Fraudulent Benefits	Percent of Benefits Potentially Fraudulent
Minnesota	$1,521,819,236	$40,709,610	2.7%
Mississippi	$1,164,127,491	$111,248,818	9.6%
Missouri	$1,381,549,584	$76,909,040	5.6%
Montana	$28,547,600	$641,929	2.2%
Nebraska	$224,090,675	$8,960,403	4.0%
Nevada	$1,045,638,640	$178,554,516	17.1%
New Hampshire	$380,925,915	$7,511,148	2.0%
New Jersey	$7,953,740,268	$206,003,790	2.6%
New Mexico	$363,535,335	$28,189,799	7.8%
New York	$36,959,767,657	$1,264,572,705	3.4%
North Carolina	$2,001,465,064	$80,275,568	4.0%
North Dakota	$42,762,654	$1,798,980	4.2%
Ohio[48]	-	-	-
Oklahoma	$258,445,888	$15,919,682	6.2%
Oregon	$12,793,535	$356,266	2.8%
Pennsylvania	$12,013,278,545	$1,621,289,719	13.5%
Puerto Rico	$3,787,502,324	$544,454,540	14.4%
Rhode Island	$1,214,504,366	$93,440,983	7.7%
South Carolina	$597,641,726	$26,548,764	4.4%
South Dakota	$49,454,363	$1,685,005	3.4%
Tennessee	$792,679,589	$50,470,868	6.4%
Texas	$12,208,792,612	$805,059,960	6.6%
Utah	$204,928,522	$5,464,464	2.7%
Vermont	$320,986,729	$11,247,760	3.5%
Virgin Islands[49]	$10,574	-	-
Virginia	$1,760,246	$106,392	6.0%
Washington	$5,533,192,514	$187,905,983	3.4%
West Virginia	$381,101,768	$34,122,211	9.0%
Wisconsin	$563,699,825	$17,923,283	3.2%
Wyoming	$93,060,895	$4,748,998	5.1%

Source: OIG analysis of claims data for pandemic-related UI programs submitted by the 53 SWAs

[48] The State of Ohio provided PUA data; however, it was not processed in time for this report.
[49] The U.S. Virgin Islands provided PUA data; however, it was not processed in time for this report.

APPENDIX A: SCOPE AND METHODOLOGY

SCOPE

This audit primarily covered DOL and states' implementation of the PUA program from March 27, 2020, to September 30, 2021. We examined the effect of self-certification on claims payments by testing PUA claims from March 27, 2020, to April 6, 2021. Our assessment focused on the impact of CARES Act requirements, allowing claimants to self-certify eligibility, and the CAA, which mandated claimants to provide documentation for the verification of employment or self-employment. Additionally, we extended the review to include the most recent UI overpayment data through March 31, 2023.

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

METHODOLOGY

To address the objectives of this audit, we followed a systematic methodology that encompassed procedures conducted at both ETA and state levels to evaluate compliance with program requirements.

The performance audit was carried out remotely, mainly using electronic methods like virtual meetings and a file transfer protocol site. Of the 53 SWAs with signed agreements to participate in the PUA program, the OIG selected 10 SWAs for in-depth testing: the Commonwealth of Puerto Rico and the States of: Colorado, Illinois, Kansas, Maryland, Massachusetts, New York, Pennsylvania, Texas, and Utah. The OIG selected these 10 SWAs based on a risk analysis, including, but not limited to, funding amounts, law enforcement intelligence, congressional interest, and media reports. By focusing on these SWAs, we aimed to gain a comprehensive understanding of program compliance in diverse contexts.

Additionally, we distributed surveys to the remaining 43 SWAs that had agreed to participate in the program. Of the 43, 21 responded to the survey request. Therefore, this report reflects 31 of 53 SWAs' experiences (58 percent) during the audit period. These surveys allowed us to obtain relevant information about program implementation, further enhancing our assessment.

Our evaluation of state compliance encompassed several key areas, including the implementation of the CARES Act and related legislation, preparedness, initial eligibility determinations, continued eligibility determinations, improper payment detection, recovery efforts, and compliance with ETA's oversight requirements. By thoroughly examining these aspects, we aimed to ascertain adherence to program guidelines and regulations.

Using non-statistical sampling, we randomly selected 60 claimants for each of the audited states and tested payments made for: 3 periods; the initial claim; a payment prior to December 27, 2020; and a payment made after December 27, 2020. By testing these periods, we were able to garner an understanding of the self-certification process.

Furthermore, we analyzed state-provided data sets to gain insights into occurrences of overpayments and claim denials. This examination of datasets enabled us to evaluate the effectiveness of program processes and identify any potential areas of concern.

RELIABILITY ASSESSMENT

We assessed the reliability of computerized data. We summarized the information provided by states and analyzed if the data was determined reliable for our purposes. Methods of determining reliability were dependent upon the availability of information at the state level. Primary methods of ensuring data reliability involved IT assessments, information reviews, interviews, inspections, comparisons, observations, walk-throughs, tracing, and policy reviews.

INTERNAL CONTROLS

A performance audit includes an understanding of internal controls considered significant to the audit objective and testing compliance with significant laws, regulations, and other requirements. In planning and performing our audit, we considered whether internal controls significant to the audit objective were properly designed and placed in operation. This included reviewing policies and procedures. We confirmed our understanding of these controls and procedures through interviews and the review and analysis of documentation. We evaluated internal controls used for reasonable assurance. Our consideration of internal controls for administering key pandemic-related UI programs would not necessarily disclose all matters that might be reportable conditions.

CRITERIA

- Public Law 116-136: Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020)
- Public Law 116-260: Consolidated Appropriations Act, 2021, specifically Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (December 27, 2020)
- American Rescue Plan Act of 2021 (Pub. L. 117-2), specifically Title IX, Subtitle A, Crisis Support for Unemployed Workers (March 11, 2021)
- Office of Management and Budget, "Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement" (March 5, 2021)
- Unemployment Insurance Program Letter 01-16, Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures (October 1, 2015)
- Unemployment Insurance Program Letter 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 (July 14, 2022)
- Unemployment Insurance Program Letter 11-23, Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA) (July 13, 2023)

PRIOR RELEVANT COVERAGE

During the last 3 years, the OIG has issued 9 reports of significant relevance to the subject of this report. Those reports are the following:

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

2. 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;

3. 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;

4. 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;

5. 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;

6. 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;

7. Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to $45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf;

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

9. The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2022, Report No. 22-23-006-13-001 (June 9, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/22-23-006-13-001.pdf.

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 22, 2023

MEMORANDUM FOR:	CAROLYN R. HANTZ Assistant Inspector General for Audit
FROM:	BRENT PARTON Principal Deputy Assistant Secretary
SUBJECT:	Response to Draft Report: *COVID-19: Pandemic Unemployment Assistance for Non-Traditional Claimants Weakened by Billions in Overpayments Including Fraud*, Report No. 19-23-XXX-03-315

The Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the above-referenced draft report from the Office of the Inspector General (OIG) with respect to the Pandemic Unemployment Assistance (PUA) program, which was created in Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

ETA appreciates the OIG acknowledging that several factors contributed to high incidences of overpayments, including a statutory provision that required state workforce agencies to rely on self-certification of key eligibility criteria. Additional factors that influenced overpayments include, but are not limited to, the unprecedented surge in unemployment insurance (UI) claims, declining annual administrative funding for states prior to the pandemic, low staffing levels, antiquated state systems, the need to on-board staff quickly with minimal training, and the onslaught of sophisticated fraud attacks on a scale which the UI system had not previously encountered. Further, as the OIG states in the draft report:

> "*PUA was the first temporary UI program to provide benefits to non-traditional claimants. The introduction of the PUA program posed a unique challenge as it was implemented without an adequate preparation period and under new eligibility requirements. ... Consequently, the challenges associated with the PUA program had to be resolved in real-time, while states grappled with an extraordinary tenfold increase in claims volume.*"

ETA would also like to take this opportunity to thank the OIG for highlighting ETA and states' efforts to combat overpayments, including fraud.

The Department takes UI fraud and improper payments very seriously and continues to ensure UI program integrity remains a top agency priority. ETA develops, implements, and oversees robust and dynamic fraud mitigation strategies to address emerging and evolving fraud risks and is in the process of evaluating all of ETA's integrity initiatives, tools, and actions to ensure the Department's UI fraud risk assessment processes are conducted in alignment with the Government Accountably Office's (GAO) Fraud Risk Framework. As part of the Department's efforts to align ongoing UI fraud risk management activities with the leading practices in GAO's Fraud Risk Framework, ETA and the Department's Office of the Chief Financial Officer (OCFO) developed a UI Fraud Risk Profile and antifraud strategies for the UI program. The GAO recently closed four recommendations in this area[1].

ETA has made available $765 million in grants to states, to enhance and strengthen program integrity. Additionally, ETA has regularly issued guidance to states on enhancing program integrity, reducing fraud, and ensuring equitable access[2]. ETA continues to communicate its UI antifraud initiatives to state UI agencies and other relevant stakeholders through guidance and will continue to ensure states are aware of inherent fraud risks to the UI program. In partnership, ETA and OCFO will regularly update the UI Fraud Risk Profile and will work with state UI agencies to develop, document, and evaluate state-specific antifraud strategies to inform updates to an agile national UI antifraud framework.

Observations Related to the OIG's Draft Report

Once again, ETA would like to recognize and thank the OIG for developing this draft report, which strives to discuss the complexities associated with serving non-traditional claimants. Based on ETA's review, ETA would like to clarify some statements in the draft report.

- The draft report states:

  > "*Given the delay in reporting the improper payment rate and the absence of a corresponding fraud rate, various third-parties have produced their own estimates of the extent of pandemic UI fraud. This situation has the potential to create confusion both among the general public and within Congress, particularly when discrepancies exist within the rates. To uphold transparency and effective governance of the program, it is imperative that ETA produce standardized and timely metrics.*"

  ETA clarifies that the Department conducted an exhaustive study to estimate the level of improper payments in the PUA program, in alignment with the Payment Integrity Information Act (PIIA). The PIIA requires improper payment rates to be calculated for any federal program that is in effect for at least 12 months and is determined to be at high risk for improper payments. Since PUA is fundamentally different from regular UI, with different eligibility requirements and serving a different population of workers, the Department's standard methodology for estimating UI improper payments using Benefit Accuracy Measurement could not be used. Consequently, the Department developed a hybrid methodology to calculate a statistically valid improper payments estimate for the

[1] COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response. Published October 27, 2021 – GAO-22-105 (https://www.gao.gov/products/gao-22-105051)
[2] Examples of such guidance include Unemployment Insurance Program Letter (UIPL) Nos. 23-20; 28-20; 28-20, Change 1; 28-20, Change 2; 28-20, Change 4; 22-21; 23-21; and 11-23.

2

PUA program. Recently, on August 21, 2023, ETA published an estimate of improper payments. This estimate includes the payment outcome categories of overpaid (17.0 percent), underpaid (1.5 percent), and payments that could not be determined as valid, overpaid, or underpaid (17.4 percent). The methodology uses data from a national review process, as well as administrative data submitted by states. The full report, which provides the Department's current and future efforts to protect and strengthen UI programs, is publicly accessible at: https://oui.doleta.gov/unemploy/pdf/Pandemic_Unemployment_Assistance_Improper_Payment_Rate_Report.pdf.

- The draft report states:

> "*Section 2102 of the CARES Act specifically outlined the eligibility criteria for PUA. Eligible individuals included those that were self-employed, advised by a health care professional to self-quarantine or self-isolate due to COVID-19, had caregiving responsibilities for a family or household member with COVID-19, were unable to work due to a lack of childcare caused by pandemic-related closures, or experienced temporary business closures or significantly reduced hours directly attributable to COVID-19.*"

ETA notes that during the pandemic, states were required to first determine if individuals were eligible for regular UI or extended benefits under state or Federal law or any of the pandemic emergency unemployment compensation programs, including if those individuals have exhausted all rights to such benefits. Individuals who were not eligible for these programs could apply and be determined eligible for PUA provided they self-certify that they are able and available for work, except that they are unemployed, partially unemployed, or unable or unavailable to work due to one or more of the COVID-19-related reason(s) identified in Section 2102 of the CARES Act.

- The draft report states:

> "*Allowing claimants to self-certify their eligibility meant states did not have non-traditional claimants' information on prior work and earnings, as they were outside the federal-state UI taxation system.*"

This sentence implies that ETA and state workforce agencies allowed claimants to self-certify. It would be clearer and more accurate to note that the CARES Act included a statutory provision that claimants self-certify their eligibility[3]. These non-traditional claimants were not covered by the federal-state UI taxation system; thus, states did not have records of their prior non-covered earnings and employment.

Further, the draft report states:

> "*The self-certification process prevented states from denying PUA benefits to claimants, even if those claimants had been denied regular UI benefits due to*

[3] Section 2102(a)(3)(A)(ii) of the CARES Act, as amended.

3

disqualifying factors such as misconduct or voluntary separation unrelated to the pandemic. This suggests that self-certification may have inadvertently allowed ineligible claimants to receive benefits."

The final sentence in the quote above seems to miss one of the key purposes of the PUA program. Congress designed the PUA program similar to the Disaster Unemployment Assistance program, and statutorily permitted temporary income assistance to individuals who, although they may be ineligible for regular UI benefits, were otherwise able and available for work, except that they were unemployed, partially unemployed, or unable or unavailable to work, due to one or more of the COVID-19-related reason(s) identified in Section 2102 of the CARES Act. The PUA program was designed to provide benefits to workers not covered by the regular UI program to avoid extended economic hardship, protect people from COVID-19, and provide for the economic security of workers who were not working due to the pandemic.

- The draft report states:

"*To put the $35 billion in established overpayments into perspective, that amount is equivalent to more than 30 years of regular UI established overpayments in a pre-pandemic year. Such a sum could have substantially advanced other key government initiatives. For instance, it exceeded the 2023 budget for the National Aeronautics and Space Administration and could provide support for over 1 million students in the Job Corps program, as indicated by a 2020 DOL-sponsored study. This underscores the magnitude of the amount lost as well as the challenges ETA and states faced in operating and managing a program that provided billions in benefits to millions of claimants during a time of national crisis.*"

In response to a review of the discussion draft report from July 2023, the Department urged the OIG to remove this language since the purpose of OIG reports is to help agencies identify issues or areas of concern that need to be addressed. The comparisons to the National Aeronautics and Space Administration and Job Corps are inconsequential when equated to approximately 53 million unemployed individuals at the height of the pandemic, a truly unique mass unemployment event that warranted billions in benefit payments. The OIG's inclusion of such a statement of public policy and political judgement regarding the relative value of different uses of funds is outside the scope of this audit. The Department sees no inherent value in having this sensational language in the report and formally requests the OIG to remove this language from the final report.

- The draft report states:

"*In May 2020, just 2 months after the CARES Act was enacted, the OIG highlighted the risk associated with permitting claimants to self-certify their eligibility for PUA benefits. Subsequent to our work, Congress took action by modifying the PUA program to require documentation when the program was*

4

extended on December 27, 2020, by the CAA. However, 81 percent of all approved PUA claims were filed prior to December 31, 2020."

It is salient to note that the Department provided legislative technical assistance to Congress, as early as Summer 2020, encouraging them to address this same issue.

- The draft report states:

  "*In light of ETA's response indicating their lack of control over the self-certification aspect of the PUA program, it is imperative for ETA to proactively prepare to mitigate the risk involved with future emergency programs that may allow for participants to support eligibility with self-certifications. For one, fraud testing and data analytics can be greatly beneficial in unveiling rampant identity theft within UI programs, as the OIG identified millions of claims showing easily detectable fraud indicators within PUA.*"

  It is very challenging to mitigate for statutorily required provisions in the design of programs. It was the statutory structure of the program that prevented the use of controls when the law required only that the claimant self-certify to meeting key eligibility requirements, rather than a flaw or error on ETA's part. When statutory provisions specifically set out eligibility requirements, it constricts an agency's ability to impose additional requirements not provided for in the statute. Congress subsequently enacted new requirements for the program in December 2020 -- substantiation of employment/self-employment and identity verification.

- The draft report states:

  "*Despite these measures, officials reported the program's vulnerability to fraudulent activity persisted, mainly due to a lack of comprehensive safeguards and the substantial volume of claims. For example, according to state officials, the increased level of UI claims meant that Benefit Payment Control staff had to assist with processing claims. Additionally, state officials reported the level of identity theft affected state efforts to detect other types of overpayments. Furthermore, Social Security Administration validation did not prevent fraud since certain fraudsters used stolen information to file claims.*"

  The Department notes that because PUA covered non-traditional claims, the usual checks and balances that exist with employer participation in the regular UI benefit program (i.e., employers are notified of every claim filed by their former employees and provided an opportunity to respond and raise eligibility concerns) were not available by nature of the PUA program's structure.

Responses to the OIG Recommendations

Please find each of the OIG's recommendations contained in the draft report followed by ETA's proposed corrective actions to address each of the OIG's recommendations below.

5

<u>Recommendation 1</u>: **Develop a document that captures lessons learned from the implementation of the pandemic-related UI programs that can be used to provide legislative technical assistance and operational guidance to Congress and states on any future emergency UI programs, including an assessment of fraud and fraud prevention methods in programs that allow for self-certification.**

<u>ETA Response</u>: ETA agrees with this recommendation. While it is challenging to develop mitigation strategies for a program that does not exist and has not yet been created, ETA is working closely with states and the national UI Integrity Center to increase usage of the Integrity Data Hub (IDH) for cross-matching and data analytic purposes. All states now have participation agreements in place to use the IDH datasets. ETA is currently focused on increasing tools available via the IDH and the robustness of how states use such tools in their investigation efforts. The UI Integrity Center, in collaboration with ETA, hosted a webinar on August 1, 2023, on how states can leverage funds from federal grant opportunities to use the IDH most effectively (*see* Training and Employment Notice No. 02-23).[4]. ETA is also investing in IDH enhancements and pursuing additional data sources for integration into the IDH, which includes data sharing with other federal agencies. In addition, the President's Fiscal Year (FY) 2024 Budget proposes a comprehensive package of provisions designed to provide new and expanded tools and controls for states to help improve efforts to ensure entitled workers are properly paid and to prevent fraud and improper payments in the UI system.

ETA will continue to capture and use the lessons learned from the implementation of the pandemic-related UI programs to shape future legislative technical assistance to Congress on any future emergency UI proposals. ETA expects this process to be completed by the end of FY 2025. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

<u>Recommendation 2</u>: **Provide guidance to states regarding the criminal statute of limitations, which could impact the ability to criminally charge individuals that engaged in pandemic-related UI fraud. Guidance should recommend that states identify and promptly refer pandemic-related UI fraud cases for criminal investigation. This directive should also emphasize the importance of cooperation between states and law enforcement agencies, making specific reference to UIPL 04-17, Change 1 - Attachment I, concerning activity that must be reported to the OIG.**

<u>ETA Response</u>: ETA agrees with this recommendation. ETA will publish a Training and Employment Notice addressing these points. ETA expects this process to be completed by the end of Calendar Year 2023. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

[4] Training and Employment Notice 02-23: https://www.dol.gov/agencies/eta/advisories/ten-02-23

<u>Recommendation 3</u>: Work with Congressional stakeholders to inform them of the urgency of the statute of limitations concerning pandemic-related UI fraud.

<u>ETA Response</u>: This recommendation is consistent with President Biden's Pandemic Anti-Fraud Proposal[5], which called on Congress to increase statute of limitations for serious, systemic pandemic fraud, including in the PUA program. Matters of criminal statutes and statutes of limitation are not within ETA's jurisdiction. ETA is willing to collaborate or consult with any appropriate federal agency if they require assistance informing additional Congressional stakeholders of this concern.

[5] President Biden's Sweeping Pandemic Anti-Fraud Proposal: https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-president-bidens-sweeping-pandemic-anti-fraud-proposal-going-after-systemic-fraud-taking-on-identity-theft-helping-victims/

7

REPORT FRAUD, WASTE, OR ABUSE TO THE DEPARTMENT OF LABOR

Online
https://www.oig.dol.gov/hotline.htm

Telephone
(800) 347-3756 or (202) 693-6999

Fax
(202) 693-7020

Address
Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue NW
Room S-5506
Washington, DC 20210