

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 Accountability 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 access². 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.

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 eligibility³. 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.

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

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.

Recommendation 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.

ETA Response: 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.

Recommendation 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 UIPL 04-17, Change 1 - Attachment I, concerning activity that must be reported to the OIG.

ETA Response: 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>

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

ETA Response: This recommendation is consistent with President Biden’s Pandemic Anti-Fraud Proposal⁵, 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/>