

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

Employment and Training Administration
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Washington, D.C. 20210



September 21, 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: ETA Needs a Plan to Reconcile and Return to the U.S. Treasury Nearly \$5 Billion Unused by States for a Temporary Unemployment Insurance Program*, 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 Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week (TFFF) program, which was created in Section 2105 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

Areas of Concern with the OIG's Draft Report

As described below, ETA is fully committed to reconciling the funds provided under Section 2105 of the CARES Act, that provided for temporary full federal funding of the first week of regular unemployment compensation for states with no waiting week. Section 2105 was modified by the Consolidated Appropriations Act, 2021, and by the American Rescue Plan Act of 2021 (ARPA), the latter of which extended Section 2105 to weeks of unemployment ending on or before September 6, 2021. A vital component of this reconciliation process is providing direction and instructions to states on associated requirements to reconcile funding under Section 2105. Previously, ETA expressed several concerns, including the OIG's portrayal of states as not meeting the eligibility provisions to participate in the TFFF reimbursements. Unfortunately, many of the concerns ETA shared with the OIG are not reflected in the draft report. As a result, ETA restates the following concerns and inaccuracies in the draft report:

- *The draft report incorrectly indicates in a number of places that the TFFF provisions have ended.* These statements are inaccurate. As with previous temporary or episodic programs, states will continue to have activities that may impact TFFF funding as states work through backlogs, appeals, fraud investigations, overpayment establishments, and recoveries. Although the CARES Act programs and provision eligibility period expired September 6, 2021, this does not mean that the TFFF provisions or reconciliation activities have concluded. The September 6, 2021 expiration date addresses the period

within which benefit payments are covered by the provisions. However, states continue to administer and pay benefits for the period within which TFFF reimbursements are covered. The TFFF reimbursements continue to apply to benefits paid for these covered periods.

- The draft report inaccurately portrays certain states as not meeting TFFF eligibility requirements.
 - The State of Oregon met TFFF eligibility requirements. The Governor of Oregon issued Executive Order (EO) 20-03 on March 8, 2020, which declared a state of emergency due to COVID-19 and authorized state agencies to take actions, including waiving the first waiting week, upon further direction from the Governor or her office. On June 26, 2020, the Acting Director of the Oregon Employment Department (OED) advised ETA that the Governor has already exercised her statutory authority to waive the waiting week. On December 29, 2021, OED reiterated that the waiting week was waived starting on March 8, 2020. Due to technological challenges, the State was not able to immediately implement the programming that waived the waiting week until November 2020. Although the waiting week was waived as of March 8, 2020, Oregon and the Department are in agreement that reimbursement was not available for weeks waived prior to the week ending April 4, 2020.
 - The State of Louisiana met TFFF eligibility requirements. Louisiana had gap weeks in waiving their waiting period requirements. However, ARPA permitted states to reenter the waiting week agreement with the Secretary under CARES Act Section 2105, if necessary, retroactively pay for the waiting week, and receive full reimbursement for weeks of unemployment that ended after December 31, 2020. On March 17, 2021, ETA was advised by the Deputy Secretary of the Louisiana Workforce Commission that the State interprets State of Louisiana Proclamation No. 58 JBE 2021 to allow retroactive payment of the waiting week for all initial claims filed on or after December 27, 2020. This applied to all gap weeks affected. Documentation was provided to the OIG explaining this in July 2023.
- There is concern about the OIG's declarations that the States of Delaware and Mississippi accessed TFFF funds that were outside of the allowable period. ETA was not made aware of the OIG's concerns about these states until the discussion draft report for exit was shared with ETA in July 2023. As part of the reconciliation process, ETA will need to review the payments and determine if they were in fact payments paid for weeks of eligibility within the allowable timeframe or outside of that timeframe.
- There is concern about the OIG's declaration that the State of Washington continued to pay claimants and drew down TFFF funding after the waiting week waiver expired. Washington's drawdown activity reflects the State's payment catch up of claims that fall within the period of eligibility. This is typical at the end of programs or provisions when states reconcile issues, work on backlogs affecting the requirements of the provisions, and issue retroactive payments, as appropriate, along with other close out activities. As

part of the reconciliation process, ETA will review these payments and determine if they were allowable or not.

- The draft report incorrectly implies that the remaining TFFF balances are vulnerable to fraud, waste, and abuse and that the remaining funds could have been put to better use. Pursuant to CARES Act Section 2105(c), TFFF funds can only be used for temporary full federal funding of the first week of regular unemployment compensation (UC) for states with no waiting week. They cannot be used for anything else, and to infer that these funds could be used elsewhere is incorrect. It is also unclear how the remaining TFFF balances are vulnerable to fraud, waste, and abuse when states are subject to their agreement with the Department, which subjects states to using the money for the purpose for which it was paid to the state, account for the funds used and return any remaining balances. Furthermore, ETA plans to publish upcoming guidance to states on reconciling funds under Section 2105, which will include instructions on how to return unused funds.

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: Work with Oregon, Louisiana, Delaware, and Mississippi to ensure the appropriate return of approximately \$105.1 million in TFFF reimbursements for first-week regular UI compensation paid that were associated with ineligible weeks.

ETA Response: ETA disagrees with this recommendation. During the exit conference with the OIG, ETA requested the OIG to rephrase this recommendation (see revised language shown below).

Revised Recommendation: Conduct appropriate reviews and make any necessary determinations to appropriately address costs associated with identified issues in Oregon, Louisiana, Delaware, and Mississippi related to \$105.1 million in TFFF reimbursements for first-week regular UI compensation.

As mentioned to the OIG during the exit conference, appropriate processes and determinations must first be made before directing states to pay specific amounts. The OIG is raising some issues in this draft report that warrant further investigation. ETA provided information indicating that Oregon and Louisiana met the eligibility requirements to participate in TFFF. ETA was not previously made aware of the OIG's concerns with Delaware and Mississippi and is reviewing the information provided in this draft report. ETA will conduct an appropriate review. ETA expects the reconciliation process to be completed by the end of Fiscal Year (FY) 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 2: Establish a deadline by which states are required to perform a timely review of past drawdowns and provide evidence that drawdowns were for reimbursement of eligible first week regular UI compensation paid by the state for claim weeks that fell within the TFFF program period.

ETA Response: ETA concurs with this recommendation. ETA is in the process of developing specific guidance that will address this recommendation. ETA expects this process to be completed by the end of FY 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 3: Reassess the eligibility of all states with waiting week provisions according to their state laws to ensure that the waiting week was not in effect when states accessed TFFF funds prior to December 31, 2020.

ETA Response: ETA concurs with this recommendation. ETA is in the process of developing specific guidance that will address this recommendation. ETA expects this process to be completed by the end of FY 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 4: Ensure that any state drawdowns of the remaining almost \$5 billion in TFFF funds are only for the reimbursement of first week regular UI compensation paid by the state that fall within the TFFF program period (March 27, 2020 through September 6, 2021).

ETA Response: ETA concurs with this recommendation. ETA is in the process of developing specific guidance that will address this recommendation. ETA expects this process to be completed by the end of FY 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 5: Establish a deadline for states to reconcile and close out TFFF accounts so ETA can facilitate deobligation of the funding.

ETA Response: ETA concurs with this recommendation. ETA is in the process of developing specific guidance that will address this recommendation. ETA expects this process to be completed by the end of FY 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 6: Establish written procedures and deadlines for the timely return of funding for TFFF and future similar programs and consult with [the Office of Management and Budget] OMB and Treasury officials to execute the proper return of unused funds that remain within states' accounts.

ETA Response: ETA agrees with part of this recommendation. ETA is in the process of developing specific guidance that will address written procedures and deadlines for the timely return of funding. ETA expects this process to be completed by the end of FY 2024. The

Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

ETA does not agree with the part of the recommendation that makes reference to future programs. ETA is unable to develop written procedures for programs created by a future Congress in response to future mass layoff events. Although ETA will not know specific requirements for future enactments, ETA's Office of Unemployment Insurance will formulate general guidelines in anticipation of bottlenecks in accounting and reconciliation procedures and processes that may be helpful for future programs.

Recommendation 7: Develop effective internal control procedures to ensure states meet program requirements, including eligibility, and have sufficient infrastructure in place to pay claimants' UI benefits without delay for similar temporary emergency UI programs that may be established in the future.

ETA Response: ETA disagrees with this recommendation. However, ETA proposes an alternative approach to address the essence of this recommendation. During the exit conference with the OIG, ETA requested the OIG to rephrase and consolidate Recommendations 7 and 8 (see revised language shown below).

Revised Recommendation: Develop a document that captures lessons learned from the operation of the TFFF program and use this information to inform technical assistance and operating guidance for similar temporary emergency UI programs that may be established in the future.

It is extremely challenging to develop controls for a program that does not exist and for which ETA does not know the requirements. Although ETA will not know specific requirements of a future enactment, ETA's Office of Unemployment Insurance will capture lessons learned to help inform actions for similar future programs. This approach is more meaningful, especially since ETA cannot speculate when Congress will authorize and appropriate funding for a similar future program.

ETA expects this process of capturing lessons learned to be completed by the end of FY 2024. The Administrator for the Office of Unemployment Insurance is responsible for the implementation of this recommendation.

Recommendation 8: Develop and implement controls to ensure the methodology and procedures are documented and maintained for estimating allotments and subsequent adjustments for similar temporary emergency UI programs that may be established in the future.

ETA Response: ETA disagrees with this recommendation for the reasons outlined in ETA's response to Recommendation 7 above, and respectfully requests that this recommendation be removed. ETA proposes an alternative approach, which incorporates the intent of this recommendation and is outlined in the response to Recommendation 7 above.