APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

June 14, 2024

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

FROM: JOSÉ JAVIER RODRÍGUEZ
Assistant Secretary

SUBJECT: Response to Draft Report – *COVID-19: ETA's Oversight of Short-Time Compensation Did Not Detect $129.6 Million in Questioned Costs,*
Report No. 19-24-XXX-03-315

The U.S. 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 Inspector General (OIG). Below are ETA's observations on the draft report, followed by responses to the draft report's recommendations.

Acknowledgement of ETA's Oversight of the Short-Time Compensation (STC) Program

The Department takes oversight of federally funded programs very seriously. The draft report states that "ETA sufficiently monitored states' compliance with Section 2110" of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The draft report further states that "no compliance exceptions" were found regarding the Section 2110 funds. ETA appreciates the acknowledgement in the draft report that oversight of STC funds occurred.

The draft report also notes that with respect to Section 2108 of the CARES Act, "ETA relied on the review of ETA 5159 reports…. ETA used these reports to conduct its oversight of the STC program and as its method to ensure the reimbursement amount the states received aligned with the STC benefit payments the states reported." The key concern in the draft report is that ETA did not sufficiently conduct oversight of the funds covered by Section 2108. However, the draft report correctly highlights ETA's efforts and several challenges beyond the Department's control that impacted ETA's ability to monitor states' use of funds covered by Section 2108.

Funding for Program Administration is a Critical Issue Requiring Congressional Action

Insufficient Funding for Federal Unemployment Insurance (UI) Administration. ETA appreciates the language in the draft report acknowledging the lack of adequate and timely funding for federal UI administration of the CARES Act. Specifically, the draft report notes:

> "for much of the pandemic and the life of these new programs, Congress did not provide any new funding for ETA staffing. When the American Rescue Plan Act of 2021 was enacted in March 2021, it extended the temporary programs through September 6, 2021, and provided some temporary funding for additional staffing in ETA. However, this funding came a year after the onset of the pandemic and after the most critical time of administering new temporary programs while states struggled to process the highest level of claims in the history of the UI program."

The draft report also reflects the long-term decline in program administration to support ETA's administration and oversight of the UI program, stating that:

> "the enacted levels of funding for program administration in workforce security, which funds UI program staff in the Department's national and regional offices, declined significantly between Fiscal Year (FY) 2006 and FY 2021, resulting in a reduction in staff. Specifically, in FY 2006, the UI program had 419 staff, far higher than the 169 staff employed by the program during the pandemic in FY 2021. It was in this environment that ETA had the immense responsibility of overseeing the many new, temporary UI programs while continuing its oversight of prior existing responsibilities."

The funding situation has not improved since the end of the pandemic. As indicated in the Department's FY 2025 Budget Request,[1] "With rescissions and limitations on annual funding implemented through the Fiscal Responsibility Act, ETA anticipates limited hiring in FY 2024 to fill only the most strategically critical positions and a general reduction in staffing levels..."

Insufficient Funding for State UI Administration. In addition to insufficient funding for federal UI administration and oversight, funding for state UI administration is another serious issue for the UI system. In April 2024, the Department published a document titled, *Building Resilience: A plan for transforming unemployment insurance*.[2] This UI Transformation Plan represents a more complete accounting of activities and strategies underway and being pursued by the Department, along with recommendations for necessary legislative action. The Department's first identified Action Area is adequately funding UI administration. In particular, the plan states that "The federal underfunding of UI administration poses significant and far-reaching challenges to the fair and efficient operations of the UI system…In real terms, administrative funding declined by 23 percent between 1989 (on the eve of the 1990 recession) and 2019." The current administrative funding framework is predominately based on a state's workload (defined as the volume of unemployment claims), leading to steep drops in funding when the economy improves, and leaving states poorly positioned to respond to downturns, let alone an economic collapse of the magnitude experienced in spring 2020.

The draft report is part of growing evidence to justify the need for Congressional action to increase funding for the UI program. Without sustainable resources in the future, the

[1] U.S. Department of Labor, FY 2025 Congressional Budget Justification, Employment and Training Administration, Program Administration: https://www.dol.gov/sites/dolgov/files/general/budget/2025/CBJ-2025-V1-09.pdf.

[2] U.S. Department of Labor, *Building Resilience: A plan for transforming unemployment insurance*, published April 2024, https://oui.doleta.gov/unemploy/transformation_plan.asp.

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Department will continue to experience notable challenges related to staffing and program oversight, and states will continue to struggle in effectively operating the program.

Findings Related to Michigan

The draft report identifies $129.6 million in questioned costs (reimbursements) to states for STC benefit payments. Of this amount, $100.1 million relates to the review of one state's (Michigan) reimbursements for STC benefits. A requirement for reimbursement for STC benefits under the CARES Act is that the individuals receiving STC benefits were not temporary or seasonal workers. The auditors found that Michigan did not ask employers participating in STC to certify that the individuals receiving benefits were not temporary or seasonal workers. To reach a conclusion that $100.1 million should be treated as questioned costs, one has to make a huge leap in assuming that nearly all employees who were provided STC benefits in the State were seasonal, temporary, or intermittent. There are no data or facts to justify this conclusion. In fact, it is worth noting that the Michigan Job Vacancy Survey report in 2021 indicates that only nine percent of job vacancies in the State were for temporary or seasonal positions.[3] This conclusion also ignores the fact that the prohibition on using the STC program to pay benefits to seasonal, temporary, and intermittent employees is a requirement for Michigan STC and the State has been very clear in sharing information about this requirement with employers.[4] ETA will work with the State and make a determination on the validity of the potential questioned costs raised in the draft report. However, it is highly unlikely that the amount will be near the $100.1 million noted in the draft report.

Responses to the Recommendations

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

<u>Recommendation 1</u>: Establish policies and procedures for monitoring, using lessons learned from the Short-Time Compensation program during the pandemic, that ensure states meet requirements for similar future temporary unemployment insurance programs that provide federal reimbursements to states.

<u>ETA Response</u>: ETA agrees with this recommendation. ETA will capture and analyze lessons learned from the implementation of the pandemic-related STC program, which will be used by ETA to provide legislative technical assistance to Congress and develop monitoring and

[3] See Michigan Labor Market News March 2021, pages 10 and 14 at: https://milmi.org/_docs/publications/News/LMN/LMN_0321.pdf.
[4] See bullet points under Work Share Requirements on Michigan's website: https://www.michigan.gov/leo/bureaus-agencies/uia/employers/panel-resources/programs/workshare-program; Michigan's Employer Guide Sheet: https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/UIA/Publications/UIA-Work-Share-Employee-Guide-Sheet-2022.pdf?rev=ad58964373c8425cadc4d59b15cafa53&hash=9391064BE78765294BF1E99AC706D459; and pages 3 and 30 of Michigan's Toolkit for Shared Work: https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/UIA/Publications/Work_Share_Toolkit.pdf?rev=5bd6ec6df03c46b1b10b2c8bb3b910af&hash=FCC90F2419E392D39721E11173BC50F8.

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oversight strategies for similar temporary emergency UI programs enacted in the future. 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: Review states' compliance with Short-Time Compensation (STC) eligibility requirements and require all states with STC agreements to return federal funds used for reimbursements of STC benefit payments for weeks of unemployment beginning before March 27, 2020, and ending after September 6, 2021, as well as for reimbursements that exceeded benefits paid.

ETA Response: ETA agrees with this recommendation and notes that work in this area is already underway. As indicated in the draft report, three states have already returned $11.5 million to ETA, and the draft report raises some issues that warrant further investigation by ETA. Appropriate processes and determinations must first be made before directing states to pay specific amounts. ETA will conduct an appropriate review and expects the process to be completed by the end of FY 2026. The Administrator for the Office of Unemployment Insurance and the Administrator for the Office of Grants Management are responsible for this recommendation.

Recommendation 3: Monitor states administering unemployment insurance programs subsidized with federal funds, including temporary programs such as Short-Time Compensation, to ensure compliance with the 3-year records retention requirements established in the Code of Federal Regulations (2 C.F.R. § 200.334).

ETA Response: ETA agrees with this recommendation. Employment and Training Order (ETO) No. 1-20, Change 2, *National Office (NO) and Regional Office (RO) Roles in Managing and Monitoring the Unemployment Insurance (UI) Program Reviews as part of Grant Management beginning in Fiscal Year (FY) 2024* establishes ETA's monitoring priorities for FY 2024, including a description of ETA's methodology for assessing risk and determining which UI programs to monitor each year with available resources. This monitoring includes reviewing a state's record retention policies as described in ETO No. 1-24, *Grants Management Policies and Responsibilities*, as appropriate. ETA's Regional Offices also use the Core Monitoring Guide, which was updated in FY 2024, for its monitoring, and which includes reviewing for sufficient record retention, as outlined under 2 CFR 200.334. The Director for the Office of Regional Management is responsible for this recommendation.

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