

U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT AND TRAINING
ADMINISTRATION



**RECOVERY ACT: ETA IS MISSING
OPPORTUNITIES TO DETECT AND COLLECT
BILLIONS OF DOLLARS IN OVERPAYMENTS
PERTAINING TO FEDERALLY-FUNDED
EMERGENCY BENEFITS**

Date Issued:
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January 31, 2012
18-12-001-03-315

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

BRIEFLY...

Highlights of Report Number **18-12-001-03-315**, issued to the Assistant Secretary for Employment and Training.

WHY READ THE REPORT

The Unemployment Insurance (UI) program is designed to provide benefits to individuals out of work, generally through no fault of their own, for periods between jobs. Over the past 3 years, the UI program has grown to unprecedented levels, paying nearly \$318 billion in benefits to unemployed workers. Of this amount, \$126 billion was for federally-funded emergency benefits, comprising Emergency Unemployment Compensation and Federal Additional Compensation. UI's rate of overpayments (11.2 percent) was the third largest of any benefits program in fiscal year 2010. ETA estimated nearly \$32 billion in overpayments occurred over the past 3 years and \$17.2 billion of that total should be detectable by the states. Nearly \$6.9 billion of the \$17.2 billion in detectable overpayments pertained to federally-funded emergency benefits. The growth in the UI program presents challenges to ETA, not only in implementing the UI program, but in detecting overpayments in UI benefits.

WHY OIG CONDUCTED THE AUDIT

We initiated an audit to determine if ETA had effective controls over the states' detection of overpayments of traditional state-funded UI benefits and federally-funded emergency benefits. This report presents the results and findings related to the federally-funded emergency UI benefits. Our audit work was conducted at ETA's Office of Unemployment Insurance located in Washington, D.C.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2012/18-12-001-03-315.pdf>.

January 2012

RECOVERY ACT: ETA IS MISSING OPPORTUNITIES TO DETECT AND COLLECT BILLIONS OF DOLLARS IN OVERPAYMENTS PERTAINING TO FEDERALLY-FUNDED EMERGENCY BENEFITS

WHAT OIG FOUND

The OIG found that ETA did not effectively apply key controls related to the overpayment detection process to federally-funded emergency benefits, leaving this portion of the UI program vulnerable to billions of dollars in undetected overpayments.

For the \$126 billion in federally-funded emergency benefits, ETA used a questionable methodology when estimating the amount of overpayments. As a result, ETA's \$6.9 billion estimate of overpayments related to the federally-funded emergency benefits may be significantly misstated.

ETA did not measure the effectiveness of improper payment detection activities for the \$126 billion in federally-funded emergency benefits. Using data provided by ETA, we determined states detected only \$1.3 billion (19 percent) of the estimated \$6.9 billion in detectable overpayments from federally-funded emergency benefits.

The lack of a performance measure for detecting federally-funded emergency benefit overpayments hampered ETA's ability to monitor state performance. As a result, ETA may be missing opportunities to detect and collect billions of dollars in overpayments of federally-funded emergency benefits.

WHAT OIG RECOMMENDED

The OIG recommended that the Assistant Secretary for Employment and Training take steps to (1) develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the federally-funded emergency programs, (2) establish a valid performance measure for federally-funded emergency programs, (3) increase ETA monitoring regarding improper payment detection activities related to federally-funded emergency programs, and (4) develop and implement a plan to increase detection efforts over the estimated \$5.6 billion in detectable overpayments related to federally-funded emergency benefits that states did not identify in the past 3 years.

ETA generally did not agree with our conclusions or recommendations 1 and 2, and did not fully address recommendations 3 and 4.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



January 31, 2012

Assistant Inspector General's Report

Ms. Jane Oates
Assistant Secretary for Employment and Training
U.S. Department of Labor
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Washington, D.C. 20210

The Unemployment Insurance (UI) program is designed to provide benefits to individuals out of work, generally through no fault of their own, for periods between jobs. In order to be eligible for benefits, jobless workers must show that they were separated from work through no fault of their own, met minimum length of time and wage requirements before they were separated, and must be able and available for work. The program is administered at the state level, but is funded by both state and federal monies. According to data reported by Department of Labor (DOL) at the time of our fieldwork, more than 14 million individuals (9.1 percent of the covered workforce¹) are currently unemployed. Of those unemployed, more than 3.4 million individuals claimed UI state-funded benefits and nearly 7.2 million individuals claimed state and/or federally-funded UI benefits. The DOL Employment and Training Administration (ETA) is responsible for oversight of the UI program to ensure states operate it effectively and efficiently. This oversight includes ensuring that states do not provide unemployment compensation (UC) to ineligible recipients and ensuring that states detect these overpayments when they do occur.

From October 1, 2007, to September 30, 2010, the UI program grew to unprecedented levels, paying nearly \$318 billion in benefits to unemployed workers. Of this amount, \$126 billion was for federally-funded emergency benefits, comprising Emergency Unemployment Compensation (EUC) and Federal Additional Compensation (FAC).² UI's rate of overpayments (11.2 percent) was the third largest of any benefits program in fiscal year (FY) 2010.³ DOL estimated that nearly \$32 billion in overpayments occurred over the past 3 years. The growth in the UI program presented challenges to ETA, not only in implementing the UI program, but in detecting overpayments in UI benefits. ETA

¹ The covered workforce includes people who did any work at all for pay or profit. This includes all part-time and temporary work, as well as regular full-time, year-round employment. Persons also are counted as employed if they have a job at which they did not work during the survey week because of situations such as vacations or illness.

² A portion of the emergency benefits (\$51.3 billion of the \$126 billion) was funded with funds from the American Recovery and Reinvestment Act of 2009.

³ For our reporting purposes, we included data that ETA reported during FYs 2008-2010.

has recently undertaken several initiatives designed to improve overpayment detection efforts, including the following:

- Facilitating state implementation of the National Directory of New Hire cross match to address the largest cause of UI improper payments — earnings while benefits are being paid,
- Hosting a National Unemployment Insurance Integrity Professional Development Conference in April 2010 in order to provide a forum for disseminating successful practices for preventing, detecting and recovering UI overpayments,
- Holding 10 training sessions with more than 400 state staff during FYs 2008 and 2009 in order to improve the quality and accuracy of initial UI eligibility determinations, and
- Implementing the Separation Information Data Exchange System, which will improve the accuracy of claimant eligibility determinations — the second largest cause of improper payments by enabling state agencies to obtain more timely and complete information regarding the reasons that UI applicants were separated from work.

Based on the results of the Benefit Accuracy Measurement (BAM) survey, ETA annually estimates the amounts of overpayments it believes should be detectable by states through their normal improper payment detection activities, known as Benefit Payment Control (BPC) activities. Not all overpayments are easily detected or cost beneficial to detect. ETA has established an annual performance measure for states to detect at least 50 percent of the amount estimated to be detectable. For the 3-year period we reviewed, ETA estimated that \$17.2 billion of the total estimated \$32 billion of overpayments should be detectable by the states. ETA's estimate was based on samples of state-funded benefit programs only. ETA then applied the results to all benefits, including federally-funded emergency benefits. Nearly \$6.9 billion of the \$17.2 billion detectable overpayments pertained to federally-funded emergency benefits.

ETA established three key controls for measuring how well states were doing in identifying detectable UI overpayments.

- The Estimate – Establishing a valid estimate is a key control because it serves as a benchmark to measure how well states are doing in detecting overpayments. ETA conducts a statistical survey known as the BAM to estimate the rate and amount of overpayments in the UI program. This report focuses on two of the estimates produced by the process – an overall estimate of the amount of overpayments that occur within the UI programs and an estimate of the amount of overpayments that should be detected by the states through normal program operations.

- The Performance Goal – Establishing a performance goal is a key control for measuring how well states are doing in detecting overpayments. ETA established a performance goal for states to identify at least 50 percent of estimated detectable overpayments.
- The Quality Plan – ETA requires states that do not meet the minimum performance goal to include in their State Quality Service Plans (SQSP) the corrective actions necessary to meet the minimum performance goal and the milestones for completing those actions. On a quarterly basis, ETA’s regions monitor each state’s efforts in achieving the performance goal.

As part of our overall audit objective, which was to determine whether DOL had effective controls over the states’ detection of overpayments for the UI federal and state programs, we evaluated ETA’s controls over the federally-funded portion of the UI program. We are issuing this report to address issues we found related to these controls. We will be issuing a subsequent report that will address issues we found related to the controls over the overpayment detection process for state-funded programs.

The audit covered UI overpayments reported between FYs 2008 and 2010.

Our work included tests of controls over both estimated and actual improper payment data reported by ETA regional offices and the states. We used survey questionnaires sent to all ETA regional offices and states to evaluate the extent of ETA’s oversight.

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 provides a reasonable basis for our findings and conclusions based on our audit objective. Our objective, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

ETA’s initiatives are significant and positive steps toward increasing the amount of overpayments detected by the states. However, we found weaknesses in controls related to overpayment detection of federally-funded emergency benefits that are not necessarily addressed by its recent initiatives. ETA did not effectively apply its three key controls related to the overpayment detection process to federally-funded emergency benefits, leaving this portion of the UI program vulnerable to billions of dollars in undetected overpayments. In conjunction with the DOL’s Office of the Chief Financial Officer, ETA applied a methodology designed for state-funded benefits to estimate the amount of overpayments in federally-funded emergency programs that it subsequently reported to Office of Management and Budget (OMB) in accordance with the Improper Payment Elimination Recovery Act (IPERA). As a result, the estimated \$6.9 billion in

overpayments of federally-funded emergency benefits may have been significantly misstated.

Furthermore, ETA did not measure the effectiveness of improper payment detection activities for the \$126 billion in federally-funded emergency benefits. ETA reported that the UI program met its performance goal by detecting more than 52 percent of detectable overpayments. However, ETA only reported on state-funded benefits and did not include how well states were doing in detecting overpayments from federally-funded emergency benefits. Using data provided by ETA, we determined states detected only \$1.3 billion (19 percent) of the estimated \$6.9 billion in detectable overpayments from federally-funded emergency benefits.

When federally-funded emergency benefits are included in the performance measure, the overall performance of states drops to an approximately 34 percent detection rate for overpayments, well below the 50 percent performance goal. Specifically, 44 of 52 states⁴ (85 percent) did not meet the performance goal when including federally-funded emergency benefits. In contrast, ETA reported that only 21 of 52 states (40 percent) did not meet the goal for the same period.

Controls for monitoring the detection of overpayments related to federally-funded emergency benefits were also not effective. ETA told us there was no requirement to report detections for the federally-funded emergency benefits even though Executive Order (EO) 13520 of November 20, 2009, specifically states that federal agencies are required to identify and measure improper payments. The EO does not exempt federally-funded emergency benefits from this requirement.

ETA conducted on-site reviews of the federally-funded emergency benefits in all states and collected the data on overpayment detections and recoveries for the federally-funded emergency benefits. However, because the ETA performance goals for the states pertained to only state-funded benefits, ETA and its regions could not objectively measure how well states were doing in identifying improper payments related to federally-funded emergency benefits.

ETA did not effectively apply its three key controls related to the overpayment detection process to federally-funded emergency benefits; as a result, it may be missing opportunities to increase the detection and collection of additional overpayments. During the period FY 2008-2010, states detected \$1.3 billion of the estimated \$6.9 billion in federally-funded overpayments. If ETA had established and states had met the same detection goal for federally-funded overpayments that was in place for state-funded overpayments (50 percent), an additional \$2.15 billion of overpayments would have been detected and potentially recovered. This \$2.15 billion could then have been put to better use for paying legitimate claims for UC.

We recommend that the ETA Assistant Secretary take steps to (1) develop and implement a valid and reliable method for estimating the rate of detectable

⁴ Includes the District of Columbia and Puerto Rico

overpayments in the federally-funded emergency programs, (2) establish a valid performance measure for federally-funded emergency programs, (3) increase ETA monitoring regarding improper payment detection activities related to federally-funded emergency programs, and (4) develop and implement a plan to increase detection efforts over the estimated \$5.6 billion in detectable overpayments related to federally-funded emergency benefits that states did not identify in the past 3 years.

In response to our draft report, ETA did not agree with the recommended actions to establish a valid and reliable method for estimating overpayments in the federally-funded emergency programs, or to establish a valid performance measure for the federally-funded emergency programs.

ETA stated that it was not desirable or feasible to implement a new sampling process to estimate overpayments for federally-funded emergency programs for the following reasons: the temporary nature of such programs; states' lack of administrative resources needed to add a new audit program for such programs; and the complexity of the designs of the various different federally-funded emergency programs. While developing a new sampling process may not be feasible; ETA should consider expanding the BAM sample to include all UI benefit payments regardless of funding source. By doing so, ETA would ensure that future overpayment estimates cover all UI programs, including any temporary federally-funded emergency programs that may be put into place.

Regarding the recommendation to establish a valid performance measure for federally-funded emergency programs, ETA stated that there is no requirement in EO 13520, the Improper Payments Information Act, or IPERA to establish a performance measure for improper payment detections. While not required, we believe such a measure would enable ETA to better assess states' effectiveness in identifying overpayments of federally-funded emergency benefits.

ETA's response is included in its entirety in Appendix D.

RESULTS AND FINDINGS

Objective — Did the Employment and Training Administration have effective controls over the detection of overpayments by states for the federally-funded emergency program?

ETA lacked effective controls over the detection of overpayments by states for the federally-funded emergency program, leaving the program vulnerable to undetected overpayments arising from error, fraud, and abuse.

ETA did not effectively apply its key controls related to the overpayment detection process to federally-funded emergency benefits. For the \$126 billion in federally-funded emergency benefits, ETA used questionable methodology when estimating the amount

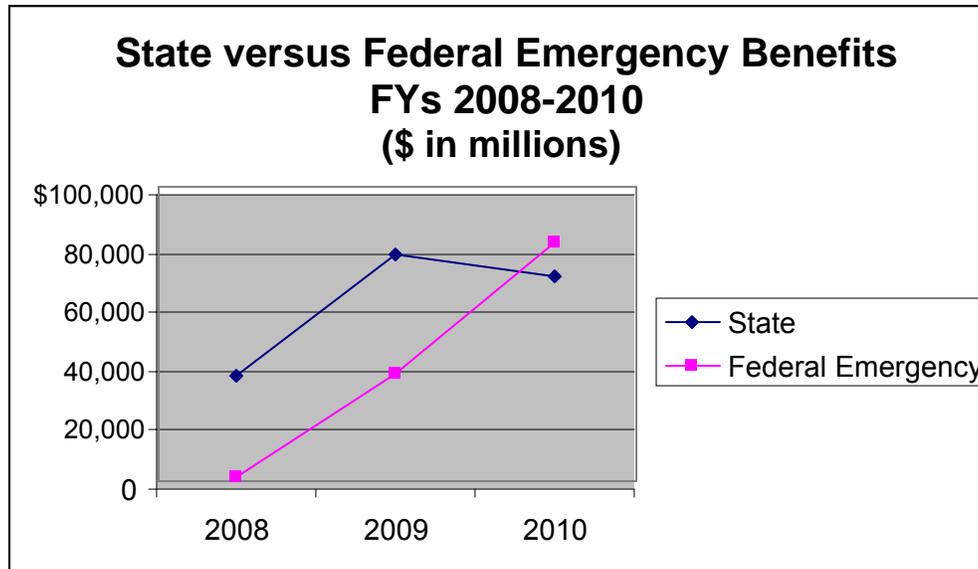
of overpayments. Therefore, not only is ETA's \$6.9 billion estimate of overpayments unreliable, it may be significantly misstated. ETA also failed to establish a performance measure to determine the effectiveness of improper payment detection activities related to federally-funded emergency benefits, and its reports significantly overstated how well states were doing in detecting overpayments. Because a performance measure wasn't established for the federally-funded emergency benefits, ETA and its regions had no way to effectively monitor how well states were doing in detecting overpayments related to federally-funded emergency benefits. As a result, ETA may be missing opportunities to detect and collect billions of dollars in additional overpayments from federally-funded emergency benefits.

Finding 1 — ETA did not establish valid overpayment estimates for federally-funded emergency benefits.

Federally-funded emergency benefits consist of EUC and FAC. For FYs 2008 through 2010, states paid \$126 billion in federally-funded emergency benefits and ETA estimated that nearly \$6.9 billion in federally-funded emergency benefits were paid improperly.

Establishing a valid estimate is a key control because it serves as a benchmark to measure how well states are doing in detecting overpayments. Both IPERA and OMB Circular A-123, updated in April 2011, state the head of the relevant agency shall produce a statistically valid estimate or an estimate that is otherwise appropriate using a methodology approved by the Director of OMB. OMB Circular A-123 also requires agencies to incorporate refinements to their improper rate methodologies based on recommendations from agency staff or auditors. Agencies are required to identify all programs and activities that may be susceptible to significant overpayments.

Annually, ETA estimates the amount of overpayments within the state-funded benefit programs based on a projected amount of overpayments found in a statistical sample of claimant benefit case reviews. However, as illustrated by the chart below, a similar process was not established to estimate the amount of overpayments for the federally-funded emergency benefits, even though the federally-funded benefits have grown to surpass the state-funded benefits.



Instead, ETA assumed that the rate of overpayments it determines for state-funded benefits would apply also to federally-funded emergency benefits. This was not a statistically valid estimate and ETA provided no documentation to show that OMB actually approved its methodology to estimate the federally-funded overpayments based solely on sampling state-funded benefits. ETA told us that in conjunction with the Office of the Chief Financial Officer and after consultation with OMB in October and November 2009, it applied the overpayment rates from the state-funded benefits to all UC outlays. ETA further stated that OMB accepted the estimated amount of overpayments. Our review of documentation ETA provided us showed that OMB did not specifically approve using the BAM error rate for all outlays. Even if it did, decisions made almost 2 years ago are not prudent in today's environment given (1) the magnitude of increase in emergency benefits (from less than \$39 Billion in FY 2009 to nearly \$84 Billion in FY 2010) and (2) the subsequent requirements of IPERA and OMB Circular A-123, which specifically require Director of OMB approval for deviations from statistical sampling and also require refinements based on auditor recommendations.

ETA has not done any testing to confirm whether its assumption is valid. We believe the estimate could have significantly misstated the amount of improper payments related to the federal programs for the following reasons.

- The federal and state programs have different eligibility requirements. For example, people who have part-time jobs, but make below certain dollar thresholds, may be eligible for federally-funded benefits but not state-funded benefits.
- Considering the severity of the economic downturn, there is a greater risk that displaced workers will continue to claim benefits even when re-employed to subsidize their lessened earnings. DOL's Bureau of Labor Statistics News Release dated August 26, 2010, had shown that the economic downturn from

2007 to 2009 was far more severe than previous recessions. Only 45 percent of displaced workers who were subsequently re-employed reported earning as much or more than they did prior to displacement, and 36 percent reported earning losses of 20 percent or greater. This suggests a heightened risk that claimants will claim benefits after returning to work. Claiming benefits after returning to work represents the largest cause of UI overpayments.

ETA told us it considers the federally-funded emergency benefits to be temporary and episodic and it did not have the staff or technological resources to conduct the sampling necessary for determining the estimate of overpayments in these benefit programs. Specifically, ETA stated:

- It would take an estimated 18 months or longer to modify the database design and the management and reporting software in order to implement a data collection program for the current federally-funded emergency benefits. Also, since the current federally-funded emergency benefits differ in design from previous emergency programs, the data collection program may not be applicable to future federally-funded emergency programs.
- While states are detecting payments for the federally-funded emergency benefits, they do not have sufficient resources to add a new collection program for the federally-funded emergency benefits.

While developing a new process may not be feasible, ETA should consider expanding its current BAM sample to include all UI benefits regardless of funding source. By doing so, ETA would ensure that future overpayment estimates cover all UI programs, including any temporary federally-funded emergency programs that may be put into place.

Finding 2 — ETA did not measure the effectiveness of states in identifying federally-funded overpayments.

Establishing a performance goal is a key control for measuring how well states are doing in detecting overpayments. ETA established a performance goal for states to identify at least 50 percent of estimated detectable overpayments and reported that states actually identified nearly 53 percent. However, ETA's improper payment performance goal did not include federally-funded emergency benefits. ETA told us there was no requirement to report detections for the federally-funded emergency benefits even though EO 13520 of November 20, 2009, specifically states that federal agencies are required to identify and measure improper payments. The EO does not exempt federally-funded emergency benefits from this requirement. ETA further stated that the absence of a performance goal does not preclude the ability to monitor state performance. However, we believe a performance goal provides an objective measure of how well states are doing at detecting overpayment. Since ETA did not establish a performance goal for the federally-funded emergency benefits, it was unable to measure the effectiveness of improper payment detection by states for these programs.

Based on data ETA provided us, we determined that the rate of detection was only about 19 percent of estimated overpayments pertaining to federally-funded emergency benefits, or about \$1.3 billion detected versus about \$6.9 billion estimated to be detectable.

ETA measures state performance using the improper payment detection core measure. The core measure compares the estimated detectable overpayments to the actual overpayments states identified for a 3-year period. As of September 30, 2010, the improper payment detection core measure performance report showed that states were identifying nearly 53 percent of estimated detectable overpayments during FYs 2008-2010 (see Exhibit 1). However, this information did not include the federally-funded emergency benefits.

ETA did not break down its estimate of \$17.2 billion in detectable overpayments for FYs 2008-2010 to determine how much of the estimate pertained to federally-funded emergency benefits. However, applying ETA’s rate of detectable overpayments to claims information for both federally-funded and state-funded benefits that ETA provided us, we determined that \$6.9 billion of the \$17.2 billion estimated detectable pertained to federally-funded emergency benefits. We then compared that estimated amount to the actual amount of federally-funded benefits states detected. We determined that the rate of detection was only about 19 percent for federally-funded emergency benefits (about \$1.3 billion detected versus about \$6.9 billion estimated). Overall, ETA’s rate of detection when including federally-funded emergency benefits was only about 34 percent of the estimated overpayments for FYs 2008-2010.

Table 1: Core Measure with Federal Funds Included (in millions)					
	Amount Paid	Detectable Rate ⁵	Estimated Detectable Overpayments	Actual Overpayments Detected	Overall Rate of Detection
All UI Funds	\$317,873	5.42%	\$17,228	\$5,861	34.02%

ETA reported that 21 of 52 states (40 percent) did not meet the performance goal for FYs 2008-2010. However, when including federally-funded emergency benefits, 44 of 52 states (85 percent) did not meet the performance goal (see Exhibit 2).

As with the estimate, ETA told us that even if an overpayment rate for the federally-funded emergency benefits could be reliably estimated and a performance measure for detection effectiveness could be constructed, it did not believe it was feasible or desirable to implement a new process for federally-funded emergency benefits.

⁵ ETA’s BAM error rate for detectable overpayments

Finding 3 — ETA could not effectively monitor state performance in identifying federally-funded overpayments.

ETA's SQSP is its third key control related to the identification of detectable overpayments. If states are not meeting the minimum performance goal of identifying 50 percent of detectable overpayments, Unemployment Insurance Program Letter 14-05 and ETA Handbook 336 require them to include Corrective Action Plans (CAP) in their SQSP for the actions necessary to meet the minimum performance goal and the milestones for completing these actions. On a quarterly basis, ETA's regions monitor each state's efforts in achieving the performance goal. ETA told us that for FY 2012, it had established a requirement for all states to address UI integrity as part of their SQSP. ETA told us that it provided states with detailed data on the root causes of improper payments and is providing intensive technical assistance to support the development of comprehensive plans to prevent, detect, and recover UI overpayments.

We found that ETA had established a review process for states' overpayment detections related to the federally-funded emergency programs. ETA conducted on-site reviews in every state and provided technical assistance and support for states' implementation of the programs. However, because the performance goals that ETA established pertained only to state-funded programs, ETA and its regions had no way to effectively monitor how well states were doing in identifying overpayments related to federally-funded emergency benefits.

Once ETA establishes a valid estimate and performance goals for identifying detectable overpayments related to federally-funded emergency benefits, it will need to require states that do not meet the performance goals to include CAPs in their SQSPs and monitor states' efforts in meeting the goals.

Finding 4 — ETA is missing opportunities to detect and collect additional federally-funded overpayments.

IPERA requires federal agencies to report on whether or not they have the internal controls, human capital, information systems, and other infrastructures needed to reduce improper payments to a level below which further expenditures would cost more than the amount such expenditures would save in preventing or recovering improper payments. ETA has not developed a plan to accurately detect overpayments from prior years, in spite of the knowledge that substantial undetected overpayments occurred. Such a plan should include an analysis to identify the resources needed at both the federal and state levels to accurately detect overpayments to the point at which the expenditures for such detections would cost more than the overpayments detected.

The sharp increase in UI benefit claims, not only in federally-funded emergency benefits, but state-funded benefits as well, has challenged the ability of states to detect UI overpayments. ETA officials and officials in 14 states told us that over the past 3 years, states had diverted their staff from improper payment detection efforts to claims

processing. In addition, ETA officials told us that the computer systems of states were limited when dealing with the substantial influx of benefits and overpayments related to the federally-funded emergency benefits. However, a prior ETA study in 2001 concluded that increasing detection activities has a high payoff — between \$4 and \$5 recovered for every dollar invested. The study concluded that the ratio of overpayments detected to additional dollars spent on detection activities (including improper payment detection and recovery) was about 8.8 to 1. The study's conclusion was reinforced by testimony given by the Executive Director, Utah Department of Workforce Services, to the Senate Committee on Finance on June 22, 2011. In her testimony, the Executive Director stated that for every dollar invested in integrity efforts, Utah collects \$5.50 in benefit overpayments. When we questioned ETA officials about the reasons they haven't developed a plan, the officials told us that investigating claims is resource intensive and that states do not have the resources to conduct additional investigations. ETA also noted that because of a statutory limitation, states can only offset 50 percent of future EUC payments with current EUC overpayments. However, this does not preclude states from collecting the entire amount of EUC overpayments.

We recognize that substantial investment in improper payment detection activities could be required to more accurately identify recoverable overpayments and return them to their proper state or federal account within the UI Trust Fund. However, given the fact that the resources of states have been strained because of the spike in UI claims for both the federally-funded and state-funded benefits, and given the rapid growth and the magnitude of the federally-funded emergency benefits, the expansion of improper payment detection activities to maximize recovery of additional overpayments would appear to be a prudent investment. ETA data has shown states have only identified \$1.3 billion of the estimated \$6.9 billion in detectable overpayments related to federally-funded emergency benefits, which means that states have not detected about \$5.6 billion in detectable overpayments related to federally-funded emergency benefits. If all states met the ETA established goal of 50 percent, nearly \$2.2 billion in additional overpayments related to federally-funded emergency benefits would have been identified and subjected to collection efforts.

Furthermore, developing a plan to detect additional overpayments would help ETA comply with IPERA, which requires federal agencies to report on actions planned or actions taken to reduce overpayments to a level below which further expenditures to reduce overpayments would cost more than the amount recovered from such expenditures.

RECOMMENDATIONS

We recommend that the ETA Assistant Secretary take steps to:

1. Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the federally-funded emergency programs.
2. Establish a valid performance measure for federally-funded emergency programs.
3. Increase ETA monitoring regarding improper payment detection activities related to federally-funded emergency programs.
4. Develop and implement a plan to increase detection efforts over the estimated \$5.6 billion in detectable overpayments related to federally-funded emergency benefits that states did not identify in the past 3 years.

We appreciate the cooperation and courtesies that ETA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibits

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Exhibit 1

Improper Payments Detection Measure as of September 30, 2010

Overpayment Detection Core Measure Report

Estimated BAM Overpayments and Amount Established by BPC						
Region	ST	Amount Paid	BAM Oper. Rate #	Estimated Amt. OP #	BPC Established ±	BPC/ Est. OP
Boston	CT	\$905,575,944	2.66%	\$24,101,686	\$9,928,640	41.19%
	MA	\$2,023,282,587	2.34%	\$47,310,748	\$26,391,066	55.78%
	ME	\$183,337,205	4.54%	\$8,318,765	\$4,991,930	60.01%
	NH	⊗ \$166,466,266	3.38%	⊗ \$5,622,944	\$3,945,796	70.17%
	NJ	\$2,694,381,268	7.28%	\$196,034,644	\$132,256,213	67.47%
	NY	\$3,495,956,198	5.75%	\$200,947,982	\$95,611,077	47.58%
	PR	\$249,235,187	6.85%	\$17,081,587	\$4,901,956	28.70%
	RI	\$307,341,052	4.37%	\$13,429,767	\$6,493,239	48.35%
	VT	\$133,362,640	2.99%	\$3,990,263	\$2,277,631	57.08%
Philadelphia	DC	\$150,522,851	6.49%	\$9,768,548	\$4,791,404	49.05%
	DE	\$148,235,822	6.53%	\$9,678,360	\$3,591,697	37.11%
	MD	\$776,665,635	5.03%	\$39,092,533	\$35,831,815	91.66%
	PA	⊗ \$3,522,028,064	6.01%	⊗ \$211,837,387	\$73,009,653	34.46%
	VA	\$725,769,818	6.57%	\$47,710,532	\$20,296,756	42.54%
	WV	\$223,510,024	2.73%	\$6,106,031	\$3,267,336	53.51%
Atlanta	AL	\$437,294,461	5.90%	\$25,784,935	\$19,152,180	74.28%
	FL	\$2,146,267,064	5.13%	\$110,180,147	\$73,152,001	66.39%
	@ GA	\$1,044,820,481	2.49%	\$25,979,060	\$18,368,776	70.71%
	KY	\$682,673,750	2.11%	\$14,373,315	\$13,058,162	90.85%
	MS	\$224,034,715	7.32%	\$16,394,570	\$14,606,014	89.09%
	NC	\$1,791,312,665	5.39%	\$96,602,061	\$32,299,846	33.44%
	SC	\$617,434,697	6.34%	\$39,162,122	\$15,661,424	39.99%
	TN	\$656,342,056	5.63%	\$36,956,745	\$15,492,011	41.92%
Dallas	AR	\$453,605,509	8.99%	\$40,772,362	\$6,963,680	17.08%
	@ CO	\$599,170,758	5.05%	\$30,230,518	\$16,530,978	54.68%
	LA	⊗ \$311,041,796	17.10%	⊗ \$53,186,794	\$13,789,992	25.93%
	@ MT	\$102,946,981	5.07%	\$5,224,202	\$3,454,662	66.13%
	ND	\$62,556,846	3.07%	\$1,920,797	\$1,184,474	61.67%
	NM	\$225,121,084	6.73%	\$15,160,549	\$8,974,756	59.20%
	OK	\$326,191,892	3.71%	\$12,100,031	\$7,932,094	65.55%
	SD	\$40,296,735	3.35%	\$1,348,366	\$1,259,821	93.43%
	TX	\$2,292,716,939	5.85%	\$134,153,364	\$96,756,611	72.12%
	UT	\$302,453,153	5.13%	\$15,511,354	\$9,170,950	59.12%
	WY	\$85,781,311	5.66%	\$4,854,975	\$2,799,833	57.67%
Chicago	IA	\$543,439,658	5.85%	\$31,769,801	\$14,226,889	44.78%
	IL	\$3,064,298,640	8.25%	\$252,699,727	\$100,664,816	39.84%
	IN	\$1,248,661,091	4.88%	\$60,924,356	\$34,383,696	56.44%
	KS	\$467,266,102	5.58%	\$26,080,988	\$14,179,352	54.37%
	MI	\$2,563,951,287	5.64%	\$144,628,860	\$87,091,866	60.22%
	MN	\$1,024,891,831	6.00%	\$61,533,811	\$36,572,141	59.43%

	MO	\$719,784,117	5.92%	\$42,605,539	\$17,956,883	42.15%
	NE	\$133,625,062	5.59%	\$7,471,238	\$4,576,568	61.26%
	OH	\$1,752,797,297	4.86%	\$85,255,768	\$73,479,997	86.19%
	WI	\$1,257,861,999	4.67%	\$58,787,482	\$31,023,773	52.77%
San Francisco	AK	\$145,634,915	5.76%	\$8,394,790	\$5,151,734	61.37%
	AZ	\$596,258,945	9.62%	\$57,361,900	\$25,599,657	44.63%
	CA	\$8,054,885,367	3.87%	\$311,348,254	\$146,604,579	47.09%
	HI	\$269,292,877	1.22%	\$3,282,492	\$1,245,002	37.93%
	ID	\$268,164,552	5.10%	\$13,675,700	\$7,552,265	55.22%
	NV	\$715,092,830	8.70%	\$62,207,768	\$28,499,047	45.81%
	OR	\$1,021,443,822	9.68%	\$98,843,750	\$17,905,163	18.11%
	WA	\$1,498,430,695	3.43%	\$51,427,713	\$80,128,164	155.81%
	US	\$53,453,514,541	5.42%	\$2,899,227,981	\$1,525,036,065	52.60%

Notes:

BAM estimates are for 04/01/2007 - 03/31/2010.

BPC data are for 10/01/2007 - 09/30/2010.

Amount paid is average annual UI benefits paid in population from which BAM samples were selected.

⊗ BAM data estimated due to missing reports.

* BPC total estimated due to missing reports.

Includes fraud and nonfraud recoverable overpayments; excludes work search, ES registration, base period wage, and 'other' issues.

+ Excludes penalties assessed for fraud.

@ Excludes quarters in which insufficient BAM and / or BPC data were reported.

Overpayment detection results for these states do not accurately reflect actual performance because of this data completion issue.

The ratio of the amount of overpayments established (BPC) to the amount of overpayments estimated by BAM is reported in the highlighted column.

This ratio measures performance for the Detection of Overpayments UI Performs Core Measure.

Prepared by Div. of Performance Management on May 27 2011

Exhibit 2

Comparison of Improper Payment Detection Performance

Improper Payment Detection Performance for FY 2008 - FY 2010				
		When Excluding Federal Funds from Performance Measure	When Including Federal Funds in Performance Measure	
Boston	Connecticut (CT)	41.19%	47.00%	
	Massachusetts (MA)	55.78%	46.24%	
	Maine (ME)	60.01%	11.43%	
	New Hampshire (NH)	70.17%	26.20%	
	New Jersey (NJ)	67.47%	30.91%	
	New York (NY)	47.58%	33.53%	
	Puerto Rico (PR)	28.70%	25.67%	
	Rhode Island (RI)	48.35%	31.42%	
	Vermont (VT)	57.08%	31.37%	
Philadelphia	District of Columbia (DC)	49.05%	35.03%	
	Delaware (DE)	37.11%	33.28%	
	Maryland (MD)	91.66%	35.59%	
	Pennsylvania (PA)	34.46%	29.44%	
	Virginia (VA)	42.54%	39.87%	
	West Virginia (WV)	53.51%	29.72%	
Atlanta	Alabama (AL)	74.28%	38.88%	
	Florida (FL)	66.39%	39.17%	
	Georgia (GA)	70.71%	60.75%	
	Kentucky (KY)	90.85%	16.53%	
	Mississippi (MS)	89.09%	30.52%	
	North Carolina (NC)	33.44%	69.29%	
	South Carolina (SC)	39.99%	46.74%	
	Tennessee (TN)	41.92%	40.11%	
Dallas	Arkansas (AR)	17.08%	44.33%	
	Colorado (CO)	54.68%	29.77%	
	Louisiana (LA)	25.93%	62.20%	
	Montana (MT)	66.13%	29.87%	
	North Dakota (ND)	61.67%	21.52%	
	New Mexico (NM)	59.20%	52.44%	
	Oklahoma (OK)	65.55%	42.48%	
	South Dakota (SD)	93.43%	59.44%	
	Texas (TX)	72.12%	32.01%	
	Utah (UT)	59.12%	40.53%	
Chicago	Iowa (IA)	44.78%	30.72%	
	Illinois (IL)	39.84%	47.01%	
	Indiana (IN)	56.44%	40.07%	
	Kansas (KS)	54.37%	11.59%	
	Michigan (MI)	60.22%	27.23%	
	Minnesota (MN)	59.43%	15.65%	
	Missouri (MO)	42.15%	36.74%	

Improper Payment Detection Performance for FY 2008 - FY 2010			
	When Excluding Federal Funds from Performance Measure	When Including Federal Funds in Performance Measure	
	Nebraska (NE)	61.26%	23.70%
	Ohio (OH)	86.19%	82.57%
	Wisconsin (WI)	52.77%	24.78%
San Francisco	Alaska (AK)	61.37%	43.75%
	Arizona (AZ)	44.63%	57.54%
	California (CA)	47.09%	31.10%
	Hawaii (HI)	37.93%	46.82%
	Idaho (ID)	55.22%	103.12%
	Nevada (NV)	45.81%	41.46%
	Oregon (OR)	18.11%	44.59%
	Washington (WA)	155.81%	42.64%
US		52.60%	34.02%

Appendices

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Appendix A

Background

The UI program is designed to provide benefits to individuals out of work, generally through no fault of their own, for periods between jobs. In order to be eligible for benefits, jobless workers must show that they were separated from work through no fault of their own, and met minimum length of time and wage requirements before they were separated. The program is administered at the state level, but is funded by both state and federal monies. Based on data reported by DOL at the time of our fieldwork, more than 14 million individuals (9.1 percent of the covered workforce) are currently unemployed. Of those unemployed, more than 3.4 million individuals claimed UI state-funded benefits and nearly 7.2 million individuals claimed state and/or federally-funded emergency benefits. The covered workforce includes people who did any work at all for pay or profit. This includes all part-time and temporary work, as well as regular full-time, year-round employment. Persons also are counted as employed if they have a job at which they did not work during the survey week because of situations such as vacations or illness.

Title III of the Social Security Act of 1935 requires DOL to oversee and monitor the UI program to ensure the states operate it effectively and efficiently. This oversight includes ensuring states do not provide UC to ineligible recipients and ensuring that states detect these overpayments when they do occur. The UI program represents one of the largest benefit payment programs in the United States. A total of nearly \$318 billion dollars of benefit payments were paid for the three-year period ending September 30, 2010. Of this amount, \$126 billion was for federally-funded emergency benefits. A portion of the emergency benefits (\$51.3 billion of the \$126 billion) was funded by the American Recovery and Reinvestment Act of 2009.

Table 2: Outlays for all UI Programs

	2008 Outlays	2009 Outlays	2010 Outlays	Total Outlays
State Benefits	\$38,045	\$74,856	\$63,638	\$176,539
UCFE/UCX ⁶	722	958	1,321	3,001
Extended Benefits	2	4,242	7,632	11,876
EUC	3,729	32,398	72,157	108,284
FAC	0	6,482	11,693	18,175
Total	\$42,498	\$118,936	\$156,441	\$317,875

UI's rate of overpayments (11.2 percent) was the third largest of any benefits program in FY 2010. ETA conducts a statistical survey known as the BAM to estimate the rate and amount of overpayments in the UI program. This report focuses on two of the estimates produced by the process – an overall estimate of the amount of overpayments that

⁶ UCFE – UC for Federal Employees
UCX – UC for Ex-Service Members

occur within the UI programs and an estimate of the amount of overpayments that should be detected by the states through normal program operations. ETA has estimated that nearly \$32 billion dollars of overpayments exist in the benefits paid for the 3-year period, of which ETA estimated more than \$17.2 billion was recoverable. ETA defines recoverable overpayments as those most readily detected through state operations. Furthermore, the amount of UI benefit payments has grown from about \$42.5 billion in 2008 to more than \$156 billion in 2010. Much of this growth is attributed to the following new, temporary federally-funded emergency programs:

- EUC – Since 2008, this program has provided potentially 53 weeks of additional benefits to claimants.
- FAC - Since 2009, this program has added \$25 in weekly benefit payments to UI claimants.

In 2010, the federally-funded emergency programs accounted for nearly \$83.9 billion of the more than \$156 billion paid in 2010. State-funded UI programs include state-funded regular UC, UC for federal employees, and UC for ex-service members. The growth in the UI program, resulting from several complex laws passed by Congress, presented formidable challenges to ETA, not only in implementing the UI program, but in detecting overpayments in UI benefits. ETA attempted to combat these challenges by undertaking several initiatives designed to improve overpayment detection efforts. The specific initiatives included:

- Facilitating state implementation of the National Directory of New Hire cross match to address the largest cause of UI improper payments – earnings while benefits are being paid,
- Hosting a National Unemployment Insurance Integrity Professional Development Conference in April 2010 in order to provide a forum for disseminating successful practices for preventing, detecting, and recovering UI overpayments,
- Holding 10 training sessions with over 400 state staff during FYs 2008 and 2009 in order to improve the quality and accuracy of initial UI eligibility determinations, and
- Implementing the Separation Information Data Exchange System, which will improve the accuracy of claimant eligibility determinations — the second largest cause of improper payments — by enabling state agencies to obtain more timely and complete information regarding the reasons that UI applicants were separated from work.

ETA UI National and Regional offices have responsibility for providing oversight of UI program operations. To measure whether the 52 states' (including Puerto Rico and District of Columbia) processes for detecting UI benefit overpayments were achieving an Acceptable Level of Performance (ALP), ETA implemented the Improper Payment

Detection Core Measure. The measure requires states to identify and set up a minimum of 50 percent of the “estimate” of recoverable overpayments that exist based on the statistical BAM process in order to meet the ALP. ETA annually estimates the amounts of overpayments it believes should be detectable by states through their normal improper payment detection activities, known as BPC, but not all overpayments are easily detected or cost beneficial to detect. In FY 2008, ETA required that states who did not meet the ALP of 50 percent to develop and submit a CAP.

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Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

Did the Employment and Training Administration have effective controls over the detection of overpayments by states for the federally-funded emergency program?

Scope and Methodology

To accomplish our audit objective, we obtained and analyzed ETA's written policies and procedures over the Regions Responsibilities, the SQSP, CAPs, BAM (overpayment estimates), BPC (actual overpayments detected), and Data Validation. We also conducted interviews and analyzed the oversight and processing of overpayment detection activities at the ETA National Office in Washington, DC, and ETA Regional Offices in Atlanta, GA, and Dallas, TX. We used survey questionnaires sent to all ETA regional offices and states to evaluate the extent of oversight. The audit covered ETA's controls over detection of UI overpayments by states for FYs 2008, 2009, and 2010.

We considered the internal control elements of control environment, risk assessment, control activities, information and communication, and monitoring during our planning and substantive audit phases. We performed internal control work in the following areas: BPC, BAM, and SQSP. During our work, we identified three key controls and identified weaknesses in those three controls for the federally-funded emergency benefits. The three key controls include the following: the estimate, the performance goal, and the plan. We have reported on the deficiencies found in each of the three key control areas.

We analyzed written policies and procedures concerning improper payments. We analyzed (1) ETA's reporting of the federally-funded emergency benefit outlays, overpayments and estimated overpayments; and (2) ETA's performance measure with the state-funded UI programs and compared them to ETA's performance measure with all the UI programs to determine which states fell below the ALP in for the three-year period ending September 30, 2010. We reviewed on-site monitoring reports for all 6 Regions for the 52 states and territories, and one Region's desk reviews and risk assessments for 6 states in that Region regarding the EUC and FAC programs to determine whether the Regions were measuring federally-funded overpayments. We also reviewed their data validation process for the federally-funded emergency programs to ensure the data was reliable and accurate.

We did not determine the reliability of the claims and actual improper payment information that ETA provided to us; we used the best available data at the time of the report. In addition, while we recognize that ETA's rate of detection was not statistically valid for estimating federally-funded emergency benefits, we used the rate in the absence of a statistically valid rate.

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 provides a reasonable basis for our finding and conclusions based on our audit objective.

Criteria

The Overpayments Elimination and Recovery Act (IPERA; Public Law 111-204),
July 22, 2010

OMB Circular A-123, Appendix C

EO 13520

UI Program Letter 14-05 Change 1

ETA Handbook 336

Appendix C

Acronyms

ALP	Acceptable Level of Performance
BAM	Benefit Accuracy Measurement
BPC	Benefit Payment Control
CAP	Corrective Action Plan
DOL	Department of Labor
EO	Executive Order
ETA	Employment and Training Administration
EUC	Emergency Unemployment Compensation
FAC	Federal Additional Compensation
FY	Fiscal Year
IPERA	Improper Payment Elimination and Recovery Act
OIG	Office of Inspector General
OMB	Office of Management and Budget
SQSP	State Quality Service Plan
UC	Unemployment Compensation
UI	Unemployment Insurance

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ETA Response to Draft Report

U.S. Department of Labor

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

OCT 17 2011

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JANE OATES *Jane Oates*
Assistant Secretary for Employment and Training

SUBJECT: Review of Draft Interim Report -- Improving Unemployment
Insurance (UI) Overpayment Detection
Draft Interim Report No. 18-12-001-03-315

Thank you for the opportunity to respond to your report cited above. I would like to reiterate my commitment that the Employment and Training Administration (ETA) will continue to work with the state workforce agencies to develop administrative policies and procedures that will improve the measurement, detection, and recovery of improper payments in the UI program. However, we have some concerns about the findings in the report, as well as the basis for some of the conclusions, which we have previously shared with Mr. Robert Richardson of your office.

ETA's responses to your findings and recommendations are described below.

ETA lacked effective controls over the state's detection of overpayments for the UI Federal programs, leaving programs vulnerable to undetected overpayments arising from error, fraud, and abuse.

The integrity of the UI program is a top priority for ETA and the Department broadly. Throughout the period of implementation of the Emergency Unemployment Compensation of 2008 (EUC08) program, the Federal Additional Compensation (FAC) program, and full Federal funding of the Extended Benefits (EB) program, ETA has actively worked to ensure states were in the best position to implement these programs and pay benefits accurately through extensive guidance and intensive technical assistance. All three of these programs were extremely complex for states to implement, as is described in more detail in Attachment A. In addition, ETA focused the additional resources provided under the American Recovery and Reinvestment Act (ARRA) primarily on state monitoring activities, including monitoring program integrity. Also, during the course of these programs, ETA has developed an extensive and comprehensive strategic plan to improve prevention, detection, and recovery of improper payments for all UI programs. The components of this strategic plan are provided in Attachment B.

Finding 1 — ETA did not establish valid overpayment estimates for Federally-funded emergency benefits.

Recommendation 2 — Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the UI programs.

ETA Response

Implementation of what could be a burdensome state-level data collection and measurement program to estimate improper payments for the Federal emergency unemployment compensation programs was not feasible or desirable for the following reasons:

- On average, emergency Federal programs during a recession last approximately 18 months. The time to design a collection program, obtain Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act, provide guidance to states, and develop information technology (IT) systems at the Department of Labor and in the states to implement this methodology would take 18 months at a minimum. Given other strains on the system during the Great Recession with respect to staffing and IT implementation of the emergency programs, development time would probably have been much longer.
- While states had additional administrative resources to operate the Federal programs, they did not have sufficient capacity to add a new audit program for the newly implemented Federal programs. State IT staff was already stretched to the limit to simply implement the basic program requirements and the lack of trained program staff forced many states to reassign integrity staff, including regular Benefit Accuracy Measurement (BAM) staff, to process claims due to the overwhelming workload.
- Federal emergency programs differ in their design and, in the case of Emergency Unemployment Compensation 2008 (EUC08), the design changed over time with the establishment of additional tiers. In addition, the implementation of FAC in 2009 increased the complexity and design of the program making it impossible to implement a uniform methodology for sampling and auditing cases (see Attachment A for details).

With respect to the finding that “ETA provided no documentation to show that OMB actually approved its methodology to estimate the Federally-funded overpayments based solely on sampling state-funded benefits,” we note that ETA has previously provided information to the Office of the Inspector General (OIG) which documents that: 1) OMB initiated the request to apply the BAM improper payment rate estimates to the Federally-funded programs; and 2) OMB informed ETA that it was “appropriate to report the \$119 billion figure since it’s consistent to report the American Recovery and Reinvestment Act funds and additional UI benefits that were paid to beneficiaries.” Additionally, we note that OMB did not require ETA to include Federally-funded payments in the BAM samples during the fiscal year (FY) 2008 to FY 2010 reporting period and that OMB did not issue complete guidelines for the Improper Payments Elimination and Recovery Act (IPERA) reporting requirements until April 14, 2011, after the reporting period included in the OIG audit.

Finding 2 — ETA did not measure states’ effectiveness in identifying Federally-funded overpayments.

Recommendation 1 — Establish a valid performance measure for Federally-funded programs.

ETA Response

While ETA acknowledges the requirement in Executive Order (E.O.) 13520 to measure improper payments in all programs, we note that there is no requirement in the E.O., the Improper Payments Information Act (IPIA), or IPERA to establish a performance measure for improper payment detections. The absence of a performance measure and target does not prevent ETA's ability to monitor state performance in detection of overpayments. ETA monitors all UI programs and continuously collects and analyzes data on these programs, including data related detection of overpayments for all programs. State agencies do not differentiate efforts to prevent, detect, or recover improper payments among state and Federally-funded programs. ETA's onsite reviews in the state agencies did not identify any differential treatment of improper payments among programs.

Section 2(a) of the E.O. requires that OMB:

[E]stablish, in coordination with the executive department or agency (agency) responsible for administering the high-priority program annual or semi-annual targets (or where such targets already exist, supplemental targets), as appropriate, for reducing improper payments associated with each high-priority program;

Following consultation with OMB, two supplemental improper payment measures were approved: 1) the BAM Operational Overpayment rate, which is used to estimate detectable and recoverable overpayments; and 2) the Employment Service Registration rate. ETA would like to point out that in developing these supplemental measures, ETA made clear to OMB that these would be based on the BAM survey, which includes only the permanent State UI and Federal unemployment compensation programs for civilian employees and military service members.

In addition, pursuant to OMB's *Requirements for Implementing the Executive Order 13520: Reducing Improper Payments* which requires programs designated as "high priority" by OMB to provide a report to OIG containing information on the agency's efforts to measure and reduce improper payments, ETA submitted a report to the OIG on March 18, 2011 referencing our methodology for calculating the UI improper payment rate. The report also contained a comprehensive strategic plan for reducing improper payments. OIG did not raise the issue of a new methodology for estimating overpayments in the Federal programs at that time.

While ETA did acknowledge that if there was an estimation methodology for the Federal programs, it would be possible to develop a detection performance measure, we also were very clear that it was not feasible or desirable to implement a new sampling process to estimate overpayments for the Federal programs for the reasons provided in the response to Recommendation #1 above.

Finding 3 — ETA could not effectively monitor state performance in identifying Federally-funded overpayments.

Recommendation 3 — Increase its monitoring regarding improper payment detection activities.

ETA Response

ETA has established a requirement for all states to address UI integrity as part of their State Quality Service Plans beginning in FY 2012. ETA has also provided states with detailed data on the root causes of their improper payments and is providing intensive technical assistance to support the development of comprehensive plans to prevent, detect, and recover UI improper payments for all UI programs.

ETA routinely collects data from states relative to the detection of overpayments in the Federally-funded programs. During the period subject to the OIG audit, ETA conducted on-site reviews in every state and provided necessary technical assistance and support for states' implementation of the Federally-funded programs.

Finding 4 — ETA is missing opportunities to detect and collect additional Federally-funded overpayments.

Recommendation 4 — Develop and implement a plan to increase detection efforts over the estimated \$5.6 billion detectable overpayments related to Federally-funded emergency benefits that states did not identify in the past 3 years.

ETA Response

ETA has been continuously working with states to improve detection of overpayments for all UI programs and has dramatically accelerated those activities since the issuance of the EO. A comprehensive summary of current ETA UI integrity initiatives to reduce improper payments is provided in Attachment B. In addition to the strategies listed in Attachment B, ETA is willing to examine additional strategies to improve detection in the EUC, Federal Additional Compensation (FAC), and EB programs.

ETA is committed to detecting and recovering the maximum amount of overpayments in all UI programs within the resources available. ETA has recently submitted aggressive recovery targets to OMB for FY 2011 through 2013, as required by IPERA. Additionally, a new requirement for all states to address UI integrity as part of their annual State Quality Service Plans has been established. ETA has provided states with detailed data on the root causes of improper payments and is providing significant and intensive technical assistance to support the development of comprehensive plans to prevent, detect, and recover UI improper payments. As part of that technical assistance, ETA issued a new recommended operating procedure for state cross matching with the National Directory of New Hires (UI Program Letter 19-11 issued June 10, 2011) designed to enhance both prevention and detection of improper payments.

ETA will explore, and pursue as feasible, the following actions to detect, and establish for recovery, overpayments in the Federally-funded programs.

1. Retroactive state review of paid claims from Federally-funded programs and follow-up of matches obtained from state and national new hire directory matches.

State agencies may have in their files matches of claimant Social Security Numbers with new hire records for payments from Federally-funded programs. However, in many cases follow-up investigations with the employers and claimants to verify dates of employment and earnings were deferred because state integrity staff was reassigned to claims taking activities in response to the sharp increases in workload between 2008 and 2010. States could retroactively conduct these follow-ups, at a level supported by available resources, to detect additional overpayments attributable to benefit year earnings or separations due to voluntary quit or discharge for cause from a benefit-year employer.

If these claims were not submitted for matching at the time the payment was made, the ability of the states to retroactively cross-match claims from Federally-funded programs with the National Directory of New Hires (NDNH) is limited by the record retention provisions in the Computer Matching Agreements that state agencies sign as a condition of matching with the NDNH. The Social Security Act does not allow the Department of Health and Human Services (HHS) to have access to new hire, wage, or UI data when 12 months have elapsed since the date the information was provided, and where there has not been a match resulting from the use of the information in any information comparison activity. The statute also requires that all NDNH data be deleted from the database 24 months after the date of entry into NDNH, which limits the data available for the cross-match to benefits paid that are no older than 24 months.

The states can verify the legal status of claimants through the Systematic Alien Verification for Entitlement (SAVE) operated within the Department of Homeland Security for those claimants that may have been paid when their legal status expired. The limitation for this information is 18 months.

States can also verify claimant eligibility for benefits paid by matching against the state's wage records. However, for the cross-match to be effective, states will have to adjust parameters within their systems to match across different time periods taking into consideration of any statutory changes for earnings disregards that may have occurred for those time periods. It should be noted that the wage record verification is constrained by employer responsiveness to wage cross-match audits as well as the period of time that the state retains the wage records. Additionally, these cross-matches are resource intensive for most states due to the lack of automation in this area. In May, 2011, ETA facilitated the implementation of the State Information Data Exchange System (SIDES) – Earnings Verification format. The implementation of this system would make it less labor intensive and will help states with the retroactive detection of overpayments due to undetected earnings. In FY 2011, ETA provided supplemental funding to 12 states to implement the Earnings Verification format.

2. Review of work search activity for claimants receiving EB payments.

Unemployment Insurance Program Letter No. 12-09, issued in February 2009, reminds states that they must require EB claimants to conduct a systematic and sustained search for work, and to submit tangible evidence of such search, as a condition of being eligible for EB for a week. State agencies could verify their records on claimant work search activities for the weeks compensated to ensure that the necessary work search requirements were fulfilled. However, this activity is labor intensive and may be constrained by resources available to the state agencies.

3. Recovery of FAC overpayments.

We are aware that a number of states encountered significant technology challenges with the implementation of FAC, including ensuring mechanisms to establish overpayments. ETA continues to monitor state implementation of FAC and provide technical assistance as appropriate. In those cases where states were unable to establish overpayment processes for FAC, states could seek retroactive recovery of FAC payments for those overpayments established for state and Federal unemployment compensation program claims. FAC was payable on any claim for which the claimant received at least \$1 in benefits. FAC could be recovered for any established overpayment that completely disqualified the claimant (partial overpayments, in which the claimant was still entitled to a portion of the benefit, would not be included as long as the claimant retained eligibility for at least \$1). As with other retroactive detection activities, there will be significant administrative overhead involved in identifying these payments and capacity issues related to the information technology processes necessary to implementation of this strategy. Contacting the claimants, many of whom will likely be difficult to locate given the elapsed time, will pose a significant challenge and require the investment of significant state agency staff time.

ETA has carefully examined other detection activities to retroactively detect and establish for recovery overpayments for the Federally-funded programs. However, there are significant barriers and challenges for all of these activities.

- Additional overpayments from prior years could be detected by selecting samples of claims to review and investigate in a manner similar to the BAM investigations. However, this would be extremely resource intensive and would not be cost effective. The time and cost to investigate EUC08 and EB claims would be considerably higher than that for the regular UI program due to the complexity of these programs and the follow-up efforts that would be required to locate claimants and employers and obtain documentation for eligibility at the time the payment was made. Many states have been using their most experienced UI staff to operate and manage the EUC08 and EB programs, which are still ongoing. These same staff would likely be needed to work on any new detection efforts, which then could jeopardize ongoing EUC08/EB program operations.
- While we understand states have been cross-matching all claims including regular UI, EUC08, and EB, not all states have done so with the same frequency. It is possible that additional cross-matching could be conducted. However, because of the extensive time and resources required to investigate these matches (potential leads), we do not believe

that states have the resources to conduct these additional investigations. Also, as noted above, there are statutory barriers reflected in the Computer Matching Agreements between the state agencies and HHS that limit access to records in the NDNH.

- Federal law allows for overpayment waivers under certain circumstances for non-fraud EUC08 overpayments. There are 35 states that have waiver provisions for regular UI compensation in their state UI law. These state provisions may be applied to non-fraud EUC08 and EB overpayments under certain circumstances. Thus, it is expected that some overpayments from prior years that could be identified through new detection efforts would not necessarily result in significant recoveries of these benefits.
- Furthermore, there are state finality rules (time limitations) that will prohibit states from retroactively establishing overpayments. These finality provisions vary among states, but based on BAM data these would apply to about 12 percent of the estimated overpayments.

With respect to overpayment recovery for the Federally-funded programs, ETA agrees with the OIG's observation that recoveries would probably be lower than the recovery rate for the permanent state and Federal UI programs, given the statutory limitation of offsetting only 50 percent of future EUC program payments as a recovery method. ETA has identified additional factors that impede recoveries of overpayments for the Federally-funded programs:

- Many of these claimants have exhausted benefits and states are therefore unable to offset overpayments against their unemployment compensation payments, which is a primary method used by states for overpayment recovery.
- Claimants who have been unemployed for long durations have few resources available for the repayment of overpayments.
- The severe decline in the economy and employment situation negatively impacted the primary tools that states have used to recover overpayments, which are by garnishing wages, income tax offsets, and attaching liens to an individual's property to recover the overpayments when the property is sold.

The OIG report cites an ETA cost-benefit study conducted in 2001 to support its analysis of the expected increases in overpayment detections as a result of additional investment of resources. It should be noted that this study was based on the permanent state and Federal programs, not temporary emergency and episodic programs, such as EUC08 and EB, and was conducted in a significantly different economic environment, in which state agency resources were not stressed due to increased workload. Replication of this study for the recent recessionary period would likely yield significantly different results.

ETA will continue its aggressive work with states to improve the prevention, detection, and recovery of all UI overpayments with emphasis on Federally-funded programs, as well as address this issue in state reviews as they are scheduled. Additionally, we will continue to collect data submitted by the states on their overpayment detection and recovery activities to the

extent supported by our existing data collection and reporting systems, and utilize that data to support state monitoring and oversight of improper payment detection and recovery.

Again, thank you for the opportunity to share our comments and thoughts on your report. If you have questions, please contact Gay Gilbert, Administrator, Office of Unemployment Insurance, at 202-693-3029.

Attachment A

Implementation Issues for the Establishment of a Data Collection Program to Measure the Accuracy of Federally Funded Emergency Unemployment Compensation Programs

History of EUC 2008 Implementation

The Supplemental Appropriation Act of 2008 (Public Law 110-252), Title IV—Emergency Unemployment Compensation (EUC08), was signed by the President on June 30, 2008. During the months leading up to the signing and implementation of the law that authorized EUC08 benefits to all states, the National and Regional offices of the Employment and Training Administration (ETA) worked closely with the states to prepare them for implementation of the legislation. The requirements and provisions of the EUC08 program were not specified until final passage of the legislation. The Department provided generic guidance to the states in advance of the enactment to ensure that all states, many of which have aging UI computer benefit systems that cannot be easily adapted to new requirements, would be able to pay benefits once the program became law. The Department issued twenty separate Unemployment Insurance Program Letters (UIPLs) over the ensuing two and one-half years to provide guidance on how to implement and execute the law and all of its subsequent additions, modifications, and extensions.

The first EUC-related UIPL was issued less than a week after the law was signed (UIPL No. 23-08, July 6, 2008), which provided states with instructions for implementing the legislation and operating the EUC08 program, including fiscal and reporting instructions. The EUC08 program initially provided up to 13 weeks of 100 percent Federally-financed compensation to eligible individuals in all states. EUC08 was payable to individuals who (1) have exhausted all rights to regular compensation with respect to a benefit year that ended on or after May 1, 2007; and (2) have no rights to regular compensation or Extended Benefits (EB). To qualify for EUC08 benefits, individuals must have had been employed at least 20 weeks, or the equivalent in wages, in their base periods. Continuing eligibility is determined under the requirements of the individual state's law. As agents of the United States in administering the EUC08 program, states had to follow the instructions and guidance that were provided in the Department's advisories.

The EUC08 program became effective in July 2008 and was due to expire with the last week payable for the week ending June 27, 2009. In response to worsening economic conditions, Congress enacted numerous extensions and modifications to the program. A second tier of benefits was added to the initial 13 weeks, and third and fourth tiers were subsequently added. In February 2009, Congress enacted the American Recovery and Reinvestment Act, which established the Federal Addition Compensation (FAC) program, which provided an additional payment of \$25 per week to every claimant's weekly benefit payment. The EUC08 program is currently scheduled to phase-out beginning January 3, 2012.

Throughout all of the changes, the Department worked intensively with the states to give them guidance and to ensure that the states would be able to implement the programs in a timely and

accurate fashion. The proper payment of benefits is of paramount importance in not only the regular State UI and Federal unemployment compensation programs for civilian employees and military service members, but also in the EUC08, FAC, and EB programs. The same crosschecks, claims audits, and work search requirements apply to both the permanent state and Federal programs and the Federally-funded emergency programs. In fact, for the EB program, stricter work search requirements are in place to attempt to ensure that claimants return to the workforce as soon as possible.

All aspects of the original claim are subject to the agencies' review, crosscheck, and audit processes and are subject to selection for the Benefit Accuracy Measurement (BAM) review process. The agencies conduct weekly eligibility, work search verification, and other eligibility reviews for the EB and EUC08 claims. Generally, these eligibility reviews are in the same manner and extent as they do for regular claim, except for the EB program which has a more rigorous requirement for verifying work search than in most states.

Once all states were paying EUC08, the Department continued to emphasize the accuracy and timeliness of all payments. In response to significant increases in workload -- in some cases quadrupling within a year -- states reassigned some of their tax and Benefit Payment Control (BPC) staff to the claims taking, adjudication, and payment processes. Benefit payouts increased five-fold while the number of people assigned to the integrity functions remained the same, or even decreased. Department staff continued to provide technical assistance to try to maximize the effectiveness of the integrity staff, while ensuring that benefit payments were made properly and expeditiously. Many of the overpayments which occurred during the 2008 to 2010 period are just now being established and collected as staff work the backlog of overpayments detected through cross-matches and interstate audits. The Department's continued monitoring, assistance, and integrity function emphasis will ensure a quality program.

Management Challenges

The history of implementing the EUC08 program, which was discussed in detail above, as well as the operational contingencies presented by the macroeconomic conditions of 2008 to 2010 presented formidable challenges to the Department. Although the Department has not conducted a formal cost-benefit study, our management and technical analyses have identified several significant issues associated with modifying the BAM and BPC programs to support the coverage of temporary and episodic programs. These issues are discussed below.

Operational Costs

BAM

In order to produce estimates at a degree of precision comparable to BAM paid claims estimates, sample allocations of 360 cases in the ten smallest states and 480 cases in the other 42 states conducting BAM would be required -- a total of 23,760 cases nationally.

For paid claims, state investigators spend 5.1 hours, on average, to complete a BAM paid claims investigation, with an additional 3.17 hours for coding and entering data into a computerized

database, reviewing completed cases, and transmitting the data to the Department, for a total of 8.27 hours per investigation. Therefore, a total of 196,495.2 staff hours are required to complete the BAM audits. In fiscal year 2011, state staff costs are estimated to be \$40.81 per hour. This translates to a direct cost of just over \$8 million, which does not take into account additional supervisory overhead and information technology (IT) costs.

BPC

Additional overpayments from prior years could be detected by pulling samples of claims to review and investigate in a manner similar to the BAM investigations. However, this would be extremely resource intensive and possibly would not be cost effective. The time and cost to investigate EUC08 and EB claims would be considerably higher than that for the regular UI program due to the complexity of these. Many states have reassigned their most experienced UI staff to operate and manage the EUC08 and EB programs, which are still ongoing. These same staff would likely be needed to work on any new detection efforts, which could then adversely affect ongoing EUC/EB program operations.

Although states have continued to cross-match all claims including regular UI, EUC08, and EB, not all states have done so with the same frequency. It is possible that additional cross-matching could be conducted. However, because of the extensive time and resources required to investigate these matches (potential leads) we do not believe that states have the resources to conduct these additional investigations.

Also, federal law allows for overpayment waivers under certain circumstances for nonfraud EUC08 overpayments. There are 35 states that have waiver provisions for regular compensation in their state UI law, and these state provisions may be applied to nonfraud EUC08 and EB overpayments under certain circumstances. Thus, it is likely that some overpayments from prior years that could be identified through new detection efforts would not necessarily result in significant recoveries of these benefits.

Furthermore, state finality rules (time limitations), which vary from state to state, will preclude states from retroactively establishing some overpayments. Based on BAM data finality limitations would affect about 12 percent of the estimated overpayments.

IT Issues

- Assuming a new sampling program is developed and distributed to the states, the states would have to undertake extensive programming to create the extract files of the EUC08 and EB program payments from their state management records systems. Because of the legal requirement to pay benefits to eligible claimants “when due,” in periods of high unemployment states make every effort to pay claims as expeditiously as possible. When emergency programs are enacted, states are more likely to prioritize the use of their scarce IT resources to implement the operational and eligibility requirements of the temporary extended benefits programs rather than divert these scarce resources to support sample selection and audit activity.

Staffing Issues

Both BAM and BPC share staffing challenges: 1) the lack of experienced / trained staff during periods of high workloads; 2) the inability to hire additional staff in a timely manner; and 3) the need to reassign staff from integrity to claims taking functions. These are discussed in more detail.

- By definition, extended and temporary unemployment compensation (UC) programs are implemented in response to sharp increases in workload. During these periods of high workload, state agencies reallocate staff from integrity activities, such as establishing overpayments and conducting claims audits, to claims taking functions. During the most recent recession, 23 states reduced their BAM samples by one staff year to free staff for claims processing. Two states – Colorado and Montana – completely suspended BAM operations for several months, creating gaps in integrity measurement in these states.
- In addition, temporary programs such as EUC08 depend on Congressional action. These programs vary in their design and are subject to extensions or expansions. As discussed above, historically, each of these temporary emergency programs has unique eligibility and operational characteristics. Therefore, it is very difficult to plan for and anticipate these programs.
- In order to measure the accuracy of extended and temporary UC programs, states need to add staff. However, because the economic conditions that result in increases in workload also reduce state revenues, many states institute hiring freezes, furloughs, or layoffs to reduce staff costs. Many states, in spite of the Department’s explicit admonitions in public guidance, apply these policies even to positions that are fully funded by the Federal government. Therefore, even if the Congress were to appropriate the additional administrative resources needed to measure the accuracy of payments from the temporary emergency and extended benefit programs, it is likely states would face challenges in utilizing funds for that purpose.
- Because the enactment and extension of extended and temporary UC programs is uncertain, those states that do agree to add staff will begin the hiring process after these programs have been implemented. States will also have to incur costs to train these new staff in the audit methodology to ensure that the audit results are reliable.

Operational Issues

- If states are to conduct additional reviews of temporary and episodic UC program claims, the best tool to detect claiming while earning (Benefit Year Earnings or BYE) issues is National Directory of New Hires (NDNH) matching. The Social Security Act does not allow the Department of Health and Human Services (HHS) to have access to new hire, wage, or UI data when 12 months have elapsed since the date the information was provided, and where there has not been a match resulting from the use of the information in any information comparison activity.

- In addition, the Computer Matching Agreement that each state signs as a condition of accessing NDNH data requires independent verification of employment while claiming indicated by the NDNH match. Verification of NDNH matches is labor intensive, and it is reasonable to assume that the costs of locating employers and claimants for these older claims would be significantly higher than the verification costs of contemporary claims. State agencies will be unable to take official action to establish overpayments for recovery without this costly and time consuming independent verification. It is likely that due to the passage of time, many of these matches will not be verifiable.

Regulatory Authority

The regulation establishing a Quality Control program for UI (20 CFR part 602) provides authority for the Department to waive components of the program based on cost or operational considerations. Given the resource and operational issues discussed above, ETA has taken the position, under authority of the regulation quoted below, that the extension of BAM to include temporary and episodic UC programs is not cost-beneficial.

§ 602.22 Exceptions.

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

Paperwork Reduction Act

The Department is required to obtain OMB authorization under the Paperwork Reduction Act (PRA) to implement new data collection programs. The PRA process involves pilot testing the proposed methodology to collect cost and staff hour data to conduct the program. The public (claimants, employers, state agencies) must be given an opportunity to comment on the proposed data collection burden. This process is estimated to take one to one and a half years to complete.

Attachment B

Addressing Improper Payments in the Unemployment Insurance (UI) Program

The Employment and Training Administration (ETA), working with our state partners, has been focused for many years on implementing strategies to detect, prevent, and recover UI improper payments and bring down the improper payment rate. These strategies include:

Implementation of New Performance Measures — New state performance measures and strategies which: 1) target reducing BYE improper payments when claimants claim five weeks or more after returning to work by 30 percent the first year, and a total of 50 percent after two years; 2) targets a reduction of improper payment rates higher than 10 percent; and 3) establishes a recovery target for overpayments.

Treasury Offset Program (TOP) — TOP permits states to recover UI overpayments due to fraud by offsetting the claimant's Federal income tax refund. To date, three states have implemented the UI TOP program for recoveries (Michigan, New York, and Wisconsin) and an additional 25 states will implement TOP as a result of the recent supplemental funding.

Enhanced Use of National Directory of New Hires (NDNH) with Recommended Operating Procedures (ROP) — For several years, ETA has encouraged states' use of the NDNH to reduce improper payments in the UI program. Recommended Operating Procedures (SOP) has been developed and provided to states with information about best practices in conducting this match. Any states not already doing so will be required to begin conduct cross-matches using NDNH by December 2011 and all states are strongly encouraged to implement procedures in-line with the ROPs.

Claimant and Employer Messaging — Implementation of a statewide claimant and employer messaging campaign designed to: 1) improve claimants' awareness of their responsibility to report any work and earnings if they are claiming benefits, 2) improve claimants' understanding of work search requirements as a condition of eligibility for benefits, and 3) improve employers' awareness of their responsibility to respond to state requests for separation information and/or earnings/wage verifications. The state's campaign must consider how it may incorporate the messaging products and tools that are currently in development and will be shared with states when completed.

State Information Data Exchange System (SIDES) — SIDES is a web based system that allows electronic transmission of UI information requests from UI agencies to multi-state employers and/or Third Party Administrators, as well as transmission of replies containing the requested information back to the UI agencies. The current implementation of SIDES allows for the exchange of Separation and earnings verification information.

Cross-Functional Task Forces/Virtual Institutes — These are cross-functional teams that include a combination of management, front-line workers, and state subject matter

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experts that will assess and address root causes of improper payments in individual states. The key objectives for these task forces is to have every state focus on the root causes of overpayments that have the highest impact in the state and use this process to inform strategic planning that will achieve immediate and meaningful reductions in the improper payment rate.

High Priority States — Beginning in 2011 and annually thereafter, ETA will identify the states with persistently high improper UI payment rates as "High Priority" and provide targeted and customized technical assistance to improve their performance. ETA will work closely with these states to identify the impediments, action steps, and technical assistance strategies to improve performance with a specific focus on prevention. High Priority states will be subject to additional monitoring and technical assistance until they achieve an improper payment rate under 10% and sustain that performance for at least six months.

State Quality Service Plan (SQSP) / Strategic Plan Development — The SQSP is intended to be a dynamic document states use not only to ensure strong program performance, but also to guide key management decisions, such as where to focus resources. The SQSP should focus state efforts to ensure well-balanced performance across the range of UI activities. The SQSP also is designed to be flexible so as to accommodate, among other things, multi-year planning and significant changes in circumstances during the planning cycle. States can use this flexibility to incorporate the elements from the strategic plans developed by their Cross-Functional Task Forces into the SQSP to address improper payments.

Employment Service (ES) Registration — Providing technical assistance to states with high ES registration errors and implementing technology or other solutions designed to address improper payments due to a claimant's failure to register with the state's Employment Service or job bank in accordance with the state's UI law.

Supplemental Budget Requests (SBRs) - ETA has offered states the opportunity to apply for supplemental funding targeted to support integrity activities including automation to address specific overpayment root causes and core integrity strategies to support prevention, detection and recovery of overpayments. Since 2009, ETA has provided \$101.1 million in supplemental funding to states to support integrity-related projects.

- FY 2011: \$63.5 million
- FY 2010: \$10.7 million
- FY 2009: \$26.9 million

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Appendix E

Acknowledgements

Key contributors to this report were Robert Richardson (Acting Audit Director), Melissa Young (Auditor-in-Charge), Laura Brockway, Dorothy Dorsey, Cory Grode, Ronald Larry, Sarah Pentecost, Aaron Talbert (Auditors), and Steve Witherspoon (Reviewer).

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