


U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

September 6, 2023

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

FROM: BRENT PARTON 
Principal Deputy Assistant Secretary

SUBJECT: Response to Draft Alert Memorandum: *ETA Needs to Incorporate Data Analytics Capability to Improve Oversight of the Unemployment Insurance Program*,
Report Number: 19-23-xxx-03-315

The Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the above-referenced draft alert memorandum from the Department's Office of Inspector General (OIG).

Areas of Concerns with the OIG's Draft Alert Memorandum

As described below, ETA is fully committed to combatting fraud and improper payments and welcomes the OIG's collaboration on this multi-faceted problem. However, throughout the development of the draft alert memorandum, ETA repeatedly expressed concerns regarding the OIG's proposed approach and provided extensive technical comments to promote development of recommendations that are both actionable and meaningful. ETA is disappointed that much of this input is not reflected in the draft alert memorandum. As a result, ETA notes the following concerns regarding the content of the draft alert memorandum:

- Many of the claims identified in this draft alert memorandum were not payments to individuals over 100 years of age, but rather "pseudo records" of previously identified fraudulent claims, where the date of birth was changed significantly to help the state identify these records and protect innocent victims from having future claims denied.*

In the draft alert memorandum, the OIG states: "Our analysis identified four states that paid [Unemployment Insurance] claims to 18 percent or more of individuals aged 100 years or older from March 2020 to April 2022" and highlighted one state in particular that paid claims to over 58 percent of its centenarian population. Given the seriousness of the concerns identified in the draft alert memorandum, ETA's Regional Office reached out to the highlighted state to get clarification on the OIG's statement. The state in question informed ETA that they had not paid 58 percent or more of individuals aged 100 years or older. Rather, this was the result of how the state ensured victims of fraud were not unfairly prevented from accessing benefits.

When a fraudulent claim is identified, states have a responsibility to ensure that a rightful recipient is not held liable for amounts stolen by fraudulent actors and is not inhibited from accessing benefits in the future. In alignment with the Department's guidance,¹ states often transfer the fraudulent claims information to a "pseudo record" to prevent automated systems from flagging future legitimate claims by the claimant. According to the state, approximately 90 percent of the records that the OIG reviewed were "pseudo records." To make these known fraudulent "pseudo records" easier to identify, the state intentionally used significantly older dates of birth. These "pseudo records" were created to protect the rights of victims on claims that had already been determined to be fraudulent—they were not claims paid to individuals who are over 100 years old.

ETA advised the OIG of this information and urged the OIG to seek clarification with the state to ensure that the draft alert memorandum did not include erroneous claims or mischaracterizations. ETA is disappointed that the OIG did not include this context in the draft alert memorandum and is concerned that this mischaracterization of the data could result in sensationalism and unwarranted attention damaging the public's trust and faith in existing institutions.

- *The recommendations are not achievable without significant new and ongoing appropriations, which make these recommendations dependent on Congressional action and at high risk of not being accomplished.* To implement the first two recommendations in this draft alert memorandum, as written, would require an appropriation from Congress to support the infrastructure, development, and hiring of necessary staff to oversee the collection, secure storage, and data analysis of a significant amount of new data. ETA is concerned that the agency lacks resources to develop a data warehouse that would be required to achieve this result. In addition, there would be a need for ongoing annual funding to support the maintenance and operations of the data collection and to provide the staffing to oversee and conduct the data analysis envisioned in these recommendations. As recently as June 2023, the Fiscal Responsibility Act was enacted which rescinded \$1 billion in previously appropriated funds to support the Unemployment Insurance (UI) programs. In light of this recent legislation, the recommendations will be very difficult to implement.
- *The draft alert memorandum exaggerates the Department's legal authority to obtain data from states.* The OIG's draft alert memorandum concludes that the Department has authority under 20 C.F.R. 603.6(a) to require states to submit all claims data to ETA. 20 C.F.R. 603.6(a) requires "disclosure of all information necessary for the proper administration of the [Unemployment Compensation] program." ETA can only require the states to disclose all claims information if the information is necessary for the proper administration of the program. The OIG's interpretation is a novel and very broad

¹ See Section 4.b.v.C. of Unemployment Insurance Program Letter (UIPL) No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (APRA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23> and Section 5 of UIPL No. 16-21, *Identity Verification for Unemployment Insurance (UI) Claims*, issued April 13, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-21>.

interpretation of existing regulations. The Department has not interpreted 20 C.F.R. 603.6(a) to require states to provide the Department direct access to *all* claims data.

**ETA is Committed to Combatting Fraud and Improper
Payments and Collaborating with the OIG**

ETA recognizes the OIG's crucial role in helping to combat fraud, waste, and abuse within the UI programs. Additionally, ETA acknowledges the OIG's assessment regarding the significant increase in fraudulent activity challenging state UI programs across the nation since the beginning of the COVID-19 pandemic. ETA agrees that it has a shared responsibility with the states to continue to explore, research, and identify fraud trends, and provide states with innovative tools, resources, strategies, and guidance, as warranted, to help states combat new sophisticated fraud typologies and emerging schemes impacting the UI system.

Supporting States through Monitoring, Data Analysis, and Technical Assistance Efforts. ETA is fully committed to combating fraud and preventing improper payments. ETA's current UI statistical programs, monitoring activities, data analysis, and dedicated integrity activities provide ETA the ability to analyze root causes and trends and develop appropriate mitigation strategies. The Benefit Accuracy Measurement (BAM) program is designed specifically to identify the root cause(s) of improper payments, including fraud. ETA reviews quarterly BAM data and produces state-level root cause information, as well as provides technical assistance to states to reduce improper payments and monitors states for BAM program compliance.

ETA's regional offices conduct ongoing monitoring of states' UI program integrity, which involves reviewing and approving the annual State Quality Service Plans (SQSP) and Integrity Action Plans (IAP), including review of the SQSP Corrective Action Plan quarterly updates and the IAP six-month update. In addition, ETA's regional offices complete quarterly risk assessments regarding the integrity of states' UI programs and conduct virtual and in-person monitoring of state UI processes and procedures. The regional offices work closely with states on UI fraud and integrity matters, providing individual technical assistance and facilitating ongoing discussions amongst states to share challenges and best practices aimed at improving program integrity and combatting UI fraud.

Supporting States through Collaboration with the Department's OIG. Furthermore, ETA regularly coordinates and collaborates with the OIG's Office of Investigations to stay abreast of emerging fraud threats, streamline communication with states, and coordinate fraud prevention and recovery efforts. For the past year, ETA's regional offices have been hosting joint quarterly regional calls with the OIG and states to improve communication between states and the OIG at a more localized regional level. The calls provide a forum for states and the OIG to share updates on investigation and prosecution efforts; allow the states to hear from the OIG regarding fraud trends and data analytic techniques; discuss recommendations and effective strategies for responding to emerging fraud schemes; and provide opportunities for states to share UI fraud and

integrity-related challenges and best practices. The Department has also advised states on multiple occasions of the importance of sharing data with the Department's OIG.² ETA has also taken actions to support the OIG in having access to UI data in the interim until the existing regulations can be revised. In August 2021, using authority provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, ETA issued guidance to states requiring states to provide the OIG access to UI data for investigations and audits for weeks of unemployment through the expiration date of the CARES Act programs. In addition, and separate from the CARES Act, the guidance reiterated an ongoing requirement to disclose such data to the OIG for fraud investigations and rescinded prior guidance to make clear that such disclosures do not require any written agreement between the state and the OIG.

Also, in August 2021, ETA made available to states an opportunity to seek fraud prevention grants and conditioned these grants on states providing the OIG access to state UI data. Fifty states were awarded these grants which currently have a performance period through December 2023. On July 13, 2023, ETA issued new American Rescue Plan Act (ARPA)-funded grant opportunities and conditioned the award of any grants under these opportunities on states providing the OIG access to state UI data through the life of the awarded grants, which will be in effect at least through December 2025.³

Finally, the Department on July 25, 2023, issued a Request for Information (RFI) in the *Federal Register* regarding possible changes to the UI Confidentially regulations set forth at 20 C.F.R. Part 603 and the states providing UI data to the Department's OIG for investigation and audit purposes. See *Federal Register on July 25, 2023 (88 FR 47829)*.

Supporting States by Providing a National Identity (ID) Verification Offering. The Department is providing states with online and in-person opportunities to strengthen ID verification utilizing ARPA funds. Over the next two years, the Department is making government-operated ID verification systems available to states, leveraging online services through the U.S. General Services Administration's Login.gov and in-person services through the U.S. Postal Service. The Department is covering transaction costs for ID verification for participating states during this process.⁴

² A few significant documents to date of such advisement: UIPL No. 04-17, Change I, *Requirement for States to Refer Allegations of Unemployment Compensation (UC) Fraud, Waste, Abuse, Mismanagement, or Misconduct to the Department of Labor's (Department) Office of Inspector General's (DOL-OIG) and to Disclose Information Related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to DOL-OIG for Purposes of UC Fraud Investigations and Audits*, issued August 3, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-04-17-change-1>; Training and Employment Notice (TEN) No. 05-22, Authority of the U.S. Department of Labor's (Department) Office of Inspector General (DOL-OIG) to Receive Confidential Unemployment Compensation (UC) Data, issued September 15, 2022, <https://www.dol.gov/agencies/eta/advisories/training-and-employment-notice-no-05-22>; UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

³ See UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

⁴ See UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

Supporting States through Implementation of a National UI Fraud Risk Framework. The Department takes UI fraud and improper payments very seriously and continues to ensure UI program integrity remains a top agency priority. ETA develops, implements, and oversees implementation of robust and dynamic fraud mitigation strategies to address emerging and evolving fraud risks and is in the process of evaluating all of ETA's integrity initiatives, tools, and actions to ensure the Department's UI fraud risk assessment processes are conducted in alignment with the Government Accountability Office's (GAO) Fraud Risk Framework. As part of the Department's efforts to align ongoing UI fraud risk management activities with the leading practices in GAO's Fraud Risk Framework, ETA and the Department's Office of the Chief Financial Officer (OCFO) developed a UI Fraud Risk Profile and antifraud strategies for the UI program. ETA has already started communicating its UI antifraud efforts to state UI agencies and other relevant stakeholders through guidance and will continue ensuring states are aware of inherent fraud risks to the UI program. In partnership, ETA and OCFO will regularly update the UI Fraud Risk Profile and will work with state UI agencies to develop, document, and evaluate state-specific antifraud strategies to inform updates to an agile national UI antifraud framework.

Supporting States by Providing Targeted Grant Funding to Combat Fraud. In addition to providing significant guidance and technical assistance to states, ETA has leveraged funding provided by the CARES Act and ARPA to invest in state efforts to improve fraud prevention and detection, strengthen ID verification, and recover overpayments. ETA made available to states a total of \$765 million in grant opportunities, of which **\$525 million** was under the CARES Act and **\$240 million** was under ARPA, for these specific purposes.

Recognizing that the condition of state UI technologies contributed to state UI systems being overwhelmed by the surge of claims at the start of the pandemic and being unable to more fully protect against fraud while implementing temporary extensions of unemployment benefits to additional populations, ETA is also providing approximately **\$200 million** in direct grants to help states adopt new strategies to modernize and rearchitect their UI programs.⁵

Furthermore, ETA is providing 36 states with customized consultative assessments through its Tiger Team initiative and making recommendations to improve systems and processes. About two-thirds (approximately 200) of all Tiger Team recommendations to date either directly or indirectly support program integrity.⁶ ETA has made nearly **\$115 million** available to states to support implementation of the resulting recommendations for preventing and detecting fraud, promoting equitable access, reducing backlogs, and ensuring timely payment of benefits.⁷

The systematic challenges exposed by the pandemic evolved over decades and will take years to remedy, but the investments under the CARES Act and ARPA mark one of the most ambitious efforts to date to drive transformation of the UI program.

⁵ See UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

⁶ See TEN No. 24-22, *New Unemployment Insurance (UI) Tiger Team Promising Recommendations Resource Pages Available on WorkforceGPS*, issued April 17, 2023, <https://www.dol.gov/agencies/eta/advisories/ten-24-22>.

⁷ See UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (ARPA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

Supporting States by Making Services Available through the UI Integrity Center. The Department continues to provide funding and support to the UI Integrity Center, established in 2012, to enhance tools and develop new resources for states to use in combatting fraud and reducing improper payments. This effort includes investing in datasets to enhance the UI Integrity Center's Integrity Data Hub (IDH), which began as only a Suspicious Actor Repository (SAR) in December 2017, and has evolved over time to be a key fraud detection resource, providing states with the ability to identify patterns of suspicious characteristics across UI claims that may be indicative of fraud and helping states prioritize investigations to reduce improper payments.

The IDH has grown rapidly in functionality since the onset of the pandemic in March 2020, and two new datasets have been integrated into the IDH, including the Identity Verification (IDV) solution in July 2020 and the Bank Account Verification (BAV) service in February 2022. IDH Results Management enhancements have included improvements in flagging potential fraud and sorting, filtering, and prioritizing IDH results to help states streamline their investigative resources.

The Department consistently encourages greater state usage of and participation in the IDH as a fraud prevention strategy and these efforts are gaining success. In March of 2020, only 34 states had an IDH Participation Agreement, 21 states were using the SAR, and three states were using the Multi-State Cross-Match (MSCM). Currently all 53 states have a signed IDH Participation Agreement, 52 states are using the SAR, 51 states are using the MSCM, 44 states are using the IDV solution, and 38 states are using the BAV service. All IDH services are cost-free to the states.

ETA acknowledges there is more to do to enhance these services and resources and to ensure more states are consistently participating. The Department has proposed, in the President's Fiscal Year 2024 budget, a UI program integrity legislative proposal that includes, among several other items, providing the Department with statutory authority to require states to participate in the IDH and other payment control cross matches/systems.⁸

Responses to the OIG Recommendations

As discussed above, ETA is concerned that the OIG's recommendations, as written, are not the optimal or immediate way to improve the UI system. While ETA has and continues to work with states to implement recommendations made by the oversight community, suggested alternative recommendations that ETA believes will be effective and can be implemented in a more realistic timeframe are provided for consideration. Below are each of the OIG's recommendations contained in the draft alert memorandum, followed by ETA's response to address each of the OIG's recommendations.

⁸ See "UI Program Integrity" proposal beginning on page 24 of *Fiscal Year 2024 Congressional Budget Justification for ETA's State Unemployment Insurance and Employment Service Operations*, <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-07.pdf>.

Recommendation 1: Obtain direct access to unemployment insurance claims data from all State Workforce Agencies.

Response: The Department does not agree with this recommendation at this time.

It would involve a significant amount of new resources for ETA to implement, obtain, and maintain direct access to UI claims data from all state workforce agencies. ETA does not have the capability currently to gather, securely store, and analyze this amount of data. New appropriations would be required that make sustainable investments in the UI program to implement this recommendation.

Further, the Department has not interpreted 20 C.F.R. 603.6(a) to require states to provide the Department direct access to *all* claims data. 20 C.F.R. 603.6(a) requires “disclosure of all information necessary for the proper administration of the [Unemployment Compensation] program.” Adopting the OIG’s recommendation would be a novel and very broad interpretation of existing regulations. This would be a significant change in how this regulation has been interpreted since it was promulgated in 2006. The Department has recently issued a RFI to begin the rulemaking process to amend 20 C.F.R. part 603 and is seeking public comment on disclosures of confidential UC information to the OIG.

ETA believes that many of the impacts desired from the OIG’s recommendations can be achieved through an alternative approach. ETA sets out this alternative approach in response to Recommendation 2 below.

Recommendation 2: Create an integrity program that incorporates a data analytics capability and regularly monitors state unemployment insurance claims data to detect and prevent improper payments, including fraudulent payments, and to identify trends and emerging issues that could negatively impact the UI program.

Response: The Department does not agree with this recommendation. This approach would duplicate much of the Department’s ongoing investment in the UI Integrity Center, including the IDH. The draft alert memorandum examines claims activity from March 2020 through April 2022. As noted above, state participation in the IDH increased significantly over the course of the pandemic. In March of 2020, only 34 states had an IDH Participation Agreement, 21 states were using the SAR, and three states were using the MSCM. Currently all 53 states have a signed IDH Participation Agreement, 52 states are using the SAR, 51 states are using the MSCM, 44 states are using the IDV solution, and 38 states are using the BAV service.

As an alternative approach to achieving the essence of Recommendations 1 and 2, the Department will leverage ongoing investments in the UI Integrity Center’s IDH and work with the UI Integrity Center to improve IDH data analytics capabilities to better identify fraud trends. ETA will meet at regular intervals with the UI Integrity Center to receive information about identified fraud trends and to discuss efforts to mitigate fraud and reduce improper payments. This approach leverages existing infrastructure and investments to achieve comparable integrity-enhancing results, instead of duplicating efforts and requiring states to send data to yet another

entity. Further, this alternative approach to achieving the intent of these recommendations is actionable and will have a meaningful impact.

In addition, the Department is committed to providing additional funding to support enhancements to the IDH and for training to more effectively utilize the IDH. Additional IDH enhancements would consist of expanding data collection and analytics to include employer data and integrating additional external data sources to improve fraud prevention and detection, including data sharing with other Federal agencies. These efforts, along with greater and more consistent use by states, should improve the IDH's detection rate as well.

Finally, the Department is committed to continuing its close collaboration with the OIG, including ensuring the OIG has necessary access to claims data. Details about ETA's ongoing actions supporting the OIG's access to state UI data are discussed on pages 3 and 4 above. Most recently, the Department announced providing the OIG access to claims data as a condition for ARPA-funded grants awarded under UIPL No. 11-23,⁹ which will extend this expectation through at least December 2025.

Recommendation 3: Establish effective controls, in collaboration with State Workforce Agencies, to mitigate fraud and other improper payments to ineligible claimants in high-risk age categories.

Response: The Department agrees with this recommendation and requests closure of this recommendation since there are controls in place to mitigate fraud and improper payments to ineligible claimants in high-risk age categories.

As noted above, ETA and OCFO completed the development of a UI Fraud Risk Profile to align the Department's ongoing fraud risk management activities with the leading practices in GAO's Fraud Risk Framework. Additionally, ETA recently published UIPL No. 11-23,¹⁰ which unveils a comprehensive, strategic approach to deploying the remaining ARPA funds to improve the future integrity of the UI system.

To specifically address claimants in high-risk age categories, ETA worked in partnership with the UI Integrity Center to ensure claimants in high-risk age categories are identified by the IDH and are classified as high priority by the IDH's prioritization rules. Any claims flagged by the IDH as high-risk due to age will also be added to the IDH data file that identifies potential fraud, waste, abuse, mismanagement, or misconduct and shared regularly with the OIG's Office of

⁹ UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (APRA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

¹⁰ UIPL No. 11-23, *Announcement of Grant Opportunities and National Identity (ID) Verification Offering under the American Rescue Plan Act (APRA)*, issued July 13, 2023, <https://www.dol.gov/agencies/eta/advisories/uipl-11-23>.

Investigations. The OIG has also identified processes under which state workforce agencies must share this information directly with the OIG.¹¹

The Department will continue to identify risks to the UI program, develop new and update existing strategies to mitigate fraud as well as other improper payments, and evaluate the effectiveness of our fraud risk management activities.

Further, the Department notes that the risk of potential fraud occurring using information from individuals within the identified age brackets was much higher during the temporary pandemic programs, which expired on September 6, 2021, specifically Pandemic Unemployment Assistance, which primarily relied on self-certification in assessing eligibility. The regular UI program has restrictions that provide benefits only to individuals in covered employment. State workforce agencies contact employers and have access to employer wage records to verify prior employment activities and earnings of claimants -- thus ensuring the person had covered earnings regardless of age.

¹¹ See Attachment I to UIPL No. 04-17, Change 1, *Requirement for States to Refer Allegations of Unemployment Compensation (UC) Fraud, Waste, Abuse, Mismanagement, or Misconduct to the Department of Labor's (Department) Office of Inspector General's (DOL-OIG) and to Disclose Information Related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to DOL-OIG for Purposes of UC Fraud Investigations and Audits*, issued August 3, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-04-17-change-1>.