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COVID-19: MORE CAN BE DONE TO MITIGATE RISK TO UNEMPLOYMENT COMPENSATION UNDER THE CARES ACT

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BRIEFLY...

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August 07, 2020

WHY OIG CONDUCTED THE AUDIT

On March 27, 2020, Congress passed the Coronavirus Aid, Relief and Economic Security (CARES) Act. The CARES Act included an estimated \$260 billion in funding for new or expanded Unemployment Insurance (UI) benefits. It provided for additional benefit payments and created new programs that provided benefits to individuals not traditionally eligible for UI. These expanded benefits and new programs have significantly increased the risks for fraud, waste, and abuse.

WHAT OIG DID

We conducted this performance audit to answer the following question:

Was ETA's initial implementation of the CARES Act UI provisions sufficient to mitigate the risk of fraud, waste, and abuse?

To answer this question, we conducted interviews with ETA officials and reviewed and assessed guidance, oversight and fraud prevention plans, training offered to states, state agreements, program funding, plans for information technology assistance, and implementation challenges.

READ THE FULL REPORT

<https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

WHAT OIG FOUND

While ETA implemented CARES Act UI provisions timely, additional guidance could better assist states in mitigating the risk of fraud. Further, ETA has directed states to leverage their existing program integrity systems to include CARES Act UI programs, but ETA can do more to ensure adequate program assessment and reporting.

ETA's guidance did not sufficiently address the risk of fraud, waste, or abuse. On May 26, 2020, we issued an alert memorandum to highlight the risk of fraud in the Pandemic Unemployment Assistance (PUA) program given its reliance on self-certification. In response to our memorandum, ETA agreed to engage Congress regarding additional fraud prevention and program integrity measures.

ETA is leveraging existing tools to combat fraud, but more needs to be done. In April 2020, we issued an advisory report presenting our initial areas of concern regarding implementation of CARES Act UI provisions. ETA's implementation of the provisions has included measures to combat fraud and other improper payments. ETA directed states to include CARES Act UI programs in its Benefit Payment Control activities. However, ETA needs to do more to ensure existing tools are used effectively and to assist OIG obtain access to state data. Over the years, joint investigations between OIG and states have led to hundreds of successful prosecutions and monetary recoveries.

ETA's oversight plan does not sufficiently address the assessment of CARES Act UI program results. ETA does not include CARES Act UI programs in its program assessments, noting their temporary nature and the cost associated with including them. However, by not assessing these programs, it discounts the scope of programs that are estimated to cost \$260 billion.

WHAT OIG RECOMMENDED

We made four recommendations to ETA to improve management oversight of the UI program provisions under the CARES Act.

ETA agreed with three of our four recommendations. ETA did not agree to adapt its benefit accuracy measure program to provide for temporary program changes, such as with the CARES Act.

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INSPECTOR GENERAL'S REPORT

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This report presents the results of the Office of Inspector General's (OIG) audit of the Employment and Training Administration's (ETA) planning for and initial implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act Unemployment Insurance (UI) programs.

On March 27, 2020, Congress passed the CARES Act. The expanded UI benefits under the CARES Act required ETA to implement major changes to the existing system including establishing six new programs — each with the intent of providing expanded UI benefits to Americans who are unable to work as a direct result of the COVID-19 pandemic. These expanded UI benefits are estimated to cost \$260 billion and are funded by the federal government. The billions of dollars involved have significantly increased the risk for fraud, waste, and abuse in UI programs.

We conducted this performance audit to answer the following question:

Was ETA's initial implementation of the CARES Act UI provisions sufficient to mitigate the risk of fraud, waste, and abuse?

To answer this question, we conducted fieldwork with the ETA, Office of Unemployment Insurance's National Office. We conducted interviews and reviewed and assessed guidance, oversight and fraud prevention plans, training offered to states, state agreements, program funding, plans for information technology assistance, and implementation challenges.

We found that while ETA implemented CARES Act UI provisions timely, additional guidance could assist states in better protecting funds against fraud, waste, and abuse. Further, ETA has directed states to leverage their existing program integrity systems to include CARES Act UI programs, but ETA can do more to ensure adequate program assessment.

Background

The CARES Act established six new UI programs with unemployment compensation provisions generally effective through December 31, 2020. The six programs include:

- The Federal Pandemic Unemployment Compensation (FPUC) program, which provides a supplemental payment of \$600 per week to individuals receiving traditional and PUA benefits until July 31, 2020.
- The Pandemic Unemployment Assistance (PUA) program, which extends UI benefits to individuals who are not traditionally eligible for UI benefits. This includes self-employed workers, independent contractors, those with limited work history, and others.
- The Pandemic Emergency Unemployment Compensation (PEUC) program, which provides up to an additional 13 weeks of unemployment compensation to individuals who have exhausted their regular unemployment benefits.
- The Temporary Full Federal Funding (TFFF) program. Most states require a one-week waiting period prior to a claimant being eligible for regular UI benefits. The TFFF program provides federal funding for the first week of benefits if states agree to waive the waiting week.
- The Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations program (EURGENO), which provides payments to states to reimburse non-profits, government agencies, and Indian tribes for half the costs of UI.
- The Temporary Financing of Short-Time Compensation (STC) program provides funding to support employers who reduce employee hours instead of laying off workers and the employees with reduced hours received a pro-rated unemployment benefit.

The Department of Labor completed funding agreements with almost every state shortly after the CARES Act was signed into law, with states drawing down funds

from the U.S. Treasury as early as April 7, 2020. Table 1 shows that states had drawn down a total of approximately \$165 billion to administer five CARES Act UI programs, as of June 19, 2020.

Table 1 – CARES ACT UI Program Funding*
(as of June 19, 2020)

Program	FPUC	PUA	TFFF	PEUC	EURGENO
No. States**	54	52	24	46	43
Funding Amount (\$ in millions)	\$144,605	\$15,672	\$2,567	\$1,858	\$258

*No states reported funding for STC

**Includes the 50 states, District of Columbia, Puerto Rico, U.S. Virgin Islands, and the Pacific territories

Past audits of expansion of the UI program have revealed that ETA did not adequately ensure proper controls were in place to protect funds and ensure they were paid to eligible claimants. With the historic increase in costs for the CARES ACT UI programs, ETA’s oversight is of critical importance to ensure that funds are protected from fraud, waste, and abuse.

RESULTS

ETA’s implementation of the CARES Act UI provisions focused on interpreting the Act, translating it into operating guidance for the states, and ensuring states understand the guidance through training and technical assistance. While these actions are critical for program implementation, ETA could provide additional guidance to help protect against fraud and other types of improper payments.

The substantial increase in UI benefits magnifies the need for ETA and the states to take every action to ensure funding is used to support impacted workers and the economy as intended. The UI program paid approximately \$27 billion in benefits over a one-year period ending June 2019 and estimated almost \$3 billion (11 percent) were improper payments. Assuming the improper payment rate continues above 10 percent, at least \$26 billion of the estimated \$260 billion in expanded UI program funds could be paid improperly. Media reports and OIG’s own investigative work indicate significant fraudulent activity is occurring, which poses a major threat to the integrity of the UI program. Following are the overall results of ETA’s planned implementation of the CARES Act UI provisions, which are discussed in greater detail in this report.

ETA guidance did not sufficiently address the risk of fraud, waste, or abuse. On May 26, 2020, OIG issued an alert memorandum highlighting the increased risk for fraud due to the sole reliance on self-certification for claimant eligibility. ETA's guidance to states, based the Department's Office of the Solicitor's (SOL) interpretation of CARES Act UI provisions, directs states not to require individuals applying for PUA to provide documentation to support their employment, but rather to accept an individual's self-certification for a COVID-19 related issue. We recommended ETA consult with Congress regarding this issue and in its response to our memorandum on June 5, 2020, ETA agreed to engage Congress regarding additional fraud prevention and program integrity measures.

In addition, ETA's PUA program and program integrity guidance does not adequately assist states in identifying individuals who refuse to return to work and continue to receive program benefits. ETA's guidance simply encourages states to request employers to provide information when workers refuse to return to their jobs for reasons that do not support their continued eligibility for benefits. More substantive guidance is needed to mitigate the risk presented by current CARES Act programs and any future extensions.

ETA is leveraging existing tools to combat fraud, but more needs to be done. On April 21, 2020, we issued an advisory report presenting our initial areas of concern that ETA and the states should consider as they implement UI provisions in the CARES Act. ETA's implementation included proactive measures to combat related fraud and other improper payments. ETA directed states to include CARES Act UI programs in its Benefit Payment Control¹ activities. ETA also worked with the National Association of State Workforce Agencies (NASWA) UI Integrity Center and other entities to develop and promote additional resources. However, more needs to be done, to include ensuring existing tools are used effectively to combat fraud and other improper payments. ETA also should work with the OIG to obtain access to state claimant data that can be used to identify and disrupt fraudulent schemes that threaten the integrity of UI programs, including those under the CARES Act.

ETA's oversight plan does not sufficiently address the assessment of CARES Act UI program results. ETA only assesses the performance and estimates improper payments for its three permanent UI programs. The agency maintains it does not include episodic, temporary programs in assessments due to their temporary nature and the cost associated with including them. However, the inclusion of the CARES Act programs is especially critical for ETA's assessment of performance and improper payments, as the estimated program

¹ Benefit Payment Control entails the prevention, detection, and recovery of improper UI benefit payments.

costs are nearly 10 times the \$27 billion in regular UI outlays the Department estimated for Fiscal Year (FY) 2019.

ETA GUIDANCE DID NOT SUFFICIENTLY ADDRESS THE RISK OF FRAUD, WASTE, OR ABUSE

ETA worked quickly to obtain signed agreements with and to ensure funds were made available to states. ETA also issued Unemployment Insurance Program Letters (UIPLs) that provided guidance for the new programs and produced related training webinars available through the ETA sponsored WorkforceGPS website, UI community of practice page. However, it could provide additional guidance to further reduce the risk of fraud and other improper payments related to PUA program eligibility and individuals refusing return to work opportunities.

Based on SOL's interpretation of the CARES Act UI provisions, ETA issued PUA program guidance that instructed states not to require documentation to support an individual's employment or self-employment. In addition, ETA's guidance to states should encourage them to take proactive measures to detect individuals who refused to return to work rather than waiting for employers to report this information. PUA regulations² require documentation to support employment or self-employment and CARES Act provisions require individuals to be able and available for employment in order to remain eligible for benefits. ETA maintains that the PUA regulations conflict with the CARES Act self-certification requirement for PUA eligibility, and further maintains that while it strongly encouraged states to put procedures in place to enable employers to report individuals who refuse to return to work, it does not have the authority to require states to take proactive measures to detect those individuals.

PUA PROGRAM RISK NECESSITATES GREATER OVERSIGHT

On May 26, 2020, OIG issued an alert memorandum regarding ETA's decision to instruct states not to require individuals applying for PUA to provide documentation to support employment, self-employment, or the scheduled commencement of either. Our alert memorandum recommended that ETA consult with Congress concerning whether a claimant is entitled to establish and continue to receive PUA payments without providing documentation at any point during a weekly benefit amount determination.

² The CARES Act (§ 2102(h)) states that federal regulations (Title 20 C.F.R § 625) governing the Disaster Unemployment Assistance (DUA) program apply to the PUA program unless there is a conflict between the regulations or expressly provided for by the Act.

On June 5, 2020, ETA and the Department of Labor, Office of the Solicitor (SOL) responded to our alert memorandum and maintained their position that the PUA program does not require proof of employment, but instead it requires that the individual self-certify that one of many COVID-19 related reasons for unemployment applies to his or her situation. Nonetheless, ETA and SOL agreed to engage Congress regarding ways in which it may want to legislatively enhance fraud prevention and program integrity requirements of the CARES Act.

In addition to our alert memorandum, the OIG conducted a survey of the state UI agencies to identify actions the states are taking to ensure program integrity over their individual PUA programs. The results from that survey are to be issued in a separate report. ETA needs to follow through on its commitment to consult Congress and implement the strongest program integrity measures it deems allowable. If it does not issue stronger guidance or the states do not implement additional measures on their own, the PUA program is at significant risk of fraud and other improper payments until the program expires on December 31, 2020.

INDIVIDUALS REFUSING TO RETURN TO WORK WITHOUT VALID JUSTIFICATION

To address individuals who refuse to return to work, ETA encouraged states to request employers report such employees to the state workforce agency. However, to prevent millions of dollars in overpayments, states will also need to take proactive measures to identify individuals that refuse to return to work. ETA should consider encouraging states to contact large employers or, at least, ensure that states use public websites to alert employers about their obligation.

The FPUC program's \$600 weekly benefit set to expire July 31, 2020, has potentially exacerbated this condition. These expanded benefits have provided much needed financial assistance to millions of American workers but have also raised concerns from some business leaders who worry that workers who receive more in UI benefits than they earned in their prior employment will refuse to return to work as the economy reopens.

The CARES Act³ and ETA's implementing guidance⁴ both require an individual to be able and available for work as a condition of eligibility for UI benefits. To meet this requirement, states direct individuals to certify that they were able and available to work. Any individual who refuses suitable employment would not meet this requirement.

³ Section 2102 (3)(A)(ii)(I) and Section 2107(A)(2)(D).

⁴ UIPL 17-20 Change 1, and UIPL 16-20.

ETA has made it clear that individuals who refuse to return to work, except for good and just cause as determined by respective states, are ineligible to receive UI benefits. Good and just cause includes the inability to work as a direct result of COVID-19.⁵ However, the Agency has offered minimal guidance to assist states with identifying these potentially ineligible individuals. In UIPL 23-20, issued May 11, 2020,⁶ ETA stated:

Conversely, as states begin the process of phased reopening, we expect historically high levels of suitable return to work opportunities. As such, states must work to maintain program integrity by ensuring that claimants are not continuing to claim benefits when they have been offered suitable work.

To assist states with identifying individuals who refuse reemployment opportunities, the UIPL contains the following statement:

...states are strongly encouraged to request employers to provide information when workers refuse to return to their jobs for reasons that do not support their continued eligibility for benefits.

We reviewed state websites as of June 25, 2020, and found that 23 percent did not provide employers detailed instructions and/or forms designed specifically for reporting individuals who refused to return to work. However, the remaining 77 percent (up from 51 percent in May 2020) of states websites provided guidance for employers on how to report employees who refuse to return to work. For example, according to a June 2020 news article,⁷ employers in one state informed state officials of 3,336 individuals who refused to return to work since January. About one third of these individuals have been denied benefits and the rest have lost benefits while they are under review. However, the state has delayed reviews of refusal to work cases due to limited staffing.

With large numbers of employees expected to receive return to work opportunities with their prior employers, states will need to take active measures to identify employees who refuse those offers and continue to collect UI benefits. ETA's guidance does not encourage states to proactively contact employers — especially large employers with a multitude of laid off or furloughed employees —

⁵ Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law.

⁶ UIPL 23-20, May 11, 2020, Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020 - Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, and Pandemic Emergency Unemployment Compensation Programs.

⁷ Whites-Koditschek, S. (June 23, 2020). Alabama begins cutting unemployment for thousands for 'refusal to work'. AL.com.

to determine if individuals have been offered reemployment and refused to return to work. ETA stated it does not believe states have the capacity, nor does ETA have the legal authority to require states to contact employers. ETA also stated it cannot do more beyond encouraging states to request employers provide information about individuals who refused to return to work when offered reemployment. Even so, ETA should do more to encourage states to contact large employers, or at least ensure that states that have not already done so are using public websites to alert employers to their obligation.

Without proactive measures by the states, individuals will be able to continue to collect benefits, including the FPUC \$600 weekly benefit through July 31, 2020 (or future weekly supplements), even though they refused suitable job offers from either their prior employer or an equally suitable employer. This will likely result in millions of dollars in overpayments that will go undetected.

The Government Accountability Office (GAO) reported a similar issue in a report⁸ issued on June 25, 2020. GAO identified that ETA had no real-time mechanism to help states identify individuals who are both receiving UI benefits and wages under the paycheck protection program, which is a program operated by the Small Business Administration (SBA) and designed to provide small business loans to employers with the intention of keeping their workforces employed during the crisis. GAO recommended that ETA work with the SBA and Treasury to provide paycheck protection program information to the state unemployment agencies. ETA stated that it has consulted with the SBA and Treasury and plans to soon issue guidance regarding the paycheck protection program and its intersection with the UI program.

In addition, ETA could leverage the Department’s Enterprise Risk Management Council (ERMC) to better understand and mitigate the risks presented by UI CARES Act programs. The ERMC is available to offer assistance to DOL agencies tasked with developing and implementing responses to COVID-19 related risks. This assistance is not limited to initial planning; it includes the CARES Act implementation as well.

**ETA IS LEVERAGING EXISTING TOOLS TO
COMBAT FRAUD, BUT MORE NEEDS TO BE
DONE**

ETA has directed states to include CARES Act UI programs into their existing program integrity systems, in an effort to prevent and detect improper payments.

⁸ GAO Report No. GAO-20-625, issued on June 25, 2020.

However, ETA needs to take the necessary measures to ensure existing tools are used effectively and to assist OIG obtain access to state UI claimant data.

On May 11, 2020, subsequent to an OIG advisory report regarding initial areas of concern related to CARES ACT programs,⁹ ETA issued UIPL 23-20. The purpose of the UIPL was to remind states of their responsibilities for continuing program integrity measures for regular UI programs and to incorporate CARES Act UI programs in those measures, including all Benefit Payment Control functions. In addition, ETA took the following additional steps to mitigate fraud:

- Included clear statements on states' responsibilities for integrity in 10 of the 15 UIPLs issued between April 2, 2020, and June 15, 2020 (see Exhibit 1).
- Worked with the NASWA UI Integrity Center to promote its resources to states and identify additional tools, such as the UI Integrity Data Hub, the National Integrity Academy, and the Knowledge Exchange, and processes that states can use to detect, prevent, and recover fraudulent and other improper payments.
- Worked with the NASWA to develop a new resource through the Interstate Connection Network (ICON) system to allow states to cross-check quickly social security numbers for PEUC or PUA claims in other states, and promoted the use of this tool on April 28, 2020.

Although ETA is not including the CARES Act UI programs in its estimates of improper payments by including these payments in the sampling for the Benefit Accuracy Measurement (BAM). ETA has directed states to include the PEUC and PUA benefit payments when using its existing program integrity tools to detect fraud and other improper payments. These include:

- Program integrity provisions designed to: (1) detect payments made in error or through willful misrepresentation, (2) deter individuals from obtaining benefits through willful misrepresentation, and (3) recover overpaid benefits.
- Recommending states implement additional Benefit Payment Control activities as part of an effective Benefit Payment Control operation for regular UI programs, PUA, and PEUC. Some examples of the tools states use are:
 - National Directory of New Hires (NDNH) Cross-match. This runs a weekly process that compares state UI beneficiary rolls against a national database of employer reported new hires.

⁹ OIG Report No. 19-20-001-03-315 – CARES ACT: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, issued April 21, 2020.

- State Directory of New Hires cross-match. This is a daily cross-match that states use to compare their UI beneficiary rolls against a state database of employer reported new hires.
- Social Security Administration cross-match; Matching UI beneficiary rolls (usually monthly) against Social Security Administration data.
- Interstate Benefits Cross-match. This cross-matches state UI beneficiary data against data from other states to locate individuals with outstanding overpayment balances.
- State Identification Inquiry and IB8606 enhancements made to the ICON cross-match to prevent concurrent claim filing in multiple states.
- State Information Data Exchange System (SIDES). This is a system designed to enable more rapid and accurate communication between states and employers, resulting in better initial eligibility determinations and a reduction in UI improper payments.

ETA will need to be diligent to ensure states utilize available tools, such as NDNH and SIDES, to mitigate the increased risks posed by CARES Act UI programs. OIG identified insufficient use of these tools by state agencies in prior reports.^{10,11}

WORKING WITH OIG TO ADDRESS FRAUD

OIG is currently encouraging ETA to issue a UIPL to state workforce agencies that will provide the OIG with reoccurring access to state workforce agency data. Access to the state data will help disrupt fraudulent schemes that threaten the integrity of the CARES Act UI programs. ETA will need to ensure the swift completion and issuance of the UIPL in order to address this growing concern.

States are in the midst of managing extraordinary workloads due to the effects of the COVID-19 pandemic. As previously mentioned, the UI system is facing historically high levels of claims in the regular UI program while simultaneously implementing the newly created temporary programs authorized by the CARES Act. During this time, there is a heightened need for states to maintain a steadfast focus on UI functions and activities that ensure program integrity and the prevention and detection of improper payments and fraud across all UI programs. As states implement these new programs quickly, while also processing an unprecedented volume of claims, there is significant risk for fraud and abuse. Therefore, ETA, OIG, and state UI agencies must continue to work

¹⁰ Report No. 04-18-003-03-315 - Improved Oversight of States Use of New Hire Tools Would Help Reduce Improper Payments, issued September 27, 2018.

¹¹ Report No. 04-17-003-03-315 – Better Strategies Needed to Increase Employer Participation in the State Information Data Exchange System, issued March 31, 2017.

together to promote program integrity and mitigate fraud in the UI system to ensure that UI payments are made only to eligible individuals.

OIG plays an essential role in working collaboratively with states to investigate and prosecute fraud in UI programs. Over the years, joint investigations between OIG and states have led to hundreds of successful prosecutions and significant monetary recoveries. Many of these investigations successfully pursued sophisticated multi-state fraud schemes by organized criminal groups involving millions of dollars in fraudulent claims.

With the exponential increase in UI claims resulting from the COVID-19 pandemic, OIG expects a commensurate escalation in the number and sophistication of fraud schemes impacting the UI system. Providing the OIG with specific data to identify and investigate suspected fraudulent claims will enhance its ability to work jointly with the states in responding to allegations of UI fraud related to the COVID-19 pandemic.

**ETA’S OVERSIGHT PLAN DOES NOT
SUFFICIENTLY ADDRESS THE ASSESSMENT
OF CARES ACT UI PROGRAM RESULTS**

ETA’s oversight plan for the CARES Act UI provisions included hiring additional staff, developing a new monitoring guide and a risk assessment tool, and creating new reporting requirements. The plan does not: (1) establish performance measures for the timeliness of determinations and payments, or measures for improper payment detection and recovery; (2) include program payments in their annual estimate of UI improper payments; or (3) include additional measures to enhance the accuracy and completeness of program reporting.

The Green Book¹² requires management to measure performance of a program. ETA stated it does not establish performance measures for episodic, temporary programs. By not doing so for the CARES Act UI programs, ETA has not recognized the material impact of these programs. For example, improper payments for CARES Act programs will likely exceed \$27.6 billion, which is nearly 10 times the amount of estimated UI improper payments for FY 2019.

¹² GAO-14-704G, Standards for Internal Control in the Federal Government, September 2014.

ETA DID NOT ESTABLISH PERFORMANCE MEASURES RELATED TO TIMELINESS OR IMPROPER PAYMENTS

ETA has not established performance standards for CARES Act UI programs or any method of measuring performance in such key areas as timeliness of determinations and payments, and identifying improper payments.

The Green Book requires management to measure performance and internally communicate the necessary quality information to achieve the entity's objectives. ETA has established standards and methods of measuring many key metrics for its regular UI programs using its performance management system, referred to as UI Performs.¹³

UI Performs establishes core measures and acceptable levels of performance for metrics like first payment promptness, non-monetary determination timeliness, and detection and recovery of overpayments. State performance is publicly accessible and regularly displayed in UI Performs scorecards. ETA explained that it has not historically measured performance for episodic, temporary UI programs because by the time it could establish any performance measures, the program would already be ending. ETA further explained that the statute did not charge them with evaluating the success of the programs.

ETA should explore methods to evaluate the quality of assistance provided by states under episodic, temporary UI programs. The CARES Act UI programs are estimated to cost \$260 billion. This amount is nearly 10 times the \$27 billion in regular UI outlays estimated in the Department's FY 2019 Agency Financial Report. By not measuring state performance for key areas such as timeliness of determinations and payments and overpayment detection and collection, ETA has discounted the magnitude of this temporary program and missed opportunities to identify program weaknesses. Identifying program weaknesses and applying lessons learned before another episodic event occurs is also critical, regardless of whether the future events are on a smaller or larger scale.

ETA DID NOT INTEND TO MEASURE THE ACCURACY OF CARES ACT UI PROGRAM PAYMENTS

Office of Management and Budget (OMB) Circular A-123 requires the inclusion of any payment in an entity's improper payment estimate. However, ETA stated it

¹³ The goal of UI Performs is to create a cooperative system of management, planning and oversight leading to increasingly effective, consistent, efficient service to workers and employers.

does not include payments for episodic, temporary programs in the BAM program.

ETA uses the BAM program to meet its requirement under the Improper Payment Information Act¹⁴ (IPIA) to estimate UI improper payments. ETA officials do not include episodic, temporary programs, such as the CARES Act, in BAM due to the temporary nature of the programs and the cost and time associated with their inclusion. By not including CARES Act programs in the UI improper payments estimates, ETA will materially underestimate UI improper payments for both IPIA years 2020 and 2021.

ETA uses the BAM program to estimate improper payments in UI’s three permanent programs: State UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Service Members. It does this by reconstructing the claims process for weekly samples of paid and denied claims using data verified by trained investigators. In addition to estimating improper payments, BAM investigators identify the cause and responsible party for the error. Apart from the current pandemic programs, ETA has historically chosen to exclude other periodic and episodic, temporary programs, such as Extended Benefits (EB) and Disaster Unemployment Assistance (DUA). Historically, a temporary or episodic program may represent a relatively insignificant amount of money. For example, the DUA program reported an average of about \$21 million in benefit payments over the past three FYs. By comparison, regular UI program outlays for the past three FYs averaged about \$29 billion. Table 2 breakdowns UI program outlays from FY 2017 through FY 2019.

Table 2 - UI Outlays and Improper Payments FY 2017 through FY 2019

	Total Outlays (\$ in millions)	Improper Payments (\$ in millions)	Improper Payment Rate
FY 2017	\$32,530	\$4,066	12.50%
FY 2018	\$28,690	\$3,743	13.05%
FY 2019	\$26,910	\$2,855	10.61%
Averages	\$29,377	\$3,555	12.05%

Source: Agency Financial Reports for FY 2018 and FY 2019

However, the CARES Act UI programs are estimated to cost \$260 billion for a period of less than one year. By not estimating CARES Act UI program improper payments using either the BAM program or another reliable estimating

¹⁴ Improper Payments Information Act of 2002, Public Law 107-300 as amended, January, 2013.

methodology, ETA is neglecting its responsibility to accurately quantify and ultimately recover improper payments.

OMB Circular A-123, Appendix C, provides guidance to agencies responsible for estimating and reporting on improper payments. The Circular defines improper payments as:

...any payment that should not have been made or that was made in an incorrect amount...includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received...

The operative words in this definition are “any payment,” which implies that episodic, temporary payments related to a particular program are to be included in any estimates. Nowhere in the Circular does it direct agencies to exclude such episodic, temporary payments, and ETA officials stated they had not sought OMB’s approval to do so.

On June 17, 2020, OMB issued a memorandum regarding the use of risk based financial audits and reporting activities in response to COVID-19. Related to the inclusion of COVID-related funding in an agency’s improper payment reporting, the memo stated:

Programs already reporting an annual improper payment estimate do not need to perform an additional improper payment risk assessment as the quantitative method used for annual reporting fulfills the risk assessment requirement, unless Agency management deems otherwise. Programs receiving COVID related funding that are already reporting an annual improper payment estimate may incorporate the new funding into their normal sampling process.

OMB’s guidance does not excuse ETA from excluding the CARES Act UI programs from its improper payment estimates, but it does provide them with the option of including these payments in its regular sampling process. Logically, ETA can include these payments in the BAM program or devise another acceptable method for reliably estimating improper payments for these programs.

When questioned about including CARES Act UI program payments in the BAM, ETA explained the following:

Historically, ETA has excluded episodic temporary programs from BAM. Each of these programs are unique and have distinct eligibility requirements that are different from prior episodic

programs. Additionally, the CARES Act programs have different eligibility requirements than the regular UI program. As such the development of a standing BAM program for these episodic programs is not feasible and would be costly to implement due to changing eligibility requirements for these programs...By the time the new BAM programs could be developed and become operational, the underlying temporary programs will have expired...we are looking to an alternative approach to conduct an independent evaluation of improper payments related to these new temporary programs.

The improper payment rate for FY 2019 was estimated at 10.61 percent. Assuming this rate continues, we conservatively estimate that improper payments for the CARES Act UI programs will be at least \$27.6 billion. This represents nearly 10 times the amount of estimated improper payments for FY 2019 of \$2.9 billion. ETA will be vastly underestimating improper payments by not including the CARES Act UI programs in its improper payment estimates.

ETA CAN DO MORE TO ENSURE COMPLETE AND ACCURATE PROGRAMMATIC REPORTING

ETA's oversight plan includes hiring additional staff, developing a new monitoring guide, and creating numerous reporting requirements. ETA will also rely heavily on desk reviews, automated alerts¹⁵ and the investigation of data anomalies with the states. These techniques have proven insufficient in the past for ensuring the completeness and accuracy of reported data. ETA should consider performing periodic spot checks of state-reported data by requesting supporting documentation for select data elements for a small number of reports, which would help to ensure data is complete and accurate.

According to agency officials, ETA has temporarily rehired annuitants and other staff and has plans to hire additional permanent or temporary staff. This will increase the number of full-time equivalent positions from approximately 58 to more than 70, including 12 positions the regional offices plan to fill to provide additional monitoring and oversight. ETA is also working with its regional office staff to develop new tools, including a risk assessment tool and a monitoring guide, for conducting reviews of CARES Act UI programs.

Since passage of the CARES Act, ETA has issued numerous UIPLs providing guidance to states for reporting. In total, states may be required to report

¹⁵ Automated alerts are received when edit checks embedded in the reporting system compare natural correlations between numbers and identify outliers that require investigation with state officials.

program information using as many as 15 different reports due weekly, monthly, and quarterly (see Exhibit 2). Due to the sheer scope of the CARES Act UI programs and the multitude of reports that regional offices will need to review on a regular basis, ETA will have to rely on its established methods of investigating report outliers with state officials. Further, ETA must rely on edit checks and the review and investigation of data anomalies with state officials to provide much of its oversight. Use of these measures in the past have proven insufficient to ensure the accuracy and completeness of state-reported data. Recent OIG reports have identified instances of state reported UI data that was both incomplete and/or inaccurate.^{16,17,18}

Without complete and accurate data reporting, Congress and ETA officials will not be able to make informed decisions regarding the current program or future programs of a similar nature.

OIG'S RECOMMENDATIONS

We recommend the Assistant Secretary for Employment and Training:

1. Amplify its guidance to states that strongly encourages them to enlist employers to assist state officials identify the continued eligibility of individuals who refuse to return to work by providing technical assistance and sharing best practices on processes and messaging that will increase employer reporting.
2. Include CARES Act UI transactions in the BAM or develop an alternative methodology to reliably estimate improper payments for those programs.
3. Develop oversight processes that ensure states are administering the CARES Act UI programs so as to ensure payments to eligible individuals in a timely manner and that states are submitting accurate reports.
4. Issue guidance directing states to provide access to state UI claimant data, in order to prevent and detect fraud.

¹⁶ Report No. 04-18-003-03-315 - Improved Oversight of States Use of New Hire Tools Would Help Reduce Improper Payments, issued September 27, 2018.

¹⁷ Report No. 04-17-001-03-315 – ETA Should do More to Help States Curtail Unemployment Insurance Tax Avoidance Practices, issued September 13, 2017.

¹⁸ Report No. 04-17-002-03-315 – Program Specific Performance Measurements are Needed to Better Evaluate the Effectiveness of the Reemployment Services and Eligibility Assessment Program, issued September 26, 2017.

SUMMARY OF ETA’S RESPONSE

ETA agreed with three of our four recommendations. ETA agreed to amplify its guidance to states to enlist employers to identify UI claimants who refuse return to work opportunities, agreed to develop oversight processes to ensure states are paying benefits timely and submitting accurate reports, and agreed to continue to work with the OIG to gain efficient access to state UI data to prevent and detect fraud.

ETA did not agree with our recommendation to include CARES Act UI transactions in the BAM or to develop an alternative methodology to reliably estimate improper payments for those programs. ETA argued that it was impractical to include these payments in the BAM. It further stated that it will maintain its continued and sustained focus on identifying potential root causes for improper payments and fraud and developing and implementing strategies to address these root causes.

We made technical revisions to the report as appropriate based on ETA’s review of our draft report. Management’s response to our draft report is included in its entirety in Appendix B.

We appreciate the cooperation and courtesies ETA extended us during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.



Elliot P. Lewis
Assistant Inspector General for Audit

EXHIBIT 1: CARES ACT UIPLS

No.	OUI Guidance	Date Issued	Purpose
1.	UIPL 14-20	4/2/2020	To provide states an overview of CARES Act UI programs.
2.	UIPL 15-20	4/4/2020	To provide operating, financial and reporting instructions for the FPUC program.
3.	UIPL 15-20 Change 1	5/9/2020	To provide questions and answers and additional guidance for the FPUC program.
4.	UIPL 15-20 Change 2	6/15/2020	To provide states with new ETA 227 Overpayment and Detection Recovery Activities FPUC Report.
5.	UIPL 16-20	4/5/2020	To provide operating, financial and reporting instructions for the PUA program.
6.	UIPL 16-20 Change 1	4/27/2020	To provide questions and answers and additional guidance for the PUA program.
7.	UIPL 17-20	4/10/2020	To provide operating, financial and reporting instructions for the PEUC program.
8.	UIPL 17-20 Change 1	5/13/2020	To provide questions and answers and additional guidance for the PEUC program.
9.	UIPL 18-20	4/27/2020	To provide instructions to states for implementation of the emergency unemployment relief for state and local entities, certain non-profit organizations, and federally recognized Indian tribes.
10.	UIPL 20-20	4/30/2020	To provide operating, financial, and reporting instructions for the TFFF program.
11.	UIPL 21-20	5/3/2020	To provide states with an overview of the Short-Time Compensation (STC) program.
12.	UIPL 22-20	5/10/2020	To encourage and assist states apply for STC grant funds.
13.	UIPL 23-20	5/11/2020	To remind states of program integrity requirements for regular UI programs and additional requirements for CARES Act UI programs.
14.	UIPL 24-20	5/14/2020	To provide guidance and respond to state inquiries related to the Federal-State EB program
15.	UIPL 25-20	6/15/2020	To provide guidance to State Workforce Agencies on changes in the operation of the BAM program

Source: OIG analysis of UIPLs on ETA's website.

EXHIBIT 2: REQUIRED REPORTING FROM CARES ACT UIPLS

No.	Report Title	Frequency of Reporting
1.	ETA 538 – Advance Weekly Initial and Continued Claims	Weekly
2.	ETA 539 – Weekly Claims and Extended Benefits Trigger	Weekly
3.	ETA 2112 – UI Financial Transaction Summary	Monthly
4.	ETA 902 – Pandemic Unemployment Assistance	Monthly
5.	ETA 5130 – Benefit Appeals	Monthly
6.	ETA 207 – Nonmonetary Determination Activities	Quarterly
7.	ETA 218 - Benefit Rights and Experience r	Quarterly
8.	ETA 8403 – Summary of Financial Transactions, Title IX	Bi-Monthly
9.	ETA 5159 – Claims and Payment Activities	Monthly
10.	UI-3 - Quarterly UI Above-Base Earnings Report	Quarterly
11.	ETA 227 – Overpayment Detection and Recovery Activities	Quarterly
12.	ETA 9178 – Quarterly Narrative Progress	Quarterly
13.	ETA 9130 – Federal Financial Report	Quarterly
14.	STC Quarterly Grant Report	Quarterly
15.	Non-specific report to be created by ETA, which establishes reporting requirements for states, number of averted layoffs, and the number of participating employers and workers.	To be determined

Source: OIG analysis of UIPLs on ETA's website.

APPENDIX A: SCOPE, METHODOLOGY, & CRITERIA

SCOPE

The audit covered ETA's plans for administration and oversight of CARES Act UI provisions from March 27, 2020, to June 30, 2020. Our work was conducted remotely with ETA headquarters personnel located in Washington, DC.

METHODOLOGY

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To answer our audit objective, we reviewed the CARES Act, ETA guidance, state agreements, program funding, information technology assistance, ETA oversight and fraud prevention plans, challenges in implementing the CARES Act, training provided to states, and additional controls implemented. We interviewed ETA officials to obtain an understanding of the program and the provisions, funding, and requirements included in the CARES Act. We questioned officials about the process to advise and monitor states on program implementation.

We did not use sampling on this audit. We analyzed all summary data available from the states on UI claims and funding. We examined all 15 UIPLs and associated webinars issued by ETA in response to the CARES Act.

RELIABILITY ASSESSMENT

We did not perform a data reliability assessment. Our audit was limited to a review of the administration and oversight of the CARES ACT UI provisions. We did not require any data to address the audit objective. Any data on claims or funding was reported as provided by ETA.

INTERNAL CONTROLS

In planning and performing our audit, we considered ETA's internal controls relevant to our audit objective by obtaining an understanding of those controls, and assessing control risks for achieving our objective. The objective of our audit was not to provide assurance of the internal controls; therefore, we did not

express an opinion on ETA's internal controls. Our consideration of internal controls for administering the accountability of the program would not necessarily disclose all matters that might be significant deficiencies. Because of the inherent limitations on internal controls, misstatements or noncompliance may occur and not be detected.

CRITERIA

- CARES Act, Public Law 116-136 (March 27, 2020)
- Code of Federal Regulations, Title 20, Employee Benefits, Chapter 5, Part 604 (January 16, 2007)
- Code of Federal Regulations, Title 20, Employee Benefits, Chapter 5, Part 625 (September 16, 1977)
- Federal-State Extended Unemployment Compensation Act of 1970 (August 10, 1970)
- Improper Payments Information Act of 2002, Public Law 107-300 as amended, (November 26, 2002)
- Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement (June 26, 2018)
- Social Security Act of 1935 (April 5, 1935)
- Unemployment Insurance Program Letter 16-20, Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions (April 5, 2020)
- Unemployment Insurance Program Letter 23-20, Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020 - Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, and Pandemic Emergency Unemployment Compensation Programs (May 11, 2020)
- GAO-14-704G, Standards for Internal Control in the Federal Government (September 2014)

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



July 31, 2020

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

FROM: JOHN PALLASCH 
Assistant Secretary for Employment and Training

SUBJECT: Response to Office of Inspector General Draft Audit Report
Number 19-20-006-03-315 – *COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act*

The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the Office of Inspector General's (OIG) Draft Audit Report (Report) titled *COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act*, Report Number 19-20-006-03-315, and its recommendations. ETA also reiterates the agency's views expressed in its joint response with the Department's Office of the Solicitor to the OIG's Alert Memorandum titled *The Pandemic Unemployment Assistance Program Needs Proactive Measures to Detect and Prevent Improper Payments and Fraud*, Report Number 19-20-002-03-315.

At the outset of the COVID-19 pandemic, ETA recognized the OIG's important role under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (CARES Act), in helping to combat fraud and abuse within the Unemployment Insurance (UI) program. ETA shares the OIG's concerns relating to fraud and abuse in UI programs and recognizes that ETA must remain vigilant in overseeing these programs. As a result, ETA proactively engaged with the OIG in an ongoing effort to coordinate and share relevant information to combat these abuses.

ETA shares the OIG's concerns set forth in its Report regarding potential fraud in the Pandemic Unemployment Assistance (PUA) program, arising from the self-certification eligibility process established by the CARES Act. For this reason, ETA has acted to address improper payments and fraud in the UI system stemming from the CARES Act and the PUA program, in particular, and will continue to expand upon these efforts. ETA continues to work with states to ensure full compliance with and faithful execution of the CARES Act and the Department's operating guidance provided to the states in UI Program Letters (UIPL) No. 16-20; 16-20, Change 1; and 16-20, Change 2, as well as program integrity guidance provided under UIPL No. 23-20.

ETA's response to the OIG's findings and recommendations contained in the body of the Report follows.

Similar to the OIG’s Alert Memorandum, referenced above, the OIG again suggests, in its latest Report, that ETA’s guidance is incorrect with regard to the requirement related to documentation to determine PUA eligibility. Additionally, the OIG infers that ETA has authority to issue stronger guidance or to allow states to implement additional measures of their own, as the program is at risk for significant fraud and other improper payments.

As noted in its response to the OIG’s Alert Memorandum, ETA’s interpretation of PUA’s statutory requirements is based on the interpretation of the Department’s Solicitor, who is the sole arbiter of legal interpretations with regard to the programs administered by the Department. We understand that the OIG recognizes that the Department is the sole arbiter of policy pronouncements and legal interpretations, and is, thus, singularly charged with providing guidance to the states for administering the self-certification eligibility process under the PUA statute. This is important so that states know they are to continue to follow the procedures in the Department’s existing guidance. ETA’s guidance with regard to self-certification is based on the current statutory framework for the PUA program. The risk for fraud is found in the statute itself, not in the Department’s interpretation of the statute. The Department cannot unilaterally change policy decisions made by Congress. ETA did agree to implement the OIG’s recommendation to consult with and provide technical assistance if Congress wishes to amend the self-certification provision to require submission of documentation substantiating an individual’s previous employment or self-employment. ETA has fulfilled this commitment as Congress has considered new COVID-19-related legislation.

In the Report, the OIG suggests that additional guidance from the ETA Office of UI (OUI) could better assist states in mitigating the risk of fraud and indicates that ETA’s guidance did not sufficiently address the risk of fraud, waste, or abuse given the PUA program’s reliance on self-certification. ETA respectfully disagrees with this assertion.

ETA includes program integrity language in all of the primary guidance documents associated with implementation of CARES Act programs and provisions. In addition, ETA issued UIPL No. 23-20, which specifically addresses program integrity for both the regular UI program and the CARES Act programs. This UIPL discusses administrative issues that have arisen in CARES Act program administration and encourages states to use the many fraud and overpayment prevention tools available as detailed in the guidance. In addition, as part of ETA’s proactive response to the structure of the PUA program and concern with potential fraud in the self-certification process, in UIPL No. 16-20, Attachment I, and UIPL No. 16-20, Change 2, Attachment I, ETA requires states to include fraud warnings in the system through which individuals submit self-certifications during the PUA application and continued claims processes. This warning includes a statement that fraud may result in criminal sanctions and serves as a reminder to individuals that there are significant consequences to intentionally submitting a self-attestation that is not accurate.

ETA notes that issuance of guidance is not the only mechanism to support states in mitigating the risk of fraud. ETA has actively worked on many fronts to address potential fraud in all of the CARES Act programs—particularly the PUA program. In particular, ETA is actively partnering with the OIG’s Office of Investigations – Labor Racketeering and Fraud to ensure state cooperation in detecting and investigating fraud, as well as access to the necessary state UI data

and information to prevent and detect fraud, to communicate fraud schemes in real-time, investigate and prosecute fraud schemes, and to identify effective fraud prevention and detection strategies and disseminate those to states.

ETA has also worked with the UI Integrity Center to refocus its resources to provide tools and resources for states to combat fraud in the context of the COVID-19 pandemic and the CARES Act, such as:

- Continued expansion of the Integrity Data Hub, which provides multiple resources to help prevent and detect fraud, including:
 - A Suspicious Actor Repository that allows states to share and cross-match with known fraud data elements to detect multi-state fraud;
 - Cross-matches with suspicious Internet Protocol addresses and email domains;
 - A multi-state claims data cross-match that enables data analytics to detect fraud;
 - A Fraud Alert System to enable states to communicate fraud schemes in real-time with each other and the OIG; and
 - Implementation of a national identity verification tool to support all states that is now available for state implementation.
- Weekly state calls to share and communicate fraud prevention strategies that include the OIG;
- Virtual state consultation services to provide targeted technical assistance, operational best practices, and technical guides to prevent and detect fraud;
- Coordinating communications and operating procedures to streamline work with financial institutions related to detection and recovery of fraudulent payments; and
- A suite of fraud investigation online training modules for state staff.

ETA also continues to provide technical assistance and oversight to states to ensure that they are implementing the PUA program in an effective manner and continues to remind states of the importance of program integrity in each newly issued UIPL related to CARES Act programs.

The OIG's Report suggests that ETA's PUA program guidance and its overall integrity guidance do not adequately assist states in identifying individuals who refuse to return to work and continue to receive program benefits. The OIG indicates that ETA's guidance does not encourage states to proactively contact employers, especially large employers with a multitude of laid-off or furloughed employees, to determine if individuals have been offered reemployment and refused to return to work.

ETA respectfully disagrees with the OIG's assertion. As the Report notes, ETA's guidance in UIPL No. 23-20 strongly encourages states to request information from employers on workers' refusal to return to work. ETA does not have legal authority to compel states to require employers to report this information. ETA indicated to the OIG previously that contacting every employer in the state, even if limited to large employers, was extremely resource intensive and a challenging strategy to implement as states are already struggling to manage the unprecedented workload. With that said, ETA will commit to reminding states of the need for UI, employment services, and business service teams to better coordinate information and outreach with regard to

states and businesses reopening. ETA is committed to working with states to identify, promote, and implement effective methods to secure employer reporting on this issue.

The OIG's Report noted a recommendation from the Government Accountability Office's June 25, 2020, report, recommending that ETA work with the Small Business Administration (SBA) and the U.S. Department of the Treasury (Treasury) to provide Paycheck Protection Program (PPP) information to state UI agencies. This information could be used by the states to cross-match against its beneficiary rolls and identify potential overpayments for further investigation. ETA consulted with SBA and Treasury, and it will issue additional guidance regarding the PPP and its intersection with UI programs.

The OIG's Report suggests leveraging the Department's Enterprise Risk Management (ERM) Council to better understand and mitigate the risks presented by UI CARES Act programs. ETA has already been using the Department's ERM process to support the identification and mitigation of risks for both the regular UI program and the CARES Act programs.

The OIG's Report asserts that ETA is leveraging existing tools to combat fraud, but more needs to be done. As noted above, ETA is doing more than leveraging existing tools. ETA actively works with the UI Integrity Center; the Department's OIG, Office of Investigations – Labor Racketeering and Fraud; and states to identify strategies to address fraud and to support states in implementing those strategies through weekly calls and other coordination meetings. In addition, ETA actively works to promote state use of the full range of information and resources available through the UI Integrity Center to support fraud prevention and detection. The UI Integrity Center has worked to develop new tools to address fraud detection, including the Fraud Alert System and identity verification functionality. The UI Integrity Center is also offering customized intensive technical assistance designed to address fraud to states that request it.

The Report indicates that ETA should work to ensure the OIG's access to state claimant data that can be used to identify and disrupt fraudulent schemes that threaten the integrity of UI programs, including those under the CARES Act. ETA has been working with the OIG for close to two years to address this issue and agrees that data access is key to supporting the OIG in its role to address fraud in UI programs. ETA continues its commitment to resolve this issue.

The OIG Report also indicates that ETA's oversight plan for the CARES Act programs does not: (1) establish performance measures for the timeliness of determinations and payments or measures for improper payment detection and recovery; (2) include program payments in their annual estimate of UI improper payments; or (3) include additional measures to enhance the accuracy and completeness of program reporting.

With regard to program performance, development of formal performance measures is a complex and lengthy process that involves baselining data, statistical analysis, and benchmarking—it can take as long as a year or more to accomplish. Therefore, it is impractical to develop such measures in the context of a temporary program. The program will have reached an endpoint before the measures and targets can be properly established. As a result, ETA is employing other strategies to ensure states are implementing the CARES Act programs accurately. These strategies include: conducting a review of all states' implementation of key

elements of the PUA program (given it has the most new features) in May and June of 2020 and working with states to make course corrections, where necessary; developing program implementation checklists for states that will be released shortly as a form of technical assistance; and developing a set of monitoring tools that include both a risk assessment and a comprehensive monitoring tool that will be ready to launch by the end of August 2020. ETA's monitoring activities will also include case reviews to determine the states' accurate application of the law and the Department's guidance.

With regard to establishing mechanisms to estimate improper payments, ETA concurs there needs to be a continued and sustained focus on identifying potential root causes for improper payments and fraud, as well as developing and implementing strategies to address these root causes. ETA also acknowledges its responsibilities to develop methodologies for the CARES Act programs, as required in the Office of Management and Budget (OMB) Circular A-123, Appendix C. As required and to establish mechanisms to estimate improper payments, ETA has taken the first step and developed a program inventory, which was submitted to the Department's Office of the Chief Financial Officer on June 19, 2020. ETA is committed to conducting a risk assessment within the first year of the programs.

ETA notes that it is not possible to use the Benefit Accuracy Measurement (BAM) program as the vehicle to estimate improper payments for the CARES Act programs, as suggested by the OIG. The BAM program is fully customized to support estimation of improper payments in the regular UI program, and it is impossible to simply overlay it onto the CARES Act programs. A statistical methodology for estimating improper payments for the CARES Act programs is a complex endeavor that must be built from the ground up. It would require the development of a statistical sampling process and case investigation processes tailored to the specific eligibility requirements associated with the CARES Act programs; the development and implementation of information technology systems at both the state and federal levels to support reporting and data analysis; and states hiring and training staff to conduct the audits. As noted above, ETA is currently taking the required steps, pursuant to OMB's Circular A-123, Appendix C, to estimate improper payments under the CARES Act programs. However, because this is a lengthy process, ETA is also focusing on other more appropriate approaches to identify and address root causes of improper payments in the CARES Act programs, including partnerships with the UI Integrity Center, the OIG, and states. ETA is also requiring states to report on overpayment detection and recovery activities in the CARES Act programs.

With regard to the OIG's suggestion that ETA implement additional measures to enhance the accuracy and completeness of program reporting, it is impractical to establish a data validation program similar to the regular UI program for many of the same reasons it is challenging to establish a BAM-like program or develop new performance measures. Therefore, as noted above, ETA plans to incorporate oversight of state reporting in its monitoring for the CARES Act programs as well as in its provision of technical assistance.

ETA Responses to the OIG’s Recommendations:

OIG Recommendation 1: Amplify its guidance to states that strongly encourages them to enlist employers to assist state officials identify the continued eligibility of individuals who refuse to return to work by providing technical assistance and sharing best practices on processes and messaging that will increase employer reporting.

ETA Response: ETA concurs with this recommendation.

OIG Recommendation 2: Include CARES Act UI transactions in the BAM or develop an alternative methodology to reliably estimate improper payments for those programs.

ETA Response: ETA respectfully disagrees with this recommendation for the reasons stated above. ETA will, however, maintain its continued and sustained focus on identifying potential root causes for improper payments and fraud and developing and implementing strategies to address these root causes in partnership with states and the OIG. ETA will also continue to meet the requirements provided in Appendix C of OMB Circular A-123 with regard to the process of developing improper payment estimation methodologies for new CARES Act programs.

OIG Recommendation 3: Develop oversight processes that ensure states are administering the CARES Act UI programs so as to ensure payments to eligible individuals in a timely manner and that states are submitting accurate reports.

ETA Response: ETA concurs with this recommendation.

OIG Recommendation 4: Issue guidance directing states to provide access to state UI claimant data, in order to prevent and detect fraud.

ETA Response: ETA concurs with this recommendation. ETA has issued prior guidance to states that mandates they provide data and information to the OIG. ETA remains committed to supporting the OIG’s efficient access to UI data to prevent and detect fraud.

In conclusion, ETA will continue to work collaboratively and proactively with the OIG, states, and other partners to ensure the integrity of the CARES Act UI programs and to prevent, detect, and prosecute fraud.

APPENDIX C: ACKNOWLEDGEMENTS

Key contributors to this report were:

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