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Office of Inspector General—Office of Audit

**REPORT TO THE EMPLOYMENT
AND TRAINING ADMINISTRATION**



**UNEMPLOYMENT INSURANCE
OVERPAYMENTS RELATED TO WORK
SEARCH UNDERSCORE THE NEED
FOR MORE CONSISTENT STATE
REQUIREMENTS**

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BRIEFLY...

UNEMPLOYMENT INSURANCE OVERPAYMENTS RELATED TO WORK SEARCH UNDERSCORE THE NEED FOR MORE CONSISTENT STATE REQUIREMENTS

September 29, 2021

WHY OIG CONDUCTED THE AUDIT

The Employment and Training Administration (ETA) estimated \$2.9 billion (10.6 percent) of the \$26.2 billion in Unemployment Insurance (UI) benefits paid for the period July 1, 2018 through June 30, 2019 were paid improperly. The chief cause was overpayments, with states paying \$878 million to UI claimants who had not complied with state work search requirements in accordance with the Middle Class Tax Relief and Job Creation Act of 2012.

Between Fiscal Years (FYs) 2011 and 2016, ETA had provided 39 states \$9.5 million to address work search related overpayments by developing and implementing strategies to reduce such improper payments.

WHAT OIG DID

We conducted this performance audit to answer the following questions:

To what extent did ETA and state strategies reduce UI overpayments related to work search, and did ETA ensure states reported work search information accurately?

We interviewed ETA and state officials, and reviewed overpayment reduction strategies, supplemental funding data, improper payment data, and state laws.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2021/04-21-001-03-315.pdf>

WHAT OIG FOUND

ETA and state strategies did not consistently reduce UI overpayments related to work search. In addition, ETA inappropriately excluded certain types of overpayments from improper payment estimates for the UI program.

ETA's work search overpayment rates for Program Years (PY) 2013 to 2019 indicated ETA and state strategies did not achieve consistent and sustainable reductions in overpayments. The rates fluctuated between 2.8 and 5 percent of total UI payments and did not reflect a trend of continuous improvement. As the leading cause of UI improper payments, work search overpayments factored into the UI program' not meeting the standard set by the Improper Payment Information Act of 2002, as amended, which is an improper payment rate of less than 10 percent of total UI benefits paid in a given PY. Instead, ETA reported a rate of at least 10 percent for the 7-year period we examined. The agency was unable to consistently reduce these overpayments mainly because states had varying work search laws and requirements, with some more stringent than others.

In its UI improper payment rate calculations, ETA did not include, contrary to Federal law and Office of Management and Budget requirements, billions of dollars paid to claimants who had received state formal warnings after failing to conduct or document adequate work searches. As a result, UI improper payment rates were considerably understated for FYs 2017 through 2020. For example, ETA excluded \$2 billion (58.8 percent) of the \$3.4 billion work search overpayments identified by states' Benefit Accuracy Measurement staff during PY 2018. As such, the estimated 13.1 percent improper payment rate reported in DOL's FY 2018 Agency Financial Report would have been more accurately reported at 19.8 percent. Similarly, in FY 2019, work search overpayments were understated by \$1.5 billion, and the rate of 10.6 percent would have been more accurately reported at 15.9 percent.

WHAT OIG RECOMMENDED

We made four recommendations to ETA to improve efforts to reduce and accurately report UI overpayments related to work search.

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INSPECTOR GENERAL'S REPORT

Lenita Jacobs-Simmons
Acting Assistant Secretary
for Employment and Training
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

This report presents the results of the Office of Inspector General's (OIG) audit of the Employment and Training Administration's (ETA) and states' strategies to reduce work search related Unemployment Insurance (UI) overpayments.

ETA estimated \$2.9 billion (10.6 percent) of the \$26.2 billion in Unemployment Insurance (UI) benefits paid for the period July 1, 2018 through June 30, 2019 were paid improperly. The chief cause was overpayments, with states paying \$878 million to UI claimants who had not complied with state work search requirements in accordance with the Middle Class Tax Relief and Job Creation Act of 2012.

Between Fiscal Years (FYs) 2011 and 2016, ETA had provided 39 states \$9.5 million to address work search related overpayments by developing and implementing strategies to reduce such improper payments.

We conducted this performance audit to answer the following questions:

To what extent did ETA and state strategies reduce UI overpayments related to work search, and did ETA ensure states reported work search information accurately?

We interviewed ETA and state officials, and reviewed overpayment reduction strategies, supplemental funding data, improper payment data, state laws, regulations, policies, and procedures for the period July 1, 2012 through June 30, 2020. We selected three states (California, Michigan, and South Carolina) to perform in-depth analysis with respect to their Benefit Accuracy Measurement

(BAM)¹ reviews and other activities related to work search. We surveyed the remaining 49 states² to obtain related key information for Program Year (PY)³ 2018.

BACKGROUND

ETA oversees the UI program created by the Social Security Act of 1935. The UI program is a federal-state program that provides unemployment benefits to eligible workers who become unemployed through no fault of their own. While the UI program is based on federal law, each state administers its program according to its own state law.

In accordance with requirements of the Improper Payment Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act 2010, and guidance from the Office of Management and Budget (OMB), the UI program has been identified as a program susceptible to improper payments.⁴ Therefore, ETA estimates the amount of improper payments in the UI program, and reports to Congress on those estimates and corrective actions taken to reduce future improper payments each FY.⁵ The IPIA, as amended, also requires the UI program to maintain a standard rate of improper payments below 10 percent. Since 2012, improper payments in the UI program have exceeded the 10 percent rate.⁶

ETA estimates improper payments for the program using its BAM system. BAM results for each PY are published in the Department's Agency Financial Report (AFR) for the corresponding FY. For five of seven PYs, July 1, 2012 through June 30, 2019, the BAM process identified work search issues — i.e., overpayments due to the failure of claimants to meet states' work search

¹ ETA Handbook 395, Benefit Accuracy Measurement State Operations Handbook states that each state has an automated data processing (ADP) system (currently a SUN T2000) and application software provided by DOL to support BAM operations. States can pass UI data from their databases to the ADP. DOL electronically picks up BAM data from the ADP for storage in the UI database at the National Office in Washington, DC.

² States as mentioned in this report includes 52 of ETA's 53 State Workforce Agencies, which consist of the 50 states, Puerto Rico, and the District of Columbia. The U.S. Virgin Islands is exempt from operating a BAM program.

³ The program year for the UI program for purposes of reporting improper payments is from July 1 to June 30, in accordance with the Improper Payment Information Act of 2002.

⁴ Section (d)2 of the Improper Payment Information Act defines an improper payment as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments)" Our audit focuses on overpayments, because underpayments were minimal, less than 1 percent each PY.

⁵ The federal Fiscal Year period is from October 1 to September 30.

⁶ For FY 2020, UI improper payments were reportedly less than 10 percent based on the use of 9 months of UI activity due to the onset of the COVID-19 pandemic.

requirements — as the number one cause of UI overpayments (see Exhibit 1). For PY 2020, work search was second top cause of UI overpayments. These high rankings indicated how critical it is to reduce work search overpayments to mitigate improper payments for the UI program.

RESULTS

ETA and state strategies did not consistently reduce UI overpayments related to work search. In addition, ETA inappropriately excluded certain types of overpayments from improper payment estimates for the UI program.

- ETA's work search overpayment rates for PYs 2013 to 2019 indicated ETA and state strategies did not achieve consistent and sustainable reductions in overpayments. The rates fluctuated between 2.8 and 5 percent of total UI payments and did not reflect a trend of continuous improvement. As the leading cause of UI improper payments, work search overpayments factored into the UI program not meeting the standard set by the IPIA, which is an improper payment rate of less than 10 percent of total UI benefits paid in a given PY. ETA reported a rate of at least 10 percent for the 7-year period we examined. The agency was unable to consistently reduce these overpayments mainly because states had varying work search laws and requirements, with some more stringent than others.
- In its UI improper payment rate calculations, ETA did not include, contrary to Federal law and Office of Management and Budget requirements, billions of dollars paid to claimants that received state formal warnings after failing to conduct or document adequate work searches. As a result, UI improper payment rates were considerably understated for FYs 2017 through 2020. For example, ETA excluded \$2 billion (58.8 percent)⁷ of the \$3.4 billion work search overpayments identified by states' BAM staff during PY 2018. As such, the estimated 13.1 percent improper payment rate reported in DOL's FY 2018 AFR would have been more accurately reported at 19.8 percent. Similarly, in FY 2019 work search overpayments were understated by \$1.5 billion, and the improper payment rate of 10.6 percent would have been more accurately reported at 15.9 percent.

⁷ Actual exclusion \$1,958,755,282 rounded to \$2 billion and actual work search overpayments \$3,446,453,457 rounded to \$3.4 billion. Percentage for actual amounts is 56.8 percent.

ETA AND STATE STRATEGIES DID NOT CONSISTENTLY REDUCE WORK SEARCH RELATED UI OVERPAYMENTS

To reduce work search overpayments in the UI program, ETA suggested strategies to states, and offered supplemental funding opportunities to states to develop and implement strategies outlined in six Unemployment Insurance Program Letters (UIPLs) issued FYs 2011-2016.⁸ ETA also appealed to states to develop their own strategies and offered technical assistance. However, despite the strategies that states deployed and the technical assistance that ETA provided, the agency was not able to achieve consistent and sustainable reductions in work search related UI overpayments.

WORK SEARCH OVERPAYMENTS AT THE NATIONAL LEVEL DECLINED IN ONLY TWO OF SEVEN PROGRAM YEARS

ETA and states' strategies did not produce consistent and sustainable improvements in reducing work search overpayments at the national level. Specifically, during the period July 2012 through June 2019, work search overpayments declined for two program years, PY 2015 and PY 2019.

In June 2011, ETA directed states to develop state-specific strategies to reduce their UI improper payment rates⁹ with emphasis on top causes.¹⁰ To support this initiative, July 2011 through September 2016, ETA provided supplemental funding totaling nearly \$9.5 million to 39 states (see Exhibit 2) to develop and implement strategies to reduce work search related overpayments.¹¹ These strategies were components of the five Core Strategies (see Exhibit 3) for the reduction of UI improper payments. Twenty-seven of the 39 states preferred claimant/employer messaging as the CORE strategy used to reduce work search overpayments. According to state officials, claimant/employer messaging was also one of the common strategies 35 of the 52 states¹² used to reduce work

⁸ ETA generally uses UIPLs to communicate guidance or instructions to states specific to the UI program. UIPL 26-11(\$3.1 million), UIPL 18-12 (\$1 million), UIPL 24-13 (\$63,100), UIPL 13-14 (\$5 million), UIPL 19-16 (\$224,800), and UIPL 16-15 (only provided guidance).

⁹ This rate is calculated by adding UI benefits overpaid and UI benefits underpaid, and then dividing the sum by the total amount of UI benefits paid.

¹⁰ Work search was not the top cause of improper payments for each state.

¹¹ Thirteen states did not receive funding. The 13 states are Alaska, Arkansas, Connecticut, Hawaii, Indiana, Minnesota, Montana, North Carolina, New Hampshire, Texas, Utah, Washington, and Wyoming.

¹² Based on responses from the 3 states visited and 49 states surveyed.

search overpayments.¹³ In addition, as illustrated in Table 1, some states incorporated policies as part of their overall strategies to reduce work search overpayments.

Table 1: Common Strategies and Policies States Used to Reduce Work Search Overpayments

Strategy/Policy	Description
Claimant/Employer Messaging	Clarification of work search requirements provided through brochures, pamphlets, interactive voice response, outreach campaigns, social media, simplified language, videos, and customer education.
Moderate Work Search Requirement	A broad range of work search activities or a lesser number of weekly work search contacts required for claimants.
Random Work Search Audits	In any given week, a minimum number of UI claimant's work search records selected on a random basis for audit.
Online Work Search	Claimants conducting work search activities through online networks. Work search records and information maintained online.
Formal Warnings*	Claimants entitled to an initial warning notification prior to disqualification due to their inadequate work search efforts.
Waivers*	Work search not required for any benefit week due to approved training, temporary lay-off, seasonal lay-off, union attached short-time compensation program, or specific date of new employment.

Source: Responses from 3 states visited and 49 states surveyed.

*State policy.

With respect to moderate work search requirements, states need to recognize that less stringent work search requirements could result in ineffective and meaningless efforts to improve claimants' chances of gaining employment. To illustrate, one of the three states we visited (South Carolina) with a work search overpayment rate of zero percent for PYs 2017 and 2018, changed its law July 1, 2012 to mandate that one of its 4 weekly required work searches be conducted online. In May 2017, the state reduced the number of required weekly work searches to two — both conducted online. The state uses a system that approves a payment, after it detects a claimant has accessed the system and clicked on at least two job postings each week. The system also records the amount of time the claimant spends searching for work online. We reviewed system records for PY 2018, and determined that on average a claimant could complete one valid work search contact in as few as 11 seconds, which does not appear to be sufficient time to conduct a valid work search. State officials said they placed more value on claimants' exposure to employment opportunities. State officials also said — using this online process — the state will never have a

¹³ ETA does not consider waivers and formal warnings to be strategies to reduce work search overpayments, but rather state policies.

work search overpayment. For PY 2016, the state had a work search overpayment rate of 4.9 percent of all UI benefits paid. Of all the state’s UI overpayments for PY 2016, work search represented 40.4 percent.

The state of Michigan, with the highest rate of work search overpayments in the nation for PYs 2017 through 2019 (40.9 percent, 37.1 percent, and 24.1 percent), said it was considering adopting South Carolina’s automated strategies that led to a work search overpayment rate of zero percent. We view having controls in place to mitigate the risk of less meaningful work search activities as imperative for any state that is considering similar changes to its laws and operations.

In 2012, ETA created the UI Integrity Center of Excellence (Integrity Center), which is operated by the National Association of State Workforce Agencies (NASWA), to support the needs of the 53¹⁴ State Workforce Agencies in implementing strategies to ensure program integrity, including preventing and detecting UI improper payments. In 2019, the Integrity Center proposed 9 work search related strategies for all states to consider adopting as part of their efforts to reduce and maintain a low improper payment rate (see Exhibit 4). Despite the supplemental funding and technical assistance provided by ETA, and the strategies deployed by states during the 7-year period July 1, 2012 - June 30, 2019, work search overpayments declined only twice, PY 2015 and 2019 (see Table 2).

Table 2: Work Search Overpayments (PY 2013 – 2019)

PY	Total UI Dollars Paid	Overpayment Amount	Percentage of Total UI Dollars Paid*
2013	\$40.7 billion	\$1.1 billion	2.8%
2014	\$35.9 billion	\$1.5 billion	4.2%
2015	\$31.5 billion	\$951.8 million	3.0%
2016	\$30.9 billion	\$1.2 billion	4.2%
2017	\$30.7 billion	\$1.4 billion	4.5%
2018	\$27.9 billion	\$1.4 billion	5.0%
2019	\$26.2 billion	\$878.0 million	3.4%

Source: ETA’s BAM data.

*Actual percentages may differ due to rounding.

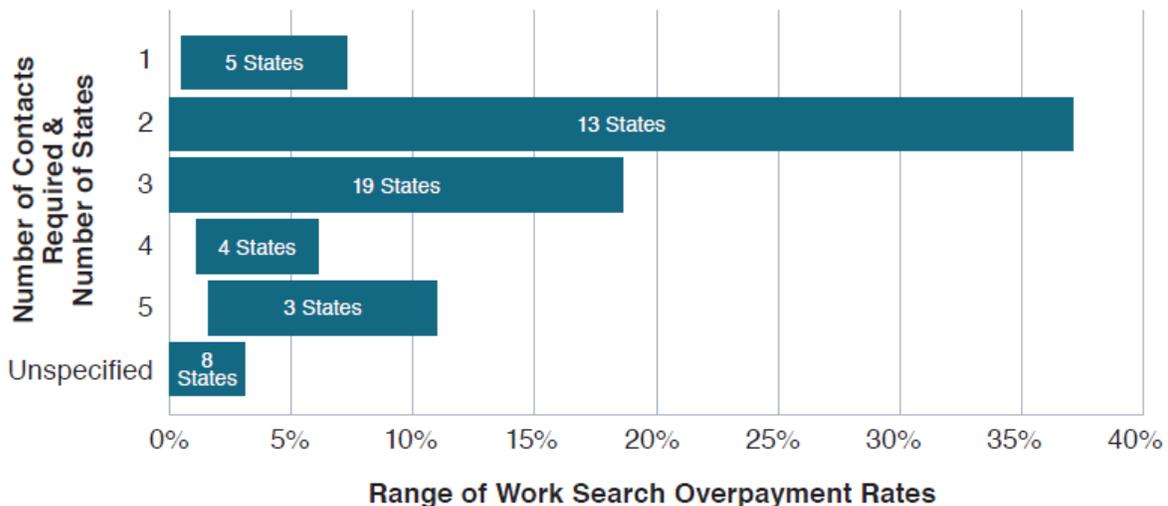
¹⁴ The UI Integrity Center supports the 50 states, District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

For PY 2019, the last full PY prior to the onset of the COVID-19 pandemic (March 2020), work search overpayments dropped to \$878 million. In November 2019, the Integrity Center attributed this decline to its strategies in the NASWA UI Integrity Center, Annual Report 2019.

ETA’S ABILITY TO REDUCE THE NATIONAL RATE OF WORK SEARCH OVERPAYMENTS WAS CONSTRAINED BY VARYING STATE REQUIREMENTS

The Middle Class Tax Relief and Job Creation Act of 2012 required individuals to be able to work, available to work, and actively seeking work, in order to be eligible for UI benefits in a given week.¹⁵ However, neither the Act nor the Department’s implementing regulations (20 C.F.R. § 604) defined “actively seeking work” or “work search”. Instead, under the federal-state UI program, states are responsible for establishing the specific eligibility requirements for receiving UI benefits. As such, this particular eligibility requirement is left up to each state to define and apply its own definition. As a result, while some states required claimants to make the same number of weekly employer contacts, there was no correlation between the number of contacts a state required and their work search overpayment rates (see Chart 1).

Chart 1: Number of Employer Contacts Required and Range of Work Search Overpayment Rates (PY 2018)



Source: ETA’s 2019 Comparison of State Unemployment Laws and PY 2018 BAM data.

¹⁵ Section 303(a)(12) of the Social Security Act.

Furthermore, while a group of states may have required the same number of employer contacts they differed in how claimants were to satisfy this requirements. For example, the five states that required at least one employer contact had wide variability in specific requirements and work search overpayment rates (see Figure 1).

Figure 1: Five States That Required One Employer Contact (PY 2018)



Source: ETA's BAM data and states' survey responses.

The results of our analysis — and the fact that certain states achieved rate reductions without the use of supplemental funding — suggests that factors other than a specific number of employer contacts impacted states' higher or lower work search overpayment rates. Other possible factors we identified included state laws, policies (e.g., required submission of work search logs), procedures (e.g., verification of work search prior to payment), and operational capabilities (e.g., technology, automation, and staffing).

ETA acknowledged that states with more stringent work search requirements tended to have higher work search overpayment rates. ETA officials said it is for this reason, that the agency did not have a performance measure or reduction targets for overpayments at the specific cause level.¹⁶ ETA also said having a

¹⁶ ETA requires states to maintain an overall improper payment rate of less than 10 percent, consistent with the national-level requirement of IPIA. States that do not meet this performance standard must submit corrective action plans as part of their State Quality Service Plans.

performance measure for reducing work search overpayments might be perceived as penalizing states with more stringent work search requirements. We view reduction targets for causes of improper payments as a control that may enable ETA to track progress towards decreasing work search overpayments.

ETA HAS PROPOSED STATE LEGISLATIVE IMPROVEMENTS THAT COULD POTENTIALLY REDUCE WORK SEARCH OVERPAYMENTS

In ETA’s Training and Employment Notice (TEN) 17-19 issued to states in February 2020, the agency recognized the importance of a consistent standard definition for actively seeking work. In this notice, ETA introduced the Model Unemployment Insurance State Work Search Legislation that defined “actively seeking work” in terms of three elements (see Figure 2).

Figure 2: Three Elements of Actively Seeking Work



Source: ETA’s TEN 17-19, Model UI State Work Search Legislation

In TEN 17-19 ETA would have state UI Directors consider working with state legislatures and UI stakeholders to adopt the model legislative language and framework for work search. The language that ETA has proposed would in part require claimants to perform at least the required number of acceptable work search activities (instead of employer contacts) in the week for which benefits are claimed — based on a list of 15 activities (see Exhibit 5). This means that states would expand the countable work search activities used to determine if claimants meet the applicable requirements for employer contact.

Furthermore, in May 2019 ETA officials said they had requested a decision from OMB as to whether or not the Department could implement a federal work search standard of one work search (i.e., contact) per week for the purposes of BAM. ETA officials said state laws were all “over the board” and they wanted

something that would “level the playing field.” However, as of August 2021, ETA had not received a response from OMB.

In the wake of COVID-19, 52 states¹⁷ suspended their work search requirements.¹⁸ However, 48 of these states (11 COVID-conditional)¹⁹ had reinstated their work search requirements by July 31, 2021. Another two states planned to reinstate work search requirements by February 2022.²⁰ The remaining two states had no date planned to resume their work search requirements.

UI IMPROPER PAYMENT RATES DID NOT MEET THE IMPROPER PAYMENT INFORMATION ACT’S STANDARD

Despite strategies to reduce the top cause of UI improper payments, the rate of UI program improper payments did not meet the less than 10 percent standard set by the Improper Payment Information Act. The estimated UI improper payment rates published in AFRs from FYs 2014 to 2019, ranged between 10.6 percent and 13.1 percent, and the rate of work search related overpayments averaged nearly 34 percent of the improper payment rate (see Table 3).

Table 3: UI Program Improper Payment and Work Search Overpayment Rates (PY 2014 – 2019)

Fiscal Year	Improper Payment Rate*	Work Search Overpayment Rate	Work Search Overpayment Rate as a Percentage of Improper Payment Rate
2014	11.6%	4.2%	36.2%
2015	10.7%	3.0%	28.0%
2016	11.7%	4.2%	35.9%
2017	12.5%	4.5%	36.0%
2018	13.1%	5.0%	38.2%
2019	10.6%	3.4%	32.1%

Source: ETA’s BAM data and OIG analysis.

* Includes underpayments, which we previously identified as less than 1.0 percent

¹⁷ Utah, did not suspend its work search requirements.

¹⁸ Section 4102(b) of the Families First Coronavirus Response Act allowed states to temporarily modify or suspend work search requirements in response to the spread of COVID-19. Also, although the territory of Virgin Islands was exempt from operating a BAM program, it did report on the status of work search suspension.

¹⁹ Claimants with a COVID-19 reason may not be required to conduct work search.

²⁰ New Jersey, September 2021 and the District of Columbia, February 2022.

For PY 2018, the BAM process identified an estimated \$1.4 billion in UI overpayments related to work search. This was \$894.4 million more than the amount needed to report an improper payment rate at less than 10 percent.²¹ The UI improper payment rate for FY 2020 (9.17 percent) is not included in Table 3 because BAM reviews were suspended for the fourth quarter of the PY.

**CERTAIN TYPES OF WORK SEARCH
OVERPAYMENTS WERE INAPPROPRIATELY
EXCLUDED FROM UI IMPROPER PAYMENT
ESTIMATES**

In its calculation of UI improper payment estimates, ETA excluded work search overpayments supported by formal²² warnings. Seventeen states issued these warnings to claimants for the first instance in which they did not seek work. ETA also excluded other work search overpayments for which states' BAM staff did not have sufficient information to determine UI claimants' eligibility with respect to work search. As such, work search overpayments were understated by approximately \$2 billion, and the estimated 13.1 percent improper payment rate reported in DOL's FY 2018 AFR would have been more accurately reported at 19.8 percent. Similarly, in FY 2019 work search overpayments were understated by \$1.5 billion, and the improper payment rate of 10.6 percent would have been more accurately reported at 15.9 percent.

These practices were not consistent with requirements of the Middle Class Tax Relief and Job Creation Act of 2012, which mandates that UI claimants actively seek work each week to receive UI benefits,²³ and OMB Circular A-123, which requires payments to be determined improper when insufficient information is available to support the pay decision.

**ETA EXCLUDED WORK SEARCH OVERPAYMENTS CODED AS
FORMAL WARNINGS FROM UI IMPROPER PAYMENTS**

According to BAM results in ETA's IPIA 2018 Work Search Verification

²¹ \$894.4 million calculated as \$3,661,347,518 (13.1 percent of \$27,949,217,692 less \$2,766,972,552 (9.9 percent of \$27,949,217,692).

²² ETA has stated that both formal and informal warnings are impermissible. However, ETA's BAM system characterized all warnings as formal.

²³ Section 303(a)(12) of the Social Security Act requires that state laws require that, as a condition of eligibility to receive UI benefits for any week, a claimant must be "able to work, available to work, and actively seeking work."

Outcomes report,²⁴ 17 states issued warnings to claimants for 1,248 payments that had insufficient information to support that claimants conducted an adequate search for work. Eleven of the states issued warnings to claimants for 80 percent to 100 percent of the respective state’s total work search overpayments in their BAM-sampled cases (see Table 4).

Table 4: Percent of Work Search Overpayments with Warnings Issued (PY 2018)

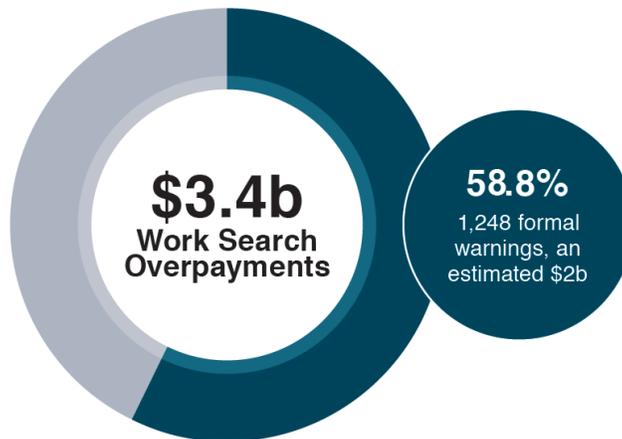
States	Total Overpayments Recorded	Warnings Issued	Percent of Overpayments with Warnings Issued
Arkansas	32	32	100.0%
Pennsylvania	224	222	99.1%
Indiana	183	178	97.3%
Vermont	76	71	93.4%
Colorado	228	212	93.0%
Missouri	120	106	88.3%
New Jersey	233	199	85.4%
District of Columbia	41	35	85.4%
Iowa	81	69	85.2%
Minnesota	10	8	80.0%
Louisiana	5	4	80.0%
Maine	48	26	54.2%
Delaware	13	6	46.2%
New York	48	21	43.8%
Nebraska	75	32	42.7%
Connecticut	107	26	24.3%
Maryland	79	1	1.3%
	1,603	1,248	78.0%

Source: OIG analysis using BAM data.

The remaining six states issued warnings to claimants for 1.3 percent to 54.2 percent of total work search overpayments in their BAM-sampled cases. The 1,248 formal warnings had an estimated valued of \$2 billion and represented 58.8 percent of the \$3.4 billion work search overpayments states’ BAM staff identified during PY 2018 (see Figure 3).

²⁴ The Verification Outcome is a detailed listing of work search compliance for each state compiled in a spreadsheet. It contains BAM results that support the improper payment rates published in the Department’s AFRs.

Figure 3: Percent of Work Search Overpayments That Were Formal Warnings



Source: ETA's BAM data.

To permit this practice to continue is to enable states to operate in a manner that directly contradicts a federal statutory requirement.

ETA EXCLUDED PAYMENTS WITH INSUFFICIENT OR INCOMPLETE DOCUMENTATION TO DETERMINE CLAIMANTS' ELIGIBILITY WITH RESPECT TO WORK SEARCH

OMB Circular A-123, Appendix C, Requirements for Effective Estimation and Remediation of Improper Payments, states:

When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment.

Of the 19,251 payments sampled by state BAM staff, that required UI claimants to actively seek work during PY 2018, insufficient or incomplete documentation of employer contacts or work search activities was provided for 3,602 payments (18.7 percent) made by the 52 states. Therefore, state BAM staff could not determine if applicable claimants were eligible to receive UI benefits with respect to work search. Table 5 shows the 10 states with the highest percentage of cases not investigated for work search.

Table 5: States with Highest Percentage of Payments Not Investigated For Eligibility Related to Work Search (PY 2018)

State	Total Sampled	Work Search Required	Number Not Investigated for Eligibility Related to Work Search	Percent Not Investigated for Eligibility Related to Work Search
Arkansas	481	426	339	79.6%
New Jersey	484	372	252	67.7%
Pennsylvania	484	349	210	60.2%
California	931	746	403	54.0%
New York	480	352	180	51.1%
South Dakota	360	198	88	44.4%
Connecticut	483	441	182	41.3%
Michigan	480	422	145	34.4%
Indiana	481	389	119	30.6%
Missouri	480	355	104	29.3%

Source: ETA’s BAM data.

For the remaining 42 states, the percentage of sampled payments for which employer contact and work search activity information was not available ranged from 0.2 percent to 28.8 percent of the total payments selected for review. ETA acknowledged OMB’s requirement by adding the following footnote to these payments in the IPIA Work Search Verification Outcomes report:

Under authorization granted, OMB instructs Federal agencies to report payments as improper for which insufficient or no documentation of payment due was found. OMB promulgated memorandum M-15-02 detailing the reporting requirements (Circular 123 Appendix C, Requirements for Effective Estimation and Remediation of Improper Payments) on page 7. The proper payment rate would be lower and the overpayment rate would be higher if these cases were counted as erroneous payments.

Nevertheless, ultimately, ETA inappropriately determined 1,995 (791 formal warnings) of these payments to be proper after reviewing for all eligibility requirements — despite insufficient documentation to determine if claimants were eligible for payment with respect to work search.²⁵

²⁵ Another 161 payments were technically proper and excluded from the improper payment estimate based on OMB’s approval, 73 were underpayments, and 3 were reversals. The remaining 1,369 payments were found to be improper (611 work search and 758 other).

UNVERIFIABLE CONTACTS DEEMED ACCEPTABLE WORK SEARCH

ETA's guidance required state BAM staff to investigate a sufficient number of work search contacts to establish whether the claimant met the state's work search requirements.²⁶ Also, ETA informed states that unverifiable work search contacts were acceptable and counted towards meeting the states' work search requirements. The treatment that ETA instructed states to use with respect to these payments does not align with OMB Circular A-123, Appendix C, Requirements for Effective Estimation and Remediation of Improper Payments, which states:

When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment.

BAM staff in 51 states²⁷ reported 8.4 percent to 80.3 percent of work search contacts and activities they investigated were unverifiable but acceptable, and the payments proper for PY 2018 (see Exhibit 6). BAM staff in 20 states were not able to verify 50.7 percent to 80.3 percent of work search contacts they investigated — the highest percentage attributed to Louisiana with a work search overpayment rate of zero percent for PY 2018. In California (one of the three states we visited) also with a zero percent work search overpayment rate for PY 2018, state BAM staff did not verify 51.3 percent of work search contacts and activities that they investigated. State BAM staff told us that they have accepted claimants' vague recollections to support that valid work searches had taken place — without verifying the information recalled — in lieu of using documentation such as the work search logs the state advised claimants to maintain. In the absence of a log, it is highly likely that this information cannot be verified. Requirements for documentation of work search activities (such as maintaining a log) support the states' ability to verify that the claimant completed the required work search activities.²⁸

The following definition of unverifiable in ETA's guidance to states acknowledges that insufficient documentation is the main reason that work search contacts cannot be verified.

²⁶ Employment and Training Handbook No. 395, 5th Edition, Benefit Accuracy Measurement State Operations Handbook.

²⁷ South Carolina is not included as its percentage of unverifiable contacts was zero percent.

²⁸ ETA's TEN 17-19, Model UI State Work Search Legislation, February 10, 2020.

The investigator was unable to establish sufficient information to make a judgment of whether the work search activities were either acceptable or unacceptable within the state's written law/policy on work search.

ETA officials stated that the work search contact employer is not a party in the claimant's claim — it is not the claimant's former employer — and the employer has no obligation to search internal records, and/or provide a response. ETA officials further stated that this process creates administrative burden on these employers and many choose to ignore requests for information from state BAM staff. Additionally, the methods used by claimants to find work have changed over the years. Individuals use portals such [as] Indeed, CareerBuilder, Craigslist or LinkedIn to search for jobs making it difficult for investigators to contact specific employers to validate/confirm work search information provided by the claimant for the key week. Furthermore, several of these platforms are designed to mask the actual employers' identity, thus making verification of the work search contact impossible in such situations.

ETA maintains that it is bound by the availability of the information. However, it is not acceptable that state BAM staff were unable to verify as much as 80 percent of work search contacts investigated without the urgent need to improve this aspect of the BAM process. ETA should take steps to address this issue and increase the chances that UI claimants who do not comply with the statutory requirement to actively seek work are identified. Also, as ETA's existing process for verifying employer contacts has not kept pace with more current methods that claimants use to seek work, such as online application portals, the agency needs to re-examine this aspect of the BAM program to improve and update its controls to better reflect the current risk environment.

ETA'S IMPROPER PAYMENT RATE ESTIMATION METHODOLOGY PERMITTED THE EXCLUSION OF FORMAL WARNINGS

ETA interpreted an email from OMB dated July 11, 2014, that granted the agency approval to exclude technically proper payments from the improper payment estimate for the UI program, as also authorizing the exclusion of payments related to formal warnings. OMB's email stated the following:

OMB approves excluding the "technically proper" aspect of the calculation to begin with FY 2014 reporting. The technically proper payments include those covered by finality rules, in which the state UI agency cannot take official action because too much time has

passed before the eligibility issue was detected. Other technically proper payments are those for which a UI agency operating under state law does not establish an overpayment for the claimant because the error rests with another party.

While permitting this exclusion, OMB asks DOL to urge states to improve their work processes to reduce these time lags to prevent improper payments.

OMB does not approve excluding the work search component of the improper payment rate calculation, in large part because work search is such a significant component of the improper payment rate (the third largest root cause in recent years). In addition, the Federal statutory requirement for states to require active work search on the part of UI claimants makes us reluctant to exclude work search from the calculation.

OMB's email underscored the importance of work search and UI claimants' responsibility to comply with the federal statutory requirement to actively seek work. ETA extending the OMB-approved exclusion categories to formal warnings (58.8 percent of total work search overpayments identified during PY 2018) ran counter to the intent conveyed in OMB's email. Furthermore, work search overpayments that state BAM staff coded Finality and Technically Proper posed significantly less risk to the accuracy of the UI program's improper payment estimate, because these payments together represented only 1.8 percent of the total amount of work search overpayments that state BAM staff identified during PY 2018. However, an alarming 58.8 percent (\$2 billion) of the \$3.4 billion work search overpayments that state BAM staff identified for PY 2018 were formal warnings.

DOL DETERMINED FORMAL WARNINGS TO BE STATUTORILY IMPERMISSIBLE IN FY 2017

The Department's AFR for FY 2017 stated:

... state formal warning policies have been determined not permissible under the Federal work search law. ETA is in the process of issuing an Unemployment Insurance Program Letter informing the states that formal and informal warnings are no longer permitted...

The Department re-emphasized this position in all subsequent AFRs (FYs 2018-2020), noting plans to issue work search guidance that addresses states' formal warnings policies that underestimate improper payment rates.

In August 2018, the Government Accountability Office (GAO)²⁹ recommended that ETA inform states that formal warnings were no longer permissible and monitor states' compliance efforts. ETA agreed with GAO's recommendations, yet our work has found that ETA has not taken corrective actions. We inquired of ETA officials as to the status of their efforts to notify states of the statutorily impermissible practice of issuing warnings. In May 2019, ETA officials informed OIG that the agency's original guidance had been with OMB for approval for quite a while. In August 2017, ETA shared draft guidance³⁰ with OMB for questions and comments, citing there was "time sensitivity to get this [the guidance] published as quickly as possible." September 6, 2017, an OMB official responded they were aiming to get comments back to ETA that week. However, ETA could not provide any record of a response from OMB or any further correspondence to or from OMB since – with respect to its August 2017 request.

In May 2021, ETA officials said all available resources were focused on providing CARES Act guidance and technical assistance to states, and they planned to resume work with OMB on the guidance later this fiscal year. As the economy has reopened and most states have reinstated their work search requirements — ETA maintains that it has not yet received the approval it requested from OMB in 2017. Nevertheless, ETA has not explained why it needs OMB's approval to take action that ensures the UI program operates in compliance with a Congressionally-enacted statute — the Middle Class Tax Relief and Job Creation Act of 2012.

THE ESTIMATED RATE OF UI IMPROPER PAYMENTS WAS UNDERSTATED IN DOL'S AFRS

In addition to at least 17 states not complying with the Middle Class Tax Relief and Job Creation Act by issuing formal warnings, ETA significantly understated the estimated rate of UI improper payments published in the Department's AFRs. Table 6 shows the impact that excluding formal warnings had on UI overpayments and improper payments for FYs 2017 through 2020.

²⁹ GAO-18-486, Unemployment Insurance, Actions Needed to Ensure Consistent Reporting of Overpayments and Claimants' Compliance with Work Search Requirements, (August 2018).

³⁰ A UIPL was to provide new policy that states will no longer be allowed to use formal warnings when they detect a claimant has not conducted acceptable work search activities for any week for which UI benefits are claimed.

Table 6: Impact of Excluding Formal Warnings (FYs 2017 – 2020)

	FY 2017	FY 2018	FY 2019	FY 2020
Reported UI Dollars Paid	\$30,675,108,501	\$27,949,217,692	\$26,178,396,907	\$20,448,076,675*
Reported IP** Rate	12.48%	12.95%	10.61%	9.17%
Reported IPs	\$3,827,946,790	\$3,620,043,228	\$2,777,261,644	\$1,874,378,574
Reported OP *** Rate	12.09%	12.54%	10.21%	8.72%
Reported OPs	\$3,707,543,452	\$3,504,125,686	\$2,673,556,320	\$1,783,417,628
OPs Understated	6.18%	7.28%	5.71%	2.56%
Adjusted IPs	\$5,603,607,059	\$5,537,189,819	\$4,167,776,117	\$2,398,430,116
IP Rate Adjusted to Include FWs	18.28%	19.81%	15.92%	11.28%

Source: BAM Reports and AFRs 2017-2020, with some adjustments from ETA.

*UI benefits paid in the first 9 months of the program year according to BAM IPIA 2020 Integrity Rates. ** IP – Improper Payment, *** OP – Overpayment, FW – Formal Warnings

The greatest disparity between improper payments reported in the Department’s AFRs and the correct amount of improper payments occurred for FY 2018. The Department’s AFR for FY 2018 stated:

The UI program paid benefits totaling \$28.7 billion for the period of July 1, 2017, to June 30, 2018...estimated improper payments totaled \$3.7 billion...The estimated improper payment rate was 13.05 percent.

In ETA’s IPIA 2018 Work Search Verification Outcomes, the agency attached the following footnote to the 1,248 overpayments that state BAM staff identified as formal warnings:

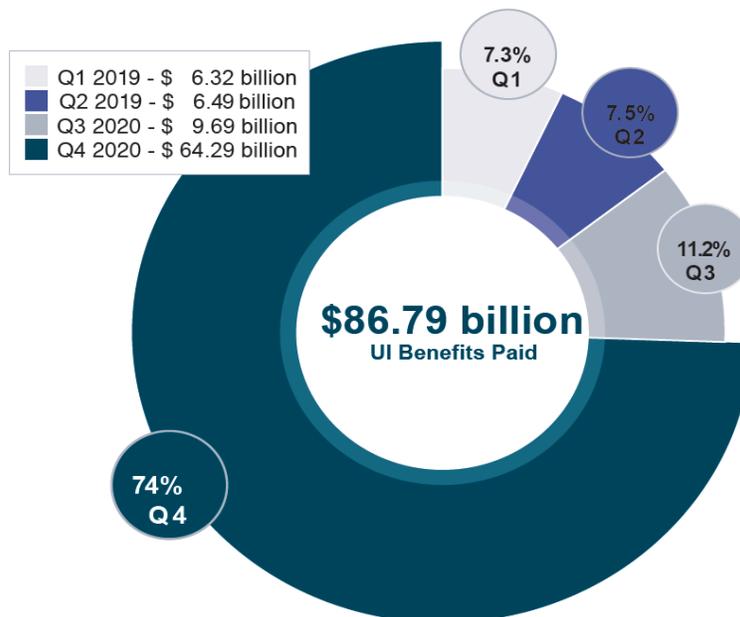
Seventeen states issue formal or informal warnings for the failure to make an adequate search for work and/or for the failure to document the search for work and no overpayment was established. The proper payment rate would be \$2.03 billion lower, and the overpayment rate would be 7.28 percent higher if these cases were counted as erroneous payments.

Furthermore, excluding formal warnings during PY 2020 resulted in the reporting of an estimated rate of UI improper payments that was less than 10 percent and in compliance with the standard set by the Payment Integrity Information Act of 2019.³¹ The Department’s AFR for FY 2020 stated:

The UI program paid benefits totaling \$86.87 billion [adjusted to \$86.79 billion]³² for the period of July 1, 2019, to June 30, 2020. Of this amount, improper payments totaled an estimated \$7.96 billion, making the estimated improper payment rate 9.17 percent.³³

States paid 74 percent of UI benefits for PY 2020 during the 4th quarter (see Figure 4), with state BAM reviews and work search requirements being suspended in response to the impact of the COVID-19 pandemic on the UI system. Therefore, the improper payment rate of 9.17 percent was based on UI benefits paid during the first three quarters of PY 2020 — July 1, 2019 through March 31, 2020.³⁴

Figure 4: PY 2020 UI Benefits Paid By Quarter



Source: ETA 5159 Report, Claims and Payment Activities.

³¹ On March 2, 2020, the *Payment Integrity Information Act of 2019* (Public Law 116-117), repealed the Improper Payment Information Act of 2002 and IPERA, but set forth similar improper payment reporting requirements.

³² Adjustment based on ETA’s 5159 Report Claims and Payment Activities.

³³ The Department reported this UI activity is exclusive of CARES Act funded benefits.

³⁴ ETA’s BAM process sampled \$20.4 billion (Table 6) of the \$22.5 billion states reported in the ETA 5159 report as UI benefits paid for the first three quarters of PY 2020.

BAM reviews conducted for the first 3 quarters identified that 15 states issued formal warnings for 391 of the 1,011 payments (38.7 percent) that BAM staff determined to be work search overpayments. ETA's IPIA 2020 Work Search Verification Outcomes had the same footnote (as 2018) attached to formal warnings. In the footnote, ETA estimated that the UI overpayment rate would have been 3.1 percent higher if formal warning payments were included in the improper payment estimate. Accordingly, the UI improper payment estimate would have been 11.3 percent. In addition, the Department's FY 2020 AFR contained this statement with respect to formal warnings:

ETA indicated it is developing work search guidance that addresses states' "formal warning" policies that exclude and therefore underestimate improper payment rates.

Although ETA was transparent about excluding formal warnings from its UI improper payment estimate by placing a statement in its AFRs for FYs 2017 through 2020, the rate was not reported correctly. The agency needs to ensure UI improper payment rate estimates reported in the AFR accurately reflect all work search overpayments that warrant inclusion — consistent with the requirements of the Middle Class Tax Relief and Job Creation Act, and the guidance prescribed by OMB that defines an improper payment.

OIG'S RECOMMENDATIONS

We recommend the following to the Principal Deputy Assistant Secretary of Employment and Training:

1. Develop and implement cause-level reduction targets to gauge and monitor the effectiveness of strategies implemented by states to reduce work search overpayments.
2. Examine the effectiveness of Benefit Accuracy Measurement's contact verification process to ensure it reflects the current methods claimants use to seek work.
3. Provide guidance to states notifying them that formal and informal warnings are not permissible under Federal work search law.
4. Include in the UI improper payment estimate: (1) overpayments related to work search formal and informal warnings; and (2) payments to claimants who provide no or insufficient documentation to support eligibility with

respect to work search, consistent with the Middle Class Tax Relief and Job Creation Act and OMB guidance that defines improper payments.

SUMMARY OF ETA'S RESPONSE

While ETA agreed with our recommendations and indicated the agency has already taken action to address one of the recommendations, ETA stated that it did not agree with how the OIG characterized its reporting of the UI improper payment rate as being understated in recent years. Specifically, ETA said it did not acknowledge its results as understated, and that the OIG's statement was not accurate. OIG believes its characterization of this issue is accurately presented in our report. As we previously noted, the Department stated in its 2020 Agency Financial Report, that the UI improper payment rate was underestimated.

ETA also stated it did not agree that its improper payment estimate had been incorrectly reported and cited that the estimate is based on a methodology approved by OMB that allowed warnings to be excluded. OIG notes that two legal opinions provided to ETA by the Department's Office of the Solicitor (one April 2, 2018, that upheld the other dated June 17, 2016) concluded states may not meet the requirement for claimants to actively seek work by issuing a warning in lieu of non-payment. The Solicitor's office also said the Department may not simply decline to enforce this requirement, and further stated:

The Department must require states that are out of conformity to take corrective action to bring their laws into consistency with SSA § [Social Security Administration Section] 303(a)(12) to continue receiving UC [Unemployment Compensation] administrative grants.

ETA also offered what it considered to be additional corrections and clarifications. We considered ETA's comments and made clarifying adjustments where we deemed warranted.

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.



Carolyn R. Hantz
Assistant Inspector General for Audit

**EXHIBIT 1: TOP CAUSES OF UI PROGRAM OVERPAYMENTS
(PY 2013 – PY 2019)**

Overpayment Causes	Overpayment Amount	Percent of Dollar Overpayment
2013		
Benefit Year Earnings	\$1,515,015,210	34%
Work Search	\$1,132,858,014	25%
Separation Issues	\$857,856,650	19%
All Other Issues*	\$972,049,585	22%
Overpayment Total	\$4,477,779,459	
2014		
Work Search	\$1,500,381,540	34%
Benefit Year Earnings	\$1,248,211,107	28%
Separation Issues	\$730,768,436	16%
All Other Issues*	\$967,445,895	22%
Overpayment Total	\$4,446,806,978	
2015		
Benefit Year Earnings	\$1,079,396,801	33%
Work Search	\$951,787,423	29%
Separation Issues	\$595,744,185	18%
All Other Issues*	\$603,383,283	19%
Overpayment Total	\$3,230,311,692	
2016		
Work Search	\$1,283,278,088	38%
Benefit Year Earnings	\$1,036,749,705	30%
Separation Issues	\$434,811,700	13%
All Other Issues*	\$665,892,862	19%
Overpayment Total	\$3,420,732,355	
2017		
Work Search	\$1,366,464,900	37%
Benefit Year Earnings	\$985,214,222	27%
Separation Issues	\$647,146,858	17%
All Other Issues*	\$708,717,471	19%
Overpayment Total	\$3,707,543,451	
2018		
Work Search Issues	\$1,406,738,135	40%
Benefit Year Earnings	941,811,191	27%
All Other Issues	607,803,591	17%
Separation Issues	547,772,778	16%
Overpayment Total	\$3,504,125,695	
2019		
Work Search Issues	\$878,270,502	33%
Benefit Year Earnings	851,132,667	32%
All Other Issues	481,985,957	18%
Separation Issues	462,167,190	17%
Overpayment Total	\$2,673,556,316	

Source: ETA's website.

*All Other Issues: Able and Available, Base Period Wage Issues, Employment Service Registration, Dependent Allowance, Sev/Vac/SSI/Pension, and Other Eligibility Issues.

**EXHIBIT 2: THIRTY-NINE STATES THAT RECEIVED
SUPPLEMENTAL FUNDING (FY 2011- FY 2016)**

	STATE		STATE
1	Alabama (AL)	21	Nebraska (NE)
2	Arizona (AZ)	22	Nevada (NV)
3	California (CA)	23	New Jersey (NJ)
4	Colorado (CO)	24	New Mexico (NM)
5	District Of Columbia (DC)	25	New York (NY)
6	Delaware (DE)	26	North Dakota (ND)
7	Florida (FL)	27	Ohio (OH)
8	Georgia (GA)	28	Oklahoma (OK)
9	Idaho (ID)	29	Oregon (OR)
10	Illinois (IL)	30	Pennsylvania (PA)
11	Iowa (IO)	31	Puerto Rico (PR)
12	Kansas (KS)	32	Rhode Island (RI)
13	Kentucky (KY)	33	South Carolina (SC)
14	Louisiana (LA)	34	South Dakota (SD)
15	Maine (ME)	35	Tennessee (TN)
16	Maryland (MD)	36	Vermont (VT)
17	Massachusetts (MA)	37	Virginia (VA)
18	Michigan (MI)	38	West Virginia (WV)
19	Mississippi (MS)	39	Wisconsin (WI)
20	Missouri (MO)		

Source: ETA

EXHIBIT 3: FIVE CORE STRATEGIES AND AMOUNT OF FUNDING AVAILABLE

1. Business Process Analysis for Improper Payments (\$250,000) – States with improper payment rates of 10 percent or higher must either conduct a Business Process Analysis or implement at least one recommendation to improve program integrity.
2. Business Process Analysis for Performance Improvement (\$250,000) - States designated as “At Risk” must conduct a Business Process Analysis or implement at least one recommendation to improve program integrity.
3. State Information Data Exchange System (SIDES) (\$600,000) - States that implement SIDES must develop and implement an outreach plan to increase employer take-up of SIDES and commit to implement at least one SIDES messaging tool.
4. State Identified Prevention Strategy (\$1 million) - States must propose the implementation of an integrity strategy designed to prevent improper payments before they occur (such as use of the National Directory of New Hires). In addition, states may request up to \$750,000 in Focus Area funding.
5. Cross-Functional Task Force (\$0) - States must attest they will continue convening a cross-functional UI Integrity Task Force (including frontline claims takers, adjudicators, Benefit Payment Control and BAM staff, information technology staff, appeals staff, and tax staff). No supplemental budget request funding provided to support this activity.

Source: UIPL 24-13, Unemployment Insurance (UI) Supplemental Funding Opportunity for Program Integrity and Performance and System Improvements (July 25, 2013)

EXHIBIT 4: NASWA WORK SEARCH RELATED STRATEGIES

1. Integrate the state’s Job Exchange system with the UI claim filing system.

2. Mandate online filing and documented work search activities of continued claims.

3. Expand “countable work search activities,” particularly activities the state workforce agency sponsors.

4. Mandate Reemployment Services and Eligibility Assessments (RESEA) requirements upon earliest permissible week in claim series.

5. Develop specific written guidance that outlines the evidentiary standard for work search.

6. Require regular meetings between BAM staff and UI leadership and operations staff.

7. Communicate UI eligibility requirements in simple and understandable media.

8. Implement robust staff-training programs based on federal performance standards.

9. Review employer messaging and refine as needed.

Source: NASWA UI Integrity Center, Annual Report 2019, November 15, 2019.

EXHIBIT 5: ETA’S 15 PROPOSED ACCEPTABLE WORK SEARCH ACTIVITIES

1. Create a reemployment plan.

2. Create a resume.

3. Upload resume to online job boards.

4. Register for work with the state’s labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices.

5. Use online career tools.

6. Log on and look for work in state’s labor exchange or other online job matching system.

7. Use reemployment services in [American Job Centers] or complete similar online or self-service activities.

8. Complete job applications for employers that have job openings, or follow through on job referrals or job development attempts, as directed by state workforce or UI staff.

9. Apply for and/or participate in employment and training services provided by partner programs in American Job Centers.

10. Create a personal user profile on a professional networking site.

11. Participate in work-related networking events (e.g. job clubs, job fairs, industry association events, networking groups, etc).

12. Make contacts or in-person visits to employers that have, or are reasonably expected to have job openings.

13. Take a civil service exam.

14. Go on interviews with employers (virtually or in-person).

15. Any other work search activities prescribed by the state in regulation and/or policy.

Source: ETA’s Training and Employment Notice (TEN) 17-19, Model UI State Work Search Legislation (February 10, 2020).

EXHIBIT 6: STATES' PERCENTAGE OF UNVERIFIABLE WORK SEARCH CONTACTS (PY 2018)

State	Total Key Week Contacts, Applications, Activities Investigated	Total Key Week Contacts, Applications, Activities Unverifiable	Percent Investigated Contacts Unverifiable
Louisiana	1,358	1,090	80.27%
Puerto Rico	249	183	73.49%
Connecticut	848	602	70.99%
Arizona	2,049	1,448	70.67%
New Mexico	862	605	70.19%
Alaska	688	454	65.99%
Utah	1,364	858	62.90%
Minnesota	817	489	59.85%
Oklahoma	934	556	59.53%
Hawaii	406	235	57.88%
Missouri	817	461	56.43%
Texas	1,360	764	56.18%
Ohio	761	425	55.85%
District of Columbia	781	430	55.06%
Kansas	962	504	52.39%
Nevada	780	407	52.18%
North Dakota	544	279	51.29%
California	589	302	51.27%
Kentucky	476	242	50.84%
Arkansas	231	117	50.65%
Vermont	751	362	48.20%
Oregon	1,014	481	47.44%
Florida	2,105	992	47.13%
Illinois	559	247	44.19%
Virginia	918	395	43.03%
Massachusetts	1,096	465	42.43%
Michigan	550	233	42.36%
Georgia	1,202	483	40.18%
Tennessee	1,156	450	38.93%
Alabama	489	187	38.24%

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Montana	192	73	38.02%
South Dakota	243	92	37.86%
Indiana	876	328	37.44%
Pennsylvania	671	251	37.41%
Mississippi	1,358	494	36.38%
New Hampshire	988	358	36.23%
New York	496	179	36.09%
North Carolina	2,099	730	34.78%
Delaware	253	81	32.02%
Wyoming	505	158	31.29%
Idaho	694	208	29.97%
Washington	1,109	327	29.49%
Iowa	462	135	29.22%
Maine	715	203	28.39%
Nebraska	1,388	387	27.88%
Maryland	929	237	25.51%
Colorado	1,397	344	24.62%
New Jersey	353	76	21.53%
West Virginia	353	76	21.53%
Wisconsin	1,138	234	20.56%
Rhode Island	867	73	8.42%
South Carolina	7,264	0	0.00%
Total	51,066	19,790	38.75%

Source: Generated by OIG using ETA's BAM data.

APPENDIX A: SCOPE, METHODOLOGY & CRITERIA

SCOPE

We focused on ETA's and states' strategies to reduce UI work search improper payments, and the process to confirm states accurately reported UI work search over the period of July 1, 2012, through June 30, 2018. In addition, to ensure reporting the most current unemployment information, we expanded certain analysis to June 30, 2020. We interviewed ETA National Office officials in Washington, DC, and Regional Offices' officials in Atlanta, GA, Chicago, IL, and San Francisco, CA. We visited three state agencies: South Carolina Department of Employment and Workforce, Michigan Department of Talent and Economic Development Unemployment Agency, and California Employment Development Department. We reviewed several UI work search laws, policies, procedures, reports, and UI claimants' case files.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our objectives, we gained an understanding of ETA's partnership with states ensuring compliance of UI work search requirements. We reviewed federal, states UI work search laws, regulations, policies, and procedures, supplemental funding; conducted walk-throughs of states' UI work search process; interviewed key management and staff personnel at ETA National Office, Regional Offices, and state agencies; and analyzed decision-making and control processes. Finally, we selected a non-statistical judgmental sample of three states (California, Michigan, and South Carolina) from the Benefit Accuracy Measurement (BAM) system data that supported the UI improper payment rate for the period between July 1, 2017, and June 30, 2018.

SAMPLING PLAN

We judgmentally selected the three states we visited based on the highest and lowest estimated work search overpayment rates (one state at 37 percent and two states at a zero rate) to test the accuracy of data that states submitted to ETA.

We used the stratified random sampling method to select a sample from the universe of BAM cases/payments that required claimants to conduct work search. We also used a judgmental sampling method to select a sample from the universe of BAM cases/payments that did not require claimants to conduct work search. For the three states, the PY 2018 (July 1, 2017 – June 30, 2018) UI work search overpayments estimated dollars totaled \$250,173,597 with a universe of 5.8 million UI weekly claims. We sampled 247 payments (146 randomly selected UI cases and 101 judgmentally selected UI cases) from the three states with a combined population size of 1,923 BAM weekly-investigated cases:

- Michigan – 88 samples (36 statistical and 52 judgmental) of 480 cases
- South Carolina - 62 samples (39 statistical and 23 judgmental) of 512 cases
- California - 97 samples (71 statistical and 26 judgmental) of 931 cases

We reviewed the cases to ensure the accuracy of data and maintenance of sufficient documentation to support the BAM investigators' decisions that work search activities were either Acceptable, Unacceptable, or Unverifiable.

Through questionnaires, we surveyed the remaining 47 states, the District of Columbia, and Puerto Rico to identify controls in place to reduce work search overpayments and ensure claimants comply with work search requirements.

DATA RELIABILITY

To assess data reliability, we tested the data's appropriateness relative to its purpose of supporting the BAM process of accurately reporting UI work search improper payments. The BAM program determines the accuracy of paid and denied claims in three major UI programs. It does this by reconstructing the UI claims process for samples of weekly payments and denied claims using data verified by trained investigators. We relied on computer-generated data from the automated data processing (ADP) system, a SUN T2000, and application software provided by DOL to support BAM operations. We received from ETA's officials and website the annual published BAM spreadsheet for the period between July 1, 2017, and June 30, 2018. We also received data information in the form of reports and PowerPoints from national and state agencies.

We conducted tests to determine the reliability of data in four areas:

- Validity – data directly supported the process of evaluating work search activities as “Unacceptable” that resulted in improper payments reported in 2018 by the National Office.

- Completeness – the UI claims work search batch records ranged from No. 201726 to No. 201826 and verified a total population count of 24,180. Case data was complete, consisted of information required, and was usable for testing conducted.
- Accuracy – data tested in source documents compared to the BAM data reported on the UI BAM data collection instrument (DCI) downloaded from the state’s UI SUN system.
- Consistency – data analyzed for the audit period of PY 2017 through PY 2018 yielded similar results in similar analyses and was generally consistent for testing conducted within the three states.

INTERNAL CONTROLS

In planning and performing our audit, we considered ETA’s internal controls relevant to our audit objectives by obtaining an understanding of those controls, and assessing control risks for achieving our objectives. 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 UI program’s work search requirements would not necessarily disclose all matters that may be significant deficiencies. Because of the inherent limitations on internal controls, or misstatements, noncompliance may occur and not be detected.

CRITERIA

- DOL, ETA, OUI, Comparison of State UI Laws 2019 (January 1, 2019)
- ET Handbook No. 395, 5th Edition, Benefit Accuracy Measurement State Operations Handbook (November 2009)
- OMB, M-15-02 Memorandum for the Heads of Executive Departments and Agencies, Appendix C to Circular No. A-123, Requirements for Effective Estimation and Remediation of Improper Payments (October 20, 2014)
- Public Law 107-300, Improper Payment Information Act (IPIA) of 2002 (November 26, 2002)
- Public Law 111-204, Improper Payment Elimination and Recovery Act (IPERA) of 2010 (July 22, 2010)
- Public Law 112-96, Middle Class Tax Relief and Job Creation Act of 2012 (February 22, 2012)
- Public Law 112-248, IPERA of 2012 (January 10, 2013)
- Public Law 116-117, Payment Integrity Information Act of 2019 (March 2, 2020)
- ETA’s Training and Employment Notice (TEN) 17-19, Model UI State Work Search Legislation (February 10, 2020)

- Unemployment Insurance Program Letter (UIPL) 26-11, Unemployment Insurance (UI) Supplemental Funding Opportunity for Program Integrity and Performance and System Improvements (July 18,2011)
- UIPL 18-12, UI Supplemental Funding Opportunity for Program Integrity, Performance, and System Improvements (May 11, 2012)
- UIPL 9-13, Change 1, Integrity Performance Measure for Unemployment Insurance (January 27, 2015)
- UIPL 15-17, Procedures for the Completion and Publication of Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Data for Improper Payment information Act Reporting Year 2017 (March 31, 2017)
- UIPL 24-13, Unemployment Insurance (UI) Supplemental Funding Opportunity for Program Integrity and Performance and System Improvements (July 25, 2013)

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



September 24, 2021

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

FROM: LENITA JACOBS-SIMMONS 
Acting Assistant Secretary

SUBJECT: Response to the Office of Inspector General Draft Report No.
04-21-001-03-315 – *Unemployment Insurance Overpayments
Related to Work Search Underscore the Need for More Consistent
State Requirements*

Thank you for the opportunity to respond to the above-referenced Office of Inspector General (OIG) draft report. The draft report provides the OIG's conclusions and recommendations with regard to the Employment and Training Administration's (ETA) actions on reporting certain overpayments of Unemployment Insurance (UI) benefits related to work search errors.

While ETA acknowledges that there is always an opportunity to improve its coordination and oversight of states in the context of reducing work search errors, ETA disagrees with the OIG's characterization of ETA's reporting of the UI improper payment (IP) rate as being understated in recent years. Also, ETA believes there is value in providing the readers of this draft report with a greater understanding and context on work search errors. Because work search errors generally cannot be prevented before the UI payment must be made to the claimant in accordance with Federal law, it is not possible for states to proactively reduce this largest root cause of UI IPs. Federal law requires states to make payments "when due," and prevents states from stopping payment of continued weekly UI benefit claims until certain due process requirements are completed, including issuing a notice and providing an opportunity for response. These requirements are important underpinnings of the UI program. In the interest of clarity, there are several audit conclusions and/or findings ETA would like to correct and provide clarification for readers of this report.

ETA provides the following comments regarding the contents of the OIG's draft report:

ETA contends its UI IP estimates have been correctly reported and ETA has been transparent in acknowledging the factors that have not been included in the methodology for reporting its UI IP estimate.

In the draft report, the OIG states that ETA did not include certain overpayments in its estimation of IPs for the UI program, and that the reported UI IP rates are incorrect and were significantly understated for Fiscal Years (FY) 2017 through 2020. ETA disagrees that the IP reporting for

these years were significantly understated. The draft report also asserts, in a number of places that ETA is not in compliance with Office of Management and Budget (OMB) requirements regarding work search. However, ETA reported its overpayment estimates pursuant to the methodology approved by OMB and was transparent by providing calculation information to indicate items that the reported UI IP rate did not include, notably cases where an individual did not conduct the required work search activities and was provided a warning by the state agency.

ETA has not included work search errors that involve the use of warnings in the estimated IP rates because these types of errors have been historically excluded as technically proper payments under the approved OMB methodology. In addition, ETA has not yet provided guidance to states that the use of warnings is prohibited and many states will be required to revise their state laws/policies accordingly. As noted on page 18 of the draft report, ETA has worked with OMB and developed proposed guidance to states on the topic of prohibiting the use of warnings related to work search errors; however, this guidance has yet to be issued. ETA continued to follow up with OMB on this issue, but due to competing priorities, most recently due to the COVID-19 pandemic and subsequent implementation of pandemic-related UI programs, these efforts were placed on hold. ETA intends to resume its efforts to work with OMB to issue this guidance.

Examples of other inaccuracies in the draft report include:

- In the introductory overview (titled “Briefly”) on page 2 and again on page 3, the draft report states that “DOL footnotes in the 2018 and 2019 [Benefit Accuracy Measurement (BAM)] results acknowledged the understatements....” This is not an accurate statement. ETA did not acknowledge the results as being understated, and does not believe that the results are understated. The rates were calculated and reported pursuant to the methodology approved by OMB.
- On page 11 of the draft report, it states that ETA incorrectly excluded certain overpayments from the IP estimate. ETA disagrees with the characterization of this as being “incorrect.” ETA agrees that the reported overpayment estimate did not include these specific type of work search issues in the calculation; however, it does not agree that the IP estimate has been incorrectly reported. The IP estimate is based on the estimation methodology approved by OMB that allowed certain types of work search issues (including those with warnings) to be excluded from the IP estimate.

To help ensure transparency, ETA reports these types of issues in the following places:

- https://oui.doleta.gov/unemploy/bam/2020/BAM_Methodology_IPIA_2020.pdf;
- https://wdr.doleta.gov/directives/attach/ETHandbook_395_Ch5_acc.pdf;
- In the U.S. Department of Labor’s (Department) Agency Financial Report (AFR) – <https://www.dol.gov/sites/dolgov/files/OPA/reports/2020annualreport.pdf>.
- ETA disagrees with OIG’s statement on page 17 that the OMB email approving the UI IP estimation methodology supports the OIG’s finding that ETA is not properly reporting work search errors. ETA’s initial request to OMB asked whether work search could be

removed from the IP calculation. OMB denied that request, but allowed technically proper payments to be excluded from the IP rate estimation—and work search errors involving the use of warnings have always been considered technically proper payments because they were properly made under state law. Since 2014, formal warnings have been openly reported and discussed in the Department's AFR, which OMB reviews. ETA has been consistent in its reporting of IPs since 2014, and OMB has not raised concerns with how the Department has reported work search IPs. Moreover, the OIG's annual Improper Payments Elimination and Recovery Act (IPERA) Compliance Reviews since 2014 reflect that the OIG has not found this reporting to be at issue.¹ This draft report is the first instance of such concern.

- On page 18, the draft report states that “ETA could not provide any record of a response from OMB or any further correspondence to or from OMB since [September 6, 2017].” The OIG auditors did not make any such request of ETA. The OIG auditors had requested evidence that ETA's draft guidance had been submitted to OMB for review. ETA had ongoing communications with OMB on this topic at least up to June of 2019 and prior to the start of the COVID-19 pandemic.
- ETA also notes that the draft report makes very liberal use of rounding of key numbers that serves to inaccurately inflate the statistics used in the draft report. For example, see footnote 7 in the draft report.

ETA encourages states to integrate flexibility into their work search policies and supports state efforts to allow valid work search strategies that are in line with current labor market standards.

In Training and Employment Notice (TEN) No. 17-19,² issued in February 2020, ETA encouraged states to have a fully integrated workforce system that focuses its collective efforts on assisting claimants in getting back to work as quickly as possible and to expand their acceptable work search activities beyond employer contacts to modernize work search policies with practices used to search for work in today's labor market. ETA provided examples of appropriate work search activities that states may implement, including various online search activities, which are effective in assisting individuals to find jobs. The issue of what constitutes an acceptable work search activity is, ultimately, a matter of state laws and policies.

Further, ETA asserts that there are valid work search situations when a state may find a contact to be “unverifiable.” Unverifiable work searches involve scenarios where activities cannot be

¹ The OIG's past reports on reviews of ETA compliance with IPERA and improper rate reporting can be found at: <https://www.oig.dol.gov/public/reports/oa/2014/03-14-004-13-001.pdf>
<https://www.oig.dol.gov/public/reports/oa/2015/03-15-001-13-001.pdf>
<https://www.oig.dol.gov/public/reports/oa/2016/03-16-002-13-001.pdf>
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<https://www.oig.dol.gov/public/reports/oa/2020/22-20-008-13-001.pdf>
² https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4227

independently verified, such as networking, applying for a job through online platforms, e.g., Craigslist, updating a LinkedIn profile, as well as where an employer is unable to provide a definitive answer on a claimant's work search attempt.³ As states continue to modernize their work search policies, a growing number of work search activities will not allow verification (i.e., unverifiable activities) but would be considered suitable if permitted under a state's work search law or policy. While an individual may not be able to provide a verifiable record of how they completed a networking activity, proper reporting of the activity upon request (i.e., via phone to the BAM investigator, on a work search log, during the weekly certification, etc.) and the BAM investigator's record of the activity, may meet the work search requirement under that specific state policy.

Further, on pages 15 and 16 of the draft report, the OIG raises concerns about the practice of BAM investigators seeking verification of work search activities by phone. ETA has always provided that BAM investigators may conduct interviews via email, phone, and mail (depending on state policies). For verification purposes, a verbal testimony is no different than an individual mailing in their work search activities on a log, with all pertinent information captured over the phone. States are encouraged to conduct BAM interviews by telephone to expedite the process and provide interviewees the opportunity for clarification to ensure that the responses are properly understood. However, ETA has also provided that the BAM investigator has the responsibility to attempt to verify all work search contacts/activities as part of their investigation. If the BAM investigator was not attempting to verify the verbally provided work search information, then there would be a legitimate concern, but that is not the situation described in the draft report.

Further, the OIG does not state the basis for their conclusion that the level of unverifiable work search activities is not acceptable (page 16) – it appears to be more speculation. However, on pages 15 – 16 of the draft report, the OIG reiterates all of the reasons why a work search activity could be considered unverifiable; therefore, in states where these conditions exist, unverifiable rates could be higher. In that paragraph, the OIG acknowledges that verifying certain acceptable types of work search activities may not be possible.

A common situation where work search activities are investigated and deemed unverifiable but acceptable occurs when the claimant provides information that they conducted a work search with a specific employer, but the employer does not have a record of applicants and cannot confirm or deny the individual's activities. Another similar situation occurs when an individual applies for a job online, and the employer uses a service that keeps their identity anonymous or confidential, making verification with employers impossible. In both these situations, the BAM investigator can conclude that the work search contact is unverifiable.

If ETA were to restrict states to only recognize work search activities for which documentation may be created by a source other than the claimant, states' abilities to align their work search policies with current labor market work search trends would be significantly impeded. This would result in maintaining outdated work search policies that do not align with effective

³ On page 5, the draft report raises concerns about one state's allowance of online work search activities. However, the fact is that individuals regularly search for jobs using online resources and ETA considers online job searches an effective strategy for individuals to find jobs in the current labor market.

methods used by job seekers to successfully secure employment and would undermine the purpose of the work search requirement itself.

Finally, Table 1, on page 5, refers to certain waivers as common state strategies or policies used to reduce work search overpayments. However, certain identified activities are explicitly required under Federal law (e.g., training under Sec 3304(a)(8), Federal Unemployment Tax Act [FUTA], and short-time compensation under Sec 3306(v)(5), FUTA).

ETA engaged the UI Integrity Center in providing intense targeted technical assistance to address the top root causes of IPs, resulting in nine of the 11 states receiving such targeted technical assistance experiencing substantial reductions in their IP rate and the national UI IP rate decreasing from 10.67 percent to 9.55 percent.

The draft report states that strategies employed by ETA and the states did not consistently reduce UI overpayments related to work search.

ETA disagrees with this statement and requests that the OIG acknowledge the significant steps taken by ETA and the states to reduce work search errors and the resultant positive effects of that effort in the final report. In FY 2019, ETA, in partnership with the UI Integrity Center, made reducing the national IP rate a top priority. As part of this effort, 11 states with high IP rates were provided intense targeted technical assistance (i.e., state intensive services) to address the top root causes of their IPs. As part of the offered state intensive services, states developed an IP Reduction Plan and executed strategies to reduce their IPs. From the period of July 1, 2018, through June 30, 2019, the national UI IP rate was 10.67 percent. For the most recent data prior to the onset of the COVID-19 pandemic (April 1, 2019 through March 31, 2020), the national UI IP rate decreased to 9.55 percent. The decrease in work search errors contributed to this reduction in the IP rate and correlated with the delivered state intensive services and the other steps taken with high rate states to reduce their IP rates. Of the 11 states receiving state intensive services, nine of the states substantially reduced their IP rates during the time periods referenced above.

Summary of Comments

In closing, while ETA acknowledges that it has not issued the planned guidance to states addressing the use of warnings in reporting work search errors, ETA is concerned that the draft report is neither a full nor accurate representation of ETA's efforts, that it misinterprets the approved IP methodology for calculating IP estimates, and that said draft report arrives at a conclusion ETA disagrees with, which is that UI IP rates have been understated. Moreover, the draft report does not address the recent success of the state intensive services strategy, which did not rely on the use of warnings and demonstrated quantifiable improvements in reducing IP rates in nine states.

Response to the OIG Recommendations

Please find below the OIG recommendations contained in the draft report, followed by ETA's response to each of the OIG's recommendations.

Recommendation 1: Develop and implement cause-level reduction targets to gauge and monitor the effectiveness of strategies implemented by states to reduce work search overpayments.

ETA Response: ETA has already implemented appropriate actions to address this recommendation. As part of the annual State Quality Service Plan (SQSP) submission, states are required to provide a state-specific Integrity Action Plan (IAP) that lists their top root causes of IPs, specific strategies to address those top root causes, and appropriate targets and milestones for these specific strategies. ETA will continue to provide technical guidance to states and to monitor the effectiveness of the strategies implemented by states to reduce IPs, including work search-related overpayments. Additionally, ETA notes that the FY 2022 SQSP guidance (UI Program Letter No. 24-21⁴) specifically requires states to include strategies in their IAP that are designed to facilitate claimants' compliance with state work search requirements while also supporting their reemployment and encourages the adoption of the work search requirements in the Model UI State Work Search Legislation (see TEN No. 17-19⁵).

While ETA will examine the implementation of cause-level reduction targets at the federal level, ETA does not believe this will be practical since the UI program is administered by 53 states under different state laws; therefore, root causes of IPs will vary from state to state. Additionally, there are many factors that may impact the IP rate at the cause-level, and changes of cause-level rates may not reflect the effectiveness of one particular strategy at the state or federal levels.

Recommendation 2: Examine the effectiveness of BAM's contact verification process to ensure it reflects the current methods claimants use to seek work.

ETA Response: ETA agrees with this recommendation and will continue to explore opportunities to examine and improve the employer contact verification process used by state BAM investigators to ensure the process supports current labor market practices.

Recommendation 3: Inform states that formal and informal warnings are not permissible.

ETA Response: ETA agrees with this recommendation and will continue to work on getting appropriate guidance to states published on this topic

Recommendation 4: Include in the UI improper payment estimate: (1) overpayments related to work search formal and informal warnings; and (2) payments to claimants who provide no or insufficient documentation to support eligibility with respect to work search, consistent with the Middle Class Tax Relief and Job Creation Act and OMB guidance that defines improper payments.

ETA Response: ETA concurs with this recommendation. Regarding work search errors involving the use of warnings for issues such as payments to claimants who provide no or insufficient documentation to support eligibility under state law and policy, ETA will begin

⁴https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5733

⁵https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4227

including these payments in its reported overpayment estimations after states have been provided guidance that the use of such warnings is not permissible and have had the necessary time to change their relevant state laws, policies, and procedures. Following the issuance of this work search-related guidance, ETA will also need to provide guidance to states regarding the changes to the IP estimation methodology and requirements for reporting the IP estimate for future years. In addition, ETA is committed to continuing its work with states and OMB to ensure its IP estimation methodology and reporting is transparent and meets OMB's requirements.

APPENDIX C: ACKNOWLEDGEMENTS

Key contributors to this report were:

Labony Chakraborty, Writer/Editor
Dwight Gates, Audit Director
Velma Ivey, Auditor
Betty Norwood, Audit Manager
Chaze Williams-Bey, Program Analyst

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Washington, DC 20210