Examining Widespread Fraud in Pandemic Unemployment Relief Programs

Report Prepared by the House Committee on Oversight and Accountability Majority Staff

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Useful Acronyms

ALP – Acceptable Level of Performance
ARPA – American Rescue Plan Act
BLS – Bureau of Labor Statistics
CAA – Continued Assistance Act
CARES Act – Coronavirus Aid, Relief, and Economic Security Act
CRF – Coronavirus Relief Fund
DOL – U.S. Department of Labor
DHS – New York City Department of Homeless Services
DUA – Massachusetts Department of Unemployment Assistance
EB – Extended Benefit program
EDD – California Employment Development Department
ETA – Employment and Training Administration, U.S. Department of Labor
EUISAA – Emergency Unemployment Insurance Stabilization and Access Act of 2020
FFCRA – Families First Coronavirus Response Act
FPUC – Federally Pandemic Unemployment Compensation
FUA – Federal Unemployment Account
FUTA – Federal Unemployment Tax Act
GAO – U.S. Government Accountability Office
LWA – Lost Wages Assistance
MEUC – Mixed Earner Unemployment Compensation
NDNH – National Directory of New Hires
NYSDOL – New York State Department of Labor
OIG – Office of Inspector General, U.S. Department of Labor
OUI – Office of Unemployment Insurance
PADLI – Pennsylvania Department of Labor & Industry
PEUC – Pandemic Emergency Unemployment Compensation
PII – Personally Identifiable Information
PIIA – Payment Integrity Information Act of 2019
PUA – Pandemic Unemployment Assistance
RESEA – Reemployment Services and Eligibility Assessment
RJM – Resource Justification Model
SWA –State Workforce Agencies
UC - Unemployment Compensation
UIA – Unemployment Insurance Agency
UIPL – Unemployment Insurance Program Letter
USPS – United States Postal Service
UTF – Unemployment Trust Fund
WBA – Weekly Benefit Amounts

I. Executive Summary

While unemployment insurance (UI) compensation programs in the United States have a long history of improper payments, new temporary pandemic UI programs created by Congress and administered by states and territories in response to the COVID-19 pandemic led to an unprecedented amount of fraud and improper payments. Although the full extent of this fraud and the money lost may never be fully known, the U.S. Government Accountability Office (GAO) estimates that about 11 to 15 percent of total benefits paid during the pandemic were fraudulent, totaling between $100 to $135 billion.[1] The Department of Labor (DOL) Office of Inspector General (OIG) estimated that <u>at least</u> $191 billion in pandemic UI payments could have been improperly paid, with a significant portion attributable to fraud.[2] As of March 2023, states reported recoveries of improper payments in an amount of only $6.8 billion.[3]

Early in the COVID-19 pandemic, Congress created the pandemic relief programs, including expanded unemployment benefits, to provide quick disbursement of benefits to displaced workers and allowed flexibility for states to prioritize speed over eligibility. However, Congress did not intend for quick payments to allow states to avoid verifying eligibility in the long-term. Several states neglected to implement basic identity verification services until several months into the pandemic, even though a large percentage of the benefits had already been paid. States, many understaffed and with outdated information technology (IT) systems, saw record numbers of claims. Instead of heeding warnings from OIG aimed at preventing fraud, states deployed 'pay and chase' models and allowed billions to flood to criminal organizations and fraudsters around the globe.

The House Committee on Oversight and Accountability held its very first hearing in the 118th Congress on February 1, 2023, on pandemic spending, hearing from witnesses about the massive fraud and improper payments in several pandemic relief programs, including pandemic unemployment programs. Prior to the hearing, on January 13, 2023, Chairman Comer wrote the U.S. Secretary of Labor, U.S. Department of Labor Inspector General, the Director of the California Employment Development Department (EDD), the Commissioner of the New York State Department of Labor (NYSDOL), and the Secretary of the Pennsylvania Department of Labor & Industry (PADLI) to request documents and communications relating to rampant fraud and improper payments in pandemic unemployment programs.

In addition to reviewing document productions responsive to those requests, Committee staff spoke with officials from the California State Auditor, the Office of the New York State Comptroller, the Pennsylvania Department of the Auditor General, and other stakeholders including the Department of Labor Office of Inspector General. The following report includes the Committee staff's findings and recommendations to prevent improper payments and fraud in unemployment insurance programs in the future. As the Biden-Harris Administration proposes legislation to make some of the "temporary" pandemic UI programs permanent, it is important

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[1] U.S GOV'T ACCOUNTABILITY OFF., GAO-23-106696, UNEMPLOYMENT INSURANCE: ESTIMATED AMOUNT OF FRAUD DURING PANDEMIC LIKELY BETWEEN $100 BILLION AND $135 BILLION (Sep. 12, 2023).
[2] U.S. Dep't of Lab. Off. of Inspector Gen., *OIG Oversight of the Unemployment Insurance Program* (last updated Dec. 15, 2023), *available at* https://www.oig.dol.gov/doloiguioversightwork.htm.
[3] *Supra*, n.1.

that Congress, states, employers, and taxpayers learn from the catastrophic failure of the pandemic unemployment programs to ensure history does not repeat itself.

II. Findings

- Congress quickly enacted a series of new pandemic response packages intended to provide stability to employers, employees, the recently unemployed, and the U.S. economy. DOL OIG estimated that at least $191 billion in pandemic UI payments could have been improperly paid, with a significant portion attributed to fraud. As of March 2023, states have reported recoveries in an amount of only $6.8 billion.

- Congress initially created three new temporary federal UI benefits programs: FPUC, PEUC, and PUA. While Congress, Governors, and state legislators wanted state workforce agencies to distribute the benefits quickly, many states chose to 'pay and chase' by sacrificing program integrity to get benefit payments out without delay.

- Pandemic UI benefits, combined with FPUC, a 'plus-up' payment of $600 (and later $300), led to 69 percent of unemployed workers being eligible to receive benefits exceeding 100 percent of their wages and non-wage compensation. Additionally, claimants did not have to provide evidence that they were actively seeking work to continue receiving benefits.

- The design of the PUA program led to massive fraud. During the program's first nine months, claimants did not have to provide any evidence of earnings which made the program susceptible to fraud. Only when Congress reauthorized the PUA program in December 2020, did states require applicants to provide proof of prior employment and wages. In August 2023, DOL reported that the PUA program had a total improper payment rate of 35.9 percent.

- In March 2021, the Biden-Harris Administration extended pandemic UI programs and benefits for an additional six months even though states and businesses were open, and the vaccine rollout was underway. Citing labor shortages, 26 states chose to end federal benefits early citing that the exorbitant federal benefits were leading to labor shortages in those states.

- Many states ignored DOL OIG's warnings about modernizing IT and staffing concerns for years and did nothing to address those problems until it was too late, and they were overwhelmed by pandemic UI claims.

- Due to outdated IT systems, staffing shortages, and new programs being implemented, many states did not deploy any anti-fraud measures, leading to criminals being able to successfully file fraudulent claims and avoid detection.

- State workforce agencies failed to identify high-risk claims that led to more than $1.2 billion in potentially fraudulent benefits being paid to multistate claimants, deceased persons, federal prisoners, individuals with suspicious emails, individuals under age 14, and individuals ages 100 and older. It is likely that many of these funds went to identity thieves.

- Organized crime played a major role in the proliferation of UI fraud by targeting pre-existing system vulnerabilities. Foreign nations, organized criminal gangs, prison inmates, and those acting on their behalf, filed fraudulent claims in multiple states.

- Insiders, including those who worked for state workforce agencies, conspired with organized crime factions and other individuals to defraud state UI programs and the states did little to stop them. Some states even hired individuals convicted of identity theft to process UI claims.

- EDD, under the leadership of LWDA Secretary Julie Su, made the decision early in the pandemic to 'pay and chase' after Su was informed that keeping integrity checks in place would lead to backlog in processing claims largely due to EDD's outdated IT.

- EDD did not make any substantive changes to its fraud detection practices until July 2020 when it finally began automating stopping payment on suspicious claims. However, EDD still delayed responding when there was clear evidence of fraudulent activity and even when state auditors identified claims as suspicious. EDD made $10.4 billion in payments to individuals with unconfirmed identities.

- EDD directed Bank of America to freeze 344,000 accounts without any plan to selectively unfreeze the accounts. After public outcry from legitimate claimants who could not access their benefits, EDD chose to permit potentially fraudulent activity by requesting that BOA unfreeze all of the accounts rather than verify each account before unfreezing.

- EDD failed to cross reference applicants with databases of incarcerated individuals and lost around $810 million to these fraudulent claims. EDD's outdated IT did not have the capacity to perform these basic checks.

- While EDD seemed able to get benefits out to fraudsters and identity thieves without delay, EDD unnecessarily delayed benefits for several million claimants, allegedly due to missing documents, while there were piles of unopened mail in EDD's building.

- Additionally, EDD wrongly denied claims to at least one million eligible beneficiaries at the same time they were paying billions of dollars to fraudsters. In one case, EDD continued to garnish wages and to freeze the state tax return of a victim of identity theft for six months after EDD had verified the individual's identity.

- Prior to, during, and even after the pandemic, EDD was unable to meet deadlines from ETA and OIG for necessary reports and data relating to UI claims. EDD often asked for deadline extensions and then failed to meet them or provided incomplete information to ETA. This wasted valuable time within EDD requesting the extensions and submitting incomplete or inaccurate reports and within ETA, constantly having to follow up with EDD about missing deadlines and extended deadlines.

- California and New York still owe outstanding loan balances and accrued interest to the Federal Unemployment Trust Fund totaling more than $26 billion and have taken no measures to repay the loans or to provide relief to employers, including small businesses, in those states.

- Instead of repaying its federal loans, California attempted to seek loan forgiveness of its debts from DOL Acting Secretary Julie Su who served as secretary of the California Labor and Workforce Development Agency when the debt was accrued. Acting Secretary Su and DOL have failed to provide Congress with information about this request.

- DOL has not been transparent about the number of and amounts of waived overpayments by state under the CARES Act and has not provided information the Committee requested about these waivers.

- ETA's compliance review found that PADLI's integrity procedures did not sufficiently guard against fraud and that it issued many improper payments in PEUC, PUA, MEUC, and EB programs.

- Despite evidence from OIG and GAO that the PUA program suffered from a higher rate of fraud and improper payments than other pandemic UI programs or regular UI, the White House, Acting Secretary Su, and Congressional Democrats have released plans to expand UI by increasing benefits and making PUA recipients permanently eligible for benefits.

III. Recommendations

- All future temporary UI benefits programs must require claimants to provide proof of prior work before claims will be reviewed for eligibility. Unemployment insurance should always be tied to work.

- All future temporary UI benefits programs must require state workforce agencies to cross-check claimant PII against all available databases, such as federal prisoner databases, as recommended by OIG and law enforcement, prior to approving benefits.

- All future temporary UI benefits programs should consider whether a one-size-fits-all approach is necessary when 54 states and territories (as well as urban, suburban, and rural areas within those jurisdictions), have vastly differing economic conditions and occupations in those areas. Supplemental payments or "plus-ups" should be determined by states depending on the individual's prior income and occupation.

- States and state workforce agencies should prioritize modernizing IT systems to process UI claims, while also considering partnering with employers in the state to fund the necessary investment for these initiatives.

- States should consider cross-training seasonal employees to prepare for temporary increases in UI claims due to economic downturns.

- States should conduct more extensive background checks on any temporary, seasonal, or permanent employees who may have any contact with claimant or beneficiary PII, or who may have any decision-making authority with approving benefits to prevent insider threats. Individuals with convictions for identity theft, mail and wire fraud, and related criminal convictions should not be hired to process government benefits. If necessary, state laws should be amended to prevent the hiring of these individuals to combat improper payments and fraud.

- ETA should improve its oversight of improper payments and fraud by directly assessing claims data from states, and creating a data analytics capability that regularly monitors state UI claims data.

- ETA/DOL should develop better methods to calculate improper payments.

- ETA must implement OIG's recommendations to use Social Security numbers and other data analytics to detect high risk individuals, including those under age 14, those over age 100, multistate claimants, incarcerated individuals, and deceased persons, to prevent fraudulent claims.

- ETA should continue to explore ways for states to more easily share data to improve program integrity.

- ETA should do more to remind states and large employers of their obligations to report individuals who refuse offers to return to work, or decline suitable work, and must require states to file these reports online.

- ETA and the DOL Office of the Solicitor (DOL SOL) should report to Congress on DOL's progress in implementing regulations that provide OIG permanent access to UI claimant data and wage records from state workforce agencies to ensure independent oversight of the UI programs. If ETA and DOL SOL fail to make satisfactory progress in issuing these regulations, Congress should consider legislation to permanently resolve this impediment.

- The Department of Labor should be led by a qualified Secretary able to be confirmed by the Senate.

- The Department of Labor should be transparent with Congress regarding its return-to-work plan.

- Congress should consider extending the statute of limitations for the fraud programs associated with the pandemic UI programs, which are due to expire in March 2025, so that criminals that defrauded taxpayers may be brought to justice.

- Congress should strongly weigh the long-term implications of any proposal to expand regular UI to include those groups of individuals eligible for PUA benefits, including the self-employed, gig workers, and independent contractors, as it is simply too difficult to verify that those individuals are unemployed through no fault of their own, are ready, willing, and able to work, and are actively seeking work as required by federal UC programs. Regular UI should continue to remain a re-employment program.

- Likewise, Congress should weigh the cost benefit analysis of any proposal to expand regular UI to include those groups of individuals who received PUA benefits since this would transform the federal UC programs from solely an insurance program funded by employer UI taxes, to include an entitlement requiring tax increases on all taxpayers. Unless states, or future beneficiaries of the entitlement, want to fund such a program through contributions—similar to some state paid leave or temporary disability programs— taxpayers will be left with the bill for this group of individuals who have chosen to drop out of the workforce. Regular UI should remain an insurance program and not a universal basic income scheme disguised as an entitlement.

- Congress should ensure that states with outstanding loans from the Federal Unemployment Insurance Trust Fund are prohibited from borrowing any additional funds until the outstanding loans and accrued interest are repaid. Additionally, employers and small businesses in those states with outstanding loans will not face repercussions for the states failing to practice fiscal responsibility by having to pay higher Federal Unemployment Tax Act (FUTA) rates until the loans are repaid; instead, the states must balance their books and cut other programs and projects to repay these loans, without putting the burden on blameless employers.[4]

[4] Note that on May 23, 2024, Representatives Michelle Steel [R-CA-45] and Claudia Tenney [R-NY-24] introduced the Protecting Small Businesses from Imposed Tax Hike Act. If enacted, the legislation would prevent further unemployment tax hikes for small businesses in New York and California due to fiscal irresponsibility by governors. "Small businesses in California face a suffocating business climate due to crippling inflation, rising taxes, and a reckless state government that is addicted to borrowing and spending. My legislation would save our job creators from repeated tax increases caused by Governor Newsom's failure to responsibility pay back unemployment insurance loans" said Rep. Steel upon introduction of the legislation. *See* H.R. 8559, 118th Cong. (2024), *available at* https://www.congress.gov/bill/118th-congress/house-bill/8559. Press Release, Congresswoman Michelle Steel, Steel, Tenney Introduce Legislation to Protect Small Businesses from Tax Hikes (May 23, 2024), *available at* https://steel.house.gov/media/press-releases/steel-tenney-introduce-legislation-protect-small-businesses-tax-hikes.

IV. Background on Unemployment Insurance Program

Unemployment insurance (UI) compensation as we know it today began in 1935 when the Social Security Act was signed into law.[5] With the New Deal providing a safety net for the most vulnerable Americans, there was also a desire to aid the able-bodied working age Americans experiencing extended periods of unemployment during the Great Depression. When considering legislation for this new benefit, policymakers studied other unemployment schemes in existence in Europe and a program Wisconsin started in 1932 to avoid potential pitfalls.[6] Some aspects of those programs remain in effect today, including the "experience rating," emphasizing the responsibility of individual employers for unemployment rates in their businesses: employers responsible for less unemployment may pay lower tax rates to fund UI benefits than other employers.[7]

The federal-state partnership also remains in effect today. There are two types of UI benefits, permanently authorized programs and temporary programs authorized by Congress during recessions. Permanently authorized UI programs include Unemployment Compensation (UC) and Extended Benefit (EB) programs. UC (or "regular" UI) provides temporary and partial wage replacement to workers who are unemployed through no fault of their own. While the U.S. Department of Labor's Employment and Training Administration (ETA) provides oversight of state UI programs and there are broad requirements under federal law regarding benefits and financing that all states must follow, each of the 54 states and territories operates its own UI program according to specific state laws. Most states provide up to 26 weeks of UI benefits to eligible individuals. Eligibility varies by state, but claimants must have earned enough wages in the 12 months prior to unemployment to receive benefits. The claimant must also be ready, willing, and able to work and actively seeking work.[8] Once a claimant is determined eligible to receive benefits, he or she must produce records of his or her job search activities as often as the state requires (usually weekly) and participate in the Reemployment Services and Eligibility Assessment (RESEA) program[9] and other return to work programs the state requires. Beneficiaries generally must file weekly claims attesting that they are still unemployed and eligible to continue receiving benefits.

Since 1970, federal law includes an automatic expansion of the regular UI benefit with the EB program to augment the UC program.[10] EB may provide an eligible individual up to 13 or 20 weeks of benefits once regular UI benefits are exhausted when a state is experiencing high periods of unemployment. The EB program is funded 50 percent by the federal government and 50 percent by the states.[11]

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[5] Daniel Price, *Unemployment Insurance, Then and Now, 1935-1985*, Social Security Bulletin (October 1985).
[6] *Id*.
[7] *Id*.
[8] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).
[9] *Reemployment Services and Eligibility Assessment Grants*, U.S. Dep't of Lab. Emp't and Training Admin., *available at* https://www.dol.gov/agencies/eta/american-job-centers/RESEA.
[10] Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373, 84 Stat. 695 (1970).
[11] *Id*.

Regular UI has always been tied to employment: federal law requires private sector employers of covered workers to pay unemployment taxes for each covered worker they employ. Self-employed workers and others who do not have an employer who pays unemployment taxes, are not eligible for regular UI benefits, just as those workers who have not met work and payroll tax contribution requirements, are not eligible to apply for Social Security Retirement benefits, Social Security Disability Insurance, or Medicare benefits. Unemployment insurance, like other types of insurance including life, health, and automobile, by design is a payment of a premium in advance (in this case by the employer) for a guarantee of compensation when facing a specified loss, in this case, a job loss.

While the federal UI programs have always been susceptible to improper payments, in the years immediately prior to the pandemic, most of those improper payments were not directly attributed to fraud.[12] Since state workforce agencies have to corroborate the claimant's prior wages and separation information with their former employer, it is difficult to successfully defraud the program, which has a low payoff compared to other criminal schemes. In the two years before the pandemic, fraud—which was counted as a subset of "other eligibility issues" by the OIG—accounted for less than three percent of improper UI payments. Also, prior to the pandemic, numbers of UI claims were historically low with the Department of Labor reporting 282,000 initial claims nationwide on March 14, 2020.[13]

That would soon change: by August 2020, the Department reported more than 57 million initial claims, the largest increase since the Department began tracking UI data in 1967.

[12] Matt Weidinger and Amy Simon, *Pandemic Unemployment Fraud in Context: Causes, Costs, and Solutions*, American Enterprise Institute (Jan. 2024).
[13] *Supra* n.2.

V. Congress and Executive Branch Actions Created Problems for States and the Economy

A. Temporary Pandemic UI Programs Bring Relief, but Create Permanent Problems for States and Employers

In March 2020, due to the COVID-19 pandemic, businesses and schools abruptly closed, and millions of American workers were furloughed or laid off and ordered to stay home indefinitely. Some employers, including the federal government, voluntarily provided their employees with telework options, and others provided employees with paid leave on a temporary basis, as it was then unknown how long the closures would last. Still other employers, such as healthcare providers, first responders, and other essential workers, never stopped reporting to their usual place of work.

Congress quickly enacted a series of pandemic response packages intended to provide stability to employers, employees, and the recently unemployed (and the U.S. economy) during a time of uncertainty. The first relief package[14] on March 12, 2020, allocated federal funds to help stop the spread of the COVID-19 virus.

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA)[15] created initial pandemic relief programs including emergency paid sick leave and expanded family and medical leave for eligible employees under covered employers. FFCRA allocated nearly $1 billion in emergency administrative grants to state workforce agencies through Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA).

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[16] the largest relief package, provided cash stimulus payments to individuals and children and created the Paycheck Protection Program.[17] The CARES Act also created three new temporary federal unemployment benefit programs—all fully federally funded and able to be claimed retroactively beginning with the week ending January 27, 2020—which augmented existing UI benefits, created additional weeks of temporary benefits, and expanded UI benefits to groups traditionally not eligible to apply. The programs were:

- Federal Pandemic Unemployment Compensation (FPUC): a weekly $600 supplement (or "plus-up") on top of other state and federal UI benefit payments. This benefit terminated the week ending July 25, 2020.

- Pandemic Emergency Unemployment Compensation (PEUC): an emergency program offering 13 additional weeks of extended UI benefits for individuals who exhausted state and federal UI benefits for weeks of unemployment beginning on March 29, 2020, and payable through weeks of unemployment ending on December 26, 2020. (Extended through future legislation through September 6, 2021).

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[14] Coronavirus Preparedness and Response Supplemental Appropriations Act 2020, H.R. 6074, 116th Cong. (2020).
[15] Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).
[16] CARES Act, H.R. 748, 116th Cong. (2020).
[17] *Paycheck Protection Program (PPP) Information Sheet: Borrowers,* U.S. Dep't of the Treasury. https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf.

- Pandemic Unemployment Assistance (PUA): a temporary federal UI program for individuals not otherwise eligible for UI benefits including the self-employed, independent contractors, and gig workers, that provided up to 39 weeks of UI benefits beginning on February 2, 2020, and ending on December 26, 2020. (Extended through future legislation through September 6, 2021.)

Congress, Governors, and state legislators wanted state workforce agencies to distribute the benefits quickly, so the legislation allowed state workforce agencies flexibility with many aspects of processing claims. From April 2 through August 3, 2020, the Department of Labor's ETA issued 20 UIPLs relating to implementing the CARES Act.

On July 31, 2020, the CARES Act authorization for $600 weekly supplement expired. On August 8, 2020, President Trump issued the Memorandum on Authorizing the Other Needs Assistance Program[18] which directed up to $44 billion to the Lost Wages Assistance (LWA) program. For states that opted into the program, individuals receiving UI benefits of at least $100 per week could receive an additional $300 in LWA weekly plus an additional $100 if the state chose to contribute.[19] These benefits began on July 26, 2020, and ended on September 6, 2020, due to the amount of available funds.[20]

Throughout the pandemic, ETA would issue more than 50 UIPLs[21] to states with guidance regarding implementing the four new pandemic UI programs authorized by Congress, and the Lost Wages Assistance (LWA) program including eligibility, flexibility, and funding. The UIPLs also covered program integrity issues such as reporting of improper payments, identity verification, efforts to prevent and detect fraud and imposter claims, recovery of fraud overpayments, and the obligation to refer allegations of fraud, waste, abuse, mismanagement, or misconduct relating to unemployment compensation to DOL OIG.

On December 27, 2020, a fourth pandemic relief package, the Continued Assistance Act (CAA), a provision of the Consolidated Appropriations Act, 2021, provided another stimulus payment to individuals, reauthorized existing pandemic UI programs and created a fourth new UI program. FPUC was restarted as a weekly $300 supplement for all UI benefits, on top of other state and federal UI benefit payments ending after March 13, 2021. (Extended through future legislation through September 6, 2021.)

CAA reauthorized PEUC and PUA for 11 additional weeks of extended UI benefits (and extended through future legislation through September 6, 2021). CAA created a new temporary

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[18] President Donald J. Trump, *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (August 8, 2020), *available at* https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/.
[19] *Lost Wages Supplemental Payment Assistance Guidelines*, FEMA (May 15, 2023), *available at* https://www.fema.gov/disaster/historic/coronavirus/governments/supplemental-payments-lost-wages-guidelines.
[20] Cong. Research Serv., *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and The COVID-19 Pandemic Response* (Jan. 31, 2022), *available at*, https://crsreports.congress.gov/product/pdf/R/R46687.
[21] *ETA Advisories*, U.S. Dep't of Lab. Emp't and Training Admin., *available at* https://www.dol.gov/agencies/eta/advisories.

UI program: Mixed Earner Unemployment Compensation (MEUC). In states that elected to participate, a claimant who received at least $5,000 in self-employment income in the most recent tax year, and received a UI benefit other than PUA, could receive an additional $100 payment.

CAA also enacted new integrity measures. PUA claimants filing for benefits after January 31, 2021, had to provide documentation of employment or self-employment within 21 days (or state deadline if later). States had to verify the identity of PUA applicants. CAA also included a statutory requirement for weekly self-certification for those unable to who cannot work or seek work due to COVID-19 reasons. Additionally, beginning January 26, 2021, per a new return-to-work reporting requirement, states had to have a process to address work refusals, a method for employers to report work refusals, and provide notifications to individuals related to work refusals.

On March 11, 2021, the newly installed Biden-Harris Administration and the Democratic Majority in the House and Senate, enacted a fifth stimulus relief package, the American Rescue Plan Act (ARPA),[22] that allowed additional stimulus payments to individuals and further extended pandemic UI programs for an additional six months—even though by this point most states had been fully open for business for more than six months and the roll-out of COVID-19 vaccines was well underway. One hundred million vaccine doses had been administered to Americans by March 19, 2021, and 200 million vaccine doses had been administered to Americans by April 21, 2021. By July 4, 2021, 67 percent of the adult working population had received at least one dose of a COVID-19 vaccine. The FPUC weekly $300 supplement for all UI benefits, on top of other state and federal UI benefit payments, was extended through weeks of unemployment ending on or before September 6, 2021. PEUC and PUA were extended for 29 additional weeks through weeks of unemployment ending on or before September 6, 2021. The combination of being able to backdate certain claims, in addition to the various legislative extensions, meant that claimants could potentially receive up to 79 weeks of pandemic-related UI payments in total.[23]

*****Appendix B contains a more complete documentation of legislative and executive branch actions taken during the pandemic related to the unemployment insurance program.*****

[22] American Rescue Plan Act of 2021, Pub. L. No. 117-2, Stat. 4 (2021).
[23] *Supra* n.2.

B. Time to Return to Work, But Benefits Still Available

> *South Carolina's businesses have borne the brunt of the financial impact of the COVID-19 pandemic. Those businesses that have survived—both large and small, and including those in the hospitality, tourism, manufacturing, and healthcare sectors—now face an unprecedented labor shortage.*
>
> *This labor shortage is being created in large part by the supplemental unemployment payments that the federal government provides claimants on top of their state unemployment benefits. In many instances, these payments are greater than the worker's previous pay checks. What was intended to be short-term financial assistance for the vulnerable and displaced during the height of the pandemic has turned into a dangerous federal entitlement, incentivizing and paying workers to stay at home rather than encouraging them to return to the workplace.*
>
> *These federal entitlements pose a clear and present danger to the health of our State's businesses and to our economy. Since the Biden administration and Congress appear to have little to no comprehension of the damage being done and no appetite to terminate the federal payments, the State of South Carolina must take action.*
>
> **Henry McMaster, Governor, State of South Carolina**

It was shortsighted to extend the UI benefits, including the $300 plus-up, for six full months in March 2021. It was already evident in the summer of 2020 that providing large UI benefits payments without requiring evidence recipients were searching for work was a deterrent for some individuals returning to work and may have contributed to worker shortages in some industries. If the expectation was that much of the adult working population would be able to return to work as soon as vaccines became widely available, then it would follow that benefits did not need to be extended.

U.S. Secretary of Labor Eugene Scalia, testifying before the Senate Committee on Finance on June 9, 2020, when urging Congress to allow the CARES Act authorization for the $600 weekly supplement to expire, cited falling unemployment numbers.[24] Additionally,

[24] *Unemployment Insurance During Covid-19: The Cares Act and the Role of Unemployment Insurance During the Pandemic: Hearing Before Senate Comm. on Finance,* 116th Cong. (June 9, 2020), *available at*

National Bureau of Economic Research (NBER) data showed then that with UI benefits combined with FPUC, 69 percent of unemployed workers would receive unemployment benefits exceeding 100 percent of their wages and non-wage compensation.[25] Scalia argued that this could be a deterrent to those individuals resuming work and could prevent health care systems finding the workers needed to continue to combat COVID-19.

Between June 12, 2021, and July 31, 2021, 26 states announced their intention to voluntarily terminate their agreements with the Department of Labor and to stop paying some or all the pandemic UI benefits before their expiration dates.[26] States cited various reasons for ending benefits early including: increased job opportunities, fewer COVID-19 related barriers to re-entering the workforce, decreased unemployment rates, and work deterrent effects based on exorbitant UI benefits.[27] Fundamentally, states' goals for ending benefits were to stop paying people to stay home and get people back to work. Some states, including Montana,[28] chose to replace pandemic UI benefits with back-to-work bonuses from the Coronavirus Relief Fund (CRF).

On September 6, 2021, the authorization and funding for all temporary pandemic UI programs (FPUC, PUA, PEUC, MEUC) expired.

C. Lasting Repercussions and Attempts to make Pandemic UI Permanent

In March 2023, following Secretary of Labor Marty Walsh's resignation, President Biden nominated Deputy Secretary Julie Su, the former secretary of the California Labor and Workforce Development Agency (LWDA) during the COVID-19 pandemic, to be Secretary of Labor. Due to opposition to Su's nomination from a majority of Senators,[29] largely because of her record while serving as LWDA secretary, Majority Leader Chuck Schumer did not schedule a floor vote for Su in 2023. In January 2024, instead of choosing a different nominee who might be confirmed, President Biden renominated Su to be Secretary of Labor. With a majority of

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https://www.finance.senate.gov/hearings/unemployment-insurance-during-covid-19-the-cares-act-and-the-role-of-unemployment-insurance-during-the-pandemic.

[25] Peter Ganong, et al., *US Unemployment Insurance Replacement Rates During the Pandemic*, National Bureau of Economic Research (May 2020), *available at* http://www.nber.org/papers/w27216.

[26] Cong. Research Serv., *States Opting Out of COVID-19 Unemployment Insurance (UI) Agreements* (updated Aug. 20, 2021), *available at* https://crsreports.congress.gov/product/pdf/IN/IN11679.

[27] Letter from Henry McMaster, Governor, State of South Carolina, to Daniel Ellzey, Director, Dep't of Emp't and Workforce (May 6, 2021). *See also* Letter from Beth Townsend, Director, Iowa Workforce Dev., to Kim Reynolds, Governor, State of Iowa (May 10, 2021). *See also* Press Release, The Office of Alabama Governor, Governor Kay Ivey Announces End of Participation in All Federal Pandemic Unemployment Compensation Programs (May 10, 2021). *See also* Press Release, Office of the Texas Governor, Governor Abbott Announces End to Federal Pandemic-Related Unemployment Benefits (May 17, 2021).

[28] News Release, State of Montana Newsroom, Montana to Launch Return-to-Work Bonuses, Return to Pre-pandemic Unemployment Program to Address Workforce Shortage (May 4, 2021).

[29] Press Release, Office of Senator Joe Manchin, Manchin Opposes Julie Su for U.S. Secretary of Labor (July 13, 2023). See also, Press Release, Ranking Member Cassidy, Braun, Colleagues Call on President Biden to Withdraw Julie Su Nomination for DOL Secretary (June 22, 2023).

Senators still publicly opposing Su[30], it is unlikely that Su will be confirmed during the 118th Congress. Acting Secretary Su is now the longest-serving Cabinet nominee without a floor vote when the same party controls the White House and the Senate since 1857.[31] There are many questions regarding the legality of Acting Secretary Su continuing to serve for so long in an acting capacity[32] as well as the White House's attempt to go around the Constitution to install a Cabinet officer who otherwise could not be confirmed.

Acting Department of Labor Secretary Julie Su is able to exert significant influence over UI policies and repercussions. For example, the Social Security Act allows states to borrow funds from the Federal Unemployment Account (FUA) within the Unemployment Trust Fund (UTF), a single trust fund in the U.S. Treasury for transactions related to UI and EB.[33] States generally borrow from the FUA during a recession when state unemployment tax revenue is insufficient to fund the UC benefits for eligible claimants.[34] Federal law requires states to repay the loans and if they do not, the state faces interest on the loan and the state's employers will pay increased Federal Unemployment Tax Act (FUTA) rates until the loans and interest are fully repaid.[35] FFCRA, CAA, and ARPA, temporarily waived interest payments and accrual of interest on loans from FUA through September 6, 2021.

Most states who borrowed during the pandemic repaid the loans in due course. However, as of December 22, 2022, California, Connecticut, Illinois, New York, and the U.S. Virgin Islands still owed outstanding loan balances and accrued interest totaling nearly $28 billion dollars, leading to employers in those jurisdictions having to pay higher FUTA rates.[36] As of August 29, 2024, the states of California and New York still owe outstanding loan balances and accrued interest totaling more than $26 billion,[37] and seem to have no urgency to repay the loans they owe or to provide relief to employers (and small businesses) in their states. In fact, the longer that the loans are outstanding, the more the FUTA rates will increase. By avoiding repaying the loans, California and New York are ensuring that employers, with the increased FUTA tax rates, will repay most of the outstanding loan principal and accrued interest the states owe, even though the employers were not responsible for taking out the loans in the first place. Underscoring the seriousness of the concern, an audit issued by the Office of the New York State Comptroller noted:

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[30] Diego Areas Munhoz, *Su's Labor Nomination Advances With Senate Roadblock Ahead*, BLOOMBERG LAW (Feb. 27, 2024), *available at* https://news.bloomberglaw.com/daily-labor-report/julie-sus-labor-nomination-advances-with-senate-roadblock-ahead

[31] Memorandum from Kathleen E. Marchsteiner, Cong. Res. Serv., on Longest Presidentially-Appointed, Senate-Confirmed Cabinet Nominations in the Senate Since 1857 (Sept. 25, 2023), *on file with Committee*.

[32] Letter from Virginia Foxx, Chairwoman of U.S. House Comm. on Educ. and the Workforce and Kevin Kiley, Chairman of Subcomm. on Workforce Protections, U.S. House Comm. on Educ. and the Workforce to President Joe Biden (Jan.4, 2024) *available at* https://edworkforce.house.gov/uploadedfiles/01.04.24_letter_to_white_house_re_su_nomination.pdf.

[33] Cong. Research Serv., *The Unemployment Trust Fund: FY2024 Income, Outlays, and End-Of-Year Balances* (May 08, 2024), *available at* https://crsreports.congress.gov/product/pdf/R/R48062/.

[34] *Id*.

[35] Cong. Research Serv., *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States* (Jan. 13, 2023), available at https://crsreports.congress.gov/product/pdf/RS/RS22954.

[36] *Id*.

[37] *Advances to State Unemployment Funds (Social Security Act Title XII)*, FISCAL DATA. TREASURY.GOV (September 3, 2024).

> Borrowing from the federal UI trust fund has serious consequences for the businesses operating in New York State…[u]nless the federal government chooses to abate all or part of the interest incurred or the principal balance amount is repaid with no more interest accrued, businesses will be required to make annual IAS payments until all interest has been fully paid off.

Alternatively, states with outstanding loans could cut state UI benefits until the federal loans are repaid. Surprisingly, the state of California passed legislation to increase UI benefits instead. While the legislation failed to be enacted, California appears to continue looking for ways out of repaying its obligations.

On December 29, 2023, ETA issued a UIPL[38] announcing DOL's interpretation of state laws to temporary UI programs authorized under the CARES Act. The stated purpose of this UIPL was to provide guidance to states with finality provisions in their state unemployment compensation laws limiting reconsideration of prior decisions or determinations. Concerningly, at least one state has interpreted this guidance as a free pass to "forgive" the billions of fraudulent benefit payments the states issued to criminals and fraudsters. A recent financial report[39] from the California State Controller, stated that the California EDD, an agency under the leadership[40] of DOL Acting Secretary Su during the pandemic, "issued a letter to DOL in February 2024 requesting that three groups of CARES Act UC claims be considered resolved and no further work would be performed related to these claims."[41] Per the Controller's report, "EDD is waiting on final federal approval of EDD's request as indicated in the February 2024 letter before the event can be recognized in the financial statements as a forgiveness of debt. Once federal approval is received approximately $29.0 billion of potential federal liabilities will be removed from future financial statements in addition to a portion of the remaining $26.0 billion in federal liabilities which would also be subject to state finality laws."[42]

On May 1, 2024, DOL Acting Secretary Su testified[43] before the House Committee on Education and Workforce that it was "absolutely false that the guidance that the Department of Labor put out would forgive any fraud." It is likely that in today's culture of loan "forgiveness" that California Governor Newsom, then Secretary Su, and the State of California simply expected to borrow billions of dollars from the federal government and expected their friends in the White House and the Executive Branch (including Su again) to forgive the debt. After all, the Biden-Harris Administration to date has "forgiven" more than $406 billion in student debt[44]

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[38] EMP. AND TRAINING ADMIN., UIPL 05-24, APPLICATION OF STATE FINALITY LAWS REGARDING TEMPORARY UNEMPLOYMENT COMPENSATION (UC) PROGRAMS UNDER THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT (Dec. 29, 2023), *available at* https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2024/UIPL%2005-24/UIPL%2005-24.pdf.

[39] California State Controller, *State of California Annual Comprehensive Financial Report FY Ended June 30, 2022* (March 15, 2024), *available at* https://www.sco.ca.gov/Files-ARD/ACFR/acfr22web.pdf.

[40] *Acting Secretary of Labor Julie A. Su*, U.S. Dep't Labor. https://www.dol.gov/agencies/osec.

[41] *Supra* n.39.

[42] *Id*.

[43] *Examining the Policies and Priorities of the Department of Labor: Hearing Before the H. Comm. on Education & The Workforce*, 118th Cong. (May 1, 2024), *available at* https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=410483.

[44] Nat Malkus, *Biden's Unending Student Loan Forgiveness Run*, AEIdeas (May 23, 2024).

with taxpayers footing the bill. However, members of the U.S. House of Representatives[45] and the U.S. Senate[46] have written to Acting Secretary Su requesting clarification about EDD's request and for correspondence between the Department of Labor and California EDD officials, including a copy of the February 2024 letter[47], and to date have received no formal response from Acting Secretary Su or the Department of Labor. DOL's issuance of this guidance and lack of transparency about potential backroom deals with California EDD are another reason why both Julie Su's leadership of the California Labor & Workforce Development Agency and her acting leadership of the Department of Labor have been disastrous for the American taxpayers and workers.

Additionally, on February 7, 2022, ETA issued a UIPL[48] providing instructions to states for processing waivers of recovery of overpayments under the CARES Act. ETA identified a total of seven permissible scenarios for states to waive recovery of individual overpayments under the CARES Act. Under these approved scenarios, states could waive overpayment without the individuals submitting requests and ETA encouraged states to "proactively identity individuals eligible for a blanket waiver." ETA also included a form for states to propose additional scenarios to be considered for blanket waivers. Starting in March 2024 the Committee has repeatedly requested that ETA/DOL provide information about the number of and amounts of waived overpayments by state under each of the seven scenarios and if ETA/DOL approved any additional scenarios for blanket waivers (and the same data for those). As of the date of this report, ETA/DOL has failed to provide this information to the Committee.[49]

Meanwhile, Acting Secretary Su, in a newly released Department of Labor plan,[50] has praised paying Americans <u>not</u> to work through the pandemic UI programs and has suggested expanding "regular" UI by lengthening eligibility and boosting payments. The plan is critical that not enough unemployed workers are eligible for "regular" UI benefits including those who leave the workforce voluntarily ("job leavers") as well as low-paid, part-time, self-employed, and gig economy workers referred to as "non-standard" workers. However, as this Committee report shows, the PUA program, which did not require applicants to verify their employment or identity until the December 2020 reauthorization, suffered from a higher rate of fraud and improper payments than other pandemic UI programs or regular UI. OIG estimated that the total

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[45] Letter from Jason Smith, Chairman of Comm. on Ways and Means & Michelle Steel, Member of Congress, to Julie Su, Acting Sec'y, U.S. Dep't of Lab. (May 16, 2024), *available at* https://gop-waysandmeans.house.gov/wp-content/uploads/2024/05/Ways-and-Means-Letter-to-Acting-Secretary-Su-05.15.24.pdf.
[46] Letter from Bill Cassidy, M.D., Ranking Member of U.S. Senate Comm. on Health, Education, Lab., and Pensions, Michael D. Crapo of Ranking Member of U.S. Senate Comm. on Finance, to Julie Su, Acting Sec'y, U.S. Dep't of Lab. (May 8, 2024), *available at* https://www.help.senate.gov/imo/media/doc/2024-05-08__ui_guidance_letterpdf.pdf.
[47] Letter from Nancy Farias, Director, Calif. Emp't. Development Dep't to Tamika L. Ledbetter, Reg'l Admin., Emp't and Training Admin., U.S. Dep't of Lab. (Feb. 6, 2024), *on file with the Committee.*
[48] EMP. AND TRAINING ADMIN., UIPL 20-21 CHANGE 1, ADDITIONAL STATE INSTRUCTIONS FOR PROCESSING WAIVERS OF RECOVERY OF OVERPAYMENTS UNDER THE CORONAVIRUS AIDS, RELIEF, AND ECONOMIC SECURITY (CARES) ACT, AS AMENDED (February 07, 2022), *available at* https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2022/UIPL_20-21_Change_1.pdf.
[49] Correspondence between COA staff and DOL OCIA staff, *on file with the Committee*.
[50] U.S. Dep't of Lab., *Building Resilience: A plan for transforming unemployment insurance* (April 2024), available *online at* https://oui.doleta.gov/unemploy/transformation_plan.asp.

improper payment rate in the PUA program was 35.9 percent.[51] Evidence from OIG and others shows that the improper payments from PUA were made to fraudsters and not to the self-employed, independent contractors, and gig workers who were not eligible for "regular" UI.

The Biden-Harris Administration is supporting Democrat-led legislation extending UI benefits to workers with limited work histories, those who left work for family related reasons, and to domestic, agricultural, and seasonal workers.[52] The plan also calls for increasing the amounts of payments to all beneficiaries and for part-time workers to be eligible to collect UI benefits while working. While any significant change to regular UI would have to be enacted by Congress, it appears that funding Acting Secretary Su's plan would likely lead to imposing UI tax increases on employers.[53] Acting Secretary Su's plan also calls for benefits extensions such as EB and pandemic UI to trigger automatically in a recession rather than being authorized by Congress with specific start and end dates. Su also wants to increase the funding for the DOL Wage and Hour Division and the Office of the Solicitor to further her mission of forcing all independent contractors to be classified as employees and make even more individuals eligible for UI benefits.[54]

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[51] *Supra* n.2.
[52] *Supra* n.50.
[53] *See id.*
[54] *Id*.

VI. Office of Inspector General, Law Enforcement, and Preventing Future Improper Payments and Fraud

The U.S. Government Accountability Office (GAO) estimates that about 11 to 15 percent of total benefits paid during the pandemic were fraudulent, totaling between $100 to $135 billion.[55] As of March 2023, states reported recoveries of only $6.8 billion. The Department of Labor Office of Inspector General estimated that <u>at least</u> $191 billion in pandemic UI payments could have been improperly paid with a significant portion attributable to fraud.[56] However, much of these losses could have been avoided if Congress, ETA, and states had been better prepared prior to the pandemic, made different choices, reacted more quickly during the pandemic, and cooperated more closely with OIG and other law enforcement entities.

A. State Preparedness

OIG had been warning ETA and states for years that Information Technology (IT) upgrades and staffing were deterrents to providing UI benefit payments properly. The American Recovery and Reinvestment Act of 2009 set aside approximately $7 billion from the Federal Unemployment Account for states to modernize legacy systems for processing UI claims.[57] However, in 2010, an OIG audit found that states had not applied for (and were unlikely to apply for) large portions of the funds available to them, and that $2 billion of the funds the states did receive were used to pay UI benefits instead of modernizing IT.[58] In 2023, the OIG's contractor, GenTech Associates, found that ETA had not evaluated the capability of state workforce agencies' IT systems to successfully administer UI benefits, nor did it know which state IT systems posed the greatest risk of failing.[59] GenTech reported that ETA did not require the states to develop IT modernization plans that represented a "future-ready approach."[60] Even though the funds were available, states did not prioritize it in some cases.[61]

Additionally, OIG warned ETA and states as early as April 2020, that the CARES act required that states have sufficient staffing and system resources to manage increases in the number of claims due to the pandemic. Yet, OIG's prior work related to funding for emergency staffing showed that hiring efforts were delayed, and that ETA did not provide sufficient

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[55] U.S GOV'T ACCOUNTABILITY OFF., GAO-23-106696, UNEMPLOYMENT INSURANCE: ESTIMATED AMOUNT OF FRAUD DURING PANDEMIC LIKELY BETWEEN $100 BILLION AND $135 BILLION (Sep. 12, 2023).

[56] U.S. Dep't of Lab. Off. of Inspector Gen., OIG Oversight of the Unemployment Insurance Program (last updated Dec. 15, 2023), available at https://www.oig.dol.gov/doloiguioversightwork.htm.

[57] U.S. Dep't of Lab., Off. of Inspector Gen., RECOVERY ACT: MORE THAN $1.3 BILLION IN UNEMPLOYMENT INSURANCE MODERNIZATION INCENTIVE PAYMENTS ARE UNLIKELY TO BE CLAIMED BY STATES (Sept. 30, 2010), *available at* https://www.oig.dol.gov/public/reports/oa/2010/18-10-012-03-315.pdf.

[58] *Id*.

[59] Memorandum from Carolyn R. Hantz, Assistant Inspector Gen. for Audit, to Brent Parton, Principal Deputy Assistant Sec'y, U.S. Dept. of Lab., (Sept. 19, 2023), *available at* https://www.oig.dol.gov/public/reports/oa/2023/19-23-008-03-315.pdf.

[60] *Id*.

[61] *Id*.

monitoring and oversight to ensure states were able to hire quickly.[62] In contrast, the state of Missouri prioritized modernizing IT to process UI claims *prior* to the pandemic.[63] The effort was funded through a partnership between the state legislature and state employers. Since regular UI was intended to serve as a reemployment program, it was valuable to employers within the state of Missouri to invest in IT upgrades. Missouri also cross-trained its seasonal state workforce so that the state had flexibility when certain departments or divisions were busier than others. The seasonal workers could be assigned to assist with state tax returns during tax season and with UI claims when the Division of Employment Security was processing a higher number of claims due to economic conditions in the state.[64] This enabled Missouri to have state employees that were already trained to assist with regular UI, unlike other states that had to hire new employees (during the pandemic), and train them under stressful and unusual circumstances.

Delays in receiving benefits can be devastating for the recently unemployed or furloughed, especially during the pandemic, when it was uncertain when they would be able to return to work or look for new work because of lockdowns and closures. Outdated IT systems only exacerbated the delays with implementing entirely new programs. States without modernized IT (49 states) took 50 days on average to implement the PEUC program, while states with modernized IT implemented the program 15 days faster and implemented the PUA program eight days faster.[65] From April 1, 2020, to March 31, 2021, OIG found that only five of the state workforce agencies were able to make timely payments, including the FPUC plus-up, to regular UI beneficiaries. Post-pandemic, even with claims returning to a normal volume, only 34 percent of states are paying regular UI claimants on time compared with 75 percent timely payments before the pandemic.[66]

B. Anti-Fraud Measures and High-Risk Individuals

Using Social Security numbers associated with the claims, DOL OIG identified that $46.9 billion in potentially fraudulent UI benefits were paid from March 2020 to April 2022 to 4,595,295 "high-risk" individuals including multistate claimants, deceased persons, federal prisoners, individuals with suspicious emails, individuals under age 14, and individuals ages 100 and older.[67] Since the child labor provisions of the Fair Labor Standards Act of 1938 limits most non-agricultural employment for children under 14, any such claim submitted for UI should have raised a red flag, been denied, and reported to the appropriate federal and state authorities to

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[62] U.S. Dep't of Lab. Off. of Inspector Gen., *CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions* (Apr. 21, 2020), *available at* https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf.

[63] Anna S. Hui, Dir., Mo. Dep't. of Lab. and Indus. Relations, at *Pandemic Unemployment Fraud in Context* Panel Discussion, Am. Enter. Inst. (Feb. 13, 2024), *available at* https://www.aei.org/events/pandemic-unemployment-fraud-in-context/.

[64] Press Release, Mo. Dep't of Lab. & Indus. Relations, Cross-Training Leads to Faster Help for Missouri's Unemployed (Mar. 28, 2018), *available at* https://labor.mo.gov/news/press-releases/cross-training-leads-faster-help-missouris-unemployed.

[65] *Supra* n.56.

[66] Based on OIG analysis of data on ETA's public reporting on States' UI Benefit Timeliness and Quality, *available at* https://oui.doleta.gov/unemploy/btq.asp.

[67] *Supra* n.56.

investigate for potential violations of child labor laws and human trafficking.[68] Instead, state workforce agencies approved 45,594 claimants for more than $1.2 billion in potentially fraudulent UI benefits during this time period. Likewise, while there is no limit to the age one can continue to remain in the workforce, the labor force participation rate for workers aged 75 and older was 8.9 percent in 2020.[69] Yet, OIG identified four states (Michigan, Rhode Island, California, and Georgia) that paid UI claims to 18 percent or more of claimants aged 100 or older.[70] An average of only 1.2 percent of centenarians in the other 46 states received pandemic UI benefits. Remarkably, the state of Michigan paid 58.5 percent of its centenarian population during this period.[71] It is likely that the majority of the under 14-year-olds and the over 100-year-olds were not unemployed or furloughed workers, but victims of identity theft and the benefits went to fraudsters. OIG shared the methodology and data about detecting high risk individuals with the Department of Labor and issued four alerts on incorporating data analytics in oversight of UI, to prevent such losses in the future.[72]

Another major flaw that led to massive fraud was the design of the PUA program. During the program's first nine months, claimants did not have to provide any evidence of earnings even as states certified individuals' eligibility for benefits. While this led to benefits being delivered more quickly, as was the intent of Congress and the Administration, it also made the program susceptible to fraud. With regular UI, initial claims were delayed subject to employer verification that the claimant had, until recently, been employed by the employer. For the PUA program, the state workforce agencies had no information to verify that the claimant had any prior employment or self-employment, or the amount of wages earned, other than the information provided on the claim. Only when Congress reauthorized the PUA program in December 2020 did states require applicants to provide proof of prior employment and wages. Additionally, due to outdated IT systems, staffing shortages, and new programs being implemented, many states did not deploy adequate anti-fraud measures, leading to criminals and fraudsters being able to successfully file fraudulent claims and avoid detection. States were not cross-checking claims against databases to ensure whether the claimant was filing claims in multiple states, was incarcerated, or otherwise of high risk to file a fraudulent claim. This led to criminals receiving multiple payment cards, multiple payment cards being sent to the same address, and payments being issued in the names of incarcerated individuals, in large part due to failures in cross-matching applicant data with available databases until well into the implementation of the program.[73] Some victims of identity theft who had claims filed under

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[68] U.S. Dep't of Lab., Off. of Inspector Gen., *Alert Memorandum: ETA Needs to Incorporate Data Analytics Capability to Improve Oversight of the Unemployment Insurance Program* (Sept. 25, 2023), *available at* https://www.oig.dol.gov/public/reports/oa/2023/19-23-012-03-315.pdf.

[69] U.S. Dept. of Lab., U.S. Bureau of Lab. Statistics, Economics Daily, *Number of people 75 and older in the labor force is expected to grow 96.5 percent by 2030* (Nov. 4, 2021), *available at* https://www.bls.gov/opub/ted/2021/number-of-people-75-and-older-in-the-labor-force-is-expected-to-grow-96-5-percent-by-2030.htm.

[70] *Supra* n.56.

[71] *Supra* n.56.

[72] *Supra* n.49.

[73] U.S. Dep't of Lab., Off. of Inspector Gen., *Testimony of Larry D. Turner, Inspector General before the U.S. Senate Committee on Homeland Security and Governmental Affairs* (Mar. 17, 2022), *available at* https://www.oig.dol.gov/public/testimony/20220317.pdf.

their names only discovered they had been victimized when they were issued erroneous 1099-G forms for the benefits that were paid to criminals under their names.[74]

Some states performed better than others and were able to balance paying benefits quickly without compromising program integrity. For example, the state of Maryland uncovered a massive and sophisticated criminal enterprise involving more than 47,500 fraudulent unemployment insurance claims using identity theft totaling over $501 million.[75] With heightened security measures in place, the Maryland Department of Labor quickly detected, reported, and blocked this fraudulent claim activity. Maryland's quick and decisive actions to expose this illegal scheme helped shed light on related fraudulent criminal activity in other states.[76] In Oklahoma, the Oklahoma Employment Security Commission collaborated with the DOL OIG to stop payment on nearly 3,800 fraudulently filed UI claims, including 1,300 that were filed from IP address located in England. 2,450 of the claims were filed using the name of one Oklahoma business that employed fewer than ten employees. The effort saved the state and taxpayers more than $15.9 million.[77]

Meanwhile, Wyoming instituted a system where it would cross reference claims against employer data and prison records, would randomly ask claimants to appear in person for auditing purposes, and ended up minimizing its fraudulent payments to around $16.3 million.[78] According to DOL, the unemployment insurance improper payment rate in Wyoming was 11.45 percent from July 1, 2019, through June 30, 2022.[79]

Nebraska organized and hired additional staff for fraud prevention and detection purposes and introduced income and identity verification and would verify new applications from

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[74] U.S. Dep't of Just., Nat'l Unemp't. Ins. Fraud Task Force, *Issuance of Erroneous Forms 1099-G due to Fraudulent Unemployment Insurance Claims* (Feb. 26, 2021), *available at* https://www.justice.gov/opa/page/file/1375581/dl?inline.

[75] Press Release, Md. Dep't of Lab., Maryland Department of Labor Uncovers Massive Criminal Fraud Scheme: 47,500 Fraudulent Unemployment Claims Using Identity Theft Totaling Over $501 Million Alerted U.S. Attorney and U.S. Department of Labor, Office of the Inspector General (July 15, 2020), *available at* https://www.oig.dol.gov/public/Press%20Releases/Maryland%20Department%20of%20Labor%20Uncovers%20Massive%20Criminal%20Fraud%20Scheme.pdf.

[76] *Id*.

[77] Press Release, U.S. Attorney's Off. N. Dist. of Okla., Nearly 3,800 Fraudulently Filed Unemployment Insurance Claims Blocked by the U.S. Department of Labor (June 29, 2020), *available at* https://www.oig.dol.gov/public/Press%20Releases/NDOK_UI.pdf.

[78] *See Unemployment Insurance Benefit Accuracy Measurement Program*, WORKFORCE SERVICES (2024). *See also Unemployment Insurance Payment Accuracy by State*, U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION. *See also Unemployment Insurance Payment Accuracy Datasets,* U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION.

[79] U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION, Unemployment Insurance Payment Accuracy by State (July 1, 2019, through June 30, 2022).

previously approved claimants.[80] Nebraska's system also resulted in fraudulent payments in the millions rather than the billions.[81]

Missouri set up a special fraud investigation unit and would choose a random sample of UI applicants to audit each week. Proof of identity would be required through an authentication program that would entail a claimant showing up at a local Missouri Job Center to verify their identity. Missouri also ended the pandemic with debt in the millions rather than the billions.[82] The unemployment insurance improper payment rate in Missouri was 8.89 percent from July 1, 2019, through June 30, 2022.[83]

One of the key issues remaining is how to properly estimate improper payments and fraud in the pandemic UI programs. GAO estimates that about 11 to 15 percent of total benefits paid during the pandemic were fraudulent, totaling between $100 to $135 billion.[84] Following a recommendation from OIG,[85] in December 2021, ETA reported an improper payment rate of 18.71 percent for two of the three pandemic UI programs: PEUC and FPUC. In December 2022, ETA reported an updated improper payment rate estimate of 21.52 percent also regarding PEUC and FPUC.[86] OIG used this estimate, combined with the more than $888 billion in total federal and state UI benefits paid during the UI pandemic period, to calculate that <u>at least</u> $191 billion in pandemic UI payments could have been improperly paid, with a significant portion attributable to fraud.[87] OIG notes "[t]he potential loss of $191 billion of taxpayer money highlights the urgent need for systemic improvements. For perspective, $191 billion could have provided more than $3.5 billion to each SWA toward ensuring preparedness for emergencies, including modernizing UI IT systems, enhancing staffing levels, and formulating robust contingency plans."[88] However, OIG notes that the improper payment rate was likely higher since ETA's estimated improper payment rate did not include the PUA program. In August 2023, the Department of Labor reported that the PUA program had a total improper payment rate of 35.9 percent. OIG has several recommendations for ETA to improve its oversight of improper payments and fraud, and how it estimates these rates. They include directly accessing claims data from the states and creating an integrity program with a data analytics capability that

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[80] Press Release, Ne. Dep't of Lab., Unemployment fraud schemes continue during pandemic – NDOL continues to increase prevention and detection efforts (March 23, 2021).
[81] *See Unemployment Insurance Payment Accuracy by State*, U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION. *See also Unemployment Insurance Payment Accuracy Datasets,* U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION.
[82] *See Report Unemployment Fraud*, MO.GOV DEP'T OF LABOR & INDUSTRIAL RELATIONS. *See also Unemployment Insurance Payment Accuracy by State*, U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION . *See also Unemployment Insurance Payment Accuracy Datasets,* U.S. DEP'T OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION.
[83] U.S. DEP'T OF LABOR EMP'T. AND TRAINING ADMIN., Unemployment Insurance Payment Accuracy by State (July 1, 2019 through June 30, 2022).
[84] U.S GOV'T ACCOUNTABILITY OFF., GAO-23-106696, *Unemployment Insurance: Estimated Amount Of Fraud During Pandemic Likely Between $100 Billion And $135 Billion* (Sep. 12, 2023).
[85] U.S. Dep't of Lab., Off. of Inspector Gen., *COVID-19: More Can Be Done To Mitigate Risk to Unemployment Compensation Under the CARES Act* (Aug. 7, 2020), *available at* https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf.
[86] *Supra* n.49.
[87] *Id*.
[88] *Id*.

regularly monitors state UI claims data and establishing effective controls to mitigate fraud among high-risk areas.[89]

VII. California

A. Former LWDA Secretary Julie Su

Governor Gavin Newsom appointed Julie Su as the Secretary of the California Labor & Workforce Development Agency (LWDA), the parent agency of EDD, where she served from 2019-2021 before being nominated by President Joe Biden to serve as Deputy Secretary of the DOL. LWDA Secretary Su has stated that there was no way for California or any other state to have anticipated how widespread the fraud would be during COVID-19.[90] However, California's auditor had warned EDD for years about potential vulnerabilities within their IT systems and their background checking abilities.[91] EDD had problems for years with call center performance, had been given recommendations by the Auditor for the best practices to overhaul the call center, and EDD simply did not install them.[92] The Auditor determined that this left the EDD exposed to a backlog when the influx of applicants sought pandemic UI benefits.[93]

On March 18, 2020, then LWDA Secretary Julie Su wrote to then EDD Director Sharon Hilliard and asked if EDD would be ready for the massive number of claims likely to come their way. Hilliard wrote that the system was performing "fantastically." On March 20, 2020, LWDA Secretary Su emailed EDD director Hilliard to inquire about the pros and cons of expediting UI approvals by waiving some eligibility requirements; she wanted to know what keeping the checks in place would mean for processing times. "How long would it take to get payments out," Su asked, "and what would the backlog situation likely be?" EDD director Hillard responded that "It would be months if not well into next year."[94] Clearly upon receiving this response, Su made the decision to sacrifice preventing fraud for expeditious processing times.

EDD staff under Su's leadership adopted a 'pay and chase' model and processed incoming claims quickly; EDD staff understood that less time should be spent on checking eligibility of claimants as this would slow down paying out benefits. This led to many bad actors like international organized crime and individual criminals cashing in while eligible claimants were unable to obtain their benefits. Initial reports about the amount of UI fraud being committed in California were so extreme some industry experts wondered if hackers had gained control of

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[89] *Id*.
[90] Will Swaim, *Stalled Labor Pick Julie Su Lets Herself Off the Hook for California's Missing Billions*, NATIONAL REVIEW (Mar. 30, 2024), *available at* https://www.nationalreview.com/2024/03/stalled-labor-pick-julie-su-lets-herself-off-the-hook-for-californias-missing-billions/.
[91] AUDITOR OF THE STATE OF CALIF., REPORT 2020-128/628.1, EDD'S POOR PLANNING AND INEFFECTIVE MANAGEMENT LEFT IT UNPREPARED TO ASSIST CALIFORNIANS UNEMPLOYED BY COVID-19 SHUTDOWNS (Jan. 2021), *available at* https://information.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf.
[92] *Id*.
[93] *Supra*, n.91.
[94] Lauren Hepler, *Internal documents reveal the story behind California's unemployment crash*, CALMATTERS (Nov. 11, 2023), *available at* https://calmatters.org/economy/2023/11/california-unemployment-covid/?series=california-unemployment-crash.

EDD's outdated IT; "instead, a more chaotic web of fraud carried out simultaneously by low-level scammers, prison inmates and larger organized criminal groups, plus a few cases of people with connections to the EDD or its contractors."[95]

Despite repeated warnings from OIG and ETA, EDD did not make any substantive changes to its fraud detection practices until late July 2020 when it finally began automating stopping payment on suspicious claims. Additionally, EDD delayed responding when there was clear evidence of fraudulent activity including a high number of claims under different names filed from the same address and multiple claims filed from a vacant building or house. In one instance, 80 claims were filed from the same address and EDD, even after identifying more than 70 of the claims as suspicious, actively continued to make payments on 12 of the claims through December 2020 totaling more than $300,000. EDD was also slow to stop payments to other claimants that the state auditors identified as suspicious. And for 24 percent of the claims filed after enactment of the CARES Act, EDD could not confirm the identity of the claimant but issued at least one payment anyway totaling $10.4 billion in payments to individuals with unconfirmed identities.[96]

The California Auditor's January 2021 report states that "EDD's lack of preparation left it unable to manage two important fraud-related situations that arose during its 2020 pandemic response."[97] One of the few antifraud measures that EDD did employ in reaction to potential fraud appeared to harm legitimate claimants more than it helped prevent fraud and improper payments. In September 2020, after Bank of America (BOA), EDD's debit card processor, notified EDD of 309,000 potentially fraudulent accounts, EDD directed BOA to freeze 344,000 accounts including 73,000 accounts not identified by BOA.[98] Those in possession of the frozen cards could not access the benefit payments deposited into the UI accounts attached to the cards. However, prior to directing BOA to take this action, EDD had no plan in plan to selectively unfreeze the accounts belonging to legitimate claimants.[99]

The auditors found several aspects of this scheme troubling. EDD's fraud detection and prevention methods were not functioning, and they only initiated the request to freeze the accounts after being notified of the potential fraud by BOA. Also, following public outcry in early October 2020 from legitimate claimants who could not access their benefits, EDD requested that BOA unfreeze all 344,000 accounts rather than verify each account before unfreezing. As another example of 'pay and chase,' EDD chose to permit potentially fraudulent activity to ensure that legitimate claimants could access their benefits. However, BOA disregarded EDD's request to unfreeze the accounts citing its obligation to prevent fraud under federal law as its reason for freezing accounts without EDD's approval. EDD has yet to fully acknowledge that it had no plan or that it directed BOA to freeze the accounts in the first place. In testimony before a state Assembly Subcommittee hearing, the EDD director identified BOA as the party responsible for freezing constituent accounts. This appears to be another example of

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[95] *Id*.
[96] AUDITOR OF THE STATE OF CALIF., REPORT 2020-628.1, SIGNIFICANT WEAKNESSES IN EDD'S APPROACH TO FRAUD PREVENTION HAVE LED TO BILLIONS OF DOLLARS IN IMPROPER BENEFIT PAYMENTS (Jan. 2021), *available at* https://information.auditor.ca.gov/pdfs/reports/2020-628.2.pdf.
[97] *Id*.
[98] *Supra* n.96.
[99] *Id*.

EDD being unwilling to take any action to prevent fraud at the risk of slowing down payments going out and then failing to take accountability when another party undertook the actions EDD should have been taking to prevent fraud and preserve taxpayer dollars.

California was also one of the states that failed to cross reference applicants with incarcerated individuals, another poor decision that occurred under the leadership of LWDA Secretary Su.[100] The California Auditor estimates the state lost around $810 million dollars in fraudulent claims to incarcerated individuals alone.[101] California paid out claims to incarcerated individuals because its IT systems did not have the capacity to cross reference with data from state and local prisons, another IT system update that the auditors had previously recommended.[102]

The Committee has examples of Californians who were victims of easily identifiable identify theft who spent more than six months waiting for EDD to stopping garnishing their wages and to unfreeze their state tax returns. EDD had acknowledged that they were victims of identity theft but were slow to rectify the situation. Meanwhile the identity thieves had been able to receive benefits under their names without facing such lengthy delays.[103]

Today, Julie Su is the acting Secretary for the Department of Labor and DOL recently published a guidance memo called "Unemployment Insurance Program Letter 05-24."[104] The DOL guidance states that the COVID-19 agreement between states and the federal government dictated that states must use the CARES Act and its allocated funds "for the purpose for which the money was paid to the state," and "take such action as reasonably may be necessary to recover for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits or the administration of the Agreement." The California EDD has now considered this memo to be a "financial statement [and] a forgiveness of debt."[105] DOL also stated that "applying state finality laws to the CARES Act UC programs means that, in many instances, the state will not need to take retroactive action to resolve monitoring findings."[106]

The DOL memo trusts that states have done all they can to track down fraudulent payments yet has no mechanism to determine if this action has actually occurred.[107] California's controller reported nonetheless that "Once federal approval is received approximately $29.0 billion in federal liabilities will be removed from future financial statements in addition to a portion of the remaining $26.0 billion in federal liabilities, which would also be subject to state finality laws."[108]

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[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] California EDD 17 Production, *on file with Committee*.
[104] *Supra* n.38.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Supra* n.39.

EDD under the supervision of Julie Su, in her capacity as LWDA Secretary, ignored warnings from the state auditor about a lack of preparedness in a variety of areas of operation within the EDD department. When COVID-19 hit and California was left scrambling, the vulnerabilities that the auditor had warned about had a major impact.[109] She made the decision for EDD to pay and chase to pay benefits quickly and only months into the pandemic deployed fraud measures that did little to prevent fraud and obstructed eligible beneficiaries from accessing their benefits. When Julie Su became DOL acting Secretary, she moved to forgive herself for the debt she could have prevented but failed to do so. Julie Su has been avoiding accountability since before the COVID-19 pandemic and will continue to do so until she forced to face consequences for her negligence.

B. Hiding the Truth

A common theme in addressing pandemic unemployment insurance fraud is coordination between the states and the federal government to ensure accountability. Congress and the federal government granted emergency funding at the onset of the COVID-19 pandemic and aimed to quickly see such funds distributed to those in need. While the federal government wanted those who needed the benefits to access such funds as quickly as possible, it did not intend for bad actors, or those who were not eligible, to receive the benefits. DOL set varying deadlines for reports on the adjudication of each state's respective UI programs. However, if states did not comply with the deadlines and failed to submit reports promptly and report accurate numbers, it became more difficult to ensure that rules were being followed and states were being held accountable. Whether EDD was stretched too thin or simply did not want to abide by its deadlines or the deadlines set by DOL, deadlines were missed. EDD had a backlog of claims that accrued in such great number that the EDD employees were unable to address these claims in a timely manner, an outcome detrimental to taxpayers.

For example, each state is required by the Department of Labor to submit quarterly 227 FPUC (Federal Pandemic Unemployment Compensation) and 227 PEUC (Pandemic Emergency Unemployment Compensation). Reports for the beginning of the 2nd quarter of 2020 were due August 1, 2020. When California first submitted its 227 reports, it did so on July 28, 2020, a few days before the August 1st deadline. However, according to the document below, California submitted a report with all zeros, which typically indicates that there was no activity in the 2nd quarter of the FPUC and PEUC programs, which is impossible for a state with as large a population as California.

[109] *Supra* n.91.

Figure 1:[110]

Document ID: 0.7.5154.226205

From: Swenson, Todd E - ETA
Subject: 227 FPUC / 227 PEUC Report for QED 6/30/2020 (CA)
To: Cathy Barratt [redacted]
Sent: August 18, 2020 8:52 AM (UTC-07:00)

Hi, Cathy.

As overpayments and fraud persist in the UI program, with an even greater increase with the implementation of CARES Act programs, there is heightened focus on tracking and monitoring these activities. As you know, in addition to the ETA 227 regular report, states are required to submit quarterly the 227 FPUC and 227 PEUC reports beginning with the 2nd quarter, 2020 reports that were due August 1, 2020.

We received both your reports; however, the reports contained all zeros. To that end, please respond to the following:

- Can you confirm there was no activity?
- If there was activity, please provide a reason for not reporting the activity and the date you expect the reports to be amended.

Your response is requested by COB Tuesday, August 25, 2020.

Additionally, we are planning to host a webinar on the 227 regular, FPUC and PEUC reports on September 29, 2020, at 1 pm, Eastern. Webinar details will be disseminated once they are finalized.

Thank you.
Todd Swenson
UI Program Specialist
USDOL-ETA-OUI-RO6-DWS
90 Seventh Street, 17-300
San Francisco, CA 94103
O: 415-625-7925

No follow-up was included to ascertain how long it took for California to rectify its inaccurate report and correct the record of the involvement in their FPUC and PEUC programs. When staffing is limited, as California asserted throughout the COVID-19 pandemic, wasting time submitting incorrect reports is a misallocation of resources that ultimately hurts the taxpayer above all else. If eligible participants cannot get their claims processed expeditiously because California state employees are spending extra time fixing a report that should have been submitted in a timely and correct manner the first time, accountability, oversight, and a re-evaluation of the day-to-day administration of the FPUC and PEUC programs should occur.

The COVID-19 pandemic was an unprecedented time every state had to face. In a novel situation like COVID-19, administrative strain can occur, and it is understandable that issues may crop up that typically would not. The Department of Labor understood the challenges COVID-19 posed and gave leniency to state workforce agencies overseeing the administration of COVID-19 emergency funding. In special cases, deadlines were extended, and pauses were granted in the taking of initial applications of claims waiting to be processed. Yet, California

[110] E-mail from Todd Swenson, UI Program Specialist, Emp't and Training Admin., U.S. Dep't of Lab., to Cathy Barrett, California Emp't Dev. Dep't (Aug.18, 2020 8:52 am).

serves as an example of a pause being granted and the problem of backlogs only getting worse. California could not even manage to apply the additional time it had been given by DOL to manage and resolve its backlog it because the backlog had gotten so unmanageable with the constant influx of applicants in addition to the already pre-existing backlog.

In October 2020, the Bureau of Labor Statistics (BLS) Commissioner reached out to the EDD inquiring about questions stemming from the recently ended pause that was granted to solve the problem of backlogs.[111] BLS asked about concerns of significant fraud existing within the currently submitted data and asked about the magnitude of the backlogged claims and whether the two-week pause in the reporting of data had solved the back-log problem.

Figure 2:[112]

From: Beach, William - BLS <[redacted]>
Sent: Thursday, October 15, 2020 3:49 PM
To: Faulkner, Amy@EDD <[redacted]>
Cc: Pallasch, John P - ETA <[redacted]>; Gilbert, Gay - ETA <[redacted]>; Simon, Amy E - ETA <[redacted]>; Mondl, Rachel E - OSEC <[redacted]>
Subject: California Data After the Reset

Dear Amy:

Many thanks for your information today about the resumption of UI data from California. We're looking forward to seeing what the reset produces. To that end, I have a few questions that I wonder if you and your amazing colleagues could research:

1. The Governor's Strike team suggested that significant fraud exists in the current historical data. Will there be an effort to restate California claims history to account for invalid claims and benefits data?
2. What is the EDD plan for stating the claims and benefits data for the two weeks during which no actual estimates were published?
3. Part of the reset was designed to permit EDD to produce a plan for eliminating the claims backlog. If backlogged claims have been cleared during the two-week reset period, will they be reported in a single week or spread out over a certain time period?
4. Related to this last question, will EDD announce the magnitude of backlogged claims? Such an announcement would give economic analysts a chance to distinguish changes in UI that are driven by the changes in the economy and those that stem from past but uncleared claims.

Thanks, again, for all of the help you've given us over the past seven months.

Bill

William W. Beach, Ph.D.
Commissioner of Labor Statistics
Bureau of Labor Statistics
U.S. Department of Labor

The expectation from EDD was that initial claims would be paused, leading to a subsequent drop. However, California did not pause continued claims, and the expectation was

[111] E-mail from William Beach, Comm'r of Lab. Statistics, Bureau of Lab. Statistics, U.S. Dep't of Lab., to Amy Faulkner, Calif. Emp't Dev. Dep't (Oct. 15, 2020 3:49 pm).
[112] *Id.*

that since people could still access EDD's online system and reopen claims and certify for benefits, those numbers would remain stable. However, CA Regional ETA Office (California Employment and Training Administration) reported a drop in continued claims data rather than stable numbers.

Figure 3:[113]

Document ID: 0.7.5154.192284-000001

Regular UI/UI Joint	WE 9/19/20	WE 9/26/20	% Change
New/1254	88,429	52,461	-40.7%
AC	141,445	121,275	-14.3%
Weeks Claimed	2,824,054	2,289,875	-18.9%

When EDD asked how the drop in claims made sense/how it occurred, the Department of Labor initiated the email thread and asked to understand how the drop in claims occurred and requested clarification.[114] The clarifying remarks from CA ETA were not provided to the Committee.[115]

Unexplained drops in claims, pauses necessary to administer initial claims, incorrect reports, and missed deadlines—all led to fraud and malfeasance, leaving California ripe for opportunities for bad actors to steal and pilfer the taxpayer.

C. Benefits Not Being Paid Out in a Timely Manner

A common issue not unique to California throughout the COVID-19 pandemic was eligible claimants who desperately needed emergency unemployment insurance benefits, yet their claims we/re not being administered for months past the original submission date. California EDD would infrequently reach out to California ETA to ask about the timeliness of processing claims.

GAO was commissioned by DOL to produce a report regarding "first pay timeliness."[116] GAO asked for the reasoning behind why California's performance was below the acceptable level of performance (ALP) during the time mentioned.[117] The ALP at the time was 87 percent or above; California's ALP was between 27.55 and 31.50 percent. California was simply not adjudicating claims in a timely manner.

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[113] E-mail from Brian Tanimoto, Staff Services Manager, Unemp't. Ins. Branch, Calif. Emp. Dev. Dep't, to Kevin Stapleton, Supervisory Actuary, Div. of Fiscal & Actuarial Serv.s, Off. of Unemp. Ins. (Sept. 29, 2020, 1:08 pm).
[114] *Id.*
[115] Email from Todd Swenson, UI Program Specialist, U.S. Dep't of Lab., to Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp. Dev. Dep't (Aug. 6, 2021, 08:44 am).
[116] *Id.*
[117] *Supra* n.113.

Understaffing and unpreparedness quickly began to be the norm with EDD, as DOL began to question the financial reporting behind the adjudication of the reporting of Resource Justification Model data (RJM). California, along with other states, submits its RJM data to DOL. "The RJM is a data collection instrument that states use to report their Unemployment Insurance (UI) administrative expenditures and staffing hours utilized for the most recently completed fiscal year and to extrapolate that information to project administrative expenses for the upcoming year."[118] DOL had concerns upon seeing the CA RJM data in which California reported expenditures of $620 million for unemployment insurance fraud. The only problem: the funding available to California for unemployment insurance fraud was less than $620 million at the time. DOL questioned how California could be reporting expenditures of $620 million for the UI program when the program did not have $620 million in funding.

California submitted this report to DOL and spent valuable time putting together incorrect information. When DOL reached out to question the reporting, California spent more valuable time trying to understand the mistake it had made, time that could have been spent adjudicating claims for the taxpayer. After multiple days of deliberation, California figured out what had occurred and reported it to DOL. California had taken money allocated to them for the regular UI program and applied it to administrative costs for the PUA and PEUC programs. California had to come to a "fair share" agreement with DOL to determine what funds would be allocated to the administrative costs of PUA and PEUC and what would go back to the regular UI program. Considering how understaffed California said they were, it would be imperative to spend as little time as possible on things unrelated to the adjudication of UI fraud claims. According to documents produced to the Committee, it required more than a week and several staff to these errors and rectifying workbooks does nothing to help ease the workload and only adds to it.[119]

Another example of missed deadlines and mistakes on the part of California came in the form of the upload of PUA transaction files requested by ETA. ETA asked for a sample of PUA transaction files from EDD. EDD emailed ETA on August 26, 2022, and asked for confirmation that the files met the ETA statistical acceptance level. On August 29, 2022, ETA responded that the PUA samples were "good to go."[120] ETA reached out to CA again on August 30, 2022, and asked for PUA's case files and received no response.[121] On September 6, 2022, DOL followed up on the second request and asked for the status of the uploads.[122]

ETA wrote EDD again on September 7, 2022, and made a final request (see below figure) implying that if the request could not be filled, a call from the National Office or potential involvement from the Office of Unemployment Insurance (OUI) leadership would be forthcoming. EDD, after ignoring ETA outreach for nearly two weeks, immediately responded within four minutes of this final email from ETA and cited "access/software/provisioning issues" for the delay in uploading the case files that were "good to go" more than a week prior. When California takes days and days to respond faithfully to the requests of DOL and its own external auditors, it gives the impression that it is being purposefully unresponsive. In this case, ETA had

[118] *ETA Handbook No.410, 6th Edition,* U.S. Dep't of Lab. (July 13, 2022). *available at* https://www.dol.gov/agencies/eta/advisories/handbooks/et-handbook-no-410-6th-edition.
[119] California EDD Production 10, *on file with the Committee.*
[120] California EDD Production 16, *on file with the Committee.*
[121] *Id.*
[122] *Id.*

to state that it received a big nudge from the National Office to receive any response from EDD. Both ETA and EDD wasted time and resources that could have been put to better use serving taxpayers

Figure 4:[123]

Document ID: 0.7.5154.273968

From: Staton, Grecia@EDD
Subject: RE: Urgent Response Requested: FW: Request for Ca ifornia's PUA Case Fi es
To: Ma iaras, Steve - ETA
Cc: Tanimoto, Brian@EDD; Campbe , G enn C. - ETA; Underwood, Diane@EDD
Sent: September 7, 2022 10:19 AM (UTC-07:00)

Hi Steve,

Let me check with the teams to determine the status and ETA. I know we faced some access/software/provisioning issues in order to obtain the case samples, but I believe that has been resolved.

We'll circle back as soon as possible.

Thanks,
Grecia

From: Malliaras, Steve - ETA [redacted]
Sent: Wednesday, September 7, 2022 10:15 AM
To: Staton, Grecia@EDD <[redacted]>
Cc: Tanimoto, Brian@EDD [redacted]>; Campbell, Glenn C. - ETA <[redacted]>; Underwood, Diane@EDD [redacted]>
Subject: Urgent Response Requested: FW: Request for California's PUA Case Files

Grecia

We are looking for a status as soon as possible on the upload of the PUA IP case files.

Please reply as soon as possible.

The National Office coordinators of the PUA IP estimation review project are requesting a status of the case file upload.

As you know, the original upload due date was August 26, 2022. We have sent a message or two to CA EDD since Aug 26 regarding the upload.

We have received another (big) nudge from the National Office regarding the upload.

If we are unable to get the cases submitted, we may be elevating the issue in DOL that may result in a call from the OUI leadership to the state.

Thank you.

Steve

From: Tanimoto, Brian@EDD <[redacted]>
Sent: Tuesday, September 6, 2022 2:28 PM
To: During, Anita - ETA <[redacted]>
Cc: Simien, Alexandra@EDD [redacted]>; Campbell, Glenn C. - ETA <[redacted]>; Swenson, Todd E - ETA <[redacted]>; Cowie, Rhonda M - ETA <[redacted]>; Austin, Dennis - ETA <[redacted]
Subject: RE: Request for California's PUA Case Files

Good afternoon Anita,

ETA wrote back on September 8, 2022, and simply asked EDD for a date that the cases would be uploaded. EDD replied that "data defect" issues had caused the delay and that they would only be able to upload 52 of 190 case files; the remainder of the files would be uploaded on a rolling basis. The question becomes, why did EDD not notify ETA of the issues with their

[123] E-mail from Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp. Dev. Dep't to Steve Malliaris, Emp't. and Training Admin., U.S. Dep't of Lab., (Sept. 7, 2020, 10:19 am).

data and uploads when ETA had initially reached out? To wait until intimations of elevating the matter to higherups at ETA should not be the reason that EDD finally responds to ETA requests. EDD has a duty to adhere to federal oversight from ETA and to do so in a timely manner.

Figure 5:[124]

38 of 250 — Automatic Zoom

From: Ma iaras, Steve - ETA
Subject: RE: Urgent Response Requested: FW: Request for Ca ifornia's PUA Case Fi es
To: Staton, Grecia@EDD
Cc: Tanimoto, Brian@EDD; Campbe , Genn C. - ETA; Underwood, Diane@EDD
Sent: September 8, 2022 3:36 PM (UTC-07:00)

Grecia,

Thanks again for the prompt updates.

Please provide a date that you believe all 190 cases will be uploaded.

Thanks

Steve

From: Staton, Grecia@EDD [redacted]
Sent: Thursday, September 8, 2022 2:33 PM
To: Malliaras, Steve - ETA <[redacted]>
Cc: Tanimoto, Brian@EDD [redacted]; Campbell, Glenn C. - ETA <[redacted]>; Underwood, Diane@EDD [redacted]
Subject: RE: Urgent Response Requested: FW: Request for California's PUA Case Files

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Hi Steve,

The teams have unfortunately faced a few provisioning and data defect hurdles which have caused a delay in rolling up these cases by the date requested. The data defect was cleared with DOL on Monday, August 29th. That being said, we are able to begin sending 52 of the 190 case files in the requested package format on a rolling basis beginning tomorrow. We are working vigorously to send all 190 cases over as soon as, and as expeditiously as possible.

Thanks,
Grecia

From: Malliaras, Steve - ETA [[redacted]]
Sent: Thursday, September 8, 2022 10:42 AM
To: Staton, Grecia@EDD [redacted]
Cc: Tanimoto, Brian@EDD [redacted]; Campbell, Glenn C. - ETA <[redacted]>; Underwood, Diane@EDD [redacted]
Subject: RE: Urgent Response Requested: FW: Request for California's PUA Case Files

Grecia, Diane and Brian,

Any update?

Thanks.

[124] E-mail from Steve Malliaris, Emp. and Training Admin., U.S. Dep't of Lab to Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp't. Dev. Dep't (Sept. 8, 2020, 3:36 pm).

Figure 6:[125]

Document ID: 0.7.5154.228634

From: Ma iaras, Steve - ETA
Subject: RE: Urgent Response Requested: FW: Request for Ca ifornia's PUA Case Fi es
To: 'Staton, Grecia@EDD'
Cc: 'Tanimoto, Brian@EDD'; Campbe , G enn C. - ETA; 'Underwood, Diane@EDD'
Sent: September 9, 2022 12:10 PM (UTC-07:00)

Grecia,

1. Was CA able to upload the 52 cases?
2. Is there a target date for all 190 to be uploaded?

Thank you.

Steve

From: Malliaras, Steve - ETA
Sent: Thursday, September 8, 2022 3:36 PM
To: Staton, Grecia@EDD [redacted]
Cc: Tanimoto, Brian@EDD [redacted]; Campbell, Glenn C. - ETA <[redacted]>; Underwood, Diane@EDD [redacted]>
Subject: RE: Urgent Response Requested: FW: Request for California's PUA Case Files

Grecia,

Thanks again for the prompt updates.

Please provide a date that you believe all 190 cases will be uploaded.

Thanks

Steve

From: Staton, Grecia@EDD [redacted]
Sent: Thursday, September 8, 2022 2:33 PM
To: Malliaras, Steve - ETA <[redacted]>
Cc: Tanimoto, Brian@EDD [redacted]; Campbell, Glenn C. - ETA <[redacted]>; Underwood, Diane@EDD [redacted]
Subject: RE: Urgent Response Requested: FW: Request for California's PUA Case Files

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Hi Steve,

The teams have unfortunately faced a few provisioning and data defect hurdles which have caused a delay in rolling up these cases by the date requested. The data defect was cleared with DOL on Monday, August 29th. That being said, we are able to begin sending 52 of the 190 case files in the requested package format on a rolling basis beginning tomorrow. We are working vigorously to send all 190 cases over as soon as, and as expeditiously as possible.

At this point, EDD was 13 days past the original deadline. EDD wrote to ETA on September 17, 2022, to confirm that all 190 cases had been uploaded. The original deadline was stated as August 26, 2022. To spend over three weeks going back and forth with ETA about uploading the case files and completing a simple task as uploading cases files for three weeks after the deadline, regardless of data defects, is unacceptable. It is a waste of resources for EDD employees to spend time emailing with ETA about deadline extensions and issues with data uploads when EDD employees should be dedicating their efforts to adjudicating claims from

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[125] E-mail from Steve Malliaris, Emp. and Training Admin., U.S. Dep't of Lab to Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp't. Dev. Dep't (Sept. 9, 2020, 12:10 pm).

applicants. EDD finally confirmed upload of the PUA files nearly a month after the deadline date.

Figure 7:[126]

Document ID: 0.7.5154.274763

From: Staton, Grecia@EDD
Subject: Up oad Comp ete: Ca ifornia PUA Cases
To: Swenson, Todd E - ETA; Ma iaras, Steve - ETA
Cc: Underwood, Diane@EDD
Sent: September 17, 2022 1:52 PM (UTC-07:00)

Good afternoon Todd, and, Steve,

I'm confirming that we have uploaded all 190 PUA Cases for the PUA Improper Payment review. Once more, California sincerely apologizes for any inconvenience this delay may have caused.

Please let us know if you have any questions.

Thank you,

G r e c i a   S t a t o n
Deputy D rector
Unemp oyment nsurance Branch, M C 39
[redacted]

State of Ca forn a
Employment Development Department
PO Box 826880, Sacramento, CA 95814
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The response to the KPMG Audit from DOL serves as yet another example of California's downright inability to abide by any deadlines or measures of accountability set nationally, in which other states were able to abide by it. On October 18, 2022, KPMG followed up on its initial letter of audit from October 6, 2022, and asked that the request be treated as urgent and high priority.

[126] E-mail from Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp. Dev. Dep't to Steve Malliaris, Emp't. and Training Admin., U.S. Dep't of Lab. and Todd Swenson, UI Program Specialist, U.S. Dep't of Lab., (Sept. 17, 2020, 1:52 pm).

Figure 8:[127]

Document ID: 0.7.5154.134688

From: Swenson, Todd E - ETA
Subject: RE: Response Requested Today: State UTF Confirmations to KPMG
To: Diane Underwood ([redacted]); Staton, Grecia@EDD
Cc: Region6UI; Ma iaras, Steve - ETA
Sent: October 18, 2022 8:35 AM (UTC-07:00)
Attached: CA UTF 9.30 Confirmations SIGNED.pdf

Hi, Grecia and Diane.

This a high priority and we requesting a response by 2 PM today.

Thank you.
Todd Swenson
UI Program Specialist
USDOL-ETA-OUI-RO6-DWS

From: Malliaras, Steve - ETA <[redacted]>
Sent: Tuesday, October 18, 2022 7:18 AM
To: Diane Underwood ([redacted]) <[redacted]>; Staton, Grecia@EDD <[redacted]>
Cc: Swenson, Todd E - ETA <[redacted]>; Region6UI <[redacted]>
Subject: Response Requested Today: State UTF Confirmations to KPMG

Diane,

We are requesting that you respond to this email today.

KPMG indicates that they have not received a response to the October 6, 2022 letter (see attached) from Jim Garner to your agency regarding delinquent reports to be sent directly to KPMG.

We deem this as an urgent, high priority request.

If you did respond to the auditor, please inform us of the date the response was sent and to whom (it was to be sent to Mr. Coats at KPMG).

Thanks.

Steve

---

127 Email from Todd Swenson, UI Program Specialist, U.S. Dep't of Lab., to Diane Underwood, Div. Chief, Unemp't. Branch, Calif. Emp. Dev. Dep't and Grecia Staton, Deputy Dir., Unemp. Branch, Calif. Emp't. Dev. Dep't (Oct. 18, 2022, 08:35 am).

Figure 9:[128]

From: Underwood, Diane@EDD
Subject: RE: Response Requested Today: State UTF Confirmations to KPMG
To: Ma iaras, Steve - ETA; Swenson, Todd E - ETA
Cc: Region6UI; Staton, Grecia@EDD; Tanimoto, Brian@EDD
Sent: October 18, 2022 12:21 PM (UTC-07:00)
Attached: CA UTF 9.30 Confirmations SIGNED.PDF, RE_ Response Requested Today_ State UTF Confirmations to KPMG.em

Hello Steve and Todd,

Thank you for bringing this request to my attention. It appears that the October 6, 2022, letter was sent via traditional mail and it has not made it to me as of yet. May we request that future letters be sent via email?

In the meantime, I have notified our reporting team of the request and we are actively working to collect the reports to send to KPMG no later than EOD on Friday, October 21, 2022.

Please let me know if you have any questions.

Thank you,
Diane

Diane Underwood
D v s on Ch ef
Unemp oyment nsurance Support D v s on, M C #40
Unemp oyment nsurance Branch
[redacted]

State of Ca forn a
Employment Development Department
PO Box 826880, Sacramento, CA 95814
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Figure 10:[129]

From: Swenson, Todd E - ETA
Subject: RE: Response Requested Today: State UTF Confirmations to KPMG
To: Underwood, Diane@EDD
Cc: Region6UI; Staton, Grecia@EDD; Tanimoto, Brian@EDD; Ma iaras, Steve - ETA
Sent: October 18, 2022 4:28 PM (UTC-07:00)

Hi, Diane.

We'll work with the National Office to ensure they send these types correspondences via email. We have communicated your anticipated submission date. If you're able to send earlier, I'm sure it would be appreciated.

Thank you.
Todd Swenson
UI Program Specialist
USDOL-ETA-OUI-RO6-DWS

[128] Email from Diane Underwood, Div. Chief, Unemp't. Branch, Calif. Emp. Dev. Dep't to Steve Malliaris, Emp't. and Training Admin., U.S. Dep't of Lab. and Todd Swenson, UI Program Specialist, U.S. Dep't of Lab. (Oct. 18, 2022, 12:21 pm).
[129] Email from Todd Swenson, UI Program Specialist, U.S. Dep't of Lab., to Diane Underwood, Div. Chief, Unemp't. Branch, Calif. Emp. Dev. Dep't (Oct. 18, 2022, 04:28 pm).

On November 9, 2022, the DOL OUI emailed EDD to inquire how soon California intended to provide the requested information for the external audit that DOL had contracted KPMG to perform. California wrote back and said it would take care of this request "ASAP."

By November 14, 2022, DOL had still not received the requested information.

Figure 11:[130]

Document ID: 0.7.5154.121201

From: Beebe, Miche e E - ETA
Subject: RE: Audit Request for Information
To: Farias, Nancy@EDD; Staton, Grecia@EDD
Cc: Truong, Le@EDD; Underwood, Diane@EDD; No an, Sarah@EDD; Tanimoto, Brian@EDD; Stap eton, Kevin - ETA; Ma iaras, Steve - ETA; Swenson, Todd E - ETA
Sent: November 14, 2022 5:00 AM (UTC-08:00)

Good Morning Nancy,

Is it possible for CA to submit at least a partial response while the other questions are being worked out?

Thanks,
Michelle

From: Farias, Nancy@EDD [redacted]
Sent: Wednesday, November 9, 2022 3:59 PM
To: Beebe, Michelle E - ETA <[redacted]; Staton, Grecia@EDD [redacted]
Cc: Truong, Le@EDD [redacted]; Underwood, Diane@EDD [redacted]; Nolan, Sarah@EDD [redacted]; Tanimoto, Brian@EDD [redacted]; Stapleton, Kevin - ETA <[redacted]>; Malliaras, Steve - ETA <[redacted]>; Swenson, Todd E - ETA <[redacted]
Subject: RE: Audit Request for Information

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Hi Miche e,

We wi get this taken care of ASAP.

Nancy

From: Beebe, Michelle E - ETA [redacted]
Sent: Wednesday, November 9, 2022 12:24 PM
To: Farias, Nancy@EDD [redacted]; Staton, Grecia@EDD [redacted]
Cc: Truong, Le@EDD [redacted]; Underwood, Diane@EDD [redacted]; Nolan, Sarah@EDD [redacted]; Tanimoto, Brian@EDD [redacted]; Stapleton, Kevin - ETA <[redacted]>; Malliaras, Steve - ETA <[redacted]>; Swenson, Todd E - ETA <[redacted]>
Subject: Audit Request for Information

Hi Nancy and Grecia,

I m following up on the KPMG audit request (letter attached). KPMG is seeking information with respect to their external audit of the U.S. Department of Labor and hasn t yet received the requested information from California.

Any help you can provide in moving this along is much appreciated.

Thanks,
Michelle
--

[130] Email from Michelle Beebe, U.S. Dep't of Lab., to Nancy Farias, Dir. Calif. Emp. Dev. Dep't and Grecia Staton, Deputy Dir., Unemp't. Branch, Calif. Emp't. Dev. Dep't (Nov. 14, 2022, 5:00 am).

On that same day, DOL, elevated the request to the EDD director and asked for any partial response to the requested information. Later that same day, EDD wrote back and stated it was working with KPMG on the audit and stated that it would provide a response by the end of the day.

California eventually asked for an extension on November 14, 2022, for the report and asked to omit information for certain sections of the report they felt did not apply to them. Their request for an extension, as shown in the exhibit below, was denied. The resolution of this back and forth between DOL, KPMG, and California was not included in the documents provided to the Committee, so the date of resolution is unknown. However, KPMG sent its letter on October 6th and California was still working on its response by November 14th—and asking for an additional extension to November 18th (Figure 26).

Figure 12:[131]

Document ID: 0.7.5154.248511

From: Baudendiste , Che sea@EDD
Subject: RE: CA ETA 9178 Reports (QE 9/30/22)
To: Ramirez, Yvette@EDD; Region6UI
Sent: November 14, 2022 5:25 PM (UTC-08:00)

To follow up on the request below, can CA skip the ETA 9178 for the Fraud programs for UIPL 28-20, change 4 for quarter ending September 30, 2022 since we did not receive funding for this until September 30, 2022? We will be sure to submit a report for next quarter. Let me know if this is ok.

Thank you!
Chelsea Baudendistel

From: Ramirez, Yvette@EDD
Sent: Monday, November 14, 2022 2:56 PM
To: Region6UI <[redacted]>
Cc: Baudendistel, Chelsea@EDD [redacted]
Subject: RE: CA ETA 9178 Reports (QE 9/30/22)

Hello Andrew and Regional Office,

CA would like to request an extension for the ETA 9178-F Quarterly Report, specifically for the Fraud PUA, PEUC, and FPUC of UIPL 28-20, **Change 4** programs. Can we extend the deadline back to Friday, November 18, 2022?

We apologize for the short notice for this request. Please let us know if this is possible.

Thank you again for approving the below request for the 9178-P reports.

Thank you,
Y v e tt e R a m i r e z
Staff Serv ces Manager
F sca Programs D v s on, M C 20
Adm n strat on Branch
[redacted]

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From: Region6UI [redacted]
Sent: Monday, November 7, 2022 3:31 PM
To: Baudendistel, Chelsea@EDD [redacted] Region6UI <[redacted]
Cc: Ramirez, Yvette@EDD [redacted]
Subject: RE: CA ETA 9178 Reports (QE 9/30/22)

Hello,

We can't extend the 45-day due date since that's set Nationally, but submitting the 9178-P reports by 11/18 is fine by us Regionally.

As a quick follow-up from last quarter's 9178-Ps, the PUA Admin, PEUC Admin, and MEUC Admin funds were all fully obligated by 6/30/22. If you mark the QE 9/30/22 PUA, PEUC, and MEUC 9178-P reports as "complete this quarter" in section C of the report, then you won't have to submit those 9178-Ps for future quarters unless new SBR funding is issued to CA (such as the UIPL 16-20 Change 7 PUA Admin funds that are planned to be issued by 12/31/22.) It's not

[131] Email from Chelsea Baudendistel, Calif. Emp. Dev. Dep't to Yvette Ramirez, Staff Serv.s Manager, Calif. Emp't. Dev. Dep't (Nov. 14, 2022, 5:25 pm).

Once again, the question is raised: how does wasting precious time on administrative matters affect the ability of California to process and adjudicate UI claims in a timely manner while also ensuring that no fraudulent claims are being approved. Being understaffed is one element of the equation but being underprepared is another.

In its duty to abide by federal deadlines and be accountable for providing information and processing claims effectively and efficiently, California failed. Being more prepared for the vast number of claims that many other states anticipated would come their way and potentially taking on more staff at the beginning of the pandemic are both ways California could have adjusted. By the time the KPMG audit was ongoing, it was late 2022. This was nearly three years after the onset of the pandemic. If California realized it was understaffed at the beginning of the pandemic, it would have had the time and resources to hire staff to solve this problem. Instead, California regularly used the understaffing excuse as a reason why it could not abide by standards set by GAO, DOL, California EDD, and KPMG.

D. Issues Unique to CA

While many states were ill-prepared to face the uncertainty and unprecedented nature of the COVID-19 pandemic, California was arguably the most unprepared state in the United States. A Cal Matters investigation found that the EDD was especially vulnerable to fraud and shortcomings because of delayed reforms, ignored warnings of potential weak points in years past, and the waiving of requirements that made the UI fraud programs a target for fraud and malfeasance. California was producing so many plastic cards for unemployment insurance benefits that BOA, its contracted card processor, warned California that it may run out of plastic to produce the cards.[132]

For years, California had a system that lagged that of other states with smaller budgets and had not undergone reform for decades prior to COVID-19. California was one of only three states that did not offer a direct deposit option for UI claims and was one of only four states to not have changed its UI tax system since the 1980s, which led to a massive and rapid accrual of debt to the federal government. California also did not cross-reference UI claims with prison records, one of a few states to not do so, exposing themselves to completely unnecessary and preventable fraud.[133] State watchdogs also stated that California was slow to implement recommended fraud reforms relative to other states and when it did so, crafted a fraud recognition approach that was so enforced so broadly that it ended up encapsulating employed workers in fraud claims when they should not have been so.[134]

The California state auditor noted that EDD had fallen behind federal standards for administering payments in a timely manner and standards that would have accelerated approvals on UI fraud in a safe and efficient manner. The California state auditor also noted that EDD had been behind such federal standards since 2002, eighteen years before the COVID-19 pandemic. Scammers were able to move through the system with ease and California began to accrue a great number of UI claims that led to a massive backlog. It took California many months before it realized the fraud that was coming through and the loopholes within their system. California

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[132] *Supra* n.91.
[133] *Id*.
[134] *Supra* n.94.

had previously stopped efforts in the 2010s to prepare for any type of internet online attack or fraud, something that proved incredibly detrimental during the pandemic.

EDD tried to restrict the fraud coming through and consequently cut off benefits for over three million people who the EDD stated had not sent in the proper paperwork, despite the EDD having piles of unopened mail that very well could have contained the missing documentation. EDD also made decisions that potentially elevated the ability of scammers to commit fraud, sending out over 38 million mailing that contained full Social Security numbers despite making declarations years prior that the practice would cease, something that other states had also committed to.[135] Reports from the Legislative Analyst's office of California, a nonpartisan institute, determined that over five million Californians had unemployment payments unnecessarily delayed and that at least one million Californians were eligible for payments but were denied regardless. Unprocessed claims reached a high of 1.6 million and some claims were frozen because EDD did not have direct deposit, and the plastic credit cards were in short supply.[136]

EDD went with essentially a pay and chase approach to processing unemployment insurance claims. EDD would approve claims quickly and then after the fact take the time to verify the eligibility of the claims themselves. California took over half a year to institute ID.me technology that would use picture identification and video chats to confirm the identity of a prospective applicant. EDD signed an agreement with Pondera, a fraud detection software company, to help update its fraud detection software, despite abandoning plans to institute the same software five years prior.[137] EDD overreacted once again and instituted the technology in a way that prevented real and eligible claims from coming through, marking them as fraud. Former EDD manager Steve Sheehan stated that EDD did not put safeguards in place and that they were an easy target for fraud.[138] Fraud in the state affected even those at the highest levels. Governor Newsom's staff at one point emailed LWDA Secretary Julie Su to notify her that an individual was using the governor's Social Security number to file fraudulent claims.[139] Another individual using the name Mr. Poopy Pants on his official application also received an approved claim.[140]

EDD was such a well-known target of fraud that it reached mainstream media and music. Fontrell Antonio Baines, a.k.a. "Nuke Bizzle, of Memphis, Tennessee rapped about successfully getting rich from filing fraudulent UI claims in California in the music video "EDD" posted on YouTube[141] and Instagram.[142] Baines rapped, "I just hit a lick of EDD" and "go[ing] to the bank with a stack of these," while waving envelopes he received from EDD that had contained debit

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135 *Id*.
136 *Id*.
137 *Id*.
138 *Id*.
139 *Id*.
140 *Id*.
141 ShotOff & Nuke Bizzle, *EDD*, YouTube (Oct. 22, 2020), https://youtu.be/K0ck7hTsug8?si=X765jUHAE61YCqJ.
142 News Release, Dep't of Justice, U.S. Attorney's Office, Central District of Calif., Rapper Who Bragged About COVID-Related Jobless Benefits Scam Agrees to Plead Guilty to Federal Fraud and Firearm Charges (July 6, 2022), *available at* https://www.oig.dol.gov/public/Press%20Releases/Rapper_who_Bragged_About_COVID_Related_Jobless_Benefits_Scam_PLeads_Guilty_Fed_Fraud_Firearms_Ch.pdf.

cards loaded with UI benefits. He boasted about how he was doing "my swagger for EDD" by exploiting the vulnerabilities in the PUA program. Mr. Baines filed 92 fraudulent applications using stolen PII and addresses he had access to in Hollywood Hills and Koreatown. Once EDD approved the applications, he used his access to the addresses to collect the EDD envelopes and debit cards. "EDD" the video eventually drew the attention of law enforcement and Mr. Baines admitted to filing the false claims resulting in attempted losses to EDD and the U.S. Treasury of approximately $1,256,108 and actual losses of at least $704,760. Mr. Baines, who had previously been convicted of felonies in both Tennessee and Nevada, also admitted to possessing an illegal semi-automatic pistol and 14 rounds of ammunition when questioned. Fontrell Antonio Baines pled guilty to one count of mail fraud and one count of unlawful possession of a firearm and ammunition by a convicted felon.[143]

VIII. Pennsylvania

A. Unprepared for the Increase in Pandemic UI Claims

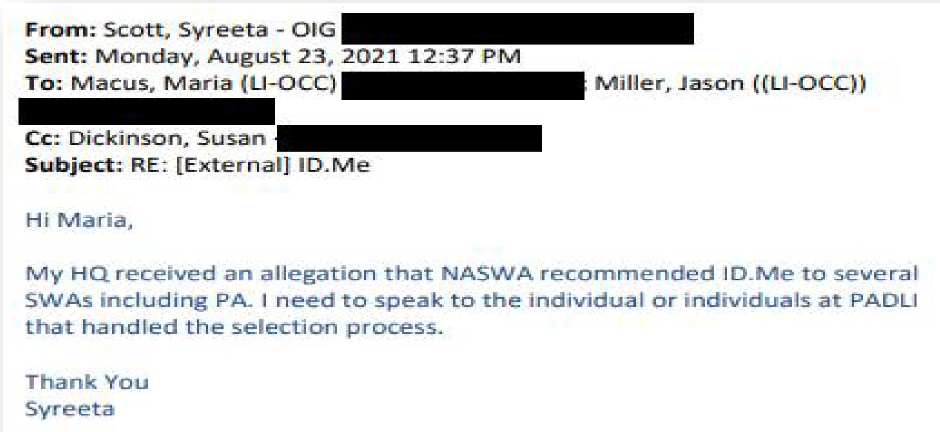
In April 2020, after the onset of the pandemic, the Commonwealth of Pennsylvania launched the PUA program.[144] This led to hundreds of thousands of fraudulent claims, many filed outside US borders.[145] The Commonwealth responded by requiring PUA applicants to upload identity verification documents on their online PUA dashboards, but the system gravely lacked staffing sufficient to review and approve the documents.[146] To account for deficient identity verification services and a lack of staffing, the Commonwealth contracted with ID.me, a security vendor that verifies identities by approving government IDs and other documentation uploaded to its computer app.[147] On November 30, 2020, the state sent roughly 400,000 messages to PUA applicants using the newly acquired ID.me software to verify applicant identities. Only 12.5 percent of applicant identities were ever verified, and of the 87.5 percent that were not verified, Pennsylvania could not separate fraudulent claims from legitimate ones.[148] The Commonwealth did not issue hundreds of thousands of PUA disqualification determinations for failure to verify identity until September 2021.

Pennsylvania's UC program updated its digital identification services platform using "Benefits Modernization" ("BenMod") on June 8, 2021.[149] The UC program, too, experienced an onslaught of fraudulent claims and contracted with ID.me to remedy the program's deficient identification services and lack of staffing.[150] On September 15, 2021, the Commonwealth's UC program system failed as a result of nearly 13,000 attempts to file a claim using ID.me.[151] It was unclear how many of the attempts were fraudulent claims and how many were legitimate

143 *'EDD' Rapper who bragged about unemployment fraud sentenced to 6 years in prison*, FOX 11 Los Angeles (Dec. 07, 2022).
144 Sharon Dietrich, *ID.me Presents Barriers for Low Income People Seeking Unemployment Insurance and Other Government Benefits*, Community Legal Services of Philadelphia (Nov. 2020).
145 *Id.*
146 *Id.*
147 *Id.*
148 *Id.*
149 *Id.*
150 *Id.*
151 *Id.*

applications.[152] The DOL OIG investigated the procurement of ID.me technology because of an allegation that the National Association of State Workforce Agencies influenced the selection process.[153] Ultimately, the DOL OIG did not find sufficient evidence to substantiate the claim.

Figure 13: Email re Potential Investigation of PADLI's ID.me Selection Process[154]



From: Scott, Syreeta - OIG [redacted]
Sent: Monday, August 23, 2021 12:37 PM
To: Macus, Maria (LI-OCC) [redacted] Miller, Jason ((LI-OCC))
[redacted]
Cc: Dickinson, Susan [redacted]
Subject: RE: [External] ID.Me

Hi Maria,

My HQ received an allegation that NASWA recommended ID.Me to several SWAs including PA. I need to speak to the individual or individuals at PADLI that handled the selection process.

Thank You
Syreeta

Pennsylvania failed to implement a modern digital identification service to offset the spike in claims during the pandemic, reduce fraud, and provide UI benefits more efficiently. Pennsylvania blamed ID.me and the Commonwealth's outdated digital identification services as a rationale for its lack of preparation to manage pandemic UI programs, ostensibly leading to billions of dollars in lost taxpayer funds.

B. Failure to Cross-reference Claims to Prevent Fraud

Pennsylvania failed to use known databases or systems to cross-reference claims for potential fraud. This led to multiple benefits checks being sent to the same address, checks being sent to claimants serving time in prison, and multiple checks being sent to claimants using fraudulently attained SSNs and government identification.

Under the Payment Integrity Information Act of 2019 (PIIA), improper payment of UI funds is any payment that should not have been made or that was made in an incorrect amount.[155] In Pennsylvania, a "fault overpayment" is an improper payment to which the Commonwealth determines the individual intentionally received a payment or a portion of a payment to which they were not entitled.[156] To prevent fault payments and reduce fraud, it is

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[152] *Id.*
[153] Email from Syretta Scott, U.S. Dep't of Lab. Off. of Inspector Gen., to Maria Macus, et al., Deputy Chief Counsel, Pa. Dep't of Lab. & Indus. Off. of Chief Counsel (Aug. 23, 2021, 12:37 am).
[154] *Id.*
[155] U.S GOV'T ACCOUNTABILITY OFF., GAO-22-105162, UNEMPLOYMENT INSURANCE TRANSFORMATION NEEDED TO ADDRESS PROGRAM DESIGN, INFRASTRUCTURE, AND INTEGRITY RISKS, (June 7, 2022).
[156] *Overpayment of Benefits*, Pa. Dep't of Lab. & Indus. Off. of Unemp. Compensation, *available at* https://www.uc.pa.gov/unemployment-benefits/overpayment-of-benefits/Pages/default.aspx.

imperative that the Commonwealth cross-reference claims for UI benefits against existing databases to determine the accuracy of payments.

An ETA compliance audit of Pennsylvania's pandemic UI programs found that Pennsylvania failed to crossmatch UI claims with the National Directory of New Hires (NDNH) database. The NDNH database contains personal and financial data on nearly every working American, even those receiving UI benefits.[157] In response to this finding, Pennsylvania admitted to not initially crossmatching UI claims with the NDNH, resulting in a failure to retrieve NDNH data to confirm UI payments.[158] Pennsylvania only began developing a plan to begin crossmatching claims with NDNH in late 2022. This occurred after Pennsylvania *twice* attempted to ignore ETA's corrective action in earlier compliance audits based on the crossmatching being too difficult, not beneficial, and not relevant. ETA reminded Pennsylvania that this crossmatching was a requirement, not a suggestion.

Figure 14: Finding Status – PA Response to Finding 11[159]

Pennsylvania Response [10/28/2022]: Pennsylvania contacted the NDNH team to gather all federal employers' names and FEIN numbers to run a report. We have started the process to ensure federal new hires reported on NDNH have not collected PUA benefits, The NDNH team was unable to provide NDNH data from March 2020 to October 2020; however, we were able to retrieve data from our mainframe system from November 10, 2020 to June 2021. The modernized system went live June 8, 2021. Pennsylvania also has access to the NDNH files from June 2021 to September 2021, and plans to filter those files for federal employers and crossmatch any hits against our standalone PUA system.

ETA's audit also found that Pennsylvania paid benefits without fact-finding or adjudicating issues reported on PUA initial claims.[160] Documents show that at least a portion of these fault overpayments were distributed to incarcerated individuals.[161]

[157] Cong. Research Serv., *The National Directory of New Hires: An Overview* (Jan. 19, 2024) *available at*, https://crsreports.congress.gov/product/pdf/RS/RS22889.
[158] Emp't and Training Admin., CARES Act Programs Grants Compliance Findings for the Commonwealth of Pennsylvania (Dec. 2022).
[159] *Id*.
[160] *Supra* n.158.
[161] E-mail from Rebecca Keen, Acting Director, Office UC Benefits Policy, to Mark Basile, et. al., Fed. Project Officer, Employment and Training Administration U.S. Dep't of Lab. (Nov. 22, 2022, 11:01 am); *see also* Transcript of Oral Interview, Pa. Dep't of Lab. & Indus. (Aug. 31, 2022).

Figure 15: Record of Oral Interview 08/31/22[162]

Record of Oral Interview 8/31/22

REBUTTAL: You completed an incarceration form, indicating that you were not incarcerated?
a. I was incarcerated, just not when the man I talked to said. I did not file while I was in prison.
In which facility were you incarcerated?
a. Delaware County
What is the name of the facility? Delaware County Prison
Does it have a more specific name?
a. No.
What about George W Hill Correctional facility?
a. Oh, yeah, that's it.
REBUTTAL: You said that you did not file while in prison, did you give your information to someone so he/she could file for you?
a. Technically, yes.
Who did you give your information to?
a. A friend of mine.
What is the friend's name?
a. Deanna
Last Name?
a. I don't know.
You gave your information to someone, and you don't know the last name?
a. It maybe

Documents produced to the Committee from Pennsylvania demonstrate that the Commonwealth's failure to cross-reference databases resulted in a proliferation of schemes to defraud the government of UI benefits. In one example, a tipster contacted PADLI to report an acquaintance running a UI scam using PII from deceased individuals and posting on social media about how much money he was receiving from the fake UI claims.[163]

Figure 16: 10/07/2020 Email re Report of Fraud[164]

From: Jack, Linda R <[redacted]>
Sent: Wednesday, October 7, 2020 1:22 PM
To: Feeser, Charlene <[redacted]>
Subject: Report of Fraud

Charlene,

We received a call from a woman by the name of [redacted]. I have not been able to locate her as being registered in the PA CareerLink system, and she stated she didn't want her name made common knowledge in this report, so I have no other information on her other than a phone number where she may be reached [redacted].

She called to report that an acquaintance by the name of [redacted] is running an ongoing scam with others whereby they are using the names of deceased individuals to file for (and receive) UC benefits. She claims he has never worked, but has been posting and bragging about how much money he is receiving from these fake unemployment claims.

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162 *Id.*
163 E-mail from Linda Jack, Program Supervisor, Pa. Dep't of Lab. & Indus., to Charlene Feeser, Exec. Sec'y, Pennsylvania Treasury (October 7, 2020, 01:22 pm EST).
164 *Id.*

Associates of the fraudster allegedly purchased cars and houses with benefits fraudulently obtained from PADLI. The tipster also stated that the alleged fraudster was arrested for a DUI and fraudulent UC payment cards were found at the scene. The tipster had previously attempted to contact PADLI's UC Fraud line, but no one answered, and the voice mail box was full, so she was unable to leave a message.

During the pandemic, Pennsylvania's failure to cross-reference a resourceful database, such as the NDNH database, resulted in the Commonwealth losing at least $6 billion in UI benefits to identity and cyber thieves.[165] Emails responsive to the Committee's document request demonstrate that these overpayments were allocated to incarcerated individuals and fraudulent scammers that could have been prevented if PADLI had implemented basic safeguards before approving claims instead of only beginning to more than one year after pandemic UI programs had expired.

C. No Transparency or Accountability

Pennsylvania also lacked transparency and accountability by not taking corrective action to resolve issues found in compliance reviews conducted by ETA. ETA reviewed pandemic UI claims in Pennsylvania from October 26, 2020 – March 2, 2022.[166] ETA determined whether Pennsylvania's UI-related programs followed all state and federal laws, regulations, policies, written agreements, and other grants management requirements and made recommendations to improve the operation of UI-related programs under the CARES Act, CAA, ARPA, and other guidance.[167] ETA first reported the findings on Pennsylvania's UI programs in a March 8, 2022, letter to PADLI Secretary Jennifer Berrier.[168] ETA's findings are shown below.

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[165] KDKA News, *State Defends Actions in Loss of Billions of Dollars in Pandemic Unemployment Relief*, CBS Broadcasting Inc. (Mar. 3, 2022).
[166] *Id.*
[167] *Supra* n.163.
[168] Letter from Jennifer Friedman, Acting Reg'l Adm', U.S. Dep't of Lab., to Jennifer Berrier, Sec'y, Pa. Dep't of Lab. & Indus. (Mar. 8, 2022), *on file with the Committee*.

Figure 17: ETA Compliance Review Findings in Letter to PADLI[169]

ETA's review resulted in 15 findings and 2 areas of concern:

Finding One: Pennsylvania did not provide sufficient evidence to review MEUC casefiles

Finding Two: Pennsylvania has not fully implemented the MEUC program

Finding Three: Pennsylvania has not implemented the expanded PUA program eligibility provisions

Finding Four: Pennsylvania is withholding PUA payments in violation of the requirements of the Social Security Act (SSA)

Finding Five: Pennsylvania did not conduct required quarterly wage checks on PUA

Finding Six: Pennsylvania paid PEUC on an ineligible claim

Finding Seven: Pennsylvania issued duplicate PUA and PEUC payments

Finding Eight: Pennsylvania paid PEUC and Extended Benefits (EB) beyond the claimant's benefit year end date

Finding Nine: Pennsylvania did not pay PUA benefits due to a claimant for eligible weeks

Finding Ten: Pennsylvania paid benefits without fact-finding or adjudication of issues reported on PUA initial claims

Finding Eleven: Pennsylvania failed to crossmatch UI claims with the National Directory of New Hires (NDNH)

Finding Twelve: Inability to submit complete and accurate 227 FPUC or PEUC reports

Finding Thirteen: Pennsylvania did not apply the required 15 percent penalty on PUA fraud overpayments

Finding Fourteen: Pennsylvania did not apply the required 15 percent penalty on FPUC, MEUC, or PEUC fraud overpayments

Finding Fifteen: Pennsylvania failed to provide required Return-to-Work notifications to claimants who refuse to return to work or to accept an offer of suitable work without good cause

Area of Concern One: Pennsylvania's PUA initial claim application did not request sufficient information to properly establish whether the claimant was eligible for backdating

Area of Concern Two: Pennsylvania's integrity procedures do not sufficiently guard against potential fraud

Each finding was designated a corrective action that advised PADLI on resolving the reported issues.[170] On June 21, 2022, DOL sent a follow-up letter informing PADLI that the Commonwealth's action was sufficient to resolve only three findings.[171] Pennsylvania did not

[169] *Id.*
[170] *Supra* n.168.
[171] Letter from Karen Pasquale, Div. Chief, Dep't of Lab., to Jennifer Berrier, Sec'y, Pa. Dep't of Lab. & Indus. (June 21, 2022), *on file with Committee*.

resolve seven of the remaining twelve findings until October 28, 2022, and five were never resolved as of the last version of the findings produced to the Committee.[172]

IX. New York

A. Disaster in New York

Like other states, the State of New York experienced an increased demand for temporary UI benefits when the COVID-19 pandemic resulted in non-essential businesses closing statewide beginning March 20, 2020. Expanded eligibility and extended benefits, combined with less stringent requirements to qualify, led to an increased number of claims. According to the Office of the New York State Comptroller, the New York State Department of Labor (NYSDOL) experienced massive fraud and improper payments in the UI program, especially PUA, largely due to identity theft. New York's estimated fraud rate in the state's UI program increased to almost 18 percent for the period from April 1, 2021, to March 31, 2022, compared to around five percent two years earlier.[173] From April 1, 2020, through March 31, 2021, New York made 218.2 million UI payments totaling more than $78 billion.

Prior to the pandemic, NYSDOL exceeded the ten percent annual improper payment rate required by the Payment Integrity Information Act of 2019; NYSDOL reported estimated improper payment rates of more than 13 percent and more than ten percent in the two fiscal years prior to the pandemic. At the height of the pandemic, NYSDOL reported improper payment rates of more than 21 percent in FY 2020-2021 (representing only three quarters of the year's data) and more than 28 percent in FY 2021-2022. The estimated improper payment rate for FY 2022-2023 is more than 18 percent, which is well above the ten percent rate required by the Payment Integrity Information Act.

NYSDOL officials did not heed warnings going as far back as 2010,[174] that the UI system was antiquated, difficult to maintain, and unable to handle surges in claims, nor did the state adjust to the new pandemic relief laws and temporary UI programs. The New York State Comptroller issued a 2015 report[175] recommending modernization and the NYSDOL's response indicated a long-term plan.[176] However, the State Comptroller found that NYSDOL ignored the warnings and did not modernize its IT system prior to the pandemic. The request for a proposal to redesign the IT system was not issued until June 2017, and the contract was not awarded until 2019, with development of the new IT system expected to continue throughout the pandemic. The new system was expected to be implemented in the fall of 2023; full implementation was

[172] Emp. and Training Admin., CARES Act Programs Grants Compliance Findings for the Commonwealth of Pennsylvania (Dec. 2022).
[173] OFF. OF THE N.Y. STATE COMPTROLLER, 2021-S-3, DEPARTMENT OF LABOR: CONTROLS AND MANAGEMENT OF THE UNEMPLOYMENT INSURANCE SYSTEM (Nov. 15, 2022).
[174] Nat'l Ass'n of State Workforce Agencies, *A National View of UI IT Systems* (July 2010).
[175] OFF. OF THE N.Y. STATE COMPTROLLER, 2014-S-9, Office of Information Technology Services, Security and Effectiveness of the Department of Labor's Unemployment Insurance System (Feb. 24, 2015).
[176] Letter from Theresa Papa, Dir. of Admin. N.Y. Off. of Info. Tech. Serv.s, to the Hon. Andrew M. Cuomo, et al., Governor of N.Y. *available at* https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2015-14s9-response.pdf.

later delayed until May 2024, but as of June 2024,[177] this has not yet occurred. The lack of modernized IT also made it difficult to find and hire staff who were knowledgeable in some of NYSDOL's programming languages.[178] NYSDOL eventually contracted with IBM to assist with data entry and coding at an additional cost to the state. NYSDOL also had to contract with Google to create a cloud-based solution due to the State UI system's limited capacity.

Like many other large states, NYSDOL employed a 'pay and chase' method for processing UI claims. In May 2021, DOL reported that New York, while it lacked modernized IT, was among the fastest states to pay out pandemic UI benefits. Forty percent of total pandemic UI claims were paid in the first quarter and 75 percent were paid in the first year. The State Comptroller found that the NYSDOL resorted to stop-gap measures to compensate for its system's limitations, which ultimately proved costly to the state. For example, NYSDOL implemented the use of a local code already in the system concluding that it would be the only way to process benefits under the temporary programs. Workarounds resulted in misclassification of claims, overpayments, and additional spending to maintain the outdated UI system. The local code that the state implemented to compensate for the outdated IT systems also overrode the automated internal controls to enforce the 26-week maximum for regular UI claims in the State of New York. This allowed claimants to be paid from incorrect program funds and increased the risk of overpayments to claimants. This in turn led to NYSDOL needing to spend additional resources to adjust claims and recover improper payments.

Prior to and during the pandemic, NYSDOL compared UI applicant claim data to multiple databases including the Department of Motor Vehicles and the Social Security Administration. However, many applications used stolen identities that passed the data matches NYSDOL had in place. NYSDOL only started considering additional solutions in August 2020 and contracted with ID.me but did not implement the services until February 2021. By then, 80 percent of the state's total claims had already been paid out.[179]

In January 2022, the New York State Commissioner of Labor testified during the state's budget hearings that NYSDOL had prevented more than $36 billion in fraudulent UI payments. However, NYSDOL officials were unable to provide the State Comptroller with any data or analyses to support their management of and response to fraudulent claims on the UI system.[180] Officials could not account for the number of claims that were actually paid to fraudulent claimants before being detected, the length of time from when claims were filed to when they were identified as fraudulent, or how the claims were originally identified as fraudulent. When the State Comptroller sought to obtain statistics and supporting documentation, information that the State Comptroller expected to be readily available, NYSDOL failed to provide it. This contributed to the State Comptroller's inability to determine the veracity of NYSDOL's claims of the dollar amount of fraudulent claims prevented and fraudulent claims paid and in need of recovery.

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[177] Letter from Andrea LaBarge, Audit Manager, Off. of the State Comptroller, to Roberta Reardon, Comm'r, Dep't of Lab. (June 17, 2024) *available at* https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2024-23f41.pdf.
[178] OFF. OF THE N.Y. STATE COMPTROLLER, 2021-s-3, DEPARTMENT OF LABOR: CONTROLS AND MANAGEMENT OF THE UNEMPLOYMENT INSURANCE SYSTEM (Nov. 15, 2022).
[179] Call between COA staff and the Office of the New York State Comptroller (January 30, 2024).
[180] *Supra* n.178.

Additionally, as stated earlier in this Committee report, the State of New York borrowed $9 billion from the federal UI trust fund to pay UI claims. At the state budget hearings, the State Commissioner of Labor, during questioning, was unable to provide an answer to a question about how much of the approximately $9 billion owed to the federal UI trust fund was for fraudulent claims.[181] As the State of New York continues to delay repayment of these loans and accompanying accrued interest, employers and small businesses in the state will continue to pay higher rates of UI taxes to pay off money that was borrowed and paid to fraudsters.

NYSDOL's slow response to certain data requests, in some cases up to six months late, delayed the State Comptroller's findings and recommendations, and the NYSDOL's ability to promptly address serious problems. NYSDOL officials seemed unfamiliar with certain procedures and protocols, such as basic security controls, and were not able to readily produce related records and documentation or failed to provide it altogether.

B. Lack of Urgency and Missed Deadlines

In the documents produced to the Committee, NYSDOL repeatedly failed to meet benchmarks requested by the DOL related to PUA and regular UI administered by New York State. Lacking urgency, NYSDOL continued to miss deadlines, both set by the state and by the DOL, for no apparent reason and without any explanation. While an influx of pandemic-related complexities certainly forced burdens onto UI offices across the nation, NYSDOL appeared to display incompetence and apathy well before the start of the pandemic that was only exacerbated during it.

In one series of email exchanges, DOL OIG requested a work search questionnaire form.[182] NYSDOL appears to request two additional weeks to produce the form, promising to deliver it to the OIG by February 7, 2020. There is no known or stated reason for delay, and just "hope" for accommodation. Upon request, the OIG accepts the extension.

NYSDOL misses the February 7 deadline by two weeks, requesting an additional two weeks to produce a rather simple work search questionnaire.[183] Between February 7, when NYSDOL is given its second deadline, and February 24, 2020, there is no contact or mention of delay from NYSDOL, until this additional extension request. Again, without explanation, NYSDOL in a one sentence email requests a "final" two-week extension.

In the two weeks after NYSDOL's self-imposed "final" deadline to produce the questionnaire, the agency yet again apologizes for failing to meet this promise.[184] On March 9, 2020, NYSDOL declares it fully anticipates being able to "transmit within a day or two." NYSDOL appears to be aware of its own incompetence, noting its appreciation for the ETA's "extraordinary patience." Two months removed from the original deadline, all the NYSDOL had

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[181] *Id*.
[182] New York Production, *on file with Committee*.
[183] *Id*.
[184] *Id*.

to show for was another delay (as seen in Figure 3 below). The documents NYSDOL produced did not show how long it took to fulfill OIG's request, or if it was completed at all.

The many months of long delays just to provide a work search questionnaire to the OIG occurred before the onset of the COVID-19 pandemic. NYSDOL's apathetic response to a rather mundane pre-pandemic request appeared to be an indicator of the state's pending incompetence in advance of the onslaught of UI claims that was about to be unleashed during the pandemic.

In the figure, below, ETA alerts NYSDOL of a developing problem wherein ETA's National Contact Center has reported calls from New York claimants being advised by NYSDOL staff to contact ETA for the issuance of FPUC funds. The callers reported that NYSDOL, rather than assisting those urgently seeking FPUC benefits, had deflected and abstained completely from helping, instead pointing the callers to ETA for information.

Figure 18: 5/26/20[185]

Message

From: Geskey, Stephen (LABOR) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9BF2D3B55A334631B5771BFB941380A2-GESKEY, STE]
Sent: 5/27/2020 7:06:27 PM
To: 'Gilbert, Gay - ETA' [redacted]
Subject: RE: Communications

Gay

I checked with my state staff & this was foreign. As a result, I referred this to our contract managers in the event it could be a vendor issue.

Should you receive any specifics, please don't hesitate to forward my way so I can reverse engineer the issue.

Steve

From: Gilbert, Gay - ETA
Sent: Tuesday, May 26, 2020 10:51 AM
To: Geskey, Stephen (LABOR) [redacted]
Subject: FW: Communications

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi, Steve. I'm writing for your help. USDOL's National Contact Center has reported receiving calls from New York claimants indicating they have been told by New York staff that it is the U.S. Department of Labor that issues FPUC funds and/or that your UI staff are saying to contact USDOL's National Contact Center for more information on FPUC.

We would appreciate you looking into this and ask that you not have staff refer claimants to our Contact Center. They only have the most generic information and obviously cannot answer claim specific question.

Thanks for any help you can provide.

Gay

Gay M. Gilbert, Administrator
Unemployment Insurance
U.S. Department of Labor
Employment and Training Administration
[redacted]

[185] Email from Gay Gilbert, Admin. Emp't and Training Admin., U.S. Dep't of Lab., to Stephen Geskey, N.Y. Dep't of Lab. (May 26,2021 10:51 am).

Figure 19 shows a thorough and pointed directive from ETA to NYSDOL after mounting months of incompetence and deflection. ETA, in addressing "several issues and areas of concern that New York must remediate as soon as possible," provides reminders of established law and a firm deadline of response. An ETA official points out that the NYSDOL claimant form for those seeking unemployment insurance does not require the claimant to identify which applicable COVID-19 reason resulted in their ongoing unemployment. By the end, ETA makes two recommendations, both of which seem to be obvious for any UI form in which an individual seeks PUA benefits but in this case were both left off the original NYSDOL form for UI insurance.

Figure 19: 7/13/20[186]

Message

From: Lovely, Cathy - ETA [redacted]
Sent: 7/13/2020 8:39:51 AM
To: Geskey, Stephen (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9bf2d3b55a334631b5771bfb941380a2-Geskey, Ste]
CC: [redacted] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=227f5c36923943cdb6a21c05b4197221-lovely.cath]
Subject: Notice re: NY PUA Issues and Areas of Concern
Flag: Follow up

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning Steve,

As you know, we recently requested information from New York regarding your agency's implementation of the Pandemic Unemployment Assistance (PUA) program authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. I would like to communicate several issues and areas of concern that New York must remediate as soon as possible. You may have already been working to correct these issues, but because it is so critical to the administration of the program, ETA wants to ensure you are taking steps to implement the correct program requirements.

Please respond to this email within 21 days (**August 3, 2020**):

1. It appears New York's continued claim form does not require the claimant to identify which of the applicable COVID-19 reasons resulted in the claimant's ongoing unemployment, partial unemployment, or inability to be able or available for work.

Citations:
As described in Question 45 of Attachment I to UIPL No. 16-20, Change 1, the state must ensure that an individual completes a self-certification form at the time of filing each continued claim that includes:

- Identification of the applicable COVID-19 related reason(s) under section 2102(a)(3)(A)(ii)(I) of the CARES Act.

As described in the Operation Instructions (#13 Determination of Entitlement: Notices to Individuals) of Attachment I to UIPL No. 16-20, the state must determine whether the individual is entitled to payment of PUA for a week of unemployment. If the state is not requiring an individual to self-certify on a weekly basis, the state will have no means of determining whether such individual meets the eligibility requirements to be considered a "covered individual" in any given week.

Corrective Action:
New York's continued claim certification must be modified to allow the claimant to select and/or enter the appropriate COVID-19 related reason to verify continued PUA entitlement. New York must obtain self-certifications for all weeks of PUA paid since the beginning of the program. An overpayment must be established for any weeks improperly paid.

Consistent with the requirements noted in UIPL No. 16-20, the self-certification form should not deviate from the reasons in the statute and UIPL.

In a May 2021 message to all UI Directors across the United States (as shown in Figure 20), ETA warned of a "serious vulnerability" with an open-source program and of credential stuffing which could lead to fraud and improper payments particularly in states like New York with outdated IT and little ability to control to whom it was paying benefits. This notice served

[186] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Stephen Geskey, N.Y. Dep't of Lab. (July 13, 2020, 8:39 am).

as a clear flag to UI administrators that their agencies could be targeted. At the end of the email, ETA instructs all SWAs to take "steps to guard against these types of attacks."

Figure 20: 5/5/21[187]

Message

From: Lovely, Cathy - [redacted]
Sent: 5/5/2021 11:45:24 AM
To: [redacted]/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a506e3ca04394b12b1254c0e85d881f3-daryle.dudz]; CT - Lucente, Michael [redacted] MA - Dishnica, Katie (EOL) [redacted] MA - Rick Jeffers - DETMA [redacted] ME - Laura Boyett [redacted] ME - Patricia K. O'Brien [redacted] NH - Burke, Michael [redacted] Thompson, Lars E (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c6d0db6f506644419e1976ce1891b4af-Thompson, L]; PR - JOSE A. RIOS [redacted] PR - Maria D. La Santa Buonomo [redacted] PR - Sandra Valentin [redacted] VI - Gary Halyard [redacted] VI - Veronica R. Grant [redacted] VT - Cameron Wood [redacted] VT - Kristine Murphy [redacted]
CC: Bissonnette, Troy M - ETA [redacted]
Subject: NUIFTF Alert: Vulnerability Associated with OpenBullet and Credential Stuffing
Attachments: National Unemployment Insurance Fraud Task Force Alert - OpenBullet and Credential Stuffing - 05/05/2021
Importance: High

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning UI Directors,

The attached alert is provided to inform you of a serious vulnerability, which is associated with an open source program called OpenBullet and the practice of credential stuffing. Several states (including one in our region) were informed earlier this morning that they could possibly be targeted in the near future. However, as noted in the alert, "**all** SWAs should take steps to guard against these types of attacks."

Please note that this alert is for your **internal use only** and is NOT to be made available to the public.

Regards,

Cathy
Cathy A. Lovely
UI Program Specialist
USDOL/ETA

In 2021, ETA tasked regional offices with making assessments of states' implementation of the PUA program to determine "if the state made a good faith effort" in accordance with the federal CARES Act. To assess state implementation, ETA asked each state, including NYSDOL, to provide a complete copy of every version of the PUA claim forms or questionnaires in use between February 22, 2020, through February 7, 2021. Below is ETA's request with a deadline of COB on October 15, 2021.

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[187] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to UI Directors (May 5, 2021, 11:45 am).

Figure 21: 10/4/21[188]

From: Lovely, Cathy - ETA [redacted]
Sent: Monday, October 04, 2021 8:30 PM
To: Thompson, Lars E (LABOR) [redacted] Murphy, Erin (LABOR) [redacted]
Cc: Filburn, Susan (LABOR) [redacted] Murphy, Erin (LABOR) [redacted]
Subject: NYSDOL's Implementation of Self-Certifications

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning Lars and Erin,

Per paragraph 4.e. of Change 6 to UIPL 16-20, ETA has charged the regional offices with assessing states' implementation of the PUA program again to "determine if the state made a good faith effort to implement the PUA program in accordance with Section 2102 of the CARES Act and 20 CFR 625.6." The results of the assessments will determine whether a state will be required to complete any retroactive activities.

To assess states' implementation of the self-certification, we are asking that each state please provide a complete copy of every version of the PUA initial and continued claim forms or questionnaires that were in use any time between February 22, 2020, through February 7, 2021. Also, please indicate the start and end dates that each form was in use. For ease and clarity, we suggest states use the naming conventions shown below for each document provided, but this is optional.

State abbreviation_IC_vers#_StartDate-EndDate
State abbreviation_CC_vers#_StartDate-EndDate

We realize states provided some of these documents over a year ago when PUA implementation efforts were first evaluated, and so this request may seem redundant. However, to ensure a proper new assessment of the full period under review, we request that states provide all new copies.

Note: If a claimant's response to certain questions prompts the system to present additional questions or requests for information, please ensure those additional questions or requests are included in the document(s) provided.

As you know, UIPL 16-20, change 6 requires states to implement the expanded eligibility provisions (see UIPL No. 16-20, Change 5, and Section 4.a. of UIPL No. 16-20, change 6) – if they did not already do so before December 31, 2021. Some states that have not implemented those expanded eligibility provisions are waiting for our good faith assessment to be completed first. Therefore, our assessments must begin as soon as possible, so please provide the requested documents **by COB on October 15, 2021**.

Please note that we will also be sending states a separate, brief questionnaire to facilitate assessment of PUA monetary determinations.

Upon receiving and reviewing NYSDOL's copies of the requested PUA forms, an ETA official wrote back on December 1, 2021, with serious concerns and to note glaring discrepancies. Among those concerns were missing and conflicting information across forms, and, notably, the fact that "claimants were not able to self-certify to the COVID-19 reasons at any time during the continued claims process." Mismanagement and inconsistency from NYSDOL and other state workforce agencies provided ample opportunity for false reporting and fraud.

[188] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Lars Thompson and Erin Murphy, N.Y. Dep't of Lab. (Oct. 4, 2021, 8:30 pm).

Figure 22: 12/1/21[189]

From: Lovely, Cathy - ETA [redacted]
Sent: Wednesday, December 1, 2021 4:38 PM
To: Thompson, Lars E (LABOR); Murphy, Erin (LABOR)
Cc: Filburn, Susan (LABOR); Murphy, Erin (LABOR); [redacted]
Subject: RE: NYSDOL's Implementation of Self-Certifications

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good afternoon everyone,

Thank you again for providing the IC and CC forms. I've looked over all the documents and have the questions shown below. Unfortunately, I need this information by noon on Friday, if at all possible. If you need more time, please let me know.

On the IC applications dated 12/18/2020 and 1/27/2021, additional questions may have been presented depending on a claimant's Yes/No response to certain COVID-19 questions. For example, claimants who indicated they became the major breadwinner were asked to provide the date the former head of household died, the deceased's SSN, and annual net income if the deceased had been self-employed. Did NYSDOL adjudicate these and base any eligibility decisions on the responses to the additional questions?
On the IC doc dated 4/26/2020, I do not see equivalents for reasons (bb), (ee), and (ii), but it is possible they were cut off from the screen shot. Similarly, the version dated 12/18/2020 shows an equivalent for (ii) but (bb) and (ee) are not included. If NYSDOL was presenting those reasons in these IC versions, please send copies of each showing the complete list of reasons that claimants would have seen.

Confidential Treatment Requested by
New York State Department of Labor
NYSDOL_COA_00004950

The last IC form provided is dated 1/27/2021. It includes a CC at the back but is also in Track Changes and shows comments. If this version was put into production, please send a clean final copy and I will delete the Track Changes version.
Is there a subsequent version of the IC and CC forms that added (kk-2), (kk-3), and (kk-4) reasons?
Based on the documents provided, it appears that claimants were not able to self-certify to the COVID-19 reasons at any time during the continued claims process. Is that correct?
From what I can tell, the IC versions provided have the start dates listed below. Please send any versions that I may be missing or confirm that this list is complete and I will assume each was used until the next version began and the last in the list was used until the program ended.

IC	CC
4/10/2020	4/14/2020
4/24/2020	4/30/2020 (break in claim)
4/26/2020	1/27/2021 (A CC is included at the back of the IC Track Changes document dated 1/27/2021)
7/15/2020	2/5/2021
9/22/2020 (IDV pages only)	
12/18/2020	
1/27/2021	

Let me know if you have any questions. Thank you again for your help!

Cathy
Cathy A. Lovely
UI Program Specialist
USDOL/ETA

[189] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Lars Thompson and Erin Murphy, N.Y. Dep't of Lab. (Dec. 1, 2021, 4:38 pm).

Prompting alarm from ETA over NYSDOL's UI claim forms, and wanting an urgent explanation of the missing information, ETA asked NYSDOL to explain the discrepancies by Noon on December 3, 2021. NYSDOL delayed again, writing back in a short email (as seen in Figure 23 below) asking for an extension until December 10, 2021.

Figure 23: 12/2/21[190]

Message

From:	Murphy, Erin (LABOR) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=79B01D51A64A457F9BCD44CA3C314EE0-MURPHY, ERI]
Sent:	12/2/2021 5:30:34 PM
To:	Thompson, Lars E (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c6d0db6f506644419e1976ce1891b4af-Thompson, L]; [redacted] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=227f5c36923943cdb6a21c05b4197221-[redacted]
CC:	Filburn, Susan (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ad2efa9a2add423ca89e32e5324faa45-Filburn, Su];[redacted] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=227f5c36923943cdb6a21c05b4197221[redacted]
Subject:	Re: NYSDOL's Implementation of Self-Certifications

Good evening Cathy,
NYS will not have the information ready by tomorrow at noon. Can we extend the deadline till next Friday 12/10 at noon?

Please let us know.

Thank you,
Erin

It is not clear if NYSDOL ultimately handed over sufficient answers to ETA regarding the botched UI claim forms it used amidst the height of the pandemic. What we do know is that NYSDOL did not hesitate to continue missing deadlines, as evidenced in the request of a separate questionnaire requested on December 8, 2021, for completion on January 7, 2022 (seen in Figure 24 below). Writing back a week later, NYSDOL stated it would not have the questionnaire completed as requested, and instead requested an extension to January 28, 2022, three weeks after the original deadline.

[190] Email from Erin Murphy, N.Y. Dep't of Lab. to Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., (Dec. 2, 2021, 5:30 pm).

Figure 24: 12/8/21[191]

From: Lovely, Cathy - ETA [redacted]
Sent: Wednesday, December 8, 2021 9:02 PM
To: Thompson, Lars E (LABOR) [redacted] Murphy, Erin (LABOR) [redacted]
Cc: Filburn, Susan (LABOR) [redacted]
Subject: Touchback Monitoring Questionnaire - CARES Act Programs

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello Lars and Erin,

Thank you for New York's ongoing efforts with our office's CARES Act monitoring. Before issuing the monitoring reports, the last component of our fieldwork consists of a questionnaire covering MEUC and any issues that were created by guidance that was not available at the time of our review of your state. That questionnaire is attached. I realize there is a lot going on and the holidays are coming up, so please let me know if you do not expect to be able to return the completed questionnaire by **Friday, January 7, 2022**.

Please note, the questionnaire asks for six MEUC case files (3 allowed and 3 denied). If there is someone else on your team I should work with to create or transmit those files, please let me know.

Thank you again and let me know if you have any questions.

Cathy
Cathy A. Lovely
UI Program Specialist
USDOL/ETA

From: Murphy, Erin (LABOR) [redacted]
Sent: Wednesday, December 15, 2021 9:45 AM
To: Lovely, Cathy - ETA [redacted] Thompson, Lars E (LABOR) [redacted]
Cc: Filburn, Susan (LABOR) [redacted]
Subject: RE: Touchback Monitoring Questionnaire - CARES Act Programs

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hi Cathy,
New York State will not be able to have this completed by January 7. Would it be possible to extend the due date to the end of January. We could return all 44 responses and six case files by January 28th.

Please let me know.

Thank you,

Erin Murphy
Director

New York State Department of Labor | Audit Unit

[191] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Lars Thompson and Erin Murphy, N.Y. Dep't of Lab. (Dec. 8, 2021, 9:02 pm).

Figure 24: 12/8/21 (cont'd)

Message

From:	Lovely, Cathy - ETA [redacted]
Sent:	12/20/2021 7:11:32 PM
To:	Murphy, Erin (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=79b01d51a64a457f9bcd44ca3c314ee0-Murphy, Eri]; Thompson, Lars E (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c6d0db6f506644419e1976ce1891b4af-Thompson, L]
CC:	Filburn, Susan (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ad2efa9a2add423ca89e32e5324faa45-Filburn, Su]
Subject:	RE: Touchback Monitoring Questionnaire - CARES Act Programs

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Erin,

Yes, I was told we can give New York until the end of January to get everything in. I hope this is helpful.

Happy holidays to all of you!

Cathy

From: Murphy, Erin (LABOR) <[redacted]
Sent: Wednesday, December 15, 2021 9:45 AM
To: Lovely, Cathy - ETA [redacted] Thompson, Lars E (LABOR) [redacted]
Cc: Filburn, Susan (LABOR) [redacted]
Subject: RE: Touchback Monitoring Questionnaire - CARES Act Programs

Two years after NYSDOL's exchange with DOL OIG staff, during which the state had trouble providing the OIG with a basic questionnaire form in a timely manner, ETA's national office was now similarly awaiting the crucial UI-1 report from NYSDOL two weeks past the deadline. Interestingly, ETA did not have a record of NYSDOL's point person for the report and had to request another NYSDOL employee forward it to that person once identified.

Figure 25: 10/14/22[192]

Message

From: Gorevich, John J (LABOR) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2CDB0B42180944A8A7AAB3D9BA8041F7-GOREVICH, J]
Sent: 10/14/2022 9:13:48 AM
To: [redacted] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=227f5c36923943cdb6a21c05b4197221-lovely.cath]
CC: Thompson, Lars E (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c6d0db6f506644419e1976ce1891b4af-Thompson, L]; Ronca, Karen D (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eab592160da94e31a3b8719c8b6ad212-Ronca, Kare]; Filburn, Susan (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ad2efa9a2add423ca89e32e5324faa45-Filburn, Su]; Lopez, Marisol - ETA [redacted] Daly, Michelle M (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b3779e55b6e4034b7239cbf66563cde-Daly, Miche]
Subject: FW: New York UI-1 Report for Period Ending 09/30/2023
Attachments: FY 2023 UI-1 transmittal.pdf

Hello Cathy,

Your message to Lars was forwarded to me, as I am the contact for the UI1 report. We did transmit this report by the deadline. It is attached for your reference. Please let me know if anything additional is required.

John Gorevich
Director of Financial Management Services

New York State Department of Labor | Administrative Finance
[redacted]

WE ARE YOUR DOL

Department of Labor

From: Lovely, Cathy - ETA [redacted]
Sent: Thursday, October 13, 2022, 5:47 PM
To: Thompson, Lars E (LABOR) [redacted]
Cc: Filburn, Susan (LABOR) [redacted] Lopez, Marisol - OASP [redacted]
Subject: New York UI-1 Report for Period Ending 09/30/2023

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Lars,

The national office has not received NY's UI-1 report for 9/30/2023, which was due by 9/30/2022. I do not know who the contact is for NYSDOL report. Could you please either forward this to the appropriate person or

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NYSDOL_COA_00002829

send me their email address so I can reach out to them directly to find out when the report will be submitted? I would then add their information to my Contacts so I would not have to bother you again with questions about the UI-1 report.

Thank you for your help with this.

It appears the NYSDOL point person for the report had emailed a non-working address at ETA (as evidenced in Figure 26 below), received a bounce back message, and failed to follow up to ensure that the report reached ETA. This conveniently generated a three-month gap until ETA

[192] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Lars Thompson, N.Y. Dep't of Lab. (Oct. 8, 2022, 5:47 pm).

wrote to NYSDOL about the missing report and the need for a point of contact for it (seen in the Figure above).

Figure 26: 7/18/22[193]

Non Delivery Report

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109E8FC61DFB]
Sent: 7/18/2022 9:26:52 AM
To: [redacted]
Subject: Undeliverable: New York Staff Designation - PUA IPER Sept. 2022
Attachments: New York Staff Designation - PUA IPER Sept. 2022

Your message did not reach some or all of the intended recipients.

Subject:New York Staff Designation - PUA IPER Sept. 2022
Sent:7/18/2022 9:26:53 AM

The following recipient(s) cannot be reached:

[redacted]@dol.gov on 7/18/2022 9:26:53 AM
Diagnostic code = NoDiagnostic; Reason code = TransferFailed; Status code = 500
< #5.0.350 smtp;550 5.0.350 Remote server returned an error -> 550 #5.1.0 Address rejected.>

Office 365

Your message to [redacted]@dol.gov couldn't be delivered.

When Office 365 tried to send your message, the receiving email server outside Office 365 reported an error.

Lars.Thompson	**Office 365**	**PUA_Review**
Sender		**Action Required**
		Policy violation or system error

Figure 27 shows ETA, about a week after NYSDOL finally submitted its report, inquiring about the large quantities of negative entries in row 30 and beyond. Wanting an immediate response, ETA then asks for a reason for the large negative entries.

[193] Email from Lars Thompson, N.Y. Dep't of Lab. to non-working address, U.S. Dep't of Lab., to (Jul. 18, 2022, 9:26 am).

Figure 27: 10/20/22[194]

Subject: Re: Verification and support for ETA 2112 reports (NY)

Received and we'll be getting back as soon as we can. Understood.

Get Outlook for Android

From: Lovely, Cathy - ETA <[redacted]>
Sent: Thursday, October 20, 2022 8:30:44 AM
To: Thompson, Lars E (LABOR) <[redacted]
Cc: Poirier, Amanda - ETA <[redacted]
Subject: FW: Verification and support for ETA 2112 reports (NY)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good morning Lars,

I apologize for the interruption, but the NO and KPMG need NYSDOL's response as soon as possible. They are asking NYSDOL to 1) verify that the negative entries are correct in row 30 and beyond on the attached report and 2) provide the reason(s) for the large negative entries. Let me know if you prefer that I reach out directly to a member of your fiscal team for this information.

Thank you.

Cathy
Cathy A. Lovely
UI Program Specialist and Regional
Contact for BPC/Integrity, Tax/TPS, etc.
USDOL/ETA Boston Regional Office
[redacted]
Head up; Stay strong; Wear a smile; Move on.

From: Pasquale, Karen - ETA [redacted]
Sent: Friday, October 14, 2022 5:14 PM
To: Thompson, Lars E (LABOR) <[redacted]
Cc: Poirier, Amanda - ETA [redacted]
Subject: FW: Verification and support for ETA 2112 reports

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NYSDOL_COA_00002825

Lars, NO had a meeting with KPMG and they've identified a couple of areas of concern where states reported negative net disbursements in the benefit payment account on particular ETA 2112 reports. For region 1, that includes the following:

NY's January 2022 report

We need NY to verify that the negative disbursements are correct and to explain the reason for the large negatives? They're looking specifically at row 30 and the rows below that net to that figure. The report is attached for reference.

KPMG is hoping NY can provide the info as soon as possible in order to resolve the concern.

As stated earlier in this report, New York, like other states, was not prepared for the increase in claims and began posting public "help wanted" ads in March 2020. NYSDOL was posting job ads in March of 2020 (see below in Figure 28), specifically for the role and position of Senior Employment Security Clerk. Essential services that included instructing customers on

[194] Email from Cathy Lovely, Emp't and Training Admin., U.S. Dep't of Lab., to Lars Thompson, N.Y. Dep't of Lab. (Oct. 20, 2022, 8:30 am).

the methods of certifying UI benefits, processing claims, interaction with other offices and governmental agencies, and constant guidance of customer eligibility, were all abandoned as a result of vacant positions in the NYSDOL. While NYSDOL had already positioned itself as a stalling' agency, staff shortages amidst the COVID-19 pandemic help explain why an influx of cases and callers were being mistakenly directed to the ETA for the issuance of FPUC funds by ETA employees (as seen in Figure 28). This lapse surely contributed to extended delays for providing UI benefits to rightful claimants of UI insurance, a vulnerable opening for those seeking redress against identity theft, and ripe opportunities for fraud to infiltrate NYSDOL's claimant form.

Figure 28: 3/20/20[195]

NEW YORK STATE OF OPPORTUNITY. | StateJobsNY

Review Vacancy

Date Posted: 03/20/20
Applications Due: 05/08/20
Vacancy ID: 80204

Duties Description

Standard Duties:

As a Senior Employment Security Clerk assigned to New York State Department of Labor (DOL)'s Unemployment Insurance (UI) Telephone Claims Center, you would:

- Instruct customers on the requirements and methods of certifying for benefits including the consequences of failure to certify
- Process claims and make appropriate determinations
- Ensure that the customer understands the criteria for alternative methods of becoming entitled to benefits
- Interact with other offices and governmental agencies to obtain information that may affect customer eligibility
- Provide information regarding the hearing process so customers understand their due-process rights; and explain penalties and forfeitures of benefits
- Respond to business inquiries or complaints regarding UI benefit claims
- Work under the pressure of continuous public contact

A few months after ETA voiced concern over NYSDOL clerks misguiding customers (as seen in Figure 18) and after NYSDOL posted help wanted ads, NYSDOL could not account for the "anomalous one week jump" in PUA initial claims in the month of September 2020. The reported initial claims increased from 31,284 in the week ending September 9, 2020, went up to 41,016 in the week ending September 19, 2020, and back down to 33,141 in the week ending

[195] StateJobsNY Review Vacancy IDL 80204 (Mar. 20, 2020).

September 26, 2020. This caused so much confusion and worry that a supervisory actuary at DOL requested immediate information from NYSDOL in hopes of an explanation for the abnormality. Providing a non-answer, the NYSDOL official responded that they could not account for the "exact drivers" of the anomaly.

Figure 29: 9/30/20[196]

Message

From: Lukaszewski, Doug (LABOR) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8D49E4FF8D40412BB6F5CF3C1C5A12CB-LUKASZEWSKI]
Sent: 9/30/2020 9:20:14 PM
To: Stapleton, Kevin - ETA [redacted]
CC: Brown, Scott F (LABOR) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98579b23b1d648d5b89d2f5327203935-Brown, Scot]
Subject: RE: Movement in PUA initial claims

I hesitate to speculate as my impressions would not be soundly rooted in or supported by the data. The exact drivers are unclear at this time.

From: Stapleton, Kevin - ETA [redacted]
Sent: Wednesday, September 30, 2020 4:07 PM
To: Kang, Daeshik (LABOR) [redacted] Anwar, Ahmad (LABOR) [redacted] Lukaszewski, Doug (LABOR) [redacted] Brown, Scott F (LABOR) [redacted]
Subject: Movement in PUA initial claims

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good afternoon,

Can someone provide any insight into the movement in New York's PUA initial claims over the past couple of weeks? Reported PUA initial claims increased from 31,284 in the week ending 9/12, up to 41,016 in the week ending 9/19 and back down to 33,141 in the week ending 9/26. This would appear from the weekly series to be an anomalous one week jump and I'm wondering if there is an explanation for it.

I recognize it's a bit late in the day, but I'm hoping to have something before tomorrow morning news release. Whatever information you might be able to provide this afternoon or first thing tomorrow morning would be appreciated.

Thank you,

Kevin A. Stapleton
Supervisory Actuary – Division of Fiscal & Actuarial Services
Office of Unemployment Insurance – U.S. Department of Labor

[196] Email from Kevin Stapleton, U.S. Dep't of Lab., to Doug Lukazewski, N.Y. Dep't of Lab. (Sept. 30, 2022, 4:07 pm).

X. Organized Crime and Insider Threats

Over the course of the COVID-19 pandemic, organized crime played a major role in the proliferation of UI fraud by targeting pre-existing system vulnerabilities. Organized crime ran identity theft schemes, gained U.S. taxpayer individual information with data breaches, and filed claims in multiple states with the illicitly obtained information. The increased fraudulent activity resulted from a rapid influx of applicants but also because of limited enforcement measures like background checking and outdated IT systems that allowed for capability gaps.

There are several stories and examples of fraudulent UI claims filed by foreign nations,[197] organized criminal gangs,[198] on behalf of prison inmates,[199] and even one involving an assistant in California Governor Gavin Newsom's office.[200] These illegal acts are made worse when the fraud is conducted by a state employee, one whose job is arguably to *prevent* such activities from occurring in the first place. This makes such insider threat concerns an additional area of pandemic UI fraud that warrants attention. Given the administrative rights and access some state employees possess, there are multiple opportunities and methods available to them to approve false claims or to work with non-state employees to facilitate fraudulent applications.

A. California

In California, federal authorities uncovered three conspiracies, including one by a "former Employment Development Department employee who was able to scam more than $200,000, including one claim that used the name of U.S. Sen. Dianne Feinstein."[201] The EDD employee, Andrea Gervais, previously worked for EDD from 2010 to 2018 under the name Andrea Dangerfield.[202] She was fired by EDD in 2018 after an investigation implicated her in a money order theft.[203] She was also subsequently arrested in January 2020 on identity theft charges for "allegedly obtaining a credit card under false pretenses,"[204] but the charges were dropped for lack of evidence.

Separately, Nyika Gomez, employed by an EDD contractor as a call center agent, was arrested after investigators "alleged she conspired with her boyfriend, a prisoner serving a term of 94 years to life at California State Prison, Sacramento, for murder."[205] With help from her boyfriend, Gomez allegedly obtained PII from California prisoners, along with stolen PII from out of state residents, to file fake UI claims.[206]

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[197] Lily Hay Newman, *The Nigerian fraudsters ripping off the unemployment system*, WIRED (May 19, 2020).
[198] Press Release, OIG U.S. Dep't of Labor, Labor watchdog's pandemic work results in more than 1,000 individuals charged with UI fraud and $45.6 billion identified in potentially fraudulent pandemic UI benefits (Sept. 22, 2022).
[199] Patrick McGreevey, *California's Prisoner unemployment fraud now estimated at $400 million, officials say,* LA TIMES (Dec. 1, 2020).
[200] *Supra* n.94.
[201] Anita Chabria and Patrick McGreevy, *Former California EDD worker faked being Dianne Feinstein in scamming jobless benefits, sources say*, LA TIMES (Dec. 17, 2020).
[202] *Id*.
[203] *Supra* n.199.
[204] *Id*.
[205] *Id*.
[206] *Id*.

Constantin Sandu, "a suspected organized crime figure,"[207] was charged in March of 2023 for orchestrating a scheme involving 214 other Romanian nationals "to fraudulently obtain [$5,207,687.00] in California unemployment insurance benefits by fabricating documents, creating fictitious accounts and businesses, and filing bogus claims with California's Economic Development Department."[208] In November 2023, Sandu pleaded guilty, was sentenced to 40 months in prison, and ordered to "forfeit $214,950 that he personally received from the offenses."[209]

Sandu and his 214 co-conspirators submitted "fraudulent identifications, falsified utility bills, falsified earnings statements, falsified W2s, fraudulent health insurance cards and [company information]."[210] Sandu's criminal enterprise also modified UI to generate larger claims and would submit their own PII to Sandu via Facebook or by meeting up with Sandu in person. Reports do not make clear whether any of the over $5,000,000 defrauded from EDD made its way to Romania or Romanian crime organizations, but it is certain that taxpayer dollars went into the hands of the Sandu crime organization—all 215 of them.

B. New York

In March 2024, a vast criminal conspiracy involving employees of the New York City Department of Homeless Services (DHS), U.S. Postal Service (USPS), and other co-conspirators, was uncovered by the Manhattan District Attorney, resulting in four indictments charging 18 people. This scheme was led by two NYC-DHS employees, Charde Baker, a former employee of the New York Police Department,[211] and another unnamed DHS employee. The pair allegedly orchestrated a despicable scheme that involved stealing PII from homeless people, then sharing those details with more than a dozen government-and-non-government-employed co-conspirators who "submitted 170 false applications that netted approximately $1.2 million in [prepaid bank cards]."[212]

Initially, the claims were sent to addresses that Baker and her accomplices "had access to or control over, including their own home addresses. Eventually, they listed addresses along an Upper East Side mail route of a (USPS) employee. This defendant intercepted the mail and provided the [prepaid bank] cards to the other defendants to access the stolen funds."[213] This case has ties to a 2022 investigation in which a ghost gun factory was uncovered in the apartment of the aforementioned unnamed DHS employee, who 3-D printed various gun parts. The ghost

[207] Press Release, OIG U.S. Dep't of Labor, Romanian citizen arrested and charged in $5 million Covid relief fraud (Mar. 2, 2023).
[208] *Id*.
[209] Press Release, U.S. Dep't of Justice, Southern District of California, Foreign National sentenced to 40 months custody for $5 million unemployment fraud scheme (Nov. 21, 2023).
[210] *Supra* n.200.
[211] Press Release, OIG U.S. Dep't of Labor, D.A. Bragg announces indictments in sprawling investigation that charges city employees in ghost gun and fraud conspiracies (Mar. 7, 2024).
[212] *Id*.
[213] *Supra* n.209.

gun factory operation took place in 2022 and 2023, after the 2020 PUA fraud conspiracy, raising the possibility that it may have been funded by the unlawfully gained funds.[214]

Two NYSDOL employees, Wendell Giles and Carl J. DiVeglia III, were indicted in 2022 for conspiring to fraudulently obtain UI benefits, including "federally funded pandemic-relief benefits."[215] According to the indictment, from around July 2020 through August 2021, Giles and DiVeglia "initiated fraudulent unemployment insurance applications in the names of other people and then abused their NYSDOL computer systems access to release benefits payments on the false claims."[216]

Giles and DiVeglia's responsibilities as NYSDOL employees included processing UI claims and distributing benefits to eligible New Yorkers.[217] The pair used their position and access to create and approve false insurance UI applications by using PII such as name, date of birth, and Social Security numbers, and inserting information in required fields such as maiden name or work history.[218] In many instances, the pair made arrangements with the individuals whose identities they were using to file the fraudulent claims to share the payouts, which "often were in the tens of thousands of dollars."[219]

DiVeglia and Giles have both pleaded guilty. DiVeglia waived indictment and pled guilty in April 2022, admitting responsibility for "over $1.6 million in losses to NYSDOL and to personally receiving approximately $225,000 in fraud proceeds."[220] Giles pled guilty a few months later in August 2022 and admitted responsibility for "$826,530 in losses to pandemic-related UI benefits programs administered by the state."[221]

DiVeglia ran a similar operation with other individuals. In an indictment last year, Todd Ward – aka "Fats", Christopher Ward – aka "Reek", Rocco Resciniti – aka "Rock", and a fourth unidentified defendant were indicted for "conspiring with a former New York State Department of Labor (NYSDOL) employee to fraudulently obtain unemployment insurance benefits in the names of other people."[222] The fourth defendant was subsequently identified as Jamaine Myers.[223] According to the indictment, from around November 2020 to September 2021, the four defendants submitted fraudulent UI applications by providing the PII of at least 13 people to DiVeglia, who submitted, approved, and paid out the fraudulent claims.[224]

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[214] *Id*.
[215] Press Release, U.S. Attorney's Off. N.D. of N.Y., Former state employee indicted for unemployment insurance fraud (Apr. 22, 2022).
[216] *Id*.
[217] Brendan J. Lyons, *NY labor dept. workers snared in massive unemployment fraud scheme*, TIMES UNION (Apr. 24, 2022).
[218] *Id*.
[219] *Supra* n.215.
[220] *Id*.
[221] Press Release, U.S. Attorney's Off. N.D. of N.Y., Former state employee pleads guilty in unemployment insurance fraud case, (Aug. 25, 2022).
[222] Press Release, U.S. Attorney's Off. N.D. of N.Y., Four capital region men charged with pandemic fraud scheme (July 20, 2023).
[223] Press Release, U.S. Attorney's Off. N.D. of N.Y., Troy man pleads guilty to unemployment insurance fraud (May 9, 2024).
[224] *Supra* n.215.

Christopher Ward pled guilty earlier this year and admitted to providing DiVeglia "with the personal identifying information of another individual, which DiVeglia used to file a false claim via the NYSDOL website,"[225] leading to NYSDOL paying out just over $15,000 in fraudulent UI benefits.[226] Resciniti also pled guilty earlier this year, admitting to providing DiVeglia with the PII of three individuals which ultimately led to payment of fraudulent UI claims to the tune of almost $70,000.[227]

And Myers pled guilty earlier in the year as well, admitting that he provided DiVeglia with "the personal identifying information of a third party, which DiVeglia used to file a false claim via the NYSDOL website."[228] It is not clear from news reports how exactly DiVeglia was identified and ultimately caught. But stories like this, where a state employee was able to take advantage of his position and use it to abuse the system, are especially problematic, when considering the impact on public trust in addition to loss of taxpayer dollars.

C. Wisconsin

In May of 2023, 30 members of a Milwaukee street gang known as the 'Wild 100s,' the 'Shark Gang,' or 'SNG' were charged with a 43-count indictment in which all gang members were charged with defrauding DOL to unlawfully obtain funds from various UI programs, including PUA.[229] Based in Wisconsin, the gang's reach spanned multiple states, including California, to falsely obtain pre-loaded debit cards, which were used to withdraw cash from Wisconsin ATMs.[230] These funds were then used "to purchase, among other things, firearms, controlled substances, jewelry, and vacations, and to solicit murder for hire."[231]

Ronnell Bowman, the alleged leader of the gang, along with fellow member Ronnie Jackson, have pleaded not guilty to all charges.[232] Bowman and Jackson are also alleged to have "used, carried, and discharged a firearm in furtherance of [a] murder for hire, resulting in the death of [an unidentified individual]."[233] Bowman has further been identified by Assistant U.S. Attorney Laura Kwaterski as "the ringleader of the fraud scheme and…personally responsible for $850,000 in stolen Covid relief money."[234]

[225] *Supra* n.221.
[226] *Id*.
[227] Press Release, U.S. Attorney's Off. N.D. of N.Y., Colonie man pleads guilty to unemployment insurance fraud (Feb. 29, 2024).
[228] *Supra* n.221.
[229] Press Release, OIG U.S. Dep't of Lab., Thirty individuals associated with Milwaukee street gang charged with federal offenses ranging from fraud to murder for hire (May 10, 2023).
[230] Spencer Kimball, *Covid fraud: Street gang in Milwaukee allegedly stole millions to pay for murder, guns and Drugs,* CNBC (August 29, 2023).
[231] *Supra* n.227.
[232] *Supra* n.221.
[233] *Supra* note 227.
[234] *Supra* n.221.

D. Michigan

In February 2024, Antonia Brown, a Michigan Unemployment Insurance Agency (MUIA) employee received a 21-month prison sentence for her role in a UI fraud scheme involving two other individuals, Angela Johnson and Kiannia Mitchell.[235] From May 2020 through September 2021, the individuals defrauded the federal government and State of Michigan in a scheme involving around "123 UI claims totaling more than $3 million dollars in benefits paid, $1.6 million of which was paid after Brown's unauthorized actions."[236]

Once again, a state employee abused her position to take advantage of the system. In this instance, Brown reportedly accessed, altered, and authorized more than 100 claims filed by Mitchell and Johnson.[237] Michigan's Unemployment Insurance Agency (UIA) uses "software that flags certain claims for review when it recognizes a likelihood of fraud, wage discrepancies, or someone making multiple claims."[238] But Brown "removed those flags to release the payments."[239]

During the investigation of this fraudulent activity, agents traced the IP addresses associated with the fraudulent claims to two single-family homes that had "no reason to file dozens of unemployment claims."[240] Investigators connected the two IP addresses to Brown, confirmed that she wasn't authorized to access or approve any of the questionable claims, and further noted that Brown "removed many of the fraud stops placed on the claims."[241] Additionally, court records determined that Brown's Michigan call center phone system "had never reached out to any of the numbers listed on the 101 claims,"[242] meaning Brown circumvented the required application process so as to be able to conspire with Mitchell and Johnson.[243] Brown's actions included discarding a fraud investigation placed on one of her fraudulent claims, and inappropriately discarding an employer protest against Mitchell that alleged she was not entitled to PUA benefits.[244]

E. There's More

These are only a few examples of specific cases that have drawn national attention. But there are more, in various stages of investigations. For example, in Illinois, the state's Executive Inspector General issued a report in 2023 identifying at least 177 instances where there was "reasonable cause to believe that a State employee violated the State of Illinois Code of Personal Conduct and/or agency policy by obtaining PPP loans based on falsified information."[245]

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[235] Newsletter, Off. of Inspector General for the U.S. Dep't of Lab., Volume 51 (Mar. 31, 2024).
[236] *Id.*
[237] Derick Hutchinson, *Longtime Michigan unemployment worker helps 2 friends who stole $1.6 million with 123 false claims*, CLICK ON DETROIT (May 20, 2022).
[238] *Id.*
[239] *Supra* n.235.
[240] *Id.*
[241] *Id.*
[242] *Id.*
[243] *Id.*
[244] *Id.*
[245] News Release, Off. of Exec. Inspector Gen. for the Agencies of the Ill. Gov., Paycheck Protection Program (PPP) Fraud (Sept. 12, 2023).

In the Commonwealth of Massachusetts, the Department of Unemployment Assistance (DUA) hired Tiffany Pacheco, in April 2020, shortly after her release from federal prison following a conviction for aggravated identity theft.[246] While employed by DUA, Ms. Pacheco "allegedly misused her position to submit fraudulent PUA claim information on behalf of herself and her husband"[247] Arthur Pacheco, who was incarcerated in Texas, until September 4, 2020. Mr. Pacheco was not eligible for PUA and provided false information by phone to DUA regarding his PUA appeal.[248] DUA also received a forged letter indicating a Massachusetts retailer withdrew a job offer due to COVID-19 in January 2020 when Mr. Pacheco was incarcerated in Texas at that time.[249] Mr. Pacheco pleaded guilty to two counts of wire fraud in federal court in July 2021, and Ms. Pacheco was scheduled to plead guilty to federal wire charges in August 2021.[250]

In Georgia, a grand jury indicted eight former state employees who allegedly falsified their applications and weekly certifications to get paid while they were "employed full-time with the State of Georgia during the entire period in which they claimed to be unemployed and failed to fully disclose their earnings. As [a] result of their applications and certifications, the eight employees received a total of approximately $170,931 in UI benefits and federal supplements."[251]

These instances are but a few of many examples of the "biggest financial scam in U.S. history."[252] In the first year of the COVID-19 pandemic, "an estimated 20% of every dollar paid [went] out…to criminals."[253] Due to the severe lack of agency oversight and traditional regulation, criminals were not only emboldened to commit mass fraud, but practically encouraged. Although the Department of Justice has recovered $1.4 billion as of April,[254] this is a far cry from the DOL OIG's 2023 estimate that "at least $191 billion in pandemic UI payments could have been improper payments, with a significant portion attributable to fraud."[255] Congress understandably "lowered the usual guardrails"[256] in 2020 to get money into people's hands quickly. However, circumventing verification processes meant that even rudimentary checks were not implemented, resulting in a situation analogous to "a bank opening its vault and asking customers to leave an IOU as they helped themselves."[257] While federal and

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[246] News Release, Dep't of Justice U.S. Attorney's Off. Dist. of Mass., Former New Bedford Man Pleads Guilty to False Pandemic Unemployment Claims (July 23, 2021).
[247] *Id*.
[248] *Supra* n.246.
[249] *Id*.
[250] *Id*.
[251] News Release, Off. of the Inspector Gen. for the State of Ga., Eight former state employees indicted for pandemic unemployment fraud (July 27, 2023).
[252] The Editorial Board, Chicago Tribune, *Editorial: Crimes of the century? Monstrous COVID-19 fraud leaves taxpayers holding the bag,* YAHOO! NEWS (June 24, 2024).
[253] *Id*.
[254] *Supra* n.235.
[255] *The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud*, 118th Cong. (statement of Larry D. Turner, Inspector General, OIG U.S. Dep't of Labor).
[256] *Supra* n.235.
[257] *Id*.

state governments "have restored guardrails that came down in 2020,"[258] it will take "decades"[259] to prosecute all criminals, many of whom will likely never even be apprehended.

The violation of public trust and confidence naturally brings into question the integrity of public servants and reflects poorly on those who were trying their best to help people during a difficult and tumultuous period. It is a credit to the various federal and state law enforcement efforts that these individuals were identified, indicted, and in some cases sentenced to prison. The brazenness of such employees benefiting financially while eligible families struggled to make ends meet, require scrutiny to identify how to catch and terminate such behavior before irreparable loss of public trust and funds. This should serve as a lesson to Congress, the Administration, and to states and territories, to do better next time the nation faces a similar crisis.

XI. Conclusion

The Committee's investigation found that, while Congress and Executive Branch actions placed states in an unprecedented position to implement temporary pandemic unemployment programs and process claims quickly, several large states, including California, New York, and Pennsylvania lost billions of taxpayer dollars in improper and fraudulent payments that will likely never be recovered. These are benefits that could have been directed to American workers who had recently been laid off or furloughed due to lock downs across the nation. State workforce agency and labor department officials made decisions to 'pay and chase' to get benefit payments out without knowing who they were sending payments to in many cases. This led to payments going to fraudsters from organized crime, foreign governments, and convicted criminals. Some of the fraudsters even had assistance from individuals working inside the very offices tasked with approving benefits.

Even after DOL OIG and other law enforcement entities warned states early in the pandemic of widespread fraud in the PUA program, states did little to nothing to prevent identity thieves and other fraudsters from receiving benefits as they made the decision that any safeguards that would detect suspicious claims or non-existent addresses might delay benefit payments going out. Congress did not require PUA claimants to provide proof of eligibility until the program had been operating for nearly nine months, and none of the temporary pandemic UI programs required claimants to provide evidence that the claimant was searching for work. When states finally began implementing fraud control measures and cross-checking claimant information against common databases, it was after most of the pandemic UI benefits had already been disbursed. Some of the measures states put into place were 'too little, too late' and, in some cases, prevented eligible beneficiaries from receiving their benefits: problems that fraudsters and identity thieves never faced.

Some of these states also have not owned up to their mistakes. New York officials claimed to have prevented billions of dollars in fraud but could not provide any numbers to back

[258] *Id.*
[259] *Id.*

up their claims to state oversight officials and have delayed other oversight efforts. California officials continue to seek ways to avoid paying back their outstanding loans from the Federal UI Trust Fund by passing the bill onto small businesses within the state, or by brokering a backroom deal with friends in the Biden-Harris Administration, including former California LWDA Secretary Julie Su, who led the agency during the pandemic. Few states have implemented any IT upgrades or addressed staffing concerns that could have avoided some of the problems they faced—and could face again.

In March 2021, when states had been opened back up for many months, and COVID-19 vaccines were rapidly rolled out, the Biden-Harris Administration and Democratic majorities in the House and Senate authorized and extended benefits for an additional six months despite clear evidence that the extended and increased benefits were deterring many working aged adults from reentering the workforce. Eventually, more than half of the states ended the federal benefits early to fill labor shortages in those states. Yet, the Biden-Harris Administration and unconfirmed Department of Labor Acting Secretary Julie Su seem to not have heeded any lessons from the disastrous pandemic UI programs as they have recently supported plans to make some of these temporary UI programs permanent and allow those who choose not to work to collect UI benefit payments.

While the United States may never face a crisis like the COVID-19 pandemic again, Congress, the Executive Branch, and states should heed the lessons of how the pandemic UI programs were designed and implemented to avoid waste, fraud, and abuse during future economic downturns that might again require temporary UI benefits programs.