Action area 4
Bolstering state UI programs against fraud

Building Resilience:
A plan for transforming unemployment insurance

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Bolstering state UI programs against fraud

The "perfect storm" conditions of the COVID-19 pandemic exposed an already challenged unemployment insurance (UI) system to significant risks of fraud and improper payments. The combination of decades of administrative underfunding, outdated state information technology (IT) systems, record claims volumes, and temporary programs designed with weaker program integrity controls in 2020 provided an opportunity for criminals to exploit vulnerabilities in UI programs, resulting in elevated rates of fraud and improper payments.

Fraud takes on many forms including eligibility fraud, which occurs when benefits or services are acquired as a result of false information being provided with the intent to receive benefits for which an individual would not otherwise be eligible. State law determines the criteria for establishing a fraud determination within the UI program. Identity (ID) fraud, another major type of fraud, occurs when one person or group of persons uses the identifying information of another person to illegally receive benefits; ID fraud also includes fictitious employer schemes.[75]

The frequency and complexity of fraud attacks against state UI programs, specifically ID fraud, increased significantly during the pandemic. The risk was especially high in the Pandemic Unemployment Assistance (PUA) program. Unlike traditional UI benefits, Congress did not establish a requirement that PUA applicants verify their employment or identity until the program was reauthorized in December 2020. Also, unlike traditional UI benefits, PUA did not require that employers receive notice of claims being filed, which normally gives them an opportunity to validate claimant information with the states.

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[75] Fictitious employer schemes involve creating companies that exist only on paper with no actual employees, business operations, or business expenses for the sole purpose of reporting fake wages and subsequently filing fraudulent unemployment claims using the fake wages.

A top priority for the Employment and Training Administration (ETA) is to improve overall program integrity, and certain activities identified in this plan also support the Department of Labor (the Department)'s Agency Priority Goal – Strengthening America's Safety Net for Workers.[76] The Department is working proactively to mitigate fraud risks in all UI programs. ETA is researching, identifying, investing in, and providing states with new tools, strategies, funding, and guidance to help combat the constantly shifting and newly emerging types of unemployment fraud. Such efforts are balanced against the vital need to preserve and protect benefits for legitimate UI claimants, ensuring that those who genuinely require support are not deterred from receiving the assistance to which they are entitled.

Improper payments are erroneous UI payments that may be either higher or lower than a claimant is owed. The estimated improper payment rate for the regular UI program has exceeded 10 percent for 17 of the last 20 years. In 2021 and 2022, two years severely affected by the pandemic, the program's estimated improper payment rate spiked to 18.7 and 21.5 percent, respectively.[77] Benefits overpaid also include those obtained through fraudulent activity, though the Department has consistently found that fraudulent payments typically represent a minority share of all overpayments within the regular UI program. Though still elevated, 2023's improper rate of 14.8 percent represents a significant year-over-year decline.[78]

The Department's strategies and projects to help bolster state UI programs against ongoing and emerging fraud threats are described as follows. In addition, further legislative action is needed to ensure that all states employ important cross-matching strategies and have sufficient resources to prevent fraudulent payments.

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[76] Brent Parton and Jim Garner, *Strengthening America's Safety Net for Workers* (Department of Labor, Employment and Training Administration, FY22-23), www.performance.gov/agencies/dol/apg/goal-2/.

[77] These are figures reported by PaymentAccuracy.gov, www.paymentaccuracy.gov/payment-accuracy-the-numbers/.

[78] This figure comes from PaymentAccuracy.gov. Accounting for Unknown Payments, which may be proper or improper, this rate increases to 16.5 percent.

Strategies

Completed	
4.1. Designate a responsible entity in the Department for improper payment reduction (GAO 22-105051)	The Government Accountability Office (GAO) recommended the Department designate a dedicated entity for managing fraud risk in the UI program. Under an order from the Secretary, the Department's Chief Financial Officer (CFO) was delegated authority and assigned responsibility to serve as the Department's Improper Payment Reduction Coordinator. Responsibilities include, but are not limited to, coordinating the establishment of policies and procedures for assessing Departmental, component agency, and program risks of improper payments and coordinating the development of action plans to determine the nature and extent of possible improper payments for all of the Department's programs. Furthermore, on January 6, 2023, the Secretary issued a memorandum, designating the CFO as the dedicated entity responsible for managing the process of assessing fraud risks to the UI program.
4.2. Assess fraud risk in state UI programs using leading practices in the GAO's Fraud Risk Framework (GAO 22-105051)	In response to GAO recommendations in October 2021[79] and January 2023,[80] the Department has developed a thorough UI fraud risk profile that aligns its fraud risk assessment processes with the leading practices in the GAO's Fraud Risk Framework. The Department completed a comprehensive assessment using GAO's framework, including documenting the key risks facing the UI program and the overall risk tolerance. The Department will regularly update its assessment of UI fraud risks and incorporate any fraud risk management activities into ETA's UI Integrity Strategic Plan.[81] The Department is also communicating its antifraud strategy for the UI program to states and other relevant stakeholders through guidance. These activities will help states address the UI improper payment rate and improve the detection of recoverable overpayments.

[79] Government Accountability Office, *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, GAO-22-105051 (October 27, 2021), www.gao.gov/products/gao-22-105051.

[80] Government Accountability Office, *Unemployment Insurance: Data Indicate Substantial Levels of Fraud during the Pandemic; DOL Should Implement an Antifraud Strategy*, GAO-23-105523 (January 23, 2023), www.gao.gov/products/gao-23-105523.

[81] Department of Labor, Employment and Training Administration, *Unemployment Insurance Integrity Strategic Plan*, https://oui.doleta.gov/unemploy/integrity_plan.asp.

4.3. Develop interim solutions to provide the Department of Labor, Office of Inspector General (DOL-OIG) direct access to states' claims data, and Integrity Data Hub (IDH) data, for the purpose of audits and investigations	The Department has enhanced its collaboration with the DOL-OIG, ensuring that states receiving American Rescue Plan Act (ARPA)-funded grants were required to provide the DOL-OIG with direct access to claims data for the purpose of audits and fraud investigations, generally through weeks of unemployment through 2025 (and in some cases through September 2028). This change eliminates the need for the DOL-OIG to subpoena such records. Additionally, the Department published Unemployment Insurance Program Letter (UIPL) No. 04-17, Change 1, and Training and Employment Notice No. 05-22 reminding states of the ongoing requirement to provide data for purposes of fraud investigations, as well as the DOL-OIG's authority to request such data for audits under the Inspector General Act. In addition, following up on recommendations from the DOL-OIG, the Department notified states that data regarding potential fraud flagged by the IDH will be shared with the DOL-OIG.[82] (Also, see activity described in Strategy 2.6 regarding consideration of changes to unemployment compensation (UC) confidentiality regulations to better support UC stakeholders.)
4.4. Enable states to cross match UI claims against prisoner records	Beginning in October 2021, the Department supported state access to the Social Security Administration's Prisoner Update Processing System (PUPS) through the Interstate Connection Network (ICON) system, allowing states to flag UI claims made by incarcerated individuals to initiate an investigation (see UIPL No. 01-22). This basic check gives states the ability to cross match UI claims information with prisoner data to aid states in determining if an individual meets UI eligibility requirements. Thirty-seven states either already have a connection to PUPS data or are in the process of establishing a connection. The Department continues to provide technical assistance to states to navigate this process.

[82] Carolyn R. Hantz, Assistant Inspector General for Audit, Letter to Suzan G. LeVine, Principal Deputy Assistant Secretary for Employment and Training, (July 1, 2021), www.oig.dol.gov/public/reports/oa/2021/19-21-006-03-315.pdf.

4.5. Strengthen resources for victims of UI ID fraud	As part of a comprehensive approach to strengthening the integrity of the UI system, the Department continues to strengthen resources for victims of unemployment ID fraud. The Department issued UIPL No. 11-23 to advise that states must take precautions to protect the rights of ID theft victims and mitigate the negative consequences related to the fraudulent activity, including ensuring that the owner of the Social Security Number (SSN) is not held responsible for any overpayment and that no legal action is taken against them. To support these efforts, the Department dedicated a website[83] to help people understand unemployment ID fraud, how to report it, and to provide resources to support victims of unemployment ID fraud. The website, available in English and Spanish, has been viewed hundreds of thousands of times since launching on March 22, 2021. Furthermore, to mitigate some risks associated with numerous phishing schemes, the Department has introduced a pop-up message as part of the process flow for the National ID Verification Offering services (see Strategy 4.7). The pop-up message notifies individuals that they are verifying their identity for an unemployment claim and provides them with resources to report ID fraud if they were directed to the national offering site to verify their identity and they did not file an unemployment claim.
Underway	
4.6. Provide states with funding to strengthen capacity to protect the UI program from fraud and recover overpayments	Through ARPA and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Department has offered states $765 million in grants to support fraud prevention, fraud detection, and overpayment recovery activities. This includes $227 million in ARPA-funded Fraud Detection and Prevention and Integrity grants awarded to 50 state UI systems as of January 2024. As part of this overall investment, the Department also made available up to $525 million in CARES Act funding to assist states with efforts to prevent and detect fraud and to recover fraud overpayments in certain CARES Act UI programs.

[83] See dol.gov/fraud.

	States are using these funds to support a variety of activities, including reducing their fraud investigation backlogs and ongoing accumulation of fraud cases, strengthening ID verification, enhancing data management and analytics capabilities, improving cross-matching with other public data sources to flag potential fraud, and increasing the collection and recovery of overpayments. The Department is actively surveying states' progress, with the goal of capturing and sharing promising practices with all states.
4.7. Strengthen ID verification in state UI programs	The experience of the pandemic emphasized the need for a robust ID verification strategy in state UI programs. The best means by which states can ensure the name and SSN belong to the individual applying for UI is by conducting evidence-based ID verification. Evidence-based ID verification includes activities such as an individual presenting ID documents (i.e., official government-issued documentation, control over a device, account or address known to be associated with an identity, or biometric information) at a physical location, through a virtual platform, or through other state-developed processes or procedures that validate or verify an individual's identity. The Department has issued guidance directing states, at a minimum, to take a risk-based approach to identify incoming claims that require evidence-based ID verification. In addition, the Department is using ARPA funding to facilitate state access, for up to two years, to the General Services Administration's digital ID verification solution Login.gov and to in-person verification through the U.S. Postal Service. In Fiscal Year (FY) 2024, the Department will begin collecting and analyzing individual-level data from participating states as part of a strategy for evaluating the effectiveness and equity of this offering and determining the appropriate long-term solution once ARPA funding is exhausted.
4.8. Expand states' cross-matching capabilities with the IDH	In addition to evidence-based ID verification, it is important that states also use other tools, such as cross-matching with available Federal databases and utilizing verification systems, to ensure that individuals are eligible for benefits and to identity fraudulent activity.

	As part of efforts to strengthen the tools offered to states to protect against criminal actors perpetrating fraud in multiple states, the Department will continue investing in and promoting the use of the UI IDH, administered by the National Association of State Workforce Agencies (NASWA)'s UI Integrity Center. This is one piece of the broader work of the NASWA UI Integrity Center to provide technical assistance and support to states towards improving payment accuracy and the overall integrity of the UI system. As a result of continued investment and promotion, the number of states with IDH Participation Agreements has increased from 34 states in 2020 to all 53 states with UI systems. Also, the Department will continue promoting state use of all functionalities available in the IDH.
	With ARPA support, the Department is also working with states to make it easier to integrate the IDH into their internal systems to facilitate quicker investigations of suspicious UI claims. UIPL No. 11-23 identified three actions states should take, including: using all IDH functionalities; implementing IDH web service/real-time connectivity, if possible; and submitting all initial and continued claims to the IDH in real-time, or daily, at minimum. In addition, the Department is investing ARPA funding to support the IDH in gaining access to additional federal data sources.
	Lastly, the Office of Unemployment Insurance and the Department's Chief Evaluation Office have launched an initial study to assess the IDH's effectiveness in identifying fraud. The findings from this study will inform additional evaluation needs and action. This initial study began in July 2023 and is anticipated to be completed in the third quarter of FY 2024.
4.9. Expand states' reporting of nonmonetary determination and disqualification activities	The Department plans to submit notice to Federal Register seeking comments on revisions to existing Information Collection Request to enhance and/or expand data elements in the ETA 207 report, Nonmonetary Determination Activities, to capture work search issues, ID verification issues, and fraud issues, with a break-out for fraud and fraud specifically related to ID verification. The additions could provide the Department with data on the volume and nature of nonmonetary determinations and denials.

	The Department will use the data to analyze the ratio of disqualifications to determinations, to examine and evaluate the program effect of nonmonetary activities in these new categories, and to inform policy decisions related to funding and technical assistance.
4.10. Partner with the DOL-OIG and other law enforcement agencies	The Department continues to emphasize the requirement and states' responsibility to refer allegations that they reasonably believe constitute unemployment fraud, waste, abuse, mismanagement, or misconduct to the DOL-OIG.

The Department will continue to partner with the DOL-OIG's Office of Investigations to streamline communication between states, the DOL-OIG, and other law enforcement agencies to ensure fraud is reported to the DOL-OIG and states are well-informed of law enforcement activities. Pursuant to recommendations by the DOL-OIG,[84] the Department has issued multiple guidance letters to states regarding the importance of referring cases for prosecution,[85] and will maintain a regular schedule of communications with the DOL-OIG to support targeted enforcement efforts and to support state engagement with the DOL-OIG.

This authority has assisted with efforts to bring criminals perpetrating UI fraud to justice. As of June 2023, the DOL-OIG's work has led to more than 700 successful prosecutions and over $900 million in monetary recoveries.[86] |
| **4.11. Strengthen states' Integrity Action Plans (IAPs)** | The Department will review IAPs submitted by states through the State Quality Service Plan process and ensure the IAPs include actionable strategies that address the state's fraud prevention and detection efforts and the state's specific root causes of improper payments. |

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[84] Department of Labor, Office of Inspector General, *COVID-19: Pandemic Unemployment Assistance For Non-Traditional Claimants Weakened By Billions In Overpayments, Including Fraud*, Report No. 19-23-014-03-315 (September 27, 2023), www.oig.dol.gov/public/reports/oa/2023/19-23-014-03-315.pdf.

[85] Department of Labor, Employment and Training Administration, *Reminder on Federal Statute of Limitations on Criminal Prosecutions of Unemployment Insurance (UI) Fraud,* Training and Employment Notice No. 12-23 (December 1, 2023), www.dol.gov/agencies/eta/advisories/ten-12-23.

[86] Department of Labor, Office of Inspector General, *Semiannual Report to Congress* (October 1, 2022–March 31, 2023), www.oig.dol.gov/public/semiannuals/89.pdf.

	The Department will carry forward the work of the fraud risk assessment to the states and ensure that states' IAPs articulate a plan to identify and address both national and state-specific UI fraud risks through a comprehensive state antifraud strategy.
4.12. Coordinate with banks, financial institutions, and law enforcement	The Department will continue to work to facilitate the recovery/return of overpaid benefits, including those that were fraudulently obtained, through collaboration and coordination with banks, financial institutions, and law enforcement agencies. The Department has provided guidance to states for recovering federally funded UI benefits, which are held by banks and financial institutions as a result of suspicious and/or potentially fraudulent activity (see UIPL No. 19-21).[87] The Department will continue to provide targeted technical assistance to states regarding overpayment recovery and return of funds.

Proposed legislative reform

The completed UI fraud risk profile, and the accompanying UI Integrity Strategic Plan, outline a series of national strategies the Department is employing to effectively prevent fraud and reduce improper payments in the UI program. The risk mitigation and antifraud strategies tracked in the UI Integrity Strategic Plan address the highest residual risks identified in the UI fraud risk profile and are evaluated quarterly to determine their effectiveness. In FY 2024, the Department began requiring that states include in their IAP plans to develop a state antifraud strategy to address state-specific UI system vulnerabilities and risks.

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[87] Department of Labor, Employment and Training Administration, *Benefits Held by Banks and Financial Institutions as a Result of Suspicious and/or Potentially Fraudulent Activity and the Proportional Distribution Methodology Required for Recovering/Returning Federally Funded Unemployment Compensation (UC) Program Funds*, UIPL No. 19-21 (May 4, 2021), www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-19-21.

To build on these efforts, the President's FY 2025 budget proposes establishing the following program integrity requirements for state UI agencies:

- **Require states to cross-match against system(s) designated by the Secretary** – This proposal would require states to cross-match against system(s) designated by the Secretary, currently the NASWA UI Integrity Center's IDH. UI system-wide use of the IDH will result in increased prevention, detection, and recovery of improper and fraudulent payments. Data sources continue to be added and currently include, but are not limited to: a suspicious actor repository for states to exchange data elements from suspicious UI claims; a multi-state cross-match to receive notifications when potentially fraudulent claims are filed in multiple states; an identity verification solution that provides identity scoring information to help states prioritize investigations of questionable identities; and a bank account verification service that allows states to authenticate bank account information.

- **Require states to use a system(s) of information exchange with employers designated by the Secretary** – This proposal would require states to use system(s) designated by the Secretary, currently the State Information Data Exchange System (SIDES), to exchange information electronically with employers, such as reasons for a claimant's separation from employment or a weekly accounting of claimant's work and earnings with a particular employer. This system is designed to help employers provide the information required to determine the eligibility of a claimant to states more quickly by providing a secure electronic data exchange between states and employers or their agents, providing the state information that can help it pay benefits to eligible claimants and interrupt potentially fraudulent claims more quickly.

- **Require states to cross-match against the National Directory of New Hires (NDNH**) – This proposal will require state UI agencies to use the NDNH to better identify individuals continuing to claim UC after returning to work, which is one of the leading root causes of UI improper payments.

- **Require states to cross-match with a system(s) designated by the Secretary that contains information on incarcerated individuals** – This proposal would require states to cross-match against system(s) designated by the Secretary, including the Social Security Administration's PUPS data. This should result in increased prevention and detection of improper and fraudulent payments.

- **Require states to disclose information to the DOL-OIG –** This proposal will require states to disclose information to the DOL-OIG to conduct audits and investigations to discover fraud, waste, and abuse or inefficiencies in the UC programs. States are already required to disclose information for the purpose of investigating UC fraud; however, the disclosure for purposes of audits is discretionary for states. In addition to state disclosure, this proposal would authorize DOL-OIG to have direct access to the system used for the electronic transmission of interstate claims (i.e., ICON) and the system for cross-matching claimants against other databases to prevent and detect fraud and improper payments (i.e., IDH), increasing efficiency and lowering burdens for states.

- **Allow states to retain up to five percent of recovered fraudulent UI overpayments for program integrity use –** This proposal will allow states to retain up to five percent of fraudulent overpayment recoveries and past-due amounts collected from employers (including when an employer is found to have misclassified employees as independent contractors) to fund additional program integrity activities in each state's UI program. This provides additional resources and incentives to states to increase detection and recovery of improper payments, to hold employers accountable for accurately reporting employees (e.g., combatting worker misclassification), and to carry out staff-intensive work to validate cross match hits and audit employers as required by law.

- **Require states to use penalty and interest collections solely for UI administration –** This proposal will require states to deposit all penalty and interest payments collected through the UI program into a special state fund and require the funds be used for improving state administration of the UI program and reemployment services for UI claimants. States with high improper payment rates would be required to use a portion of the funds for program integrity activities. Currently, states have discretion to use these funds for non-UI purposes.

- **Allow states the authority to issue a formal warning when claimants are unclear about work search requirements –** One of the primary drivers of improper payments is work search errors. This proposal centers on the requirement for an individual to be actively seeking work, which was added in 2012 to Section 303(a), SSA.

This proposal allows states to establish a practice of providing a formal warning—but not more than once per claim year—to promote equitable access and ensure full awareness of what an individual must do to meet the requirement to be actively seeking work before holding an individual ineligible for failure to comply with the work search requirements. When a formal warning is provided, the claimant would be allowed to keep the benefit payment for that week. While the specifics differ from state-to-state, formal warnings permit individuals to be eligible for UC the week that the work search requirement was not met, with the state warning the individual about ineligibility if work search requirements are not met in subsequent weeks. Additionally, this proposal would require that states provide certain "good cause" exemptions to the work search requirement, such as in the event of a disaster, and permits states to establish additional "good cause" exemptions.

- **Allow states to use contract support in recovery efforts under the Treasury Offset Program (TOP) –** States are required, as a condition of receiving federal funds to administer their UI program, to use the TOP to recover certain covered debts that remain uncollected. This involves the exchange of federal tax information (FTI) between states and the Treasury Department. States are already permitted to use contractors to support computer systems when handling FTI for tax administration purposes; however, they are restricted from using contractors to support computer systems that involve handling FTI for purposes of TOP. Many states struggle because their reliance on contractors to operate UI systems conflicts with the requirements regarding use of TOP. This proposal would allow states to use contractors to also support computer systems that involve handling FTI for purposes of TOP.

While these mechanisms will be effective at flagging suspicious claims from the pandemic and thereafter, law enforcement agencies need sufficient time to undertake criminal actions. In line with recommendations from the DOL-OIG, the administration has proposed extending the statute of limitation for federal crimes related to CARES Act payments to 10 years.[88]

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[88] Department of Labor, Office of Inspector General, *COVID-19: Pandemic Unemployment Assistance For Non-Traditional Claimants Weakened By Billions In Overpayments, Including Fraud*, Report No. 19-23-014-03-315 (September 27, 2023), www.oig.dol.gov/public/reports/oa/2023/19-23-015-03-315.pdf.