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Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response

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SUMMARY

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Katelin P. Isaacs
Specialist in Income Security

Julie M. Whittaker
Specialist in Income Security

Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response

The COVID-19 pandemic and resulting economic recession triggered a robust response from the federal-state Unemployment Insurance (UI) system. Permanent-law UI programs—Unemployment Compensation (UC) and Extended Benefits (EB)—automatically responded to the mass layoffs and business closures at the onset of the COVID-19 pandemic. Additionally, Congress authorized a suite of temporary (now-expired) UI benefits in response to COVID-19: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Pandemic Unemployment Assistance (PUA). These COVID-19 UI benefits were created through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). They were subsequently extended under Division N, Title II, Subtitle A, of the Consolidated Appropriations Act, 2021 (P.L. 116-260; the Continued Assistance for Unemployed Workers Act of 2020, or "Continued Assistance Act"); and Title IX, Subtitle A, of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2). The Continued Assistance Act also created Mixed Earner Unemployment Compensation (MEUC).

As of April 2022, the temporary COVID-19 UI benefits are now expired and the permanent-law UI programs have automatically contracted in terms of claims and expenditures. However, the unprecedented scale of the UI response to COVID-19 has highlighted concerns about UI program integrity—and especially fraud. Interest in these program integrity challenges stems from long-standing concerns about state administrative practices that have historically yielded high levels of improper payments. The additional influx of temporary UI benefits authorized by Congress in response to the COVID-19 pandemic only increased program integrity pressures. All UI programs and benefits are administered by states with oversight performed by the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL). Thus, both underlying aspects of the federal-state UI system as well as pressures unique to the COVID-19 UI response have contributed to current interest in UI program integrity and fraud issues.

This report describes the COVID-19 UI response, including information on both permanent-law UI programs (UC and EB) and the now-expired, temporary COVID-19 UI benefits (FPUC, PEUC, PUA, and MEUC). It defines key concepts related to UI program integrity and fraud: improper payments, overpayments, fraud (both eligibility fraud and identity fraud), improper payment reporting requirements, and overpayment recovery. This report also compiles current program data and estimates related to UI overpayments and fraud from ETA, the DOL Office of the Inspector General (DOL-OIG), the Government Accountability Office (GAO), and other sources. (These data and estimates are preliminary and subject to changes as additional overpayments and fraud are identified by states and law enforcement entities. Thus, the full scope of UI improper payments and fraud may not be known for some time.) Next, this report analyzes UI program integrity concerns related to the temporary, now-expired COVID-19 UI benefits as well as the underlying, permanent-law UI programs. Significant UI program integrity concerns include preexisting, systemic challenges—such as benefit structure, decreased funding and staffing, and payment timeliness requirements—as well as challenges related to recession responses, generally, and the COVID-19 recession, specifically.

Policymakers may be interested in using experiences and evidence from the COVID-19 UI response to improve the permanent-law UI programs and respond to future recessions. Therefore, this report also discusses congressional interest in these issues, including statutory changes made to COVID-19 UI benefits under the Continued Assistance Act and ARPA to strengthen program integrity. This report synthesizes existing policy options to address UI program integrity issues, many of which have nonpartisan or bipartisan support, including information technology modernization, data matching, and identity verification. Finally, this report summarizes legislation introduced in the 117th Congress to address UI program integrity concerns. These bills either would amend permanent-law UI programs (S. 490, S. 1699, S. 2898, H.R. 723, H.R. 1458, H.R. 3268, H.R. 6224) or would have amended the now-expired COVID-19 UI benefits (S. 1699, S. 2742, H.R. 3268, H.R. 4190).

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The federal-state Unemployment Insurance (UI) system has faced long-standing program integrity challenges. The enhanced and expanded UI benefits created in response to the COVID-19 pandemic exacerbated some of these challenges and introduced new considerations related to improper payments and fraud. This report defines key concepts related to UI program integrity, including fraud; addresses what is known about the scope of COVID-19 UI program integrity and fraud at this time; summarizes challenges related to UI program integrity, especially in light of the COVID-19 pandemic; and synthesizes existing policy proposals and introduced legislation to address UI program integrity generally and fraud specifically.

Overview

Under permanent law, the UI system includes 53 separate state-administered and state-financed Unemployment Compensation (UC) programs.[1] These programs provide weekly income replacement to eligible unemployed workers (regular UC). The UC program's two primary objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions. These objectives are reflected in the permanent federal and state laws that construct the UC program's funding and benefit structure. States also administer the Extended Benefit (EB) program. Depending on state law, additional federal eligibility requirements, and economic conditions in the state, EB provides additional weeks of unemployment benefits.[2] All UI programs and benefits, including temporary UI benefits (e.g., COVID-19 UI benefits), are administered by states with oversight provided by the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL).

In general, during economic expansions, states fund approximately 85%-90% of all UI expenditures—as almost all of the benefits are state-financed by state unemployment taxes.[3] In comparison, federal expenditures are relatively small during these expansions (approximately 10%-15% of UI expenditures) and are primarily administrative grants to the states financed by federal unemployment taxes.[4] During a recession—such as the one caused by the COVID-19 pandemic (February 2020 through March 2020)[5]—the federal role in funding UI benefits automatically increases as more workers lose their jobs, receive UC benefits, and remain unemployed long enough to claim EB benefits (50% financed by federal funds under permanent law, often temporarily 100% federally financed in response to recessions).[6] The increased amount of UC and EB payments to unemployed workers mitigates the economic effect of lost earnings by

[1] The District of Columbia, Puerto Rico, and the U.S. Virgin Islands are considered states under federal UI law.

[2] For additional information on state UC programs and EB, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

[3] For information on the funding of UC, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

[4] For information on the funding of UC administration, see CRS In Focus IF10838, *Funding the State Administration of Unemployment Compensation (UC) Benefits*.

[5] See National Bureau of Economic Research, "Business Cycle Dating Committee Announcement July 19, 2021," July 19, 2021, https://www.nber.org/news/business-cycle-dating-committee-announcement-july-19-2021.

[6] For information on the temporary 100% federal financing of EB in response to the COVID-19 pandemic, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

injecting additional funds into the economy. Additionally, temporary federally financed UI benefits are often enacted in response to recessions.[7]

Program integrity issues related to these permanent-law UI programs have long been of concern. The reported improper payment estimate for the UI system has been above 10% for 14 of the past 18 years.[8] The Office of Management and Budget (OMB) continues to designate UI as a "high-priority" program (i.e., a program with estimated improper payments of more than $100 million a year).[9] The UI system's pattern of high overpayment rates is evident throughout the pandemic. For the first quarter of FY2022 (the most recent available), the UI improper payment rate was reported as 17.9%, with a total of $73.8 billion in improper payments.[10]

Temporary COVID-19 UI Benefits

During recessions, temporary UI benefit expansions typically supplement the permanent-law UC programs.[11] This approach increases the proportion of federal UI expenditures. For example, in FY2021, the ratio of federal expenditures within the UI system increased to 27% of outlays on permanent-law UI programs. When temporary UI benefits enacted in response to COVID-19 are included, federal expenditures comprised 88% of total UI outlays.[12]

Congress created several temporary, now-expired UI programs through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). Congress extended these programs through Division N, Title II, Subtitle A, of the Consolidated Appropriations Act, 2021 (P.L. 116-260; the Continued Assistance for Unemployed Workers Act of 2020, or "Continued Assistance Act"); and Title IX, Subtitle A, of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2):

- *Federal Pandemic Unemployment Compensation (FPUC)* provided a supplement for all UI benefits of (1) $600 per week for weeks of unemployment beginning on March 29, 2020, through July 25, 2020 (July 26, 2020, in New York; for subsequent UI benefit expiration dates provided below, the benefit expiration date in New York fell one calendar day later based upon its state's definition of *week*) and (2) subsequently, $300 per week for weeks of unemployment beginning on or after December 27, 2020, through September 4, 2021.

[7] For how the UI programs have worked in previous recessions and were supplemented by temporary measures, see CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*.

[8] DOL, Office of Inspector General (DOL-OIG), "DOL-OIG Oversight of the Unemployment Insurance Program," https://www.oig.dol.gov/doloiguioversightwork.htm (last updated March 17, 2022).

[9] See PaymentAccuracy.gov, "High-Priority Programs," https://www.paymentaccuracy.gov/payment-accuracy-high-priority-programs/.

[10] These data include only benefits that were paid based upon a spell of unemployment covered by the regular UC program: UC, EB, Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC) that augmented UC, EB and PEUC benefits. It does not include Pandemic Unemployment Assistance (PUA) or FPUC that augmented PUA. See U.S. Department of Labor (DOL), Employment and Training Administration (ETA), "Payment Integrity Scorecard," https://www.cfo.gov/wp-content/uploads/2022/Q1/Employment%20and%20Training%20Administration%20-%20Federal%20State%20Unemployment%20Insurance%20Payments%20Integrity%20Scorecard%20FY%202022%20Q1.pdf.

[11] In total, Congress has acted nine times—in 1958, 1961, 1971, 1974, 1982, 1991, 2002, 2008, and 2020—to provide extended benefits, augmented unemployment benefits, or both. See CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*.

[12] Email communication from DOL, ETA, with authors (March 11, 2021).

- *Pandemic Emergency Unemployment Compensation (PEUC)* provided a total of 49 additional weeks of federally financed UI benefits for individuals who exhausted state and federal UI benefits and were able to work, available for work, and actively seeking work, subject to COVID-19-related flexibilities, through September 4, 2021.
- *Pandemic Unemployment Assistance (PUA)* provided a total of 75 weeks of a temporary, federal UI program for individuals who were (1) not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers); (2) unemployed, partially unemployed, or unable to work due to a specific COVID-19-related reason; and (3) not able to telework and not receiving any paid leave. The PUA benefit was available through September 4, 2021.

Additionally, the Continued Assistance Act authorized an additional, temporary UI benefit:

- *Mixed Earner Unemployment Compensation (MEUC)* provided, at state option, a $100 per week benefit augmentation for unemployed workers with income from both wage-and-salary jobs and self-employment who were not currently receiving PUA. MEUC was available in most states for weeks of unemployment beginning on or after December 27, 2020, through September 4, 2021.[13]

As of March 26, 2022, the total federal expenditures for PEUC, PUA, and FPUC were $580.4 billion.[14] Federal expenditures on MEUC totaled $63 million in FY2021.[15] The **Appendix** provides federal expenditures on FPUC, PEUC, and PUA by state.

Magnitude of COVID-19 UI Response

The overall scale of the UI response to COVID-19-related unemployment was substantial and unprecedented in comparison to the size of the UI system in nonrecessionary times:

- UC outlays were $52.0 billion in FY2021 compared with $27.6 billion in FY2018.[16]
- EB outlays were $10.6 billion in FY2021 compared with $0.0 billion in FY2018.[17]
- Outlays on the temporary COVID-19 UI payments are estimated to be approximately $870 billion,[18] including

[13] For information on all of these now-expired COVID-19 UI benefits, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

[14] DOL, ETA, "Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through March 26, 2022," https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html.

[15] FY2021 outlays provided by DOL, ETA communication with authors (March 11, 2021).

[16] DOL, ETA communication with authors (March 11, 2021). FY2018 outlays available via DOL, *Unemployment Insurance Program: Outlook, President's Budget FY2022*, https://oui.doleta.gov/unemploy/pdf/prez_budget_22.pdf. These UC outlays are all state-financed UC dollars. There was also federal financing of UC benefits authorized under the CARES Act, as amended, which amounted to $0.2 million in FY2021.

[17] Ibid.

[18] See DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program."

- in FY2021: $164.2 billion in FPUC outlays, $78.9 billion in PEUC outlays, $74.7 billion in PUA outlays, and $62.9 million in MEUC outlays.[19]

The scope of the COVID-19 UI response also exceeded UI responses to previous recessions. Prior to the COVID-19 UI pandemic, the Great Recession (December 2007 through June 2009) had led to the largest response of the UI system, with a peak of total outlays from all UI programs in FY2010 of $156.4 billion.[20] In response to the COVID-19 pandemic, the peak amount of total outlays on all UI programs occurred in FY2021 and was $217.8 billion.[21]

The peak in claims for UI benefits during the COVID-19 pandemic period occurred during summer 2020. There has been a significant decline in UI benefit claims and payments since then, particularly after calendar year 2021. For example, according to program data published by ETA, for the week ending June 20, 2020, there were 33.2 million total UI claims from all UI programs authorized at the time, including the COVID-19 UI benefits. In comparison, by the week ending February 19, 2022, total UI claims had decreased to 2.0 million.[22] Likewise, there were $22.1 billion in state UC benefits paid in June 2020. By February 2022, the amount of state UC benefits paid had decreased to $2.5 billion per month.[23]

There are several reasons for this general declining trend. First, the authority for all COVID-19 UI programs expired in September 2021. Second, as state unemployment rates declined, the criteria for the permanent-law EB program payments were no longer met at the state level. As of this report date, EB is not payable in any state.[24] Finally, regular UC benefit claims and expenditures have also decreased.

Program Integrity and the COVID-19 UI Response

Although UI claims and benefit payments have decreased after the COVID-19 recession-related peak, policymakers continue to be interested in UI program integrity issues. The COVID-19 UI response highlighted a variety of challenges that have yielded unprecedented levels of UI improper payments and fraud. Both the "Scope of UI Improper Payments and Fraud" and "Challenges Related to UI Program Integrity" are described in detail below (see also "UI Program Integrity: Key Concepts and Definitions" for information on how UI program integrity terms are used in this report). Broadly, the COVID-19 UI response has called attention to three types of program integrity challenges: (1) preexisting, systemic challenges related to the underlying structure of permanent-law UI programs and benefits; (2) pressures created by counter-cyclical UI responses to recessions generally; and (3) unique challenges related to the COVID-19 UI response.

In terms of the underlying, permanent-law UI system, states administer unemployment benefits and are required to certify the ongoing eligibility status of each claimant on a weekly basis, which is unique among income security programs. Adding to this administrative burden, federal requirements prioritize the timeliness of UI benefit payments in order to respond quickly to

[19] DOL, ETA communication with authors (March 11, 2021).

[20] DOL, *UI Outlook, Mid-Session Review FY2016*. For information on the UI response to the Great Recession, including temporary UI benefits, see CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*.

[21] DOL, *UI Outlook, President's Budget FY2023*.

[22] DOL, ETA, "UI Weekly Continued Claims—All Programs," https://oui.doleta.gov/unemploy/docs/allprograms.xlsx.

[23] DOL, ETA, "Monthly Program and Financial Data," https://oui.doleta.gov/unemploy/claimssum.asp.

[24] The availability of EB in states is announced by the DOL, ETA via weekly trigger notices. See DOL, ETA, "Office of Unemployment Insurance," https://oui.doleta.gov/unemploy/claims_arch.asp.

unexpected periods of unemployment and loss of income. Moreover, many eligibility characteristics of UI claimants, such as a return to work, are subject to change quickly. Yet decreased administrative funding and staffing over time as well as increased reliance on automated systems—often outdated and inadequately performing—have contributed to make accurate eligibility determinations and benefit payments difficult for states. These characteristics of the permanent-law UI system have led to long-standing challenges in program administration, which have resulted in sustained high rates of improper payments over time.

Additionally, the response of the UI system during recessions increases UI program integrity pressures. Permanent-law UI benefits (e.g., UC and EB) automatically expand in response to increased unemployment during recessions. At the same time, ad hoc, temporary UI benefits created in response to recessions add to the administrative burden of state UI agencies. For example, such temporary UI benefits often extend the duration of total UI benefits that a state administers. Thus, states not only make more eligibility determinations due to an increased volume of UI claims during recessions; they may also be administering new UI programs with different rules and structures than permanent-law programs. States may also face challenges in increasing staffing during recessionary periods preceded by years of low unemployment and low UI claims.

Finally, the COVID-19 UI response created unique program integrity challenges. In particular, the PUA program provided unemployment benefits to a new population of workers not previously covered by the UI system (i.e., the self-employed, independent contractors). States struggled with identity verification for PUA claimants since they did not have information on the prior work and earnings of these individuals who were outside the federal-state UI taxation system. Most of the COVID-19 UI fraud appears to involve PUA benefits. Additionally, the magnitude of the FPUC benefit ($600 a week or $300 a week) was unprecedented in terms of previous recession responses. This large weekly benefit supplement may have contributed to making UI fraud more attractive by providing additional monetary incentives to criminal elements.

Understanding these three types of program integrity challenges provides context for the scope of COVID-19 UI improper payments and fraud. These challenges also suggest approaches to reducing improper payments and fraud in permanent-law UI programs through improved administrative practices (see “Tools to Address UI Program Integrity Concerns”). Policymakers may wish to keep these program integrity challenges in mind when designing UI responses to future recessions.

UI Program Integrity: Key Concepts and Definitions

Program integrity activities are designed to prevent fraud, waste, and abuse of government resources.[25] In the context of UI, which is designed as an income security program, program integrity concerns focus on improper payments.

An *improper payment* is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes any payment to an ineligible recipient.[26] Improper payments include not only overpayments but also underpayments. Within the UI system, *overpayments* are

[25] See, for example, Government Accountability Office (GAO), *Program Integrity: Views on the Use of Commercial Data Services to Help Identify Fraud and Improper Payments*, GAO-16-624, June 30, 2016, p. 3, http://www.gao.gov/assets/680/678114.pdf.

[26] Section 2(d)(2) of P.L. 107-300, the Improper Payments and Information Act of 2002 (enacted November 26, 2002).

identified when a state determines that the individual received a payment, or a portion of a payment, to which the individual is not entitled.[27]

Fraud is a subset of UI overpayments. ETA notes that *fraud* is defined under each state's UC laws and, thus, what constitutes fraud will vary from state to state.[28] In general, fraud involves a knowing and willful act or concealment of material facts to obtain or increase benefits. States vary on the level of evidence required to demonstrate a knowing and willful act or the concealment of facts. An overpayment classified as a fraud overpayment in one state might be determined to be a nonfraud overpayment in another state. Often, fraud determinations include identifying a pattern of action or the claimant's certification of erroneous information under the penalty of perjury.

COVID-19 UI Fraud Definitions

While regular UC benefits do not employ one federal definition of *fraud*, several of the temporary COVID-19 UI benefits did include statutory language related to fraud as part of their authorizations. For example, Section 2104(f)(1), "Fraud and Overpayments," of the CARES Act, as amended, sets out the following definition of *fraud* for FPUC and MEUC benefits:

> If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which such individual was not entitled.

There is identical language under Section 2107(e)(1) of the CARES Act, as amended, with regard to fraud and PEUC benefits.[29]

In program guidance to states, ETA has explained that there have been two types of UI fraud prevalent with regard to the COVID-19 UI benefits: eligibility fraud and identity fraud. ETA defines *eligibility fraud* in the following manner:

> *Eligibility fraud* generally occurs when benefits or services are acquired as a result of false information with the intent to receive benefits for which an individual or individuals would not otherwise be qualified. State law determines how this is evaluated within the UC program. Not all improper payments are considered fraudulent.[30]

ETA provides the following definition of *identity fraud*:

> *Identity fraud* is when one person acquires and uses the identifying information of another person in order to illegally receive benefits. The fraud can happen either at the time of UI

[27] DOL, ETA, "State Instructions for Assessing Fraud Penalties and Processing Overpayment Waivers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended," Unemployment Insurance Program Letter (UIPL) No. 20-21, May 5, 2021, p. 3, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_20-21.pdf.

[28] See DOL, ETA, "UI Improper Payment Definitions," https://oui.doleta.gov/unemploy/pdf/Overpayment_CauseDefinitions.pdf.

[29] Unless otherwise specified, PUA administration follows the federal regulations for Disaster Unemployment Assistance under Title 20, Part 625, of the *Code of Federal Regulations*, which leave administrative issues such as fraud up to state UC laws. For more information, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*.

[30] DOL, ETA, "Grant Opportunity to Support States with Fraud Detection and Prevention, Including Identity Verification and Overpayment Recovery Activities, in All Unemployment Compensation (UC) Programs," UIPL No. 22-21, August 11, 2021, p. 3, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_22-21.pdf.

> application submission, or by changing key user data like bank account information after a claim has been established. … [S]ynthetic identity fraud occurs when real and fake information are combined to create false identities.[31]

UI Improper Payment Reporting

UI improper payment reporting is required as part of the regular administration of state-financed UC benefits conducted by states, with oversight performed by DOL, ETA.[32] UI improper payment data are estimated using the DOL Benefit Accuracy Measurement (BAM) survey.[33] Included in BAM estimates are regular state benefits, including UC for federal employees and UC for ex-servicemembers.[34] However, BAM estimates do not include EB payments or any temporary UI benefits such as the COVID-19 UI programs (i.e., FPUC, PEUC, PUA, or MEUC).[35] DOL compiles and provides the BAM-generated UI improper payment data to OMB for publication as part of PaymentAccuracy.gov, which publishes "Program Scorecards," including for UI.[36]

While BAM reports do not include the COVID-19 UI benefits, DOL's Office of Inspector General (DOL-OIG) recommended to ETA that it estimate an improper payment rate for the COVID-19 UI benefits. Accordingly, ETA reported an improper payment rate for FPUC and PEUC for the first quarter of FY2022 (see the section on "ETA and OMB Estimates"). The DOL-OIG has testified that ETA plans to report the improper payment rate for the PUA program (and for FPUC supplementing PUA benefits) later in 2022.[37]

In addition to BAM estimates and ETA estimates of COVID-19 UI improper payments, ETA has also required—via program guidance[38]—that states make monthly reports of overpayments of

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[31] Ibid., p. 4. As referenced, also see DOL, ETA, "Identity Verification for Unemployment Insurance (UI) Claims," UIPL No. 16-21, April 13, 2021, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-21.pdf.

[32] See 20 C.F.R. Part 602.

[33] States are required to use BAM by the Improper Payments Information Act (IPIA) and the Improper Payments Elimination and Recovery Act (IPERA). BAM is also used to identify and support resolutions of deficiencies in state UI administrations. See https://oui.doleta.gov/unemploy/improp_pay.asp#.

[34] Former federal workers may be eligible for unemployment benefits through the Unemployment Compensation for Federal Employees program, 5 U.S.C. §§8501-8508. Former U.S. military servicemembers may be eligible for unemployment benefits through the Unemployment Compensation for Ex-Servicemembers program, 5 U.S.C. §§8521-8525. For more information, see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*.

[35] For details on BAM methodology, see DOL, ETA, "Benefit Accuracy Measurement Methodology and Program Description," 2020, https://oui.doleta.gov/unemploy/bam/2020/BAM_Methodology_IPIA_2020.pdf.

[36] See PaymentAccuracy.gov, "High-Priority Programs," https://www.paymentaccuracy.gov/payment-accuracy-high-priority-programs/.

[37] Testimony of Larry D. Turner, Inspector General, DOL-OIG, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Pandemic Response and Accountability: Reducing Fraud and Expanding Access*, (hearings, 117th Cong., 2nd sess., March 17, 2022, p. 6, https://www.oig.dol.gov/public/testimony/20220317.pdf. This DOL-OIG testimony does not mention reporting on MEUC improper payments, although DOL-OIG does audit work planned on the effectiveness of MEUC.

[38] For PUA reporting, see DOL, ETA, "Continued Assistance to Unemployed Workers Act of 2020-Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes," UIPL No. 16-20, Change 4, January 9, 2021, p. 7, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_4.pdf. For PEUC, reporting, see DOL, ETA, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020-Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions," UIPL No. 17-20, April 10, 2020, p. I-14, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_17-20.pdf. For FPUC reporting, see DOL, ETA, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions," UIPL No. 15-20, April 4, 2020, p. I-9, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf.

COVID-19 UI benefits, although, according to DOL-OIG work discussed later this report (see the section on "DOL-OIG Estimates"), not all states have provided this reporting.

Recovery of UI Overpayments

States can recover UI overpayments using a variety of authorities—for example, through offsets of future UI benefits and offsets of state and federal tax refunds.[39] In some situations, fines and penalties are also applied when fraud is involved.[40] UC and EB are paid out under state laws; and many states have authorities to waive nonfraud overpayments in certain cases, in particular in situations in which the nonfraud overpayment is without fault and in situations in which recovery would be against "equity and good conscience" (i.e., hardship).[41] Additionally, the COVID-19 UI programs allow states to waive certain overpayments in cases of nonfraud hardship, including limited circumstances in which states may use blanket waivers of certain categories of nonfraud overpayments.[42] ETA currently defines the "acceptable level of performance" for the *overpayment recovery* rate measure (i.e., the amount of overpayments recovered as a percentage of the amount of overpayments established minus overpayments waived) as 68%.[43]

Scope of UI Improper Payments and Fraud

While there are several sources of existing program data and estimates on COVID-19 UI improper payments, as discussed above, there exist significant limitations and gaps in data on UI improper payments and on COVID-19 fraud generally, including fraud related to UI payments.[44] For example, fraud—in UI programs and elsewhere in the federal government—may not be identified immediately or without investigation by relevant law enforcement agencies. Thus, the full scope of UI improper payments and fraud may not be known for some time. With those caveats in mind, below is a discussion of existing estimates of UI improper payments and fraud from the three sets of agencies that have been monitoring this issue: (1) ETA and OMB, (2) DOL-OIG, and (3) the Government Accountability Office (GAO). Additional sources of information that provide context—such as state data releases, U.S. Department of Justice (DOJ) fraud prosecution efforts, and media accounts—are also discussed.

ETA and OMB Estimates

As previewed above, prior BAM-generated UI improper payment estimates did not historically include EB or any COVID-19 UI benefits. For instance, in the fourth quarter of FY2021, the UC

[39] See Table 6.2 in DOL, *2021 Comparison of State Unemployment Insurance Laws*, available at https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/overpayments.pdf#page=3. For information on state recovery of UI overpayments through federal income tax refunds via the Treasury Offset Program, see https://fiscal.treasury.gov/files/top/TOP-rules-reqs-fact-sheet.pdf and https://fiscal.treasury.gov/top/legal-authorities-quick-reference.html.

[40] See DOL, *2021 Comparison of State Unemployment Insurance Laws*, Table 6.3, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/overpayments.pdf#page=6.

[41] See DOL, *2021 Comparison of State Unemployment Insurance Laws*, Table 6.1available at https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/overpayments.pdf#page=1.

[42] DOL, ETA, "State Instructions for Assessing Fraud Penalties and Processing Overpayment Waivers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended," UIPL No. 20-21, May 5, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6830; see also UIPL No. 20-21, Change 1, February 7, 2022, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8527.

[43] DOL, ETA, "Acceptable Levels of Performance (ALPs)," https://oui.doleta.gov/unemploy/pdf/Core_Measures.pdf.

[44] See, for example, CRS Insight IN11640, *Tabulating COVID-19-Related Fraud and Financial Loss*.

improper payment rate was reported to be 8.7%, with a total of $7.6 billion in improper payments.[45] Following DOL-OIG's recommendation, ETA has provided an improper payment estimate for COVID-19 UI programs; this estimate includes only FPUC and PEUC, not PUA (or FPUC payments made to PUA beneficiaries). According to recent DOL-OIG congressional testimony

> In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent. The OIG notes this estimate is based on the regular UI program and has been applied to two of three key pandemic UI programs, PEUC and FPUC. ETA states it will report the third program, PUA, in 2022.[46]

The most recent improper payment rate for all UI programs from ETA, as published by OMB, incorporates the above estimates for two of the three COVID-19 UI programs as well as an estimate for EB. In the first quarter of FY2022, the UI improper payment rate was reported to be 17.9%, with a total of $73.8 billion in improper payments.[47] Again, this latter estimate includes not only UC but also EB and COVID-19 UI programs except for PUA and any FPUC paid to PUA beneficiaries.

DOL-OIG Estimates

DOL-OIG has been performing oversight of UI programs generally, including UI programs enacted in response to the COVID-19.[48] In recent congressional testimony, DOL-OIG noted that the actual improper payment rate for all COVID-19 UI benefits is likely to be higher than existing ETA and OMB estimates to date and is likely to include a significant amount of fraud:

> [A]t least $163 billion in pandemic UI benefits could have been paid improperly, with a significant portion attributable to fraud. Based on the OIG's audit and investigative work, the improper payment rate for pandemic UI programs is likely higher than 18.71 percent.[49]

According to DOL-OIG investigations, part of the challenge in estimating COVID-19 UI improper payments and fraud is that states have not been reporting data. In a May 2021 report, DOL-OIG found that, of the states surveyed over the March-October 2020 period, 42% of states did not complete required reporting for overpayments, and 60% did not complete required reporting on fraudulent payments.[50]

DOL-OIG has also been investigating and estimating the level of fraud involved in COVID-19 UI benefits. For example, in the May 2021 report cited above, DOL-OIG identified more than $5.4 billion in potentially fraudulent COVID-19 UI benefits during the March-October 2020 period.[51]

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[45] See DOL, ETA, "Payment Integrity Scorecard," https://www.cfo.gov/wp-content/uploads/2021/Q4/Unemployment%20Insurance%20Payments%20Integrity%20Scorecard%20FY%202021%20Q4.pdf.

[46] Turner, p. 6.

[47] See DOL, ETA, "Payment Integrity Scorecard," https://www.cfo.gov/wp-content/uploads/2022/Q1/Employment%20and%20Training%20Administration%20-%20Federal%20State%20Unemployment%20Insurance%20Payments%20Integrity%20Scorecard%20FY%202022%20Q1.pdf.

[48] See DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program.".

[49] Turner, p. 6.

[50] DOL-OIG, *COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs*, May 28, 2021, p. 14, https://www.oversight.gov/sites/default/files/oig-reports/DOL/19-21-004-03-315ETAs-UI-CARES-Act-Phase-2Final-Rpt052821.pdf.

[51] Ibid., p. 12.

DOL-OIG also notes that the volume of fraud investigations in response to COVID-19 UI benefits has been unprecedented:

> Prior to the pandemic, the OIG opened approximately 120 UI investigative matters annually. Since the pandemic started, the OIG has received more than 143,000 UI fraud complaints from the U.S. Department of Justice's (DOJ) National Center for Disaster Fraud (NCDF) and has independently opened more than 38,000 investigative matters concerning UI fraud. That is an increase of more than 1,000 times in the volume of UI work that we are facing. UI investigations now account for approximately 94 percent of the OIG investigative case inventory, compared to approximately 11 percent prior to the pandemic.[52]

DOL-OIG has also reported data on fraud recovery efforts:

> Our efforts to date have directly resulted in the identification and recovery of more than $160 million in fraud involving the UI program. We have also assisted other federal and state agencies identify and recover more than $565 million in fraudulent UI benefits. Moreover, in the alert memoranda we issued in February and in June 2021, our investigators and auditors collaborated to identify $17 billion of potentially fraudulent UI benefits paid to individuals with social security numbers filed in multiple states, to individuals with social security numbers of deceased persons and of federal inmates, and to individuals with social security numbers used to file for UI claims with suspicious email accounts.[53]

Most recently, DOL-OIG announced, "From April 1, 2020, through March 12, 2022, the OIG's investigative efforts have resulted in over 800 UI indictments/initial charges with over 230 convictions and monetary results in excess of $830 million."[54]

GAO Estimates

GAO has also been analyzing COVID-19 UI program integrity issues. For example, as of January 2022, GAO stated that, according to DOL data, states had identified $27.1 billion in overpayments from all UI programs, including

- $6.9 billion in UC and EB overpayments,
- $8.5 billion in FPUC overpayments,
- $1.3 billion in PEUC overpayments, and
- $10.4 billion in PUA overpayments.[55]

In terms of fraud, GAO most recently found that

> During the first 6 quarters of the pandemic combined (April 2020 through September 2021), states and territories reported that about $2.3 billion in overpayments they had identified resulted from fraud across the UI programs, including about $1 billion from PUA, $791 million from FPUC, $426 million from the regular UI and Extended Benefits

[52] Turner, p. 6.

[53] DOL-OIG, "Semiannual Report to Congress Office of Inspector General for the U.S. Department of Labor," April 1-September 30, 2021, p. 22, https://www.oig.dol.gov/public/semiannuals/86.pdf.

[54] DOL-OIG, "Pandemic Response Oversight Plan: *Office of Inspector General for the U.S. Department of Labor*," updated March 22, 2022, p. 16, https://www.oig.dol.gov/public/oaprojects/Updated%20Pandemic%20Response%20Oversight%20Plan%202022%20for%20Publication.pdf.

[55] GAO, *COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and Leading Responses to Public Health Emergencies*, GAO-22-105291, January 2022, pp. 81-82.

> programs, and $63 million from PEUC. However, according to DOL, states do not report such overpayments until investigations are complete and fraud has been confirmed, which may take a long time. As a result of these ongoing investigations, increasing amounts of overpayments due to fraud could be reported in the coming months.[56]

Additional Information

Some individual states have published their own estimates on these issues. For example, the California auditor reported that, "out of a total $111 billion paid during the pandemic, from March 2020 through December 2020, it paid about $10.4 billion for claims that it has since determined could be fraudulent."[57]

The Ohio auditor found that more than $475 million was paid to criminals (i.e., fraud overpayments) and an additional $3.3 billion in nonfraud UI overpayments were paid: "26% of all unemployment payments for the fiscal year ended June 2021 were potentially paid as overpayments or to fraud accounts. Before 2020, fraud and overpayments were around 3.5% of total payouts."[58]

As part of its COVID-19 fraud prosecution efforts, DOJ has also issued a recent press release that provides some qualitative information on UI program integrity issues as well as quantitative information on the scope of federal charges and arrests made related to UI fraud:

> Due to the COVID-19 pandemic, up to $860 billion in federal funds have been appropriated for UI benefits through September 2021. Early investigation and analysis indicate that international organized criminal groups have targeted these funds by using stolen identities to file for UI benefits. Domestic criminals, ranging from identity thieves to violent street gangs to prison inmates, have also committed UI fraud. In response, the department established the National Unemployment Insurance Fraud Task Force, a prosecutor-led, multi-agency task force with representatives from more than eight different federal law enforcement agencies to coordinate those efforts. U.S. Attorneys' Offices around the country have worked with law enforcement partners to investigate and arrest those responsible for committing UI fraud. Since the start of the pandemic, over 430 defendants have been charged and arrested for federal offenses related to UI fraud.[59]

Media accounts have also spotlighted issues related to the scope of UI program integrity and fraud issues related to the COVID-19 pandemic. Some of these media accounts focus on state-specific UI program integrity issues, while others attempt to describe the national scope of UI overpayments and fraud.[60] For example, July 2021 in-depth reporting by *ProPublica* provides

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[56] GAO, *COVID-19*, p. 83.

[57] Auditor of the State of California, Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments, January 2021, p. 9, http://auditor.ca.gov/pdfs/reports/2020-628.2.pdf.

[58] Ohio Auditor of State, "Internal Control Weaknesses Combined with an Antiquated System Allow for Massive $3.8 Billion in Unemployment Fraud and Overpayments," press release, October 28, 2021, https://ohioauditor.gov/news/pressreleases/Details/5801.

[59] DOJ, "Justice Department Announces Director for COVID-19 Fraud Enforcement: Criminal and Civil Enforcement Actions Alleging Fraud Related to Over $8 Billion in Pandemic Relief," press release, March 10, 2022, https://www.justice.gov/opa/pr/justice-department-announces-director-covid-19-fraud-enforcement.

[60] See, for example, Geoff Mulvihill and Andrew Welsh-Huggins, "Fraud Overwhelms Pandemic-Related Unemployment Programs," *AP News*, March 1, 2021; and Patrick McGreevy, "California Officials Say Unemployment Fraud Now Totals More Than $11 Billion," *Los Angeles Times*, January 25, 2021.

some estimates of UI fraud by state as well as context on how criminals are defrauding state UI agencies.[61] A March 2022 article from *Bloomberg News* also summarizes the scope of UI fraud.[62]

Challenges Related to UI Program Integrity

UI program integrity challenges during the COVID-19 response can be grouped into three major categories: (1) preexisting, administrative challenges related to the permanent-law structure of the federal-state UI system; (2) UI program integrity challenges that regularly arise during recessionary periods; and (3) administrative challenges that were specific to the COVID-19 UI response. Below is an overview of these three types of challenges, drawing on investigation and analysis by GAO and DOL-OIG where available.

Preexisting, Structural Challenges

The federal-state UI system provides a weekly benefit, which is unique among income security programs. Thus, as part of their regular administrative duties, staff of state workforce agencies must determine and re-determine UI eligibility on a weekly basis. Additionally, there is no uniformity across state programs in benefit eligibility, duration, or amount. Each state pays out UC and EB benefits under its own laws. Moreover, there are complex aspects of monetary eligibility (i.e., related to the unemployed worker's recent earnings history) and nonmonetary eligibility (i.e., related to other aspects of the circumstance of unemployment such as availability for work and work search).[63] ETA reports that the leading causes of UI overpayments are related to work search (i.e., failure to actively seek work), benefit year earnings (e.g., continuing to claim benefits after returning to work, failure to accurately report earnings while claiming benefits), and separation issues (e.g., ineligibility due to voluntarily quitting or discharge for cause).[64]

Decreasing Funding and Staffing Levels

Decades after the federal-state UI system's creation under the Social Security Act in 1935, the method of state administration has shifted from the filing of claims in person at the offices of state workforce agencies to the filing of claims via telephone or, increasingly, online.[65] This trend has been accompanied by decreased staffing levels in the state workforce agencies. It has also allowed the federal funding of state UI administration to stagnate. For instance, the taxable wage base for the federal unemployment tax (FUTA) that finances state UI administration has not kept pace with inflation and is less than one-sixth of the tax based in 1940.[66] State advocates assert that UI administration funding is inadequate, as states have moved to automation and skeletal staffing. For example, prior to the COVID-19 pandemic, the National Association of State Workforce

[61] Cezary Podkul, "How Unemployment Insurance Fraud Exploded During the Pandemic," *ProPublica*, July 26, 2021.

[62] Rebecca Rainey, "Fraud Still Upending Effort to Update State Unemployment Systems," *Bloomberg Law*, March 8, 2022.

[63] For summary information on state UI laws, see DOL, *2021 Comparison of State Unemployment Insurance Laws*, https://oui.doleta.gov/unemploy/comparison/2020-2029/comparison2021.asp.

[64] See DOL, ETA, "Leading Causes of UI Overpayments," https://oui.doleta.gov/unemploy/pdf/Leading_Causes_UIOverpayments.pdf (accessed Mach 25, 2022).

[65] See, for example, GAO, *Unemployment Insurance: States' Customer Service Challenges and DOL's Related Assistance*, GAO-16-430, May 2016; and GAO, *Unemployment Insurance Information Technology: States Face Challenges in Modernization Efforts*, GAO-13-859T, September 2013.

[66] For more information on FUTA, including changes in the taxable wage base over time, see CRS Report R44527, *Unemployment Compensation: The Fundamentals of the Federal Unemployment Tax (FUTA)*.

Agencies (NASWA), the stakeholder group representing state UI agencies, had been advocating for additional federal funding.[67]

Payment Accuracy and Timeliness

Under federal law,[68] the U.S. Secretary of Labor has the authority to require states to meet "Such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."[69] More specifically, the federal requirement for prompt payment of the benefits, as defined in regulation under Title 5, Section 650, of the *Code of Federal Regulations*, pushes states to determine if an individual meets state UI eligibility laws and begin payment within three weeks of an individual first claiming a week of covered unemployment.

Thus, states are charged with administering the benefits promptly,[70] but they must balance this requirement with the charge of administering the benefit accurately. GAO has noted the ways that these competing priorities can lead to UI overpayments:

> At the state level, many states do not sufficiently balance the need to quickly process and pay UI claims with the need to control program payments. Moreover, states rely heavily on self-reported information from claimants for other important data, such as a claimant's receipt of other federal or state program benefits and whether they are citizens of the United States.[71]

As described in more detail in the section on "Data Matching," states have opportunities to verify self-reported information from UI claimants with several types of data sources on eligibility-related characteristics. It is unclear whether all states have been using all data matching options as required or encouraged under ETA program guidance, particularly during the UI response to COVID-19.

General Challenges During Recessions

In addition to the underlying challenges that states face in administering UI benefits, as described above, the response of the UI system during recessions increases UI program integrity pressures. When recessions occur, the scale of the permanent-law UI programs automatically increase, as laid-off workers file claims for regular, state UC and as the EB program triggers on in states.[72] Furthermore, states typically administer the temporary UI programs created in response to

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[67] See, for example, NASWA, "Legislative Priorities: 2019," https://www.naswa.org/system/files/2021-03/2019legislativepriorities_1.pdf.

[68] See Sec. 302(a)(1) of the Social Security Act.

[69] Through the promulgation of Title 20, Section 602.10, of the *Code of Federal Regulations*, the Labor Secretary interprets Section 303(a)(1) of the Social Security Act to require that states administer their programs in a way that will reasonably ensure the prompt and full payment of unemployment benefits to eligible claimants and collection and handling of income for the state unemployment fund (particularly taxes and reimbursements) with the greatest accuracy feasible.

[70] As defined under Title 20, Section 640.5, of the *Code of Federal Regulations*, compliance with the "prompt payment" requirement is measured as a percentage of first payments issued within 14, 21, and 35 days after an individual files for UI claims.

[71] GAO, *Unemployment Insurance: Increased Focus on Program Integrity Could Reduce Billions in Overpayments*, GAO-02-697, July 2002, p. 3. For a discussion of the role of citizenship in state and federal UI benefits, see CRS Report R46510, *PRWORA's Restrictions on Noncitizen Eligibility for Federal Public Benefits: Legal Issues*.

[72] For additional details on EB, including state triggers and benefit eligibility, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

recessions.[73] These temporary UI programs place additional administrative stress on states at a time when they are already likely to face a higher volume of UC and EB claims.

For example, historical UI improper payment data show increases in UC overpayments during recession responses: For the 12-month period ending June 30, 2007 (i.e., prior to the Great Recession, which occurred December 2007-June 2009), the UC overpayment rate was reported to be 9.7% compared with 11.4% for the 12-month period ending June 30, 2011, when state unemployment rates and UC outlays were elevated in response to the Great Recession.[74]

DOL-reported measures of payment promptness also fall during UI responses to recessions. For example, the percentage of UC first payments issued to claimants within 14 days was reported to be 86.4% for the month of January 2008 (before the UI response to the Great Recession) compared with 74.3% for the month of September 2009 (during the UI response to the Great Recession) and 44.7% in June 2020 (during the UI response to the COVID-19 recession).[75]

COVID-19-Related Challenges

The COVID-19 recession presented significant new UI program integrity challenges. DOL-OIG has described this situation as "a perfect storm" in which

> Prior to the pandemic, numbers of UI claims were low: on March 14, 2020, the Department reported 282,000 initial claims. Within 2 to 3 weeks, initial claims rose to 10 times pre-pandemic levels, far higher than state systems were designed to handle. Within 5 months, through August 15, 2020, the Department reported 57.4 million initial claims, the largest increase since the Department began tracking UI data in 1967.[76]

In addition to the unprecedented number of UI claims, states were administering weekly supplements (FPUC) for all claimants' UI benefits, extensions of the number of weeks of benefits available to many workers (PEUC), and a new program to provide benefits to a new population of workers who were previously excluded from UI coverage (PUA).[77]

The PUA program, in particular, raised unique program integrity challenges for states. State UI agencies were tasked with implementing PUA, a program that provided weekly UI benefits to unemployed workers who performed non-UI-covered work (e.g., self-employed workers, independent contractors, and gig economy workers). By definition, states did not have information on the prior work and earnings of these individuals, as they were outside the federal-state UI taxation system. PUA was a novel program. No temporary measures had ever previously been enacted to provide UI benefits to non-UI-covered workers in response to a recession. After

[73] In total, Congress has acted nine times—in 1958, 1961, 1971, 1974, 1982, 1991, 2002, 2008, and 2020—to establish temporary provisions to extend or augment UI benefits, or both. For information on historical temporary UI programs enacted in response to recessions, see CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*. For additional information on the temporary COVID-19 UI programs, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

[74] See DOL, ETA, "Unemployment Insurance Improper Payment Rates Summary by IPIA Reporting Year," https://oui.doleta.gov/unemploy/improp_payrate.asp.

[75] See DOL, ETA, "Benefits Timeliness and Quality (BTQ) Reports of State Workforce Agencies," (All First Payment Timeliness), https://oui.doleta.gov/unemploy/btq.asp.

[76] Turner, p. 5.

[77] For a discussion of the success and challenges of the COVID-19 UI response, see Tyler Boesch, Katherine Lim, and Ryan Nunn, "What Did and Didn't Work in Unemployment Insurance During the Pandemic," Federal Reserve Bank of Minneapolis, August 2, 2021, https://www.minneapolisfed.org/article/2021/what-did-and-didnt-work-in-unemployment-insurance-during-the-pandemic.

PUA was authorized under the CARES Act, states enrolled tens of millions more workers without the ability to independently access data to confirm monetary eligibility and no ability to confirm continued weekly eligibility except through self-attestation. The Continued Assistance Act later created some new PUA program integrity measures. But, as the DOL-OIG noted: "The reliance solely on claimant self-certifications without evidence of eligibility and wages during the program's first 9 months rendered the PUA program extremely susceptible to improper payments and fraud."[78]

Additionally, the COVID-19 UI response provided a weekly supplement through FPUC that was either $600 a week or $300 a week during its authorization. Previously, only once before had a weekly benefit supplement been authorized, and it was in response to the Great Recession: the Federal Additional Compensation (FAC). The FAC was a $25 per week payment from February 2009 through December 2010.[79] The scale of the FPUC supplement may have contributed to making UI fraud more attractive by providing additional monetary incentives to criminal elements. For instance, DOL-OIG has noted that "the unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit."[80]

Tools to Address UI Program Integrity Concerns

Because many of the current UI program integrity concerns stem from long-standing administrative challenges, some of the tools available to address UI overpayments and fraud are part of existing nonpartisan or bipartisan recommendations.[81] Some of these tools also involve codifying administrative best practices in states. Discussed below are major categories of UI program integrity measures, including information technology (IT) modernization, data matching, and identity verification, as well as other proposals. Congress may consider policy options that address underlying weaknesses in UI administration that have led to these program integrity failures.

Information Technology Modernization

Currently, the state administration of UI benefits is conducted almost exclusively online or over the phone. While filing UI claims via telephone or online reduces costs, prior to the COVID-19 pandemic, there were established concerns regarding the lack of customer service for UI claimants using those methods as well as outdated IT.[82] In FY2009, ETA began providing IT modernization funding to states using a consortium-based model.[83] ETA recommended, "States

[78] Turner, p. 5.

[79] The FAC was created by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). The FAC was subsequently extended three times by the Department of Defense Appropriations Act, 2010 (P.L. 111-118); the Temporary Extension Act of 2010 (P.L. 111-144); and the Continuing Extension Act of 2010 (P.L. 111-157).

[80] Turner, p. 6.

[81] See, for example, National Conference of State Legislatures, "Unemployment Insurance Improper Payments and Fraud," (last updated April 28, 2021), https://www.ncsl.org/research/labor-and-employment/unemployment-insurance-improper-payments-and-fraud.aspx.

[82] See, for example, GAO, *Unemployment Insurance: States' Customer Service Challenges and DOL's Related Assistance*, GAO-16-430, May 2016; and GAO, *Unemployment Insurance Information Technology: States Face Challenges in Modernization Efforts*, GAO-13-859T, September 2013.

[83] See, for example, DOL, ETA, "Unemployment Insurance (UI) Supplemental Funding Opportunity for State Consortia to Modernize Tax and Benefit Systems," UIPL No. 22-17, September 8, 2017, https://oui.doleta.gov/dmstree/

interested in forming a consortium or on-boarding to a consortium are strongly encouraged to consult with the UI Information Technology Support Center (ITSC) operated by NASWA."[84] Prior to the pandemic, according to ITSC reporting for FY2019, 18 states had completed UI IT modernization for both their benefit and tax systems, six states had completed UI IT modernization for their tax systems only, and three states had completed UI IT modernization for their benefit systems only, with more states in IT modernization development (10 states) or planning (16 states).[85]

COVID-19 put significant additional pressure on state UI IT systems due to the unprecedented surge of UI claims filed at the beginning of the pandemic in response to governmental policies and actions by businesses, organizations, and individuals that limited person-to-person contact via stay-at-home and shutdown orders.[86] Media accounts and policy organizations illustrated significant challenges faced by unemployed workers unable to file claims, including crashing online portals.[87] Additionally, just because a state had "modernized" or upgraded its IT prior to the pandemic did not mean that its UI IT systems functioned adequately in response to the pandemic-related unemployment.[88] On July 15, 2020, the House Committee on the Budget held a hearing that addressed UI IT challenges, along with the need for investments in technology across the federal government in response to the COVID-19 pandemic.[89] Testifying at this hearing, Rebecca Dixon, executive director of the National Employment Law Project (NELP), told Congress

> Many states are struggling because they rely on antiquated mainframe systems that use COBOL, a computer language invented in 1959, when some "boomers" were still babies. Only 16 states have fully modernized their unemployment insurance systems. Many of those that did modernize, made mistakes along the way that compromised the quality of their service. In addition, as recent examples have shown, when states do move to modernize and upgrade outdated computer systems for their UI programs, or make changes to their phone systems, they often experience significant disruptions of service, systems breakdowns, and further claims backlogs and delays.[90]

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uipl/uipl2k17/uipl_2217.pdf.

[84] DOL, ETA, "Unemployment Insurance (UI) Supplemental Funding Opportunity for State Consortia to Modernize Tax and Benefit Systems," p. 4.

[85] ITSC, *Annual Report, FY2019*, http://www.itsc.org/Documents/UI%20ITSC%202019%20Annual%20Report.pdf. The current status (as of December 2021) of ITSC UI modernization efforts is available at http://www.itsc.org/Documents/Status%20of%20State%20UI%20IT%20Modernization%20Projects.pdf.

[86] For an overview of early public health responses to COVID-19, as of May 2020, see CRS Insight IN11253, *Domestic Public Health Response to COVID-19: Current Status*.

[87] See, for example, Cat Zakrzewski, "The Technology 202: State Unemployment Websites Are Crashing amid Record Number of Claims," *Washington Post*, April 2, 2020; National Employment Law Project, "Long Lines for Unemployment: How Did We Get Here and What Do We Do Now?," April 2020, https://s27147.pcdn.co/wp-content/uploads/Long-Lines-Unemployment.pdf; and Economic Policy Institute, "Unemployment Filing Failures: New Survey Confirms That Millions of Jobless Were Unable to File an Unemployment Insurance Claim," April 28, 2020, https://www.epi.org/blog/unemployment-filing-failures-new-survey-confirms-that-millions-of-jobless-were-unable-to-file-an-unemployment-insurance-claim/.

[88] See, for example, Caroline Glenn, "Florida's Flawed Unemployment System Wasn't Built or Tested Properly, State Probe Finds," *Orlando Sentinel*, May 4, 2021.

[89] U.S. Congress, House Committee on the Budget, *Software Update Required: COVID-19 Exposes Need for Federal Investments in Technology*, 117th Cong., 1st sess., July 15, 2021.

[90] Testimony of Rebecca Dixon, Executive Director, NELP, in U.S. Congress, House Committee on the Budget, *Software Update Required: COVID-19 Exposes Need for Federal Investments in Technology*, hearings, 117th Cong., 1st sess., July 15, 2021, p. 5, https://budget.house.gov/sites/democrats.budget.house.gov/files/documents/

Dixon's testimony also made several recommendations related to UI IT modernization that are echoed in research released in September 2020 by NELP, the Century Foundation, and Philadelphia Legal Assistance, the most important of which is to place the experiences and needs of UI claimants at the center of UI IT modernization efforts.[91]

Most recently, ETA has taken steps to assist states in addressing UI IT challenges, including using the $2 billion in ARPA funding for state UI IT system improvements.[92] DOL has also sent "Tiger Teams" to a dozen states to assist state UI programs, including addressing IT issues.[93] DOL has also established a new "Office of Unemployment Insurance Modernization" to assist states with "unemployment insurance reform, and provide oversight and management of $2 billion in funds in the American Rescue Plan Act to prevent and detect fraud, promote equitable access, ensure timely benefit payments and reduce backlogs."[94]

Data Matching

Another way states can ensure that UI benefits are correctly paid to eligible individuals in a timely manner is by harnessing available data sources to match claimant information with eligibility-related characteristics. States already have access to earnings records for employment covered by UI, although this information does not include non-UI-covered earnings (i.e., earnings for which an employer has not paid state and federal unemployment payroll taxes), such as self-employment, gig work, or work performed as an independent contractor. In addition to earnings data, states are currently required, via *DOL program guidance*,[95] to use the National Directory of New Hires (NDNH) to make sure, for instance, that UI claimants have not returned to work.[96]

There is currently *no statutory requirement* for states to use NDNH or several other related data cross-matches. And there is evidence that not all states were performing these required data matches (i.e., required under DOL program guidance but not required by law) while administering UI benefits, especially the COVID-19 UI programs. In a May 2021 report, DOL-OIG flagged that "20 of the states (40 percent) [surveyed by DOL-OIG] did not perform all the

Dixon_Testimony.pdf.

[91] Julia Simon-Mishel et al., *Centering Workers—How to Modernize Unemployment Insurance Technology*, Philadelphia Legal Assistance, Century Foundation, and NELP, September 17, 2020, https://production-tcf.imgix.net/app/uploads/2020/08/02153601/UI-mod-report_FINAL2.pdf.

[92] DOL, "US Department of Labor Announces Funding to States to Modernize Unemployment Insurance System, Combat Fraud, Address Equity," news release, August 31, 2021, https://www.dol.gov/newsroom/releases/eta/eta20210811. Also, see DOL, "Unemployment Modernization: American Rescue Plan Act Funding for Timely, Accurate and Equitable Payment in Unemployment Compensation Programs," August 11, 2021, https://oui.doleta.gov/unemploy/pdf/FactSheet_UImodernization.pdf.

[93] Rebecca Rainey, "DOL's 'Tiger Teams' Eye Unemployment Fixes in Six More States," *Bloomberg Law*, March 23, 2022.

[94] DOL, "US Department of Labor Announces Establishment of Office to Modernize, Reform States' Unemployment Insurance System" news release, August 11, 2021, https://www.dol.gov/newsroom/releases/eta/eta20210831.

[95] For permanent-law UI programs, see DOL, ETA, "National Effort to Reduce Improper Payments in the Unemployment Insurance (UI) Program," UIPL No. 19-11, June 10, 2011, https://wdr.doleta.gov/directives/attach/UIPL/UIPL19-11.pdf; and DOL, ETA, "National Directory of New Hires (NDNH) and State Directory of New Hires (SDNH) Guidance and Best Practices," UIPL No. 13-19, June 17, 2019, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-19.pdf. For COVID-19 UI programs, see DOL, ETA, "Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Programs," UIPL No. 23-20, May 11, 2021, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_23-20.pdf.

[96] For more information on the NDNH, see CRS Report RS22889, *The National Directory of New Hires: In Brief*.

required [Benefit Payment Control] cross-matches."[97] Correspondence from ETA indicates that not all states were using required data matching during the period that COVID-19 UI benefits were authorized. As of July 2021, according to ETA, all states except for Puerto Rico and the U.S. Virgin Islands were performing NDNH and other cross-matching for their regular state UI benefits, but six states were not performing some or all required cross-matching on any COVID-19 UI programs, and six additional states were not performing some or all required data matching on PUA benefits.[98]

In addition to NDNH and other required data matching described above, ETA has also communicated to states that they should be using program integrity tools available through the Integrity Data Hub (IDH), which is

> a secure, robust, centralized, multi-State data system that allows participating State UI agencies to submit UI claims for crossmatching and analysis to support the detection and prevention of UI fraud and improper payments. The IDH is continuing to evolve as new data sources have been added and more states are both contributing data and accessing the available data sources.[99]

ETA encourages states to use the IDH[100] as well as the State Information Data Exchange System (SIDES), which "was developed through the collaborative efforts of state UI agencies, NASWA, ETA, and employers to enable the electronic communication of separation and other UI information between employers and state UI agencies."[101] According to correspondence from ETA, as of July 2021, all but two states have signed agreements to participate in the IDH, most states are using available IDH components, and all but six states were using both available SIDES tools.[102]

Codifying the requirement for state UI agencies to use NDNH and other data matching has been part of a suite of UI program integrity proposals included in President's budgets from both the Trump and Biden Administrations,[103] a legislative recommendation from DOL-OIG,[104] and legislation introduced in the 117th Congress.[105]

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[97] DOL, OIG, *COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs*, May 28, 2021, p. 19, https://www.oversight.gov/sites/default/files/oig-reports/DOL/19-21-004-03-315ETAs-UI-CARES-Act-Phase-2Final-Rpt052821.pdf.

[98] Reporting provided by email communication from DOL, ETA with authors (July 21, 2021).

[99] DOL, ETA, "Additional Planning Guidance for the Fiscal Year (FY) 2021 Unemployment Insurance (UI) State Quality Service Plan (SQSP)," UIPL No. 29-20, September 14, 2020, p. 7, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_29-20.pdf.

[100] DOL, ETA, "Addressing Fraud in the Unemployment Insurance (UI) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs," UIPL No. 28-20, August 31, 2020, p. 5, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_28-20.pdf.

[101] DOL, ETA, "UI Integrity Strategic Plan, Fiscal Year 2020," p. 12, https://oui.doleta.gov/unemploy/pdf/ui_prog_integrity.pdf.

[102] Reporting provided by email communication from DOL, ETA with authors (July 12, 2021). This reporting included the 50 states and DC. It did not include any reporting on IDH usage by Puerto Rico or the U.S. Virgin Islands or any reporting on American Samoa, the Commonwealth of the Northern Mariana Islands, or Guam, which administered PUA (and FPUC benefits for PUA claimants) when authorized.

[103] The President's detailed budget proposal for UC in FY2021 is accessible at https://www.dol.gov/general/budget/index-2021. The President's budgets for FY2019 and FY2020 included substantively similar UC proposals and are accessible at https://www.dol.gov/general/budget/index-2019 and https://www.dol.gov/general/budget/index-2020.

[104] See DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program."

[105] For example, see two UI-related companion bills introduced in the 117th Congress: H.R. 3268/S. 1699.

A final data matching issue involves providing direct access for DOL-OIG to state UI program data, including for fraud detection purposes. DOL-OIG has raised concerns that it has had to rely on issuing subpoenas to access state UI data, which has caused delays.[106] This proposal is one of the legislative recommendations put forward by DOL-OIG.[107]

Identity Verification

ETA has noted, "Since the onset of the Coronavirus Disease 2019 (COVID-19) pandemic, the UI program has been an attractive target for international and domestic criminal organizations perpetrating identity fraud."[108] As described above, the challenges involved in administering the PUA program as well as the scale of the FPUC payment amount likely incentivized fraud, including identity fraud. ETA announced $140 million in grant funding for states (out of the $2 billion in ARPA funding) to support states in fraud detection, including for identity verification purposes. ETA has also encouraged states to use techniques to detect and fight fraud, including using identity verification processes that are compliant with National Institute of Standards and Technology standards.[109]

Media accounts have reported that as many as 28 states have started, or will start, using identity verification services for their state UI programs under a contract with ID.me.[110] On its website, ID.me states that it is "a trusted technology partner to multiple government agencies. We provide secure digital identity verification to help government agencies make sure you're you—and not someone pretending to be you—when you request access to government services online."[111] Critics have raised concerns about the use of ID.me, including issues of privacy and bias.[112] In January 2022, the Internal Revenue Service (IRS) announced that it would "transition away from using a third-party service for facial recognition [i.e., ID.me] to help authenticate people creating new online accounts."[113] Senators Ron Wyden, Sherrod Brown, and Elizabeth Warren sent a letter to DOL on February 15, 2022, outlining concerns with state UI agency use of ID.me and urging DOL to "work with the Government Services Administration (GSA) to find long-term solutions, including making GSA's login.gov available to state workforce agencies."[114]

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[106] See DOL-OIG, *Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General Report*, June 16, 2021, https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf; and DOL-OIG, *Alert Memorandum: ETA Does Not Require the National Association of State Workforce Agencies to Report Suspected UI Fraud Data to the OIG*, July 1, 2021, https://www.oig.dol.gov/public/reports/oa/2021/19-21-006-03-315.pdf.

[107] See DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program."

[108] DOL, ETA, "Grant Opportunity to Support States with Fraud Detection and Prevention, Including Identity Verification and Overpayment Recovery Activities, in All Unemployment Compensation (UC) Programs," p. 2.

[109] DOL, ETA, "Grant Opportunity to Support States with Fraud Detection and Prevention."

[110] See, for example, Ashley Gold and Peter Allen Clark, "Face Recognition's Staying Power," *Axios*, March 17, 2022.

[111] See ID.me, "Verify with ID.me to Access Government Services," https://www.id.me/individuals/government.

[112] See, for example, Andrew Egger, "ID.me and the Government's Identity Verification Problem," *The Dispatch*, February 10, 2022; and Jennifer Epstein, Shawn Donnan, and Dina Bass, "Treasury Weighing Alternatives to ID.me Over Privacy Concerns," *Bloomberg*, January 28, 2022.

[113] IRS, "IRS Announces Transition Away from Use of Third-Party Verification Involving Facial Recognition," news release, February 7, 2022, https://www.irs.gov/newsroom/irs-announces-transition-away-from-use-of-third-party-verification-involving-facial-recognition. The IRS had previously informed users it was using ID.me for certain identity verification purposes. See IRS, "New Identity Verification Process to Access Certain IRS Online Tools and Services," news release, November 17, 2021, https://www.irs.gov/newsroom/new-identity-verification-process-to-access-certain-irs-online-tools-and-services.

[114] Sens. Ron Wyden, Sherrod Brown, and Elizabeth Warren, letter to Martin J. Walsh, Secretary of Labor, February

Additional Program Integrity Measures

In addition to IT modernization, data matching, and identity verification, DOL-OIG and GAO have made recommendations on other UI program integrity issues. All of DOL-OIG's current recommendations to DOL and Congress are available online. The legislative recommendations made by DOL-OIG would[115]

- allow the Secretary of Labor greater authority to require state workforce agencies (SWAs) to implement UI corrective actions related to performance and integrity,
- require SWAs to use the NASWA's IDH and SIDES,
- require SWAs to cross-match UI claims against the NDNH,
- require SWAs to cross-match UI claims with the U.S. Social Security Administration's prisoner database and other repositories of prisoner information,
- allow SWAs to retain 5% of UI overpayment recoveries for program integrity purposes, and
- require SWAs to use UI penalty and interest collections solely for UI administration.

DOL-OIG notes, "These legislative proposals are consistent with previous OIG findings and recommendations to improve the UI program."[116]

GAO also issued three recommendations to DOL related to UI program administration:

> Two recommendations seek to reduce improper payments by strengthening program controls regarding work search verification requirements. Some states issued formal warnings to claimants after the first discovered occurrence of their failure to meet work search requirements rather than reporting that an overpayment was made. In August 2018, we reported that DOL determined federal law does not permit states to warn claimants instead of reporting that an overpayment was made. We recommended that DOL: (1) notify states about its determination that the use of state formal warning policies is no longer permissible and (2) clarify information on work search verification requirements. Due to the COVID-19 pandemic, the agency has not yet developed new guidance informing states that formal warning policies are not permissible and instructions that clarify work search verification requirements. To implement these recommendations, DOL should finalize and provide this information to states.
>
> Our third UI recommendation is from November 2020. We recommended that DOL pursue options to report the actual number of distinct individuals claiming UI benefits, such as by collecting data already available from states, beginning in January 2020. DOL agreed to pursue options to report the actual number of distinct individuals claiming benefits but not with collecting data retroactively, noting challenges state UI programs currently face with high claims volumes, antiquated data systems, and insufficient staff.[117]

Additionally, GAO has issued several recommendations to DOL specific to UI fraud management:

15, 2022, https://www.finance.senate.gov/imo/media/doc/021522%20Letter%20to%20DOL%20on%20Digital%20Identity.pdf.

[115] See DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program."

[116] DOL-OIG, "DOL-OIG Oversight of the Unemployment Insurance Program."

[117] GAO, *Priority Open Recommendations: Department of Labor*, GAO-21-429PR, June 29, 2021, p. 3, https://www.gao.gov/assets/gao-21-429pr.pdf.

> GAO recommends that DOL designate a dedicated entity and document its responsibilities for managing the process of assessing fraud risks to the unemployment insurance program, consistent with leading practices as provided in GAO's Fraud Risk Framework. This entity should have, among other things, clearly defined and documented responsibilities and authority for managing fraud risk assessments and for facilitating communication among stakeholders regarding fraud-related issues....
>
> GAO recommends that DOL (1) identify inherent fraud risks facing the unemployment insurance program, (2) assess the likelihood and impact of inherent fraud risks facing the program, (3) determine fraud risk tolerance for the program, (4) examine the suitability of existing fraud controls in the program and prioritize residual fraud risks, and (5) document the fraud risk profile for the program.[118]

Congressional Interest in UI Program Integrity and Fraud

Congress has an ongoing interest in program integrity issues. Additionally, there has been general concern about federal expenditures and COVID-19-related overpayments and fraud. For example, the CARES Act created a new federal entity, the Pandemic Response Accountability Committee, to "conduct and support oversight" of the federal government's pandemic response and promote transparency.[119]

With regard to COVID-19 UI benefits specifically, Congress recognized the importance of program integrity when authorizing benefit extensions after their initial creation under the CARES Act. In extending the authority for temporary COVID-19 benefits, certain statutory provisions were added in response to program integrity concerns prior to program expiration. Specifically, the Continued Assistance Act (P.L. 116-260, enacted December 27, 2020) authorized additional program integrity measures and ARPA (P.L. 117-2; enacted March 11, 2021) provided funding to DOL that included program integrity purposes.

UI Program Integrity Measures in the Continued Assistance Act

The Continued Assistance Act included several program integrity measures, many of which were related to PUA eligibility. First, the act added new documentation requirements for PUA claimants. Individuals filing new PUA claims on or after January 31, 2021, had to provide documentation of employment or self-employment within 21 days of application or by the state deadline if later (with exceptions for good cause). Individuals who received PUA on or after December 27, 2020, were required to provide this documentation within 90 days or within the state deadline if later (with exceptions for good cause). Second, for PUA claims filed on or after January 26, 2021, states were required to use administrative procedures to verify the identity of PUA applicants and provide timely payment to the extent reasonable and practicable. Third, the act included a new statutory requirement for weekly self-certification by claimants unemployed due to a specific COVID-19-related reason for weeks on or after January 26, 2021. Finally, the act included a new return to work reporting requirement for states. Beginning January 26, 2021,

[118] GAO, *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, GAO-22-105051, October 2021, Highlights, p. 3, https://www.gao.gov/assets/gao-22-105051.pdf.

[119] The CARES Act established this entity within the Council of Inspectors General on Integrity and Efficiency, the oversight and coordination body for the inspector general community. For an overview, see CRS Insight IN11343, *The Pandemic Response Accountability Committee: Organization and Duties*.

states were required to have a process for addressing work refusals, have a method for employer reporting of work refusals, and provide notifications to individuals related to work refusals.

UI Program Integrity Measures in ARPA

ARPA provided $2 billion in additional UI administrative funding to DOL in FY2021 to "detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits." This funding was available until expended and could have been used for (1) federal administrative costs, (2) system-wide infrastructure, and (3) grants to states and territories for program integrity and fraud prevention purposes, including for identity verification and faster claims processing for all UI benefits.

Additional Congressional Interest in UI Program Integrity

Some Members of Congress have voiced ongoing concerns related to COVID-19 UI program integrity. For example, on June 5, 2020, Senators Patty Murray and Ron Wyden asked DOL for information about the "Department's plan to address the current organized fraudulent activity."[120] On August 31, 2021, Senator Mike Crapo and Representatives Kevin Brady and Jackie Walorski requested that GAO "investigate and provide a national estimate of [COVID-19 UI] funds lost because of fraudulent activity."[121] Additionally, on May 10, 2021, and February 22, 2022, House Ways and Means Committee Republicans convened a two-meeting roundtable series on "$80 Billion (and Counting) in Pandemic Unemployment Fraud" that examined COVID-19 UI benefits and fraud.[122]

Proposals to Address UI Program Integrity Concerns

Program integrity as a UI policy issue has been legislatively active in recent Congresses. Discussed below is legislation introduced in the 117th Congress that would amend either (1) permanent-law UI programs or (2) now-expired COVID-19 UI programs to address program integrity issues.[123]

[120] U.S. Senate, Committee on Health, Education, Labor and Pensions, "Murray, Wyden, Democrats Urge DOL to Address Organized Unemployment Insurance Fraud and Ensure Much-Needed Benefits Are Not Delayed," press release, June 8, 2020, https://www.help.senate.gov/ranking/newsroom/press/murray-wyden-democrats-urge-dol-to-address-organized-unemployment-insurance-fraud-and-ensure-much-needed-benefits-are-not-delayed-.

[121] Sen. Mike Crapo, Reps. Kevin Brady and Jackie Walorski, letter to the Hon. Gene Dodaro, Comptroller General of the United States, August 31, 2021, https://gop-waysandmeans.house.gov/wp-content/uploads/2021/08/GAO-UI-fraud-request-letter-083121.pdf.

[122] See House Ways and Means Republicans, "Unchecked Unemployment Insurance: Taxpayers Are on the Hook for $60 Billion (and Counting) in Fraud," May 10, 2021, https://gop-waysandmeans.house.gov/unchecked-unemployment-insurance-taxpayers-are-on-the-hook-for-60-billion-and-counting-in-fraud/; and House Ways and Means Republicans, "ADVISORY: GOP Meeting: $80 Billion (and Counting) in Pandemic Unemployment Fraud Part II," February 17, 2022, https://gop-waysandmeans.house.gov/advisory-gop-meeting-80-billion-and-counting-in-pandemic-unemployment-fraud-part-ii/.

[123] Legislation introduced in the 117th Congress. For summaries of UI program integrity legislation introduced in previous Congresses, see, for example, CRS Report R45478, *Unemployment Insurance: Legislative Issues in the 116th Congress*; CRS Report R43993, *Unemployment Insurance: Legislative Issues in the 114th Congress*; and CRS Report R42936, *Unemployment Insurance: Legislative Issues in the 113th Congress*.

Permanent-Law UI Programs

One set of companion bills would address UI IT modernization. S. 490 (introduced by Senator Ron Wyden on March 1, 2021) and H.R. 1458 (introduced by Representative Steven Horsford on March 1, 2021), the Unemployment Insurance Technology Modernization Act of 2021, would require DOL, in consultation with relevant experts, to develop, operate, and maintain technology capabilities to modernize the federal and state administration of UI benefits. This proposal sets out a number of specifications for these technology capabilities, including accessibility requirements for online UI claim filing and requirements regarding automated decisions (i.e., to prevent biases). States would be able to use only some of the modular components of the technology components, depending on their needs. This proposal would also require a study to evaluate current UI technology needs. It would also require DOL to conduct a pilot program in at least four states prior to deploying the new technology components to all states. Finally, this proposal would establish a Digital Services Team at DOL to assist state UI agencies in the development of these technology capabilities and to oversee their maintenance and improvement.

Another UI program integrity bill would address data matching issues. H.R. 723 (introduced by Representative Bill Posey on February 2, 2021), the Reducing Fraud in Unemployment Assistance Act, would require that states compare lists of individuals receiving state UC benefits with a list of incarcerated individuals in federal and state custody for the purposes of investigating and prosecuting fraud, waste, and abuse. H.R. 723 would also have provided for the federal recovery of state overpayments of PUA and FPUC (now expired).

Some of the provisions in a set of companion bills, H.R. 3268/ S. 1699, the Combatting COVID Unemployment Fraud Act of 2021 (introduced by Representative Kevin Brady on May 17, 2021, and Senator Mike Crapo on May 19, 2021, respectively), would amend permanent-law UI programs to address program integrity concerns. Specifically, H.R. 3268/ S. 1699 would add a new statutory requirement that states use three specific data sources to confirm an individual's eligibility for UC benefits: SIDES (administered by ITSC and DOL), the NDNH (administered by the Department of Health and Human Services), and the Prisoner Update Processing System (PUPS, administered by the Social Security Administration).

S. 2898 (introduced by Senator Todd Young on September 29, 2021), the Unemployment Insurance Systems Modernization Act of 2021, would codify required data matching and add new UI administrative requirements that would address program integrity issues. S. 2898 would create additional federal requirements for state UI administration. The new requirements would include state administrative capacity to

- process certain surges in state and federal claims;
- adjust UI benefit amounts and disregard earnings, including the ability to cap benefits at 100% wage replacement and reduce the benefit amount based upon duration of unemployment; and
- automate the processing of claims under Disaster Unemployment Assistance,[124] Short-Time Compensation,[125] and UI for former federal workers and former servicemembers.

[124] For information on Disaster Unemployment Assistance, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*.

[125] For information on Short-Time Compensation, see CRS Report R40689, *Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs*.

S. 2898 would also add new statutory requirements related to (1) the electronic transmission of UI data, including state reporting requirements on employer usage, and (2) state use of certain data sources to confirm an individual's eligibility for UC benefits, including the UC Integrity Data Hub (or comparable DOL data source) for cross-matching to "prevent and detect fraud and improper payments" and the NDNH. Finally, S. 2898 would authorize DOL to establish state performance goals, corrective action plans, and consequences for states with sustained failure to meet goals and provide incentive funds for high-performing states. It would expand the use of the $2 billion funding authorized under ARPA to include grants to states for the purposes of this proposal.

H.R. 6224 (introduced by Representative Josh Harder on December 9, 2021), the Fix the Unemployment Backlogs Act, would prohibit the payment of any UI administrative funding to states that had a backlog of at least 45,000 unprocessed UI claims. Under this proposal, *unprocessed UI claims* would be defined as any claim for which an initial eligibility determination has not been completed by the state within 21 days of filing by a claimant.

Now-Expired COVID-19 UI Programs

One set of companion bills would have added program integrity provisions to the now-expired PUA program and codified required data matching: H.R. 3268 (introduced by Representative Kevin Brady on May 17, 2021) and S. 1699 (introduced by Senator Mike Crapo on May 19, 2021), the Combatting COVID Unemployment Fraud Act of 2021. H.R. 3268/S. 1699 would have amended the CARES Act to make several program-integrity-related changes. These bills would have required states to verify the identity and eligibility status of a PUA applicant prior to paying benefits and change the backdating deadline for PUA claims to April 1, 2021 (rather than December 1, 2020). H.R. 3268/S. 1699 would have also prevented any claimant from receiving a retroactive FPUC payment more than 14 days after program expiration. In addition, H.R. 3268/S. 1699 would have reinstated the federal work search requirement by removing the authority for COVID-19-related flexibility for states authorized under Families First Coronavirus Response Act (P.L. 116-127).

H.R. 3268/S. 1699 would have addressed fraudulent payments in several ways, including by expanding the use of the $2 billion funding authorized under ARPA to include grants to states for identity verification, prevention and detection of fraud, and state efforts to recover fraudulent payments, including through criminal prosecution. As a condition of administering PUA, states would have also been required to submit State Unemployment Fraud Recoupment plans to DOL. These bills would have established a COVID Unemployment Fraud Taskforce—led by the Secretary of Labor, Attorney General, and Secretary of Homeland Security—with $20 million in administrative funding. H.R. 3268/S. 1699 would also have authorized states to retain 5% of recovered fraudulent UI payments in 2020 and 2021 for administration and improving program integrity, including hiring fraud investigators. Finally, these bills would have provided additional protections for victims of UI fraud and identity theft, including victim assistance and an IRS process to hold harmless individuals who experienced UI fraud and identity theft.

Another bill, H.R. 4190 (introduced by Representative Michelle Steel on June 25, 2021), the Pandemic Unemployment Assistance Fraud Protection Act, would have addressed PUA fraud. This bill would have required states, as a condition of receiving any of the $2 billion in additional UI administrative funding authorized under ARPA, to "detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits," submit a plan for recovering all fraudulent PUA payments, establish an anti-fraud task force to investigate and recover fraudulent PUA payments, and report to DOL on the ratio of recovered fraudulent PUA payments to total PUA payments. Failure to provide required reporting to DOL would have resulted in a state not

having access to any temporary period of interest-free federal UI loans,[126] if otherwise available, after the date of failure to provide such reporting. The Labor Secretary would have also been required to provide state plans related to recovering all fraudulent PUA payments to Congress and make monthly reports to UI committees of jurisdiction on state progress in recovering fraudulent PUA payments. This bill would have authorized $50 million in funding to the Attorney General in FY2022 and FY2023 for partnering with state anti-fraud task forces and local law enforcement to assist in recovering fraudulent PUA payments.

Under H.R. 4190, states would have been required to repay the federal government in the amount of any unrecovered PUA overpayment. Further, states that failed to recover at least 75% of fraudulent PUA payments by December 31, 2022, would have been subject to a federal processing fee equal to the amount of unrecovered fraudulent PUA payments. The processing fee would have been spread out over a five-year period beginning on January 1, 2023, and states would have been prohibited from reducing their UC benefit payments in response.

H.R. 4190 would also have amended the CARES Act to require states to use certain data matching for the purposes of fraud prevention, investigation, and prosecution, including matching with federal, state, and local prisoner databases as well as the E-Verify program.[127] H.R. 4190 would have temporarily increased the penalties for fraud and identity theft with regard to PUA through December 31, 2021. H.R. 4190 would have authorized up to 10% of the $2 billion in additional UI administrative funding authorized under ARPA for grants to states to establish a fraud hotline for the reporting of UI-related identity theft and to establish a database of incorrect 1099-G forms to be provided to the IRS. Finally, H.R. 4190 would have required the IRS commissioner to issue a federal income tax refund promptly in a situation in which an individual received a 1099-G form incorrectly due to UI identity theft and filed a correction claim with the individual's state.

S. 2742 (introduced by Senator John Thune on September 14, 2021), the Recovering Fraudulent Claims Act, would also have addressed COVID-19 UI fraud. S. 2742 would have established the COVID-19 Unemployment Insurance Fraud Task Force, which would have investigated fraud with respect to COVID-19 UI benefits, submitted its findings to the Attorney General, and provided certain preliminary findings to Congress within one year. S. 2742 would also have required GAO to study how the ARPA grant funding to states was used to detect and prevent fraud and recover COVID-19 UI overpayments and to provide study findings to Congress within one year.

[126] For details on interest charges for federal loans to states, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

[127] See https://www.e-verify.gov/, which states that "E-Verify is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS)." For additional information on E-Verify, see CRS Report R40446, *Electronic Employment Eligibility Verification*.

Appendix. Federal COVID-19 UI Expenditures

Table A-1. Federal COVID-19 UI Benefit Expenditures by State

Through April 2, 2022

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)
Alaska	$712,693,591	$149,117,112	$73,891,734
Alabama	3,057,978,975	722,934,265	350,095,650
Arkansas	2,145,509,390	193,729,412	456,422,741
Arizona	8,625,195,113	754,252,049	2,711,506,124
California	87,419,216,508	12,151,535,979	32,143,689,203
Colorado	4,659,599,230	1,523,687,912	2,578,272,124
Connecticut	5,106,755,512	1,137,920,706	659,398,682
District of Columbia	1,373,876,563	387,865,131	178,588,639
Delaware	766,796,937	178,156,500	125,773,500
Florida	17,048,947,546	4,992,576,551	3,085,723,974
Georgia	12,143,750,157	2,019,235,694	2,931,123,789
Hawaii	2,597,544,335	959,704,343	732,512,016
Iowa	2,082,446,305	381,594,045	342,431,529
Idaho	716,210,436	96,870,333	128,224,796
Illinois	16,948,020,511	4,124,406,161	4,550,690,643
Indiana	6,324,024,998	709,278,073	1,379,725,921
Kansas	1,538,750,281	280,199,178	205,972,699
Kentucky	4,349,655,059	514,352,323	127,366,395
Louisiana	6,111,051,749	567,875,891	1,006,448,804
Massachusetts	14,348,233,234	5,761,994,106	5,894,301,518
Maryland	7,865,007,474	1,099,507,326	3,927,430,945
Maine	1,447,377,059	249,337,774	279,217,741
Michigan	22,028,995,827	2,939,921,579	6,081,448,358
Minnesota	6,832,775,700	1,985,955,408	1,009,678,400
Missouri	3,932,873,802	526,750,219	542,365,787
Mississippi	2,887,338,576	256,484,227	408,758,412
Montana	788,525,119	88,000,210	164,977,704
North Carolina	8,202,403,000	1,894,520,000	1,444,738,000
North Dakota	545,119,123	144,796,117	71,733,788
Nebraska	815,335,037	62,593,298	81,836,951

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)
New Hampshire	1,149,303,203	79,586,217	183,529,289
New Jersey	15,668,539,200	4,180,333,630	6,045,039,622
New Mexico	2,208,448,047	548,074,944	478,196,348
Nevada	6,120,076,967	1,444,555,492	1,345,269,556
New York	51,085,566,623	10,260,790,212	17,753,694,908
Ohio	12,293,370,703	1,829,134,086	5,094,362,506
Oklahoma	2,539,472,182	671,050,981	263,205,002
Oregon	5,232,307,677	1,353,795,664	1,069,269,854
Pennsylvania	24,438,078,313	3,921,260,856	10,948,507,958
Puerto Rico	7,202,211,241	481,656,728	1,115,908,528
Rhode Island	1,934,402,525	287,563,239	670,672,965
South Carolina	3,741,117,626	686,731,340	547,797,172
South Dakota	231,911,858	11,870,156	20,970,908
Tennessee	4,840,784,700	458,533,951	675,428,197
Texas	24,916,717,752	6,803,218,835	5,728,980,889
Utah	1,055,839,305	202,140,969	85,775,283
Virginia	7,995,452,917	1,091,658,732	1,991,089,473
Virgin Islands	105,845,334	27,301,108	33,291,069
Vermont	886,670,302	165,324,084	191,730,717
Washington	9,489,805,630	2,669,490,718	2,536,828,094
Wisconsin	3,848,460,953	547,489,908	352,177,669
West Virginia	1,334,321,888	191,984,738	168,129,985
Wyoming	248,472,816	48,069,025	26,488,913
Total	**$ 441,989,184,909**	**$ 84,816,767,533**	**$ 131,000,691,473**

Source: Selected columns from DOL, ETA "Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through April 2, 2022," https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html (accessed April 6, 2022). Totals may not add up due to rounding.

Notes: This table provides ETA data on three temporary COVID-19 UI programs: FPUC, PEUC, and PUA. State-specific reporting on Mixed Earner Unemployment Compensation (MEUC) is not available from this ETA source. This table does not include expenditures by states on permanent-law UI programs (e.g., state Unemployment Compensation and Extended Benefits).

Author Information

Katelin P. Isaacs
Specialist in Income Security

Julie M. Whittaker
Specialist in Income Security

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