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Congressional Testimony

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Hearing Title:
"Unemployment Insurance during COVID-19: The CARES Act and the Role of Unemployment Insurance during the Pandemic"

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Good morning Chairman Grassley, Ranking Member Wyden, and distinguished members of the Committee. Thank you for the opportunity to provide a statement for the record on our work relating to the Unemployment Insurance (UI) program. As you know, the Office of Inspector General (OIG) is an independent agency within the Department of Labor (DOL). My statement focuses on our work to ensure the Department is effectively addressing new and heightened challenges created by the unprecedented expansion of the UI program. The views expressed herein are based on the independent findings and recommendations of the OIG's work, and are not intended to reflect the Department's positions.

Overview of the Unemployment Insurance Program

The federal-state UI program offers the first economic line of defense against the collective impact of unemployment. With more than 40 million UI claims filed since March, nationwide stability and efficiency of the program is imperative. The UI program was designed to assist those who are out of work through no fault of their own. Each state administers a separate UI program under state laws, but all states follow uniform guidelines established by federal law. Every state system sets its own requirements for eligibility, benefit amounts, and length of time that benefits can be paid. States also manage the staffing and system resources to administer their respective programs. UI benefits are generally funded by state employer taxes with administrative costs funded by the federal government. Expansions of coverage and benefits, such as by the CARES Act, are normally funded by the federal government. As such, the Department's Employment and Training Administration (ETA) is responsible for providing program direction and oversight. The OIG provides independent oversight of the UI program through audits to strengthen the integrity and efficiency of the program, and criminal investigations to combat large-scale fraud.

Expansion of the Unemployment Insurance Program under the CARES Act

The CARES Act provided changes to existing UI benefits that will result in hundreds of billions of dollars in additional payments. The Pandemic Unemployment Assistance (PUA) program under the Act extended unemployment benefits to people who are self-employed, independent contractors, those with limited work history, and other individuals traditionally ineligible for unemployment benefits who are unable to work as a direct result of COVID-19. The Act provides $600 per week for all unemployed, in addition to their regular unemployment benefit, through July 2020. The Act also provides an additional 13 weeks of unemployment compensation for individuals who exhaust their regular unemployment benefits. Finally, the Act allows states to waive the requirement that claimants wait one week before being eligible for benefits.

A History of Improper Payments

The UI program has historically had some of the highest improper payment rates among all federal programs. The UI program paid approximately $27 billion in benefits over a one-year period ending June 2019. Of this, the Department estimated almost $3 billion were improper payments, making the improper payment rate more than 10 percent. The improper payment rate could increase due to the significant funding provided in response to the pandemic. However, conservatively assuming improper payments continue at the current rate, at least $26 billion of UI program funds issued under the CARES Act would be wasted, with a large portion attributable to fraud. The substantial increase in UI benefits, and the likelihood that the improper payment rate will increase as well, requires that ETA and State Workforce Agencies (SWAs) strengthen controls to ensure funding is used to support workers and the economy as intended.

The Department has continually faced challenges in ensuring UI improper payments were prevented, detected, and recovered in a timely manner. The UI program is required to make timely weekly benefit payments to provide needed assistance to unemployed workers. However, it is equally important that the program have sufficient controls in place to determine as quickly as possible that benefits were paid to the right person in the correct amount, and not paid to fraudsters. A UI benefit payment may later be determined improper upon receipt of information that was unavailable at the time the payment was required to be made, or because states must afford claimants due process prior to terminating benefits. The Department's challenges in helping states address the leading causes of improper UI payments are exacerbated by inadequate information when eligibility is established and the need to reassess payment eligibility each week.

Major Challenges in Administering and Overseeing the UI Program

The unprecedented increase in unemployment claims has left states struggling to pay claimants quickly while ensuring program integrity. OIG reports have highlighted several challenges in the UI program over many years. Likewise, we have listed identifying and reducing UI improper payments as a top management challenge facing the Department for several consecutive TMC reports.

Based on our prior and ongoing work, the following are major challenges DOL and States face in administering and overseeing the UI program:

- Program Fraud
- Self-Certification for PUA Benefits
- Communication with Employers
- Benefit Year Earnings
- Information Technology (IT) Systems, Staffing, and Monitoring

Program Fraud

Fraudulent activity poses a significant threat to the integrity of the UI program as identity thieves and organized criminal groups continue to exploit program weaknesses. Fraud schemes primarily relate to the legitimacy of initial benefit claims. Specific schemes we are investigating include fraudulent claims for benefits using stolen identities and fictitious employers to establish fraudulent work histories. The volume of investigative matters we are currently investigating involving CARES Act related fraud is unprecedented in the OIG's history. Currently, we are investigating over 400 UI matters and we expect that number to continue to rise.

SWAs have been challenged in detecting UI fraud. Past audits have found that states can do more to both prevent and detect fraud. Unfortunately, the higher weekly benefits offered under the CARES Act are an attractive target for scammers and fraudsters, increasing the burden on states to get payments out quickly while protecting the integrity of the program. The states must pay many more claims just as quickly as before, leaving more room for error in a program with pre-existing control weaknesses and inadequate staffing.

Workers are desperately seeking benefits in light of the pandemic and wide-scale unemployment. One scam exploits these workers by offering to help them apply for UI benefits, only to misuse their personal and financial information to fraudulently divert UI payments to scammers. Our office issued a fraud alert about this scam, and also sent the alert to SWAs and the U.S. Department of Justice to warn the public against these predators.

The most common fraud involves criminals using stolen identities to make fraudulent claims in multiple states for significant amounts of money by using prepaid debit cards and fraudulent bank accounts. There are few controls in place to prevent this particular fraud scheme, though we have recommended in the past that benefits no longer be paid using prepaid debit cards that provide anonymity to criminals. In many instances, victims only learn of the theft and use of their identity when they themselves submit a UI claim only to learn that an identity thief has already filed a fraudulent claim on their behalf. In one case, we are currently investigating the alleged theft and fraudulent use of more than three dozen frontline healthcare workers' identities that were stolen while they were combatting COVID-19. In another recent example, a local police department found a list of dozens of stolen identities in the possession of a suspect that they arrested. The suspect also had in his possession a loaded weapon. Further investigation by the OIG determined that some of the stolen identities have been used to file out-of-state UI claims. In yet another example, the identities of several former federal government attorneys, including a former Assistant U.S. Attorney, who work for the same law firm, were allegedly stolen and used to file fraudulent UI claims. In these cases, fraudsters allegedly used the victims' identities to file fraudulent unemployment claims in multiple states. These are just a few examples of the hundreds of investigative matters involving UI fraud we are currently pursuing. The vast majority of these matters involve identity theft.

We are also seeing an alarming trend of violent criminals engaged in fraudulent schemes, including some transnational gangs. We are currently working closely with states that have been targeted by these organized criminal networks outside of the country to investigate these matters.

The OIG is currently seeking data from the states that will allow the OIG to more timely detect fraud activity. Earlier detection will allow the OIG to save taxpayer dollars by stopping fraud while it is happening. We are also working closely with our partners in the federal, state, and local law enforcement communities to leverage resources and hold fraudsters accountable.

Self-Certification for PUA Benefits

We recently issued an alert memorandum about self-certifications for PUA, which extended benefits to self-employed workers, gig workers, and others not covered under traditional UI programs. We alerted the Department that states' reliance solely on self-certification to determine eligibility significantly increases the risk of fraud. According to the Department's guidance, any individual may self-certify without providing evidence of earnings and be approved for payment. We already see indications in our investigations that fraudsters are exploiting the lack of controls for this category of assistance.

Our alert memorandum recommended the Department consult with Congress or seek additional legislation to curtail potential fraud.

Communication with Employers

Past OIG audits have shown the need for better strategies to increase employer participation in efforts to determine an individual's initial eligibility for UI benefits. States need employers to confirm the employee worked for them for a sufficient length of time and lost their job through no fault of their own. The most efficient method for employers to exchange separation information is through the use of the State Information Data Exchange System (SIDES). SIDES is a standardized computer-to-computer system designed to enable rapid and accurate communication between states and employers.

A 2017 audit found that almost all states used SIDES to obtain timely and accurate information from employers on the reasons individuals separated from employment. Specifically, we found that improper payment rates for each of the five states we reviewed declined after implementing SIDES. In those instances where SIDES was used, it resulted in better initial eligibility determinations and a reduction in improper payments. However, we found that opportunities were missed to maximize the utilization of the system. Specifically, better strategies were needed to address the following:

- Less than 20 percent of employers covered by the five states we reviewed signed up to use SIDES.
- Employers that did sign up to use SIDES did not respond to more than 40 percent of the more than 4 million state requests for employee separation information.
- State marketing did not increase employer participation in SIDES.
- SIDES infrastructure presented technical challenges.

We found that SIDES was particularly effective when used by employers with a higher number of unemployment claims. As significantly more employers will fit this profile due to the pandemic, we have recommended that ETA work with SWAs to increase the number of employers using SIDES and resolve technical challenges with the system. While ETA generally agreed with our recommendations and issued additional guidance to SWAs encouraging the use of SIDES, we remain concerned that some states may not have effectively increased employer use of SIDES. This could require greater reliance on compensating controls to detect improper payments.

Benefit Year Earnings

In Fiscal Year 2017, DOL estimated the UI program improperly paid more than $1 billion to ineligible claimants who had returned to work. ETA classifies these types of overpayments as “benefit year earnings (BYE) overpayments.” To ensure unemployment compensation payments stop at the appropriate time, it is critical that states identify when claimants have returned to work. A key control for doing so is the effective use of the National Directory of New Hires (NDNH), which is a nationally consolidated database that contains UI claimant data and wage information from state and federal agencies. States will need to perform cross matches of the NDNH against state claims databases, including PUA claimants, to ensure the continued eligibility of benefit recipients. This is especially important given that large numbers of claimants are expected to return to work once COVID-19 subsides and some may continue to collect benefits after successful reemployment.

This is also an area the OIG has seen significant fraudulent activity, in particular claimants working in one state while claiming benefits in another. Therefore, it is critical that states effectively utilize the NDNH, which includes employment and wage information for all states. States also use their own State Directory of New Hires (SDNH) to identify BYE overpayments. However, since 2011, ETA has mandated that states use the NDNH.

OIG audit work has found that states generally used these new hire detection tools to reduce BYE overpayments, but ETA could do more to assist states' efforts. Despite an 8 percent reduction in overpayments, states underutilized new hire directories. Further, states did not make timely overpayment determinations of new hire investigations and did not report complete and accurate results of investigations, as required. These areas of concern will make the effective management of CARES Act funding difficult if ETA does not ensure states take action to enhance state controls over identifying claimants who return to work.

IT Systems, Staffing, and Monitoring

The inability of states to quickly ramp up staffing, and to modify IT systems to address limitations and institute program changes, are two overarching weaknesses identified in past audits that exacerbate the challenges noted and that contribute to states' inability to pay claims timely. To meet the requirements of the CARES Act, states must have sufficient staffing and system resources to manage the extraordinary increases in the number of claims and payments. ETA must also provide program monitoring and oversight that ensures states establish procedures to detect and recover improper payments and redirects funding to those eligible for assistance.

OIG Oversight of the Unemployment Insurance Program

In April, we issued our Pandemic Response Oversight Plan to outline how we will review the Department's response to the pandemic, focusing on the UI program. The work is being conducted in four phases covering the allocation and post-allocation periods for CARES Act funds.

Phase 1

We have already begun our audit and investigative work under phase one, and are reaching out to states and law enforcement contacts to provide UI fraud awareness and training, as well as obtaining data analytics needed to effectively identify, investigate, and prosecute UI fraud.

We have ongoing audits under Phase 1 of our plan to assess DOL's guidance to the states for implementing CARES Act provisions and have already issued four advisory and alert reports that cover issues the Department should immediately address, including mitigating fraud.

We have nine audits in progress assessing the guidance and oversight DOL provided for the UI program and other DOL agencies impacted by COVID-19, including the Occupational Safety and Health Administration, the Wage and Hour Division, the Office of Workers' Compensation Programs, and the Mine Safety and Health Administration. As mentioned, our audit of UI program guidance has already identified significant program weaknesses. The target completion date of Phase 1 is June 30, 2020.

Phase 2

Phase 2 of the plan will focus on the Department's implementation of its administration and oversight activities. We will also focus on increasing our investigative capacity during Phase 2 due to the unprecedented number of investigative matters that the OIG is working on related to the CARES Act. We will also continue to expand our data analytics work for both fraud prevention and detection. Phase 2 is expected to be completed by September 30, 2020.

Phase 3

Phase 3 will focus on after-the-fact reviews of the Department's administration and oversight, lessons learned, and how DOL's response to the pandemic affected normal operations. The OIG will use data analytics to reassess our deployment and complement of investigative resources during Phase 3. Should analysis show that the OIG has a need for additional investigative resources at that time, we plan on strategically increasing our investigative capacity in areas that have the greatest amount of CARES Act related fraud. Phase 3 is expected to be completed by September 30, 2021.

Phase 4

In Phase 4, an ongoing phase, the OIG will continue to monitor and assess the Department's actions related to the pandemic in response to new legislation enacted by Congress, as well as continue our investigative efforts. An overall summary of lessons learned from all major programs impacted will also be included in this phase.

Cross-Agency Coordination

We are coordinating with the National Center for Disaster Fraud, U.S. Attorneys' Offices, SWAs, and our law enforcement partners on pandemic related activity and fraud. We recently conducted UI fraud training to more than 300 of these partners nationwide to help them better identify and prevent fraud in the UI program. We are also actively seeking opportunities to collaborate because fraudsters often target other benefit and loan programs in addition to UI.

As a member of the Pandemic Response Accountability Committee, we are working with other OIGs to detect and prevent fraud and mismanagement of the trillions of dollars provided by the CARES Act and other legislation.

OIG Legislative Recommendations

The OIG believes that the following legislative actions are necessary to improve the integrity of DOL's UI program.

Allow DOL and the OIG Direct Access to Wage Records

The OIG lacks direct access to wage records to reduce improper payments and combat fraud in employee benefit programs, including the UI and Federal Employees'

Compensation Act (FECA) program. For example, the OIG needs access to the NDNH. Because the NDNH contains UI claimant data, granting the OIG statutory access to NDNH data would provide the OIG with a valuable source of information for both audits and investigations. The NDNH, however, cannot be used for any purpose not specifically authorized by federal law. In 2004, the law was amended to allow the SWAs to cross-match UI claims against the NDNH to better detect overpayments to UI claimants who have returned to work but continue to collect UI benefits. However, the applicable law does not permit the OIG to obtain NDNH data, and the OIG cannot use its subpoena authority to obtain NDNH records. Granting the OIG access to the NDNH would permit OIG auditors to use these records to verify reported outcomes for Workforce Innovation and Opportunity Act program participants. In addition, OIG investigators could use these records to investigate employer fraud in the UI program, claimant fraud in the FECA program, and prevailing-wage violations by federal contractors.

DOL and the OIG also need the authority to easily and expeditiously access state UI and Social Security Administration (SSA) wage records. Access to SSA and UI data would allow the Department to measure the long-term impact of employment and training services on job retention and earnings. This type of outcome information for program participants is otherwise difficult to obtain.

Enact UI Integrity Legislative Proposals

In October 2016, the Department submitted a legislative package to Congress proposing legislative changes that would help address UI program integrity and the high improper payment rates experienced in the UI program. These proposals were also included in each of the President’s budget requests since FY 2018. The OIG encourages Congress to consider and adopt these proposals to aid the Department’s efforts to combat improper payments in the UI program.

The proposals include the following:

- Require states to use the SIDES to cross-match against the NDNH.
- Allow the Secretary of Labor to require states to implement UI corrective actions related to performance and integrity.
- Require states to cross-match with SSA's prisoner database and other repositories of prisoner information.
- Allow states to retain 5 percent of UI overpayment recoveries for program integrity use.
- Require states to use UI penalty and interest collections solely for UI administration.

In addition to the above, the President's FY 2020 budget request included a new proposal to require states to access data sources available through the UI Integrity Center's Integrity Data Hub (IDH). IDH contains a Suspicious Actor Repository for states to exchange data elements from known fraudulent UI claims and will soon contain additional near-real-time data sources to detect improper payments and fraud, including an identity verification tool to prevent fraudulent UI benefit claims. This proposal will require states to cross-match against the data sources available through IDH. UI system-wide use of IDH will result in increased prevention, detection, and recovery of improper and fraudulent payments.

These legislative proposals are consistent with previous OIG findings and recommendations to address UI improper payments.

Conclusion

Maintaining the integrity of the unemployment insurance program is imperative to protect workers and sustain the American economy. The OIG will continue to conduct vigilant oversight of the Department and this program. Our work will be particularly focused on the extent to which ETA and the states are addressing the concerns presented with claimant eligibility and benefit year earnings. We will also work closely with our law enforcement partners, including other OIGs, to keep these important benefits out of the hands of criminals and available for workers in need. Our phased approach will allow us to timely report on our work in these critical areas and issues identified.

Thank you for the opportunity to provide this statement for the record on our important work in the unemployment insurance program.