

# U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT AND TRAINING  
ADMINISTRATION



## ADVISORY REPORT

### CARES ACT: INITIAL AREAS OF CONCERN REGARDING IMPLEMENTATION OF UNEMPLOYMENT INSURANCE PROVISIONS

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**TABLE OF CONTENTS**

INSPECTOR GENERAL’S REPORT ..... 1

RESULTS ..... 2

    State Preparedness ..... 2

    Initial Eligibility Determination..... 4

    Benefit Amount..... 7

    Return to Work ..... 8

    Improper Payment Detection and Recovery..... 10

    Program Monitoring..... 11

OIG OVERSIGHT OF PANDEMIC RESPONSE..... 13

CONCLUSION ..... 13



## **INSPECTOR GENERAL'S REPORT**

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This advisory report presents the Office of Inspector General's (OIG) initial areas of concern the Department of Labor (DOL) and the states should consider given the implementation of the unemployment insurance (UI) provisions included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. UI is a joint federal-state program with DOL's Employment and Training Administration (ETA) responsible for providing state oversight. The concerns presented in this report represent years of oversight work relating to DOL's UI program, including the use of prior stimulus funds and the Department's response to past natural disasters.

Since the coronavirus (COVID-19) pandemic first infiltrated the United States in early 2020, it has had a major impact on unemployment compensation claims. DOL reported more than 22 million additional workers have filed initial jobless claims since March 14, the largest increase since the Department began tracking the data in 1967.

The CARES Act, which became law on March 27, 2020, provides three major changes to existing UI coverage, which could total hundreds of billions of dollars in additional payments. The new Pandemic Unemployment Assistance (PUA) program extends unemployment benefits to self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who are unable to work as a direct result of COVID-19. The CARES Act also provides an additional 13 weeks of unemployment compensation available to those individuals who have exhausted their regular unemployment benefits. Finally, the CARES Act provides a supplemental payment of \$600 per week for up to four months.

The substantial increase in unemployment benefits requires that ETA and state agencies establish strong controls to ensure the use of the funding meets the intent of the CARES Act and helps to support workers and the economy.

## RESULTS

The OIG has published numerous audit reports identifying areas for improvement and fraud prevention within DOL’s UI program. Based on these reports, we identified initial areas of concern that ETA and the states should consider as they implement the UI provisions included in the CARES Act. These areas include:

- State Preparedness
- Initial Eligibility Determination
- Benefit Amount
- Return to Work
- Improper Payment Detection and Recovery
- Program Monitoring

Our past audit work included recommendations to address deficiencies identified in each of these areas. In most cases, ETA initiated corrective actions, including improvements in its oversight, as well as state operations. However, initiating corrective actions does not assure such actions are effective or will continue to be effective in addressing program risks and weaknesses. As ETA and the states implement the relevant CARES Act provisions and in light of the unprecedented demands on the unemployment system, more needs to be done to ensure those receiving compensation are eligible and receive accurate and timely payment. ETA and the states also need to develop effective fraud prevention measures and ensure any overpayments are detected and recovered.

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### STATE PREPAREDNESS

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Two issues of state preparedness to successfully implement the expansion of UI benefits—staffing and system capabilities—have been long-standing concerns underlying many issues noted in prior OIG reports. These issues have been particularly evident in prior periods of increased stress on the unemployment program due to major disasters or periods of significant economic downturn.

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 generally funded by the federal government. Each state administers a separate UI program, but all states follow the same general guidelines established by federal law. Each state sets its own additional requirements for eligibility, benefit amounts, and length of time benefits can be paid. Each state also manages the staffing and system resources needed to administer the program. These resources are critical to all aspects of the UI program and affect each area of concern discussed in this report.

### **Staffing**

Funding provided under the CARES Act necessitates that states have sufficient staffing and system resources to manage the extraordinary increases in the number of claims and payments. The CARES Act specifically provides states with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to process unemployment claims quickly.

Our work related to past funding for emergency staffing under the 2009 Recovery Act showed that states took over a year to spend the majority of funds available for hiring; and at least 40 percent of the available funds were unspent after 15 months.<sup>1</sup> State officials said they did not have sufficient staff because they were already working at low staffing levels prior to receiving the Recovery Act funding and hiring efforts were delayed due to state-imposed hiring freezes that required exemptions to bypass. ETA's intent was for states to hire quickly as its guidance stated that the majority of available funds should be spent within the first year. ETA did not provide sufficient monitoring and oversight to ensure this occurred.

### **Systems**

States have been slow to modernize unemployment systems, which has resulted in processing delays and inaccurate unemployment compensation payments. States that do not have modernized unemployment systems may need alternative controls to compensate for the limitations imposed by outdated systems, including hiring additional staff.

The Recovery Act provided \$7 billion states could use to modernize legacy systems for processing UI claims. However, an audit in 2010 found that \$2 billion was used to pay benefits (an allowable option under the legislation) and another \$1.3 billion would likely not have been spent before their period of availability

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<sup>1</sup> DOL OIG, "Recovery Act: DOL Could Have Better Monitored the Use of Re-employment Services Funds to Adhere to Standards for Transparency and Accountability," (March 31, 2011; Report No. 18-11-005-03-315)

expired.<sup>2</sup> States cited increased costs for benefit payments and the political difficulty of making the required changes to state laws as the primary reasons they would not apply for the funding. Additionally, the audit disclosed that states with \$39 million in available administrative grant funds to modernize their systems did not have plans in place to spend those funds.

ETA took action to address our prior audit recommendations on staffing and system modernization. However, the OIG remains concerned that staffing challenges, coupled with the state of legacy systems, will continue to impede the management and oversight of UI benefits. Heightened oversight and assistance from ETA and compensating controls by the states are required to ensure the concerns from past audits, as discussed in this advisory report, are adequately addressed.

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## **INITIAL ELIGIBILITY DETERMINATION**

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A key challenge faced by states is ensuring unemployment compensation benefits are paid to only those individuals eligible under program requirements. Accurate initial determinations of eligibility are critical to ensuring that benefits are granted only to those intended by the programs. For claimants covered by the regular UI program, this means obtaining necessary separation information from the employer. For claimants not traditionally covered by UI, states will need to ensure self-certifications are not abused and methods to detect fraud and recover improper payments are established.

### ***Regular Unemployment Benefits***

Past OIG audits have shown the need for better strategies to increase employer participation in efforts to determine initial eligibility. 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 the State Information Data Exchange System (SIDES). SIDES is a standardized computer to computer system designed to enable more rapid and accurate communication between states and employers compared to mailed requests. A 2017 audit found that almost all states used the SIDES, an effective automated tool to obtain timely and accurate information from employers on the reasons individuals separated from employment.<sup>3</sup> This information is key to

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<sup>2</sup> DOL OIG, “Recovery Act: More Than \$1.3 Billion in Unemployment Insurance Modernization Incentive Payments Are Unlikely To Be Claimed By States,” (September 30, 2010; Report No. 18-10-012-03-315)

<sup>3</sup> DOL OIG, ““Better Strategies Needed to Increase Employer Participation in the State Information Data Exchange System,” (March 31, 2017; Report No. 04-17-003-03-315)

determining initial eligibility, compensation amounts, validity of self-certifications, and the enforcement of voluntary quit provisions that in nearly all instances render the claimant ineligible.

We found that improper payment rates for each of the five State Workforce Agencies (SWA) 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 there was missed opportunity to maximize the utilization of the system. Specifically, better strategies were needed to address the following:

- Only 19.8 percent of employers covered by the five SWAs we reviewed signed up to use SIDES.
- Employers that did sign up to use SIDES did not respond to 41 percent of the 4.2 million SWA requests for employee separation information.
- State marketing did not increase employer participation in SIDES.
- SIDES infrastructure presented technical challenges.

We recommended ETA work with SWAs to increase the number of employers using SIDES and resolve technical challenges with the system. We found that SIDES was most effective when used by employers who had a higher number of unemployment claims. Significantly more employers will fit this profile due to COVID-19. ETA generally agreed with our recommendations and issued additional guidance to SWAs encouraging the use of SIDES. Further, ETA required the use of SIDES for UI modernization funding, held conferences and Webinars, and created a new marketing and outreach tool kit. However, we remain concerned that some states may not have effectively increased employer use of SIDES. This could require greater reliance on compensating controls, as well as greater attention to detection of improper payments.

### ***Pandemic Unemployment Assistance***

The new PUA program extends benefits to those who are classified as self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who are unable to work as a direct result of COVID-19. PUA is similar to the Disaster Unemployment Assistance (DUA) program, which the OIG has audited.

A DUA audit conducted in response to a major weather-related disaster underscores some of challenges the PUA program will face.<sup>4</sup> After the disaster,

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<sup>4</sup> DOL OIG, “Audit of Florida Disaster Unemployment Assistance Grant Number 1359 - DR,” (March 26, 2004; Report No. 04-04-004-03-315)

claimants had to show they were not eligible for benefits under the State's regular unemployment program and lost their jobs due to the disaster.

Our audit in one state found improper payments to over 71 percent of the 420 sampled claims, many for more than one reason. Payments were made to claimants who:

- were not unemployed due to the disaster, or
- did not have adequate documentation of their continuing eligibility or were paid due to other administrative errors.

Based on a statistical projection from our sample, we estimated the total amount of improper payments was at least \$1.7 million. ETA did not provide adequate monitoring to ensure state officials implemented DUA policies that were consistent with program requirements. We recommended ETA require the state to establish administrative policies and procedures that comply with federal filing and eligibility guidelines. As previously noted, the risk of fraud and improper payments is even higher under PUA because claimants can self-certify their UI qualifications. ETA needs to establish methods to detect fraud and recover improper payments.

### ***Fraudulent Claim Prevention and Detection***

The OIG is concerned ETA and the states have not developed sufficient systems to prevent fraud during initial eligibility determinations and detect fraud if those systems fail. An Investigative Advisory Report issued by the OIG's Office of Investigations in 2015 identified systemic weaknesses that make the UI program more susceptible to fraudulent activity.<sup>5</sup> The information presented is even more relevant due to the expanded benefits provided under the CARES Act and the increased volume of claims. The systemic weaknesses identified include the following:

- State systems that allow individuals to file unemployment insurance claims in multiple states during the same timeframe using the same personal information.
- State systems that auto-populate the application with the claimant's employment history, making it easier for the claimant to complete the application process, but also making it easier for someone to make

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<sup>5</sup> DOL OIG, "Weaknesses Contributing to Fraud in the Unemployment Insurance Program," (July 24, 2015; Investigative Advisory Report)



fraudulent claims.

- State systems that allow individuals to file claims online using anonymous IP addresses, internet hotspots and stolen internet connections, making it difficult to validate the identity of the claimant.
- Non-state issued pre-paid debit cards available through retail outlets, provide anonymity to those who are submitting fraudulent claims and make it difficult to trace the activity and use of the funds.
- Inconsistent or unstructured communication between state tax and employment departments, making it difficult to validate claims using corporate unemployment insurance tax filings.

ETA and the states need to consider these systemic weaknesses as they develop methods to prevent and detect fraud in the UI program.

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## **BENEFIT AMOUNT**

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The OIG is concerned ETA and states do not have sufficient systems, alternative controls, and oversight in place to ensure appropriate payment durations and amounts. The CARES Act will significantly increase the number of unemployment compensation claims because provisions include payment to those not traditionally eligible for unemployment benefits. Furthermore, provisions to provide an additional 13 weeks of unemployment compensation and an additional \$600 per week will significantly increase the duration and amount of unemployment compensation payments.

The 2009 Recovery Act included a weekly benefit augmentation similar to the CARES Act, but instead of \$600 it was the significantly lesser amount of \$25. ETA estimated the total cost of the \$25 additional payments would exceed \$8 billion. Our audit identified system limitations and control weaknesses that affected states ability to properly pay the additional \$25 per week to eligible unemployed recipients.<sup>6</sup> We determined that some states paid the \$25 additional compensation to ineligible claimants, and that overpayments by the 10 states we reviewed ranged from \$160,000 to about \$2.5 million. Moreover, some states did not attempt to identify and recover overpayments or compile and report overpayment information to ETA as required. For these states,

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<sup>6</sup> DOL OIG, "Recovery Act: States Have Aggressively Implemented the \$25 Weekly Supplemental Unemployment Benefit but Some Challenges Remain," (September 30, 2009; Report No. 18-09-004-03-315)

overpayments were considered lost and ETA did not have the information needed to provide adequate oversight and control.

ETA concurred with our conclusions in this report and addressed concerns in the states audited. ETA also issued guidance to all states to reaffirm the requirements for managing and controlling the \$25 per week additional compensation. However, our audit did not cover all states and we are concerned that state system limitations and control weaknesses still exist. Addressing these weaknesses where needed is especially critical due to the much higher \$600 per week provided by the CARES Act.

Additionally, a series of audits we conducted in response to past disasters identified systemic control weakness that ETA should consider as it oversees CARES Act provisions.<sup>7</sup> Our audits found that two states affected by Hurricanes Katrina and Rita made rapid unemployment compensation payments without ensuring claimants were eligible. For example, both states failed to verify social security numbers or crossmatch payment information to prevent duplicate payments. One state disregarded the requirement to determine the correct benefit amount based on prior wages and granted all beneficiaries the maximum amount without regard to prior earnings. Based on our review, we determined that the two states potentially overpaid about \$100 million in unemployment compensation.

We recommended ETA develop a nationally coordinated contingency plan to provide alternatives for individual states to process claims when disasters or other reasons disrupt normal processing. This included developing alternative controls for instances when states suspend established eligibility and benefit payment controls. ETA agreed with our recommendations and worked with states to develop a nationally coordinated contingency plan. However, ETA has not implemented the contingency plan during an emergency on the scale of COVID-19.

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## **RETURN TO WORK**

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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 effective use of the National Directory of New Hires (NDNH). States will need to perform crossmatches of the NDNH against state claims databases, including PUA claimants, to ensure the continued eligibility of all

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<sup>7</sup> DOL OIG, “Lack of Contingency Plans Contributed To More Than \$100 Million in Potential Overpayments of Hurricane-Related Unemployment Benefits,” (June 12, 2008; Report No. 06-08-001-03-315)

benefit recipients. This is especially important given large numbers of claimants are expected to return to work once COVID-19 subsidies and some may continue to collect benefits after successful reemployment.

In Fiscal Year 2017, DOL estimated the UI program improperly paid more than \$1 billion to claimants who were ineligible for benefits because they had returned to work. ETA classifies these types of overpayments as “benefit year earnings (BYE) overpayments.” Since 2011, ETA has mandated that states use the NDNH to detect and prevent BYE improper payments. States also use the State Directory of New Hires (SDNH) to identify BYE overpayments.

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.<sup>8</sup> 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 new hire 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 return to work.

Our recommendations included that ETA:

- Develop and implement new procedures to identify states that are underutilizing NDNH and the SDNH tools and target those states for additional technical assistance.
- Revise and redistribute recommended operating procedures for state and national new hire cross-matching that includes the use of Enhanced NDNH procedures.
- Develop and implement improved oversight procedures to ensure the results of NDNH and SDNH investigations reported on the ETA 227 Overpayment Detection and Recovery Activities quarterly report are complete and accurate.

ETA implemented these recommendations. However, ETA now needs to focus the expenditure of CARES Act funding on eligible recipients only, enabling the funding to impact a greater population of those in need.

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<sup>8</sup> DOL OIG, “Improved Oversight of States’ Use of New Hire Tools Would Help Reduce Improper Payments,” (September 27, 2018; Report No. 04-18-003-03-315).

Furthermore, the CARES Act presents additional challenges for the unemployment program. For example, the provisions for small business loans, under the Paycheck Protection Program, enable some employers to reopen and offer employees their jobs back. As conditions improve, states face the challenge of identifying situations where employees refuse to return to work because the additional \$600 per week under the Emergency Increase in Unemployment Compensation Benefits may result in sufficiently comparable payment to employment. Situations may also arise where small businesses use the loans to provide back pay to employees that received unemployment compensation for the same period. ETA needs to work with the states to develop processes to discontinue benefits when appropriate or detect and recover any overpayments.

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## **IMPROPER PAYMENT DETECTION AND RECOVERY**

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In this report, we have discussed the need for states to have in place preventive controls to ensure eligible people are receiving the correct amount of benefits for the correct period of eligibility in order to prevent the occurrence of improper payments. However, states need to establish controls to detect any improper payments made in case preventive controls fail. Furthermore, states need to establish processes to ensure they recover any detected overpayments.

The OIG continues to report the Department's ability to measure, report, and reduce improper payments in its UI program as a significant concern.<sup>9</sup> The UI program, designed to provide benefits to individuals out of work, has one of the highest improper payment rates of all government programs. The UI program paid benefits totaling \$26.91 billion during the period July 1, 2018, to June 30, 2019. Of this, estimated improper payments totaled \$2.86 billion, making the estimated improper payment rate 10.61 percent.

Our prior audit work revealed that the Department has not done enough to formally assess the various strategies and determine what issues persist, due in part to a lack of reliable state reported data. A leading cause of improper UI payments was states' inability to determine a claimant's benefit eligibility based

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<sup>9</sup> DOL OIG, "Semi-Annual Report to Congress," (Volume 82; April 1 – September 30, 2019).

on adequate base-year wages, or allowable reasons for separation<sup>10,11</sup> Furthermore, identity thieves and organized criminal groups have found ways to exploit program weaknesses. Thus, improper payments stemming from fraudulent activity continue to pose a significant threat to the integrity of the UI program.

The Department needs to continue its ongoing work with states to implement strategies designed to reduce the UI improper payment rate, which would include sharing best practices identified among states. Under the CARES Act, DOL's improper payment rate may increase if strong controls are not established. To ensure CARES Act funding can reach those eligible recipients in need of the assistance, it is paramount that states develop controls to detect and recover any improper payments.

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## **PROGRAM MONITORING**

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ETA must ensure program monitoring over the use of the stimulus funding is sufficiently designed and executed and benefit outlays are accurately tracked and reported, at the state and federal level. Without this critical oversight and transparency, ETA cannot ensure its management of the billions of dollars in supplemental program funding has achieved the desired outcome and sufficiently met the requirements of the CARES Act.

ETA is responsible for issuing operating instructions or other guidance to states as necessary. ETA can also waive requirements of the Paperwork Reduction Act to gather quickly the necessary information from states and more rapidly distribute funding appropriated under the CARES Act. While a great sense of urgency exists during COVID-19, past audit work has found that in the rush to disseminate stimulus funding, ETA was remiss in providing necessary, additional

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<sup>10</sup> DOL OIG, "ETA Needs Stronger Controls to Ensure That Only Eligible Claimants Receive Unemployment Compensation for Federal Employees," (March 28, 2016; Report No. 04-16-001-03-315).

<sup>11</sup> DOL OIG, "Reporting Over the U.S. Department of Labor's FY 2018 Compliance with the Improper Payments Elimination and Recovery Act," (Issued June 3, 2019; Report No. 22-19-007-13-001).

guidance to direct spending more effectively and to track and report more meaningful results.<sup>12,13</sup>

Specifically, prior audit work found that DOL moved quickly after the Recovery Act's passage to allocate funds to states; and develop and issue general guidance on allowable spending categories and reporting formats. While DOL provided timely guidance to states, DOL did not consistently apply lessons learned to ensure the most efficient use of the stimulus funding. One audit found that DOL could have directed states to use reemployment services grants to correct claimant service-related weaknesses identified by several organizations.<sup>14</sup>

Moreover, ETA guidance did not ensure the level of transparency and accountability the Recovery Act required. ETA guidance lacked results-oriented goals, objectives, and measurable outcomes. As a result, ETA could not provide a breakout of how the 54 states and territories spent the reemployment services funding.

The lessons learned from implementing our audit recommendations could help ETA in the effective and efficient management of CARES Act funding. Those recommendations included:

- Establishing priorities, outcome measures, and effective data collection systems for future UI program funding to address program weaknesses and better measure the services states provide to claimants.
- Developing monitoring and financial reporting requirements to enable DOL to report how effectively states spent federal funds on employment and reemployment services.

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<sup>12</sup> DOL OIG, "ETA Needs Stronger Controls to Ensure That Only Eligible Claimants Receive Unemployment Compensation for Federal Employees," (March 28, 2016; Report No. 04-16-001-03-315).

<sup>13</sup> DOL OIG, "Recovery Act: DOL Could Have Better Monitored the Use of Re-employment Services Funds to Adhere to Standards for Transparency and Accountability," (March 31, 2011; Report No. 18-11-005-03-315)

<sup>14</sup> DOL OIG, "Recovery Act: DOL Could Have Better Monitored the Use of Re-employment Services Funds to Adhere to Standards for Transparency and Accountability," (March 31, 2011; Report No. 18-11-005-03-315)

- Determining from independent analysis what state experiences were and identifying best practices; areas for improvement; and short and long- term achievements, so DOL could then use this information to set goals and measures for outcomes and achievements for future funding.

## **OIG OVERSIGHT OF PANDEMIC RESPONSE**

Federal agencies are tasked with a difficult charge—rapid implementation of programs in a manner that meets the intent of the CARES Act. Actions to fulfill the mandates of the CARES Act across government require an exceptional level of transparency to ensure the effective and efficient use of the estimated \$2.3 trillion funding, which includes keeping workers paid and employed; enhancing health care systems; and stabilizing the economy. Strong implementation plans and oversight controls are critical to ensure the use of funds as intended and ultimately achieving desired outcomes.

Given the challenges to ETA and the states noted in this report, the actions each will need to take to address those challenges, and the magnitude of risk, the OIG will conduct extensive oversight to monitor and assess how well these challenges are being addressed. The OIG has issued a four-phased oversight plan for this purpose.<sup>15</sup> Our efforts will include oversight of initial program implementation or change rollout; evaluation of intermediate implementation results; assessment of final program results; and a summary of overall lessons learned from all major impacted programs.

The OIG will continue to monitor and assess DOL’s actions relating to COVID-19, as well as any new legislation enacted by Congress. Our Oversight Plan will evolve in response to new legislation, as well as to address areas of risk identified during the completion of our oversight efforts.

## **CONCLUSION**

The rapid deployment of CARES Act funding is critical to help mitigate the impact of the COVID-19 pandemic and help workers in need. However, anticipating and addressing the increased risk that comes with the expanded funding is vital to meeting the intent of the Act. OIG’s prior recommendations in this area can help ETA with its risk assessment and response to COVID-19. As our prior audit work

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<sup>15</sup> [DOL OIG, “Pandemic Response Oversight Plan,” \(Issued April 15, 2020\)](#)

has shown, rapid fund deployment can result in shortcomings in the effective and efficient implementation of stimulus programs and possible misuse of funds. 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. The expanded coverage offered under the temporary PUA program will pose significant challenges to states as they implement processes to determine initial and continued program eligibility. ETA must ensure states establish strong controls for determining eligibility and consider past systemic weaknesses when developing fraud prevention measures. ETA must also ensure states establish procedures to detect and recover any improper payments made and redirect the funding to those eligible for the assistance.

Our past audit work has included recommendations made to assist ETA in addressing deficiencies identified in these areas. In many cases, ETA implemented corrective actions, to include improving the extent of monitoring and oversight; and state-level operations and controls. However, as ETA implements the relevant CARES Act provisions, more needs to be done to ensure those receiving compensation are eligible and receive prompt payment; and to ensure overpayments are recovered and redirected to those in need. It is critical that ETA considers these areas of concern when implementing the stimulus program activities required for managing this unprecedented level of UI claims and increase in UI funding.



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