

Congress of the United States
Washington, DC 20515

February 18, 2022

Delivered via E-mail

The Honorable Marty Walsh
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh,

On February 7, 2022, the Department of Labor's Employment and Training Administration (ETA) issued *Unemployment Insurance Program Letter (UIPL) No. 21-21, Change 1*, addressing program integrity issues related to the unemployment insurance (UI) programs under the Coronavirus Aid, Relief, and Economic Security Act (CARES). The letter allows states to apply blanket waivers to forgo recovery of overpayments in pandemic unemployment programs using seven different loopholes, including failure to provide documentation of eligibility.

Allowing use of blanket waivers would let states off the hook for due diligence and fact finding for large volumes of suspicious unemployment claims potentially involving billions of fraudulently obtained taxpayer dollars.

ETA's guidance not only ignores the prevalence of fraud but is issued under dubious legal authority. **We write to request an immediate stay of the effective date of this guidance and an explanation of the agency's legal authority**, including whether ETA consulted with the Office of the Solicitor to ensure legal authority exists, and if ETA consulted with the Department of Justice's National Unemployment Insurance Fraud Taskforce or the Labor Department Office of Inspector General (OIG) to ensure this does not undermine existing investigations.

ETA's action is particularly reckless in light of White House estimates of improper payments in the Federal-State UI program of an astounding 19 percent equating to an estimated \$78 billion fiscal year 2021.¹ This partial estimate does not include the period of the greatest fraudulent activity when generous \$600/week and \$300/week federal supplements made unemployment a lucrative target for fraudsters. In total, Federal and state spending on enhanced pandemic unemployment benefits reached more than \$850 billion in less than two years.²

¹ White House, Updated Data on Improper Payments, December 30, 2021.

² U.S. Department of Labor: https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html

ETA's public statement on the new UIPL suggests that expediency is overriding integrity. Program integrity cannot be sacrificed for expediency. It is well documented that throughout the pandemic, criminal organizations, including international cybercrime rings and opportunistic foreign actors, used stolen identities to falsely claim unemployment benefits. Fraud delayed legitimate payments and turned thousands of Americans into unwitting identity theft victims.³⁴⁵

Now is the time to pursue and prosecute fraudulent actors. Instead, this guidance equates to sweeping under the rug what is possibly the greatest theft of taxpayer dollars in American history.

ETA provides multiple loopholes for how "states may apply blanket waiver of recovery of overpayments." For example, ETA's UIPL accepts without challenge that an individual who responded "no" to being able and available for work is entitled to a blanket waiver of recovery of overpayments with no determination as to whether the individual was truthful in their response. It appears self-certification and individual assertions are the cornerstone of the repayment waiver. This action may allow those perpetrating fraud within the UI system to continue and leaves unresolved hundreds of thousands of claims involving stolen identities belonging to identity theft victims, including first responders, government personnel and school employees.

To date, ETA has fifty-six recommendations for corrective action from the DOL-OIG. Improper payments are a historical issue that this UIPL does not seek to correct.⁶ The problem is only exacerbated by the lack of coordination between the OIG, state agencies, and ETA.⁷ The OIG has issued repeated alerts to the deficiencies of ETA's management of the UI program through state entities.⁸ ETA's lack of attention to these alerts and the billions of dollars in fraud raises significant concerns about the agency's ongoing management of the program and ability to combat fraud.

Even more concerning, the February guidance has the potential to significantly undermine ongoing pursuit of perpetrators of fraud and the ability to gain restitution for taxpayers. The Department of Justice, Pandemic Response Accountability Committee, U.S. Secret Service, and OIG all have numerous active ongoing investigations involving pandemic unemployment fraud. According to OIG, since the start of the pandemic, the agency has opened more than 31,000 investigative matters relating to UI benefits paid under the CARES Act and is in the process of reviewing an additional 137,000 complaints from the National Center for Disaster Fraud. As a result of the surge in complaints, UI investigations now account for 92 percent of the OIG's investigative case inventory, compared with 12 percent prior to the pandemic.⁹

³ "DOL-OIG Oversight of the Unemployment Insurance program," U.S. Department of Labor, Office of Inspector General, February 3, 2021.

⁴ "COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and other Challenges Require Focused Federal Attention," Government Accountability Office, January 28, 2021. (GAO-21-265)

⁵ "Massive Fraud Against Unemployment Insurance Programs, U.S. Secret Service, Information Only Alert, May 5, 2020.

⁶ <https://www.oig.dol.gov/public/reports/oa/2021/04-21-001-03-315.pdf>

⁷ <https://www.oig.dol.gov/public/reports/oa/2021/19-21-006-03-315.pdf>

⁸ <https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>

⁹ <https://www.oig.dol.gov/doloiguioversightwork.htm>

We request an immediate stay on the effective date of *UIPL No. 21-21* to better understand the agency's legal authority and decision making used to create these broad categories for blanket overpayment waivers. **Please provide responses after each question instead of a narrative format by February 28, 2022.**

- To reduce hardship on individuals who may have been victims of identity theft or agency error, CARES Act provides limited authority for states to waive, on a case-by-case basis, overpayments in pandemic unemployment programs if the overpayment was through no fault of the individual. What legal justification or rationale did the Department use to construe this limited authority to mean ETA could use administrative discretion to create seven broad categories of blanket overpayment waivers?
- Did ETA conduct an economic analysis of this UIPL's impact? If so, please provide a copy of that analysis. If not, why?
- What is ETA's overall estimate for the number and dollar value of claims that fall into each of the five new waiver categories? Please provide a state-by-state breakdown of these two data points for each of the 53 UI systems.
- Provide the date on which the states added the list of COVID-19 qualifying reasons to their initial PUA claim application? And the date states began approving COVID-19 related to the PUA claim application?
- How does the Department plan to reduce friction in State Workforce Agencies' ability to validate self-employment or independent work earnings?
- Did ETA consult with the OIG to determine the impact of this UIPL on current investigations? If yes, please provide all communications or documents received from the OIG on this topic. If not, why?
- Does this UIPL address any of the OIG's outstanding recommendations to fix ETA's administration of the unemployment insurance program?
- Does ETA has a plan to address any of the OIG's outstanding recommendations to fix ETA's administration of the unemployment insurance program?
- Did ETA consult the Office of the Solicitor to ensure the legal authority to create these waivers exists? If yes, please provide a copy of any legal opinions provided by the Office of the Solicitor. If not, why?
- What role did the Office of Unemployment Insurance Modernization play in development of this policy?¹⁰ And where is this office currently housed and reporting?

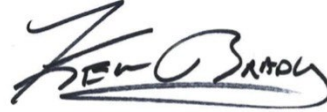
¹⁰ <https://few.com/digital-government/2021/08/new-labor-dept-office-will-focus-on-ui-modernization/259101/>

Thank you for your attention to this matter.

Sincerely,



Richard Burr
Ranking Member
Senate Health, Education, Labor and Pensions
Committee



Kevin Brady
Ranking Member
House Committee on Ways and Means



Mike Crapo
Ranking Member
Senate Finance Committee



James Comer
Ranking Member
House Committee on Oversight and Reform



Rob Portman
Ranking Member
Senate Homeland Security and Governmental Affairs Committee