Pandemic Unemployment Fraud in Context

CAUSES, COSTS, AND SOLUTIONS

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Executive Summary

The coronavirus pandemic tested the nation's unemployment benefits system more than any prior recession did. Not only did far more individuals file claims for weekly benefits than ever before, but lockdowns and mass layoffs concentrated those record claims starting in March 2020, creating an unprecedented surge in demand for benefits that quickly rose to an apparent 33 million claims by June 2020.

As Americans quickly learned, that soaring demand for assistance, accompanied by unprecedented federal benefit expansions, also created unprecedented opportunities for everyone from small-time crooks to international criminal organizations to defraud the nation's unemployment benefits system.

The scale of improper spending and outright fraud is only now coming into focus. Official federal estimates, while still preliminary, are nonetheless striking. Based on an estimated improper payment rate of more than 20 percent, government officials have reported $191 billion in improper payments, which is sure to rise as a more recent report found that one of the most abused federal programs had an improper payment rate of almost 36 percent. A separate assessment by the nonpartisan Government Accountability Office (GAO) estimates there was between $100 billion and $135 billion in fraud involving state and federal unemployment benefits paid during the pandemic. Private estimates suggest improper payments may have exceeded $400 billion.

This report attempts to answer key questions about improper payments and fraud involving unemployment benefits, with the goal of better informing the national policy debate in this crucial area for the future. Some of those questions are:

- How did such runaway abuse occur?
- How much did taxpayers lose due to improper payments and fraud?
- What factors contributed directly to the abuse?
- Why wasn't more done to stop the abuse?
- What should be done to prevent a repeat of this episode in the future?

Properly answering those questions first requires an understanding of key principles of the nation's unemployment insurance system, which offers unemployed workers support tailored to each state's unique economy and reflects a complicated mix of state and federal benefits, taxes, and administrative funding, especially during recessions. But relevant issues do not stop there; they also include the key design elements of federal legislation addressing the pandemic, along with federal administrative guidance, state agency decisions, and much more.

This report reviews all the above before offering specific legislative and other recommendations intended to prevent a repeat of the widespread rip-off of unemployment benefits experienced during the pandemic. We urge policymakers to heed these lessons and act quickly to protect these benefits in advance of another recession. One thing is certain: The criminals who defrauded unemployment benefits during the pandemic will be ready to strike again if the flaws that made those benefits so vulnerable are not sufficiently addressed.

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The nation's current unemployment insurance (UI) program was created in 1935 in response to the Great Depression. It remains a shared partnership between the federal government and the states, which generally determine eligibility for, the amount of, and the duration of weekly state UI benefit checks.[1]

As the "insurance" in its name suggests, the UI program was originally conceived as part of a broader array of social insurance programs for workers. Payroll taxes (i.e., premiums) were paid in advance, entitling workers to coverage against specific risks, including the loss of income and thus the need for the payment of unemployment benefits in the event of a layoff.

The federal role in the UI program includes providing states funds to administer program benefits and, in recent decades, creating additional permanent and temporary programs offering extended benefits for those who exhaust up to 26 weeks of state UI checks. Except for the brief recession in 1980, in every recession since 1957, Congress has authorized temporary or "emergency" federal unemployment benefit programs that offered additional weeks of benefits to workers who exhaust state benefits.[2] A permanent joint federal-state program called Extended Benefits, which at most times is supported with 50 percent state and 50 percent federal funds, was created in 1970. During the past two recessions, the Extended Benefits program was temporarily supported with 100 percent federal funds.

States administer and pay both state and, when payable, federal unemployment benefits; their administrative costs are generally supported by federal funds.[3] As a senior Department of Labor (DOL) official noted in December 2022, "Administrative funding, which supports core UI operations like staffing, training and claims review, was at record low levels—the lowest in at least 30 years—leading up to the pandemic."[4]

When surveyed in mid-2017 on the status of their IT systems and infrastructure, twice as many states suggested their fraud and overpayment detection systems needed improvement (26 states) than considered them adequate to that task (13 states).[5] Those sentiments paralleled real-world deficiencies in the administration of unemployment benefits.

State payroll taxes paid by employers on behalf of covered workers support state UI benefit costs. A federal payroll tax supports the cost of permanent-law federal responsibilities, including program administration and the normally 50 percent federal share of Extended Benefits program expenses. Other federal costs, such as for the extraordinary benefits provided during the pandemic, have frequently been supported with federal general revenue and added to the deficit.[6]

In setting state benefits and payroll taxes, states closely consider the needs of their individual labor markets, which vary widely by wage levels, type of employment, and other factors. State labor markets—including their degree of manufacturing, agricultural, small business, and other employment—constantly evolve, as does the nature of work itself. For example, as a July 2022 report prepared for the DOL noted, "Recent years have brought greater attention to trends and issues associated with alternative work, including independent contracting, on-call work, temporary help, and contingent work, in other words, jobs known to have limited duration." The report added that "particular interest exists in electronically mediated work, which includes platform-based work such as rideshare work and other so-called gig employment."[7]

Those labor market considerations are important, especially insofar as state UI is designed to replace a percentage of prior wages for employees, as distinct from independent contractors and those participating in alternative work arrangements not typically covered by the payroll taxes and benefit payments in the UI system. As described below, that changed dramatically—albeit temporarily—during the pandemic with the advent of the Pandemic Unemployment Assistance (PUA) program. PUA provided benefits to individuals in groups previously ineligible for unemployment benefits, including independent contractors, the self-employed, and employees who earned too little to qualify for state UI benefits.

State payroll taxes that support UI benefits are experience rated; employers who have more or frequent eligible claims will subsequently experience higher payroll tax rates. States apply those tax rates over a variety of wage bases, stretching from $7,000 in California to $62,500 in Washington state in 2022. The average state tax per employee in 2022 was $295.[8] Federal taxes, in contrast, are a flat effective 0.6 percent applied against the first $7,000 in wages, meaning for the typical employee, federal taxes amount to $42 per year.[9]

While state UI benefits are supported with state payroll taxes, federal benefits have been mostly supported with federal general revenue during recent recessions. That indicates that the system continues to move beyond its "social insurance" roots, as federal benefits are supported by revenues originating well outside the system's normal payroll tax funding.

Figure 1 displays the shares of annual unemployment benefit payments supported with payroll taxes (both state and federal) versus federal general revenues since 1990. Federal general revenues supported a record 71.4 percent and 87.8 percent of annual unemployment benefit expenses in fiscal years 2020 and 2021, respectively.

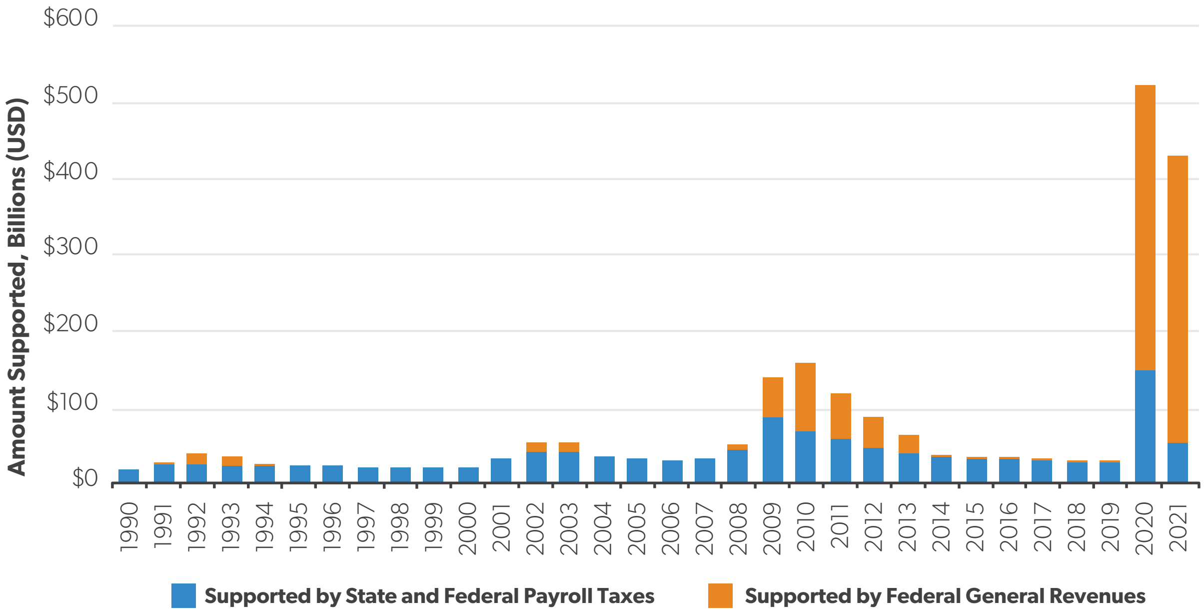
In the decades before the pandemic, significant benefit misspending was an ongoing concern.[10] As the DOL's inspector general testified in February 2023,

> For more than 20 years, the OIG [Office of Inspector General] has reported on the Department's challenges to measure, report, and reduce improper payments in the UI program, which has experienced some of the highest improper payment rates across the federal government. The reported improper payment rate estimate for the regular UI program has been above 10 percent for 15 of the last 19 years.[11]

The largest drivers of improper payments before the pandemic were benefit year earnings issues or able-and-available issues.[12] Fraud was not, however, a large driver of improper payments in the pre-pandemic era. One possible reason was the comparatively high complexity and comparatively low payoff from defrauding the program. Successful UI fraud required not only claimant information but also the ability to have former employers corroborate prior wages and separation information. In the two years before the pandemic, improper payments due to fraud were lumped into a larger category of "other eligibility issues" and amounted to less than 3 percent of total improper payments.[13]

The inspector general noted that other leading causes of improper payments were claimants not meeting work search requirements, employers not reporting worker separations in a timely manner, and people making claims based on fraudulent schemes, which the inspector general noted "significantly increased" during the pandemic.[14]

Figure 1. Shares of Unemployment Benefit Spending Supported by State and Federal Payroll Taxes Versus Federal General Revenues, by Fiscal Year Since 1990



Source: Authors' calculations using US Department of Labor, Employment and Training Administration, "ET Financial Data Handbook 394—Foreword," September 5, 2023, https://oui.doleta.gov/unemploy/hb394.asp.

Pandemic Benefit Expansions

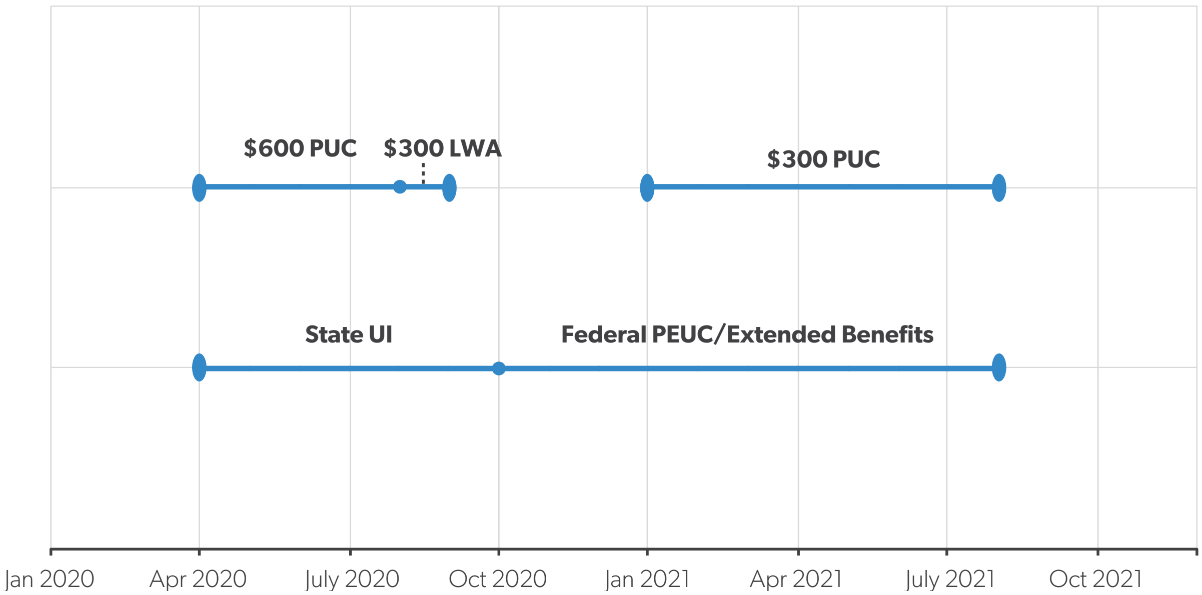
The pandemic, along with unprecedented benefit expansions legislated in response to it, contributed to record demand for benefits—and ultimately record improper payments.

UI on the Eve of the Pandemic. On the eve of the COVID-19 pandemic, the national unemployment rate hovered near one of its lowest marks in recorded history, at 3.5 percent in February 2020.[15] The UI system also experienced historically low claims for benefits, with 211,000 initial claims filed during the week ending February 15, 2020, and fewer than 2.1 million continuing claims for state UI.[16]

While such low claims contributed to rising trust fund balances available to support benefits, federal administrative funding for state UI operations, tied by formula to state workloads, was particularly low. Such funding was already in a long period of inflation-adjusted decline, diminishing the means to support program staff at most state agencies.[17] Meanwhile, the national policy focus was mostly on preventing improper benefit payments and attempting to get the national average for improper payments under 10 percent. It is no small irony that, on the eve of the pandemic, the national UI program was on the cusp of accomplishing its sub-10 percent improper payment rate target for the first time in several years.

Pandemic Benefit Programs. The sudden emergence of the coronavirus pandemic in the US in early 2020 and the federal government's rapid response to it dramatically changed that landscape, unleashing immediate and unparalleled demand for unemployment benefits. A rapidly crafted series of laws (described in the timeline in Appendix A, along with significant DOL policy guidance, proposed federal legislation, and key state decisions) authorized major temporary federal benefit expansions, including unprecedented $600-per-week (and later $300-per-week) benefit supplements, extended

Figure 2. Maximum Duration of Pandemic Unemployment Benefits and Supplements



Note: "LWA" means the temporary Lost Wages Assistance program.
Source: Authors' depiction based on features of permanent and temporary programs.

benefits payable under both a new temporary federal program and the newly federalized Extended Benefits program, and expanded eligibility for benefits that covered groups never before eligible for weekly unemployment checks.[18]

Key temporary federal program and benefit expansions authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and related legislation in the early weeks of the pandemic included the following:

- Pandemic Unemployment Compensation (PUC) provided a $600-per-week federal supplement to all state and federal unemployment benefit payments, through July 2020.[19]

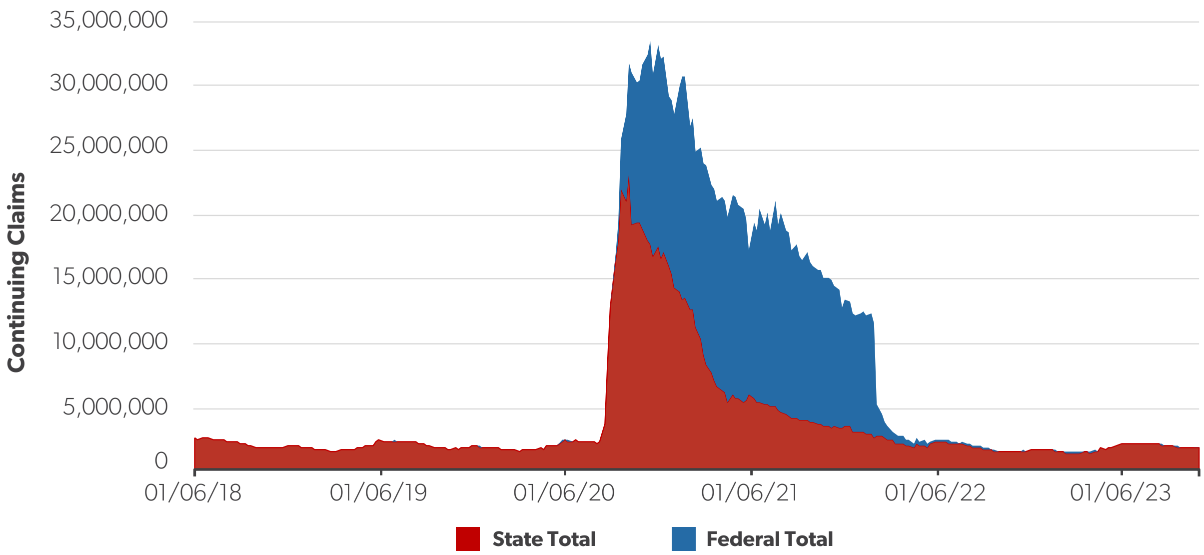
- PUA initially provided up to 39 (and later more) weeks of unemployment benefits to an expanded pool of workers experiencing an inability to work due to specific COVID-19-related reasons. The program covered unemployed or underemployed gig workers, independent contractors, recent entrants into the workforce, and others who weren't eligible for regular UI benefits.

- As originally authorized, Pandemic Emergency Unemployment Compensation (PEUC) provided up to 13 additional weeks of benefits for individuals who exhausted eligibility for state UI. Combined with the up to 26 weeks of UI eligibility, this program initially yielded up to 39 total weeks of eligibility, which was increased later in the pandemic.

- Extended Benefits provided 100 percent federal funding (instead of the normal 50 percent federal funding) for up to 20 weeks of additional extended benefits, payable in certain high-unemployment states to individuals who exhausted state UI and federal PEUC benefits.

As shown in Figure 2, the provision of federal extended benefits (both under the temporary PEUC program and the temporarily 100 percent federally funded Extended Benefits program) permitted

Figure 3. State and Federal Unemployment Benefit Continuing Claims, January 2018–May 2023



Source: US Department of Labor, Employment and Training Administration, Unemployment Insurance Data, https://oui.doleta.gov/unemploy/DataDashboard.asp.

individuals to collect weekly unemployment benefit checks from the start of the pandemic through the temporary programs' expiration on September 5, 2021. Federal supplements (first $600 per week and later $300 per week, under two separate programs) were available during many but not all of those weeks. The temporary PUA program generally mirrored that benefit (and supplement) availability for individuals not eligible for state UI, albeit with generally lower amounts of basic benefits and with PUA benefits available retroactively to the beginning of February 2020.

Implementation Challenges. Given the situation in March 2020, starting with soaring claims for state UI benefits but amplified by the rollout of unprecedented federal benefit expansions, all UI system stakeholders were bound to face massive implementation challenges. Either factor in isolation (that is, either record-setting volume or three brand-new federal programs) would have been enough to capsize UI operations in many states. State workforce agencies experienced both pressures simultaneously starting in March and April 2020.

As depicted in Figure 3, the months after March 2020 saw a historic surge in claims for state and federal unemployment benefits, which reached a record total of 33 million claims per week in June 2020. That compares with a prior record of 12 million claims during the Great Recession.[20]

Both initial and continuing claims reached epic proportions at the start of the pandemic. The DOL inspector general reported that, from March 28, 2020, to August 1, 2020—that is, during the four-month period when $600-per-week PUC supplements were paid—"more than 57 million initial UI claims and another 502 million continued claims under regular and CARES Act UI programs" were submitted.[21] Those early weeks of the pandemic saw numerous states each field as many initial claims for UI as were filed across the entire country in the weeks before the pandemic erupted. For example, in the week ending March 28, 2020, seven states had more initial claims than the precrisis level nationwide (211,000): California (1,058,325), Pennsylvania (404,677), New York (366,595), Michigan (304,335), Texas (276,185), Ohio (274,288), and Florida (228,484).[22] Those figures reflect claims before states began implementing the unprecedented PUA program, which sent total claims soaring even higher.

The now well-known problems with state technology systems spiked alongside those rapidly ascending claims.[23] In fact, it is remarkable how, given the enormous volume of claims and related system demands, some antiquated systems managed to function at all. Many states had not migrated from often-reliable but opaque mainframe systems. Many states also faced bottlenecks that prevented necessary scaling. Manual reviews possible at lower volumes quickly turned into a yearslong backlog of claims that had to be worked or double-checked by a staff member. Many of these staff were new hires either by the state or through support contractors, often with no previous experience and limited training in UI program operation. Staff learning and acculturation were also happening in the brand-new environment of fully remote operations, which was a reality unfolding in tandem with the pandemic and CARES Act and other program implementation.[24]

States' implementation of the unprecedented federal PUA program created an additional set of unique challenges. The new program meant IT systems had to be built, tested, and launched to the public within weeks.[25] PUA dealt with an entirely different population than did states' regular UI programs, meaning state workforce agencies lacked relevant data sources against which to cross-check 1099 or self-employment income before paying claims. The CARES Act also neglected to require such matching in the first place.

States also voiced frustration with the DOL's shifting guidance on crucial aspects of PUA program design.[26] The lack of a statutory requirement for identity verification in PUA (between its enactment in March 2020 and the implementation of the Continued Assistance Act's provisions in early 2021) meant that states faced a high volume of fraudsters and eligible claimants mixed together and not necessarily prioritized by fraud risk. DOL eventually provided funding for fraud-specific investments in temporary federal programs, alongside a full statutory mandate to require documentation of identity and prior income, but those measures arrived after significant losses had already occurred.[27]

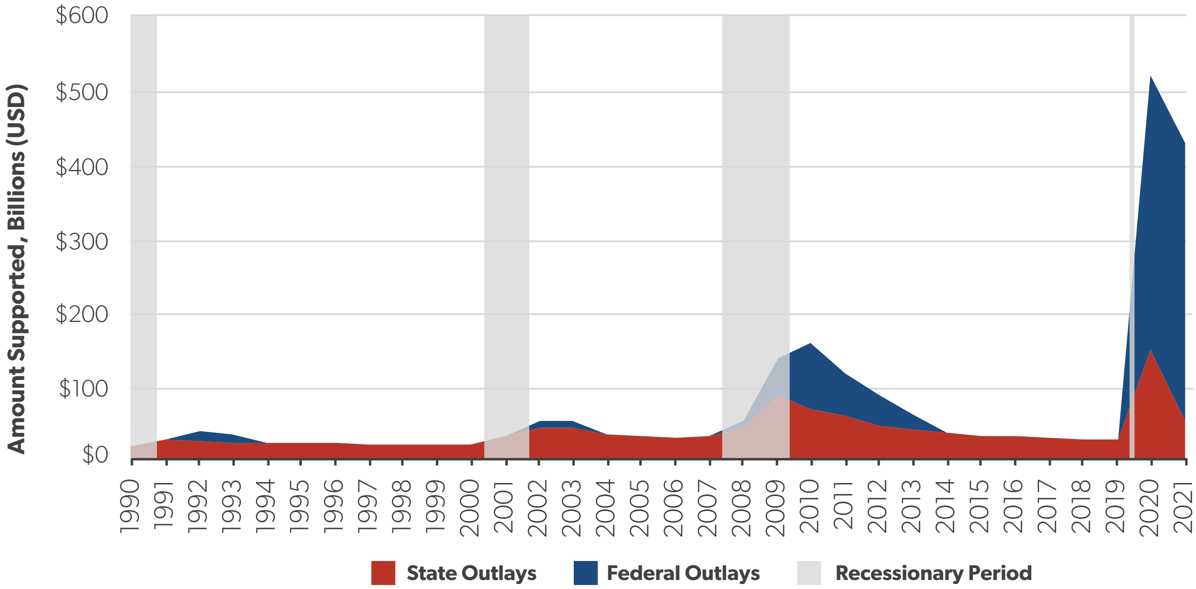
Every state faced these implementation challenges, but not every state reacted in the same way. All states recognized their systems' vulnerability to fraud, and many resorted to unprecedented measures to stem fraudulent claims. For example, in mid-2020, Maine joined Washington in freezing new applications for benefits to investigate surging fraudulent claims. Similarly, seeking to reduce huge backlogs and better prevent surging identity fraud, California suspended new benefit applications for two weeks in September 2020.[28] In the absence of federal legislative changes to address surging fraudulent claims, a growing number of states partnered with private contractors and banking and insurance executives to develop processes to confirm claimants' identity and apply other anti-fraud policies.[29]

Scope of Benefit Payments. As described above, soaring claims for state and federal benefits—including by individuals and groups bent on defrauding the system—compounded underlying administrative issues and novel factors related to the pandemic, resulting in enormous stress on the system. That resulted in unprecedented misspending and fraud during the pandemic years, with which the system continues to grapple.

In all, nearly 1.6 billion weekly state and federal unemployment benefit checks were paid during the 18 months between when the pandemic struck and temporary federal programs expired in early September 2021.[30] That's the equivalent of three full months of benefit checks for each of the 121 million US households. That figure is also equivalent to an average of 21 million unemployment benefit checks paid each week throughout the duration of temporary federal programs—or 10 times the volume of claims paid each week before the pandemic.[31] Misspending contributed significantly to the massive scale of total benefits paid during this period.

The cost to taxpayers of these extraordinary benefits was equally unprecedented, as Figure 4 displays. Overall, approximately $900 billion in unemployment benefits was distributed between April 2020 and September 2021, including over $700 billion in extraordinary federal benefits.[32]

Figure 4. State and Federal Unemployment Benefit Spending Since 1990



Source: US Department of Labor, Employment and Training Administration, "ET Financial Data Handbook 394—Foreword," https://oui.doleta.gov/unemploy/hb394.asp.

Pandemic Improper Payments and Fraud

Applied against such massive spending on benefits, even pre-pandemic error rates of around 10 percent would have yielded unprecedented misspending—totaling some $90 billion out of about $900 billion in state and federal benefits paid through September 2021. But the improper payment rates experienced during the pandemic were far from normal—and are still only partially understood.

As the White House described in December 2021, "The improper payment rate in the Federal-State Unemployment Insurance (UI) program . . . totaled 18.71% from July 2020 to June 2021—roughly 5–8 percentage points higher than during a normal, non-pandemic 12-month period."[33] However, that elevated rate was understated, perhaps significantly, for at least two reasons.

First, it missed the massive spike in claims early in the pandemic, which coincided with the bulk of the weeks when $600-per-week federal supplements provided an especially inviting target for criminals. As the White House admitted, "Data was not collected during the middle of 2020 as a result of the chaotic challenges state-run UI systems faced."[34]

Second, as the DOL's inspector general noted in a March 2022 testimony, the 18.71 percent error rate "does not include the PUA program," which "had control weaknesses that may have facilitated comparable or greater improper payments."[35] Subsequent inspector general testimony in February 2023, pointing to an Employment and Training Administration (ETA) analysis from December 2022, upped the overall improper payment rate to 21.52 percent while noting that rate applied to the PEUC and PUC programs—and thus not the even higher error rate assumed for the PUA program.[36]

The even higher error rates assumed for the PUA program were confirmed in an August 2023 improper payment rate report from DOL. That report offered three statistical findings about the PUA program, based on a review of a nationally representative sample of 2,540 PUA cases selected from 26 states and territories. First, it found that PUA had an underpayment rate of 1.5 percent. Second, it found that PUA had an overpayment rate of 17.0 percent. Finally, the study concluded that the accuracy of an even larger share of benefits (17.4 percent) "could not be determined as valid, overpaid, or underpaid." Summing those data points, the report found an overall improper payment rate of 35.9 percent.[37]

The DOL report offered no further details about PUA improper payments, such as the number of likely fraudulent claims within the sample, an estimate of the individuals affected by fraud, the amount of losses for taxpayers specifically associated with elevated PUA improper payments, the share of losses attributable to self-certification of eligibility, the share of losses associated with domestic as opposed to foreign improper claims, or other key concerns.[38]

Despite those omissions, that national review generally confirmed a series of prior state-level estimates of high PUA improper claims:

- California PUA cases doubled from 3.1 million to almost 7.0 million in just two weeks in August 2020, forcing state officials to admit that "a big part of the unusual recent rise in PUA claims is linked to fraud."[39] Later, in January 2021, California officials reported that, of all state and federal claims paid since the start of the pandemic, 10 percent had been confirmed as fraudulent and an additional 17 percent had been identified as "potentially fraudulent."[40] California separately reported that 95 percent of confirmed unemployment benefit fraud involved the PUA program.[41]

- Driven by massive fraudulent PUA claims, in August 2020, an implausible 80 percent of all 3.4 million workers in Arizona appeared to have applied for unemployment benefits.[42]

- Colorado officials reported in September 2020 that more than 75 percent of recent PUA claims "were determined to be fraudulent."[43]

- A June 2022 state audit found half of PUA benefits in Illinois were stolen. A subsequent audit found the Illinois unemployment benefit agency failed to maintain accurate data for the program, meaning auditors "were unable to conduct detailed testing to determine whether the PUA claimants were entitled to benefits."[44]

As of early January 2024, the August 2023 DOL report on PUA improper payments had not yet been reflected in official estimates of total misspending on unemployment benefits during the pandemic. However, even prior partial figures translate into staggering losses for taxpayers. Based on just the elevated 21.52 percent improper payment rate ETA reported in December 2022 for the regular state UI program, the federal PEUC, and PUC programs, the DOL inspector general's February 2023 testimony raised the "low end" for unemployment benefit misspending during the pandemic to $191 billion.[45] When the even higher 35.9 percent improper payment rate DOL found for PUA is factored into these initial estimates, that figure will only rise, likely to $240 billion or more.[46]

Of that total misspending, the GAO comptroller general also in February 2023 estimated there was "over $60 billion" in fraudulent unemployment payments by "extrapolating the lower bound" of DOL's national fraud rate for the regular UI program.[47] The DOL inspector general, using ETA's estimated fraud rate of 8.57 percent for 2021, projected that "over $76 billion was likely paid to fraudsters."[48] In early September 2023, the GAO estimated that fraud losses across all UI programs totaled between $100 billion and $135 billion.

GAO developed a methodology to evaluate the PUA fraud rate by examining a subset of the same PUA claims DOL used to reach the 35.9 percent improper payment rate. By reviewing case files, using data analysis on 18 known fraud indicators, and crossmatching with the Death Master File, the National Directory of New Hires, and the Social Security Administration's Enumeration Verification System, GAO established a basis for extrapolating a national PUA fraud rate. The actual rate was not made public in the report, but based on a comparison of the previous fraud rate estimate (around 9 percent) with the updated total rate (11–15 percent), PUA would have had to be far more heavily defrauded than other programs. To make the math work, rough estimates imply a PUA fraud rate of between 15 and 26 percent.[49]

Nongovernmental experts, including Blake Hall, CEO of identity vendor ID.me, have estimated losses to misspending—a significant share of which were attributable to fraud—could reach $400 billion.[50] Summarizing the episode, senior Republicans on the House and Senate committees with jurisdiction over unemployment benefits asserted in an August 2021 letter to the GAO head that "fraud in COVID unemployment programs appears to be the greatest theft of American tax dollars in our nation's history."[51]

The scale of just the known losses dwarfs typical annual spending on all UI benefits. Indeed, the DOL inspector general's most recent conservative estimate of at least $191 billion in misspending is seven times UI program spending in 2019, the last non-recessionary year before the pandemic.[52]

Recoveries of those misspent funds have to date been minimal. According to a November 2023 Office of Inspector General (OIG) report, as of October 5, 2023, states had recovered $7.2 billion in improper payments, including just $1.3 billion in fraudulent overpayments.[53] While recoveries should continue growing, the nonpartisan Congressional Budget Office (CBO) ultimately expects that recoveries of currently identified fraudulent payments "are likely to be a small percentage of total suspected fraud."[54] In its review of legislation passed by the House in May 2023 and designed to encourage states to recover more improper payments, CBO estimates imply that at most 8 percent of identified losses to pandemic fraud will be recovered.[55]

A number of factors contribute to low rates of current—and projected—recoveries. Haywood Talcove of LexisNexis Risk Solutions estimates that at least 70 percent of losses may be significantly attributable to state-backed international "criminal syndicates in China, Nigeria, Russia, and elsewhere," which will prove hard to trace and especially difficult to recover.[56] Other data indicate that near the peak of claims in June 2020, some two-thirds of all claims came from out-of-state individuals, compared with a norm of around 10 percent.[57] These factors suggest that common recovery methods before the pandemic—such as offsetting future state unemployment benefit checks or tax refunds for the claimant—will likely have little effect in recovering fraud, especially in cases involving stolen identities. Finally, in February 2022, the Biden administration issued guidance allowing "blanket waiver[s]" of recovery in certain cases, further limiting the instances in which recoveries could potentially be made.[58]

Factors Contributing to Unprecedented Improper Payments and Fraud

A wide range of factors—some unique to the pandemic and some long-standing issues in the operation of the UI program—contributed to unprecedented improper payments and fraud.

An Open Door to Abuse. Key design flaws, especially in the PUA program that allowed claimants to self-certify their eligibility for benefits, made it especially vulnerable to abuse.

PUA lowered the barrier to (fraud) entry by reducing required information for submitting an application. A set of personally identifiable information (PII), readily available for a small price on the dark web, and the ability to tick a "COVID-19 related reason [for unemployment]" checkbox was usually enough to claim benefits, especially between March 2020 and January 2021.[59] For example, a California corrections staff person provided lists of personal information and Social Security numbers to two incarcerated coconspirators who managed to obtain almost $1 million in fraudulent benefits. Other criminals used lists of deceased persons, international visitors, and retired persons to submit often large numbers of fraudulent applications.[60]

PUA applicants also didn't need to provide hard evidence of their labor force attachment or earnings, two key elements used to determine eligibility in the regular UI program. The early 2020 DOL guidance on PUA limited states to verifying applicant earnings via the previous calendar year's tax returns. In their defense, state workforce agencies generally do not have access to the federal and state tax records that would have been the relevant administrative data source. The early version of the PUA program both threw open the doors to fraud and tied states' hands to fight it at the same time.

The glaring flaws in the PUA program were recognized almost immediately. An April 2020 DOL inspector general report found that, under the Disaster Unemployment Assistance program on which PUA was modeled, improper payments went to over 71 percent of sampled recipients in one state. Anticipating what was to come for PUA, the report noted that "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."[61]

In late May 2020, the DOL inspector general again warned that the PUA program was at "significant" risk of "improper payments and fraud."[62] Also in May 2020, Washington state officials reported that "a Nigerian fraud ring, dubbed 'Scattered Canary' by security researchers . . . had made off with 'hundreds of millions of dollars.'"[63] Maryland's secretary of labor in July 2020 described how the PUA program's self-certification features left it open to fraudulent claims: "The PUA Program, in particular, allows individuals to self-certify that they are unemployed due to the coronavirus, eliminating the regular check-and-balance that exists under the regular state UI program, increasing the potential for fraud."[64]

Rampant abuse turned into farce as rappers crooned about (and were subsequently arrested for) ripping off California's unemployment agency, and criminals claimed benefits using the stolen identities of at least one US senator and multiple governors.[65] The DOL inspector general later summarized that PUA's "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."[66] Unfortunately, these statutory program design flaws could only be addressed by Congress.

In contrast with many state UI recipients, self-employed individuals and independent contractors could remain on PUA without the possibility of being recalled by employers. A September 2020 report reviewing benefits in California described how, as a result, "claimants of regular UI have been almost five times more likely to exit UI in any given week than those receiving PUA benefits." The same report suggested that literally every self-employed person in California had applied for PUA benefits: "Since the start of the crisis, there have been 2.2 million PUA claims by individuals indicating previous self-employment. According to available estimates, there were only approximately 2.2 million self-employed individuals in CA prior to the start of the pandemic."[67] No doubt many who were bent on defrauding the system saw an assertion of self-employment as an easy route to getting on—and staying on—PUA benefits for lengthy periods.

Other federal and state policies opened the door still wider for misspending and fraud. For example, by offering federal subsidies to states that eliminated the long-standing waiting week before collecting benefits, federal policy prioritized rushing benefits out the door over ensuring the correct recipients qualified. Federal law also allowed states to waive the long-standing requirement that benefit recipients search for work as a condition of eligibility, eliminating yet another check on improper benefit collection.[68] While that policy may have made sense early in the pandemic, as businesses and the economy reopened, the requirement should have been promptly restored.

States also made mistakes that contributed to fraud and misspending. One glaring example was when California and 14 other states failed to match unemployment benefit caseloads against prisoner databases—which was unsurprisingly exploited by fraudsters, incarcerated or not, claiming large amounts of benefits.[69]

Record Payoffs for Fraud. The massive amount of fraud visited on federal unemployment benefit programs during the pandemic is significantly attributable to those programs' designs, starting with the size of benefits. The programs' scale did more than encourage benefit collection by those who were eligible; it also created an enormous target for individuals bent on stealing benefits.[70]

The initial $600-per-week benefit increase reflected in the federal PUC supplement nearly tripled normal state UI benefits, which averaged around $325 per week nationwide during the pandemic. The increased weekly benefit exceeded prior wages for approximately two-thirds of UI benefit recipients at the start of the pandemic, encouraging ineligible and eligible individuals alike to apply—and even employers to lay off workers.[71] Early in the pandemic, some employers were cheered that laying off their employees would leave them financially "better off," regarding that as a "win-win."[72] The same $600-per-week supplement constituted an even greater relative boost to most federal PUA payments, given that program's guaranteed minimum benefit equivalent to half the average state UI payment (which thus averaged around $160 per week nationwide).[73]

For individuals consistently eligible for unemployment benefits throughout the operation of temporary federal programs, the pandemic benefit increases yielded historically high potential payments—and thus also high rewards for those able to defraud benefit systems.[74] Individuals claiming just average weekly UI benefits nationwide between April 2020 and Labor Day 2021 could receive over $46,000 in state and federal checks per person and even higher amounts in bigger-benefit states. Federal PUA benefits plus supplements during that same period averaged over $34,000.[75] Those figures highlight both the record support available to unemployed Americans and the lucrative target awaiting those seeking to defraud this system.

Making matters worse, the initial weekly $600 PUC supplement to underlying state UI or federal benefit payments was combined with the CARES Act's January 27, 2020, retroactivity provisions.[76] This meant that a PUA application filed in early May 2020 could easily be worth an initial payment of over $5,000, with little to no corroboration of claimant information. Congress enacted the CARES Act with significant benefit expansions on a bipartisan basis, yet few appreciated at the time that doing so would turbocharge fraud incentives, even as fraud barriers were lowered.

Extraordinary State Challenges. Several interrelated dynamics made fighting fraud during the pandemic more complex than it was previously for state workforce agencies and partners. First, state unemployment technology system issues, while not the direct focus of this report, resulted in the understandable prioritization of problems in the claimant-facing and benefit-delivery processes over fraud detection and prevention.[77] The unfortunate reality is that putting more energy toward fraud prevention and response earlier might have significantly reduced the often enormous volume of backlogs, manual reviews, and improper payments.[78] As White House pandemic response adviser Gene Sperling noted in June 2023, "The prevention strategy going forward is that in a crisis, you can focus on fast delivery to people in desperate situations without feeling that you can only get that speed by taking down commonsense anti-fraud guardrails."[79]

Second, the responsiveness and scaling necessary to fight fraud were inhibited by staffing constraints and the limits of aging state systems, many of which had not migrated to the cloud before the crisis. Many states could not hire, reassign, or train staff quickly enough to handle claims intake or customer support for the regular UI program, much less the novel and still-evolving PUA program.[80] Additionally, there is a small pool of experienced experts who understand both UI policy and the underlying technology systems; some are key state employees, and some work for the consulting firms and vendors that support the UI ecosystem. That small pool was suddenly stretched across 53 state systems, all in high need.

Third, states faced understandable but unrelenting public pressure, including from both elected officials and applicants, to pay benefits regardless of suspected issues.[81] Within the first year of the pandemic, over a dozen state UI directors left their positions, voluntarily or involuntarily, and some departed after they received nonstop death threats.[82] It is difficult to overstate the high-stakes, high-stress nature of both eligible claimants' personal experiences and the state workforce agencies' operating environment in 2020 and 2021.

Beyond the broader challenges of meeting the sudden surge in demand for benefits, states were facing novel fraud vectors. Historically, unemployment fraudsters needed multiple elements to commit fraud: PII of an eligible claimant, relevant wage information, and the ability to corroborate information from the employer side when the state workforce agency checked eligibility. In short, unemployment fraud before the pandemic required an intentional, knowledgeable, multidimensional investment to pull off a fraud that would usually yield a few hundred dollars a week. With the arrival of the pandemic programs, that math quickly changed, as described above, both in terms of the relative ease of accessing benefits and the record payments that resulted when criminals did so.

State workforce agency and bank reaction to the fraud often also compounded problems. During a period of high claims volume and without prior experience, it was difficult to accurately filter out fraudsters without accidentally ensnaring eligible claimants as well. This, in addition to extreme need caused by pandemic shutdowns and resulting political pressure, is perhaps one of the reasons states often resigned themselves to paying almost everyone rather than trying to identify and address false positives. When states turned on new fraud tools or screens, it could quickly result in thousands of fraud flags or high risk scores on claims, which would often mean they needed to be routed to manual review queues. The resulting exponential growth of needed manual reviews quickly dwarfed agencies' capacity to conduct those reviews.[83]

The Changing Nature of Attacks. The schemes that attacked state workforce agency websites and systems took various shapes, which differed markedly from pre-pandemic attempts to defraud the UI system. The following is a non-exhaustive, nontechnical overview of the most commonly used attacks.[84]

Initial claim fraud attacks include:

- *Identity Theft.* The most common type of fraud, especially in PUA, was straightforward identity theft. After purchasing the relevant information on dark web marketplaces, a fraudster would apply with someone else's identity on the state workforce agency site and direct benefits to a physical address or bank account they controlled. Resulting benefits would be quickly moved out of the original account to elude any later recovery efforts.[85] This fraud was particularly easy to commit given the massive volumes of available PII from unrelated data breaches.[86] In general, identity theft fraud includes most of the incarcerated claimant schemes, the deceased person schemes, and multistate application schemes. It also created thousands of victims who learned their identity had been stolen only when they could not apply for their own benefits or when they received an unexpected 1099-G form from the IRS indicating they owed income taxes on unemployment benefits they never applied for or received.

- *Synthetic Identity.* A subset of identity theft, synthetic identity involves fraudsters creating a combo identity with various individual data elements assembled to create a nonexistent claimant. Cross-checking any individual data element of the application might not reveal discrepancies with existing data, but if a combination of elements were checked, it likely would have revealed serious issues. This includes schemes in which an individual data element was used and reused many times across claimants or applications.

Enabling services attacks include:

- *Document Fraud.* Most types of identity schemes are enabled by the quick production of good-enough documents with necessary data elements. This is no longer limited to image manipulation, as the wide availability of 3D printers makes fake document production economical and speedy. This also highlights the difficulty of relying on identity documents as a keystone for verification.[87]

- *Bot Attacks.* To most efficiently identify the states likely to pay on fraudulent applications and to rapidly monetize stolen PII, fraudsters did not painstakingly apply for benefits one at a time, but instead engaged in widespread bot attacks seeking vulnerabilities in state systems.[88]

Account takeover (existing claim) fraud attacks include:

- *Bank Account Takeover.* Using easily obtained pieces of PII, fraudsters often socially engineered access to an eligible claimant's account and changed the bank account information to drain or redirect benefit balances.[89]

- *Phishing Schemes.* Fraudsters would disguise themselves as representatives of state workforce agencies or DOL, reaching out to existing claimants via phone, email, or text and requesting verification codes or missing pieces of PII. Sometimes fraudsters would tell claimants to call a hotline or visit a webpage, either of which would be disguised to appear as the legitimate state workforce agency. Similar groups on social media would impersonate the state agency's visual brand to convince claimants to enter relevant information into a fake site. Any of these methods would generally allow fraudsters to complete an account takeover directly.[90]

- *Benefit Card Skimming.* When states provided benefits on affiliated bank-managed temporary debit cards, they often did not have the additional layers of security necessary to prevent easy theft of the card's access information. Fraudsters could steal the information, create a replica card, and drain the accounts quickly without the claimant's knowledge. In one scheme, card-skimming technology installed at an ATM allowed a fraudster to steal and repurpose benefit card balances into hundreds of fake gift cards.[91]

- *Credential Stuffing.* Instead of applying individually to various unemployment benefit sites, fraudsters could obtain lists of compromised credentials, either via theft or purchase on the dark web, and rapidly deploy them (often using bots) at relevant sites until they found accounts using the same log-in and password combinations. Having gained entry, fraudsters then edited bank account information to redirect benefits to their own account or used existing account information to drain existing balances of eligible claimants.[92] In many states, these types of attacks have not diminished in the wake of the pandemic.

- *Stale Claim Takeover.* In the post-pandemic environment, one of the most straightforward ways to access funds is to identify eligible claimants who have not exhausted all weeks of benefits on a previous claim. By resetting access or banking information, fraudsters can claim and redirect remaining benefits to themselves without necessarily alerting the legitimate claimant.

When an account was successfully hijacked in the above ways, states did not always have a direct or effective way for the eligible claimant to recover their account. After a June 2021 compromise that facilitated significant account takeover fraud, one state director said that DOL regulations required fact-finding and appeals rights before balances could be restored.[93]

Insider threat attacks include:

- *Bribery Schemes.* Some state staff or contractors accepted payments from third parties to have their fraudulent claims reviewed and approved. State agency workers would solicit or advertise this service, sometimes in coordination with a ring of known coconspirators. This type of fraud was likely more widespread than is understood, as many state agencies do not appear to have deeply investigated their own administrative records for evidence of insider threat.[94]

- *Self-Dealing.* State staff or contractors sometimes applied for and received benefits in their own or others' names while employed. Staff could also run identity theft rings independently and without external parties.[95]

Federal Administrative Issues. Federal administrative guidance of the new law proved less than straightforward. As the temporary programs created by the CARES Act were new, DOL policy and legal experts had to quickly decipher, draft, and disseminate implementation guidance. There were 79 pieces of UI guidance issued between March 1, 2020, and September 6, 2021, and the vast majority were related to the new CARES Act programs.[96] The initial PUA guidance (issued on April 5, 2020) was revised five times within the program's first year. Some revisions resulted from statutory changes and some from clarifications of previous guidance.

The initial guidance properly required states to ensure that PUA applicants were not eligible for other unemployment benefits, adding that, in some situations, applicants should apply first for regular UI to demonstrate their ineligibility for that benefit.[97] Many state agencies interpreted that to mean most or even all PUA applicants had to first apply for regular UI, wait for denial, and then reapply to the PUA program. The department clarified informally and formally that this was not the case.[98]

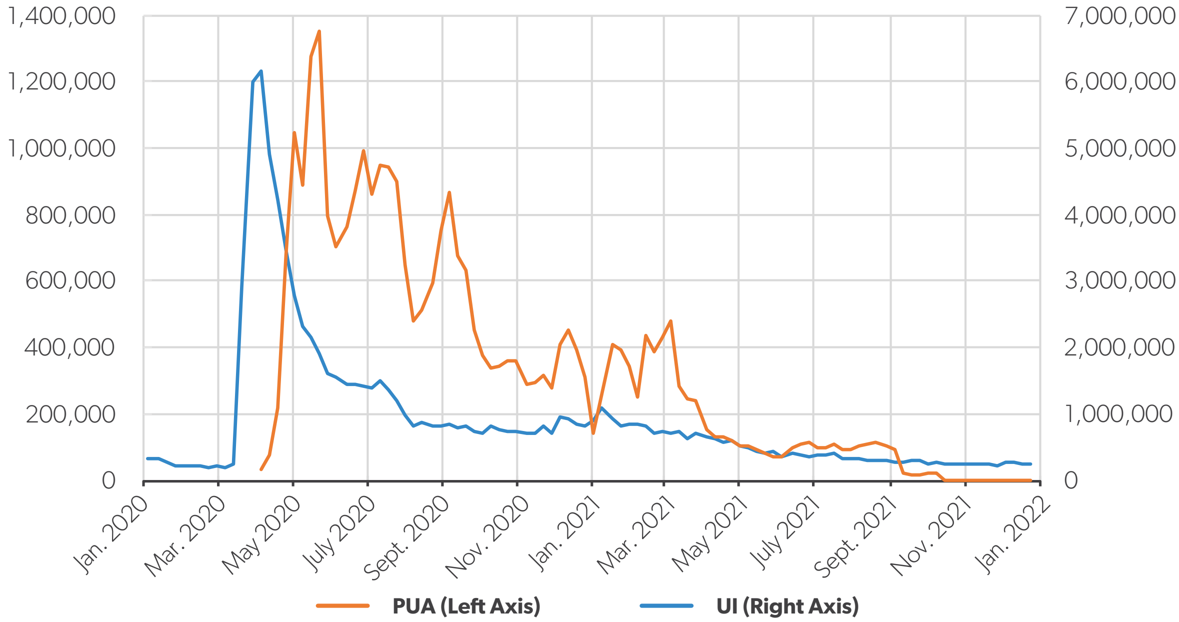
In the meantime, many states effectively created additional claimant volume for themselves in the regular UI program while also delaying some eligible PUA claimants from applying for or receiving benefits. This additional complexity—from interpretation to implementation to monitoring—was a reflection, in part, of the rushed legislative drafting, program design flaws, and environmental pressure to implement the new programs quickly.

The Slow Federal Policy Response. Beyond such administrative complexity and despite early and prominent warning signs of trouble, Congress failed for months to address obvious flaws in the federal pandemic response, especially in the highly vulnerable PUA program.[99] Senate Republicans proposed legislation[100] in July 2020 closing some of the loopholes that left the PUA program open to abuse. The legislation proposed that PUA claimants, like recipients of the Disaster Unemployment Assistance program on which it was modeled, "must provide documentation within 21 days of applying to substantiate prior employment or self-employment."[101] That was designed to address the statutory constraints reflected in the previous DOL guidance issued shortly after PUA's enactment. The guidance stated the new program "does not require proof of employment. Instead, PUA requires that the individual self-certify that one of the COVID-19 related reasons identified in section 2102(a)(3)(A)(ii)(I) applies to his or her situation."[102]

Congress failed to act on that July 2020 legislation, and it took another five months—until December 2020—before Congress closed even the most obvious loopholes. One factor contributing to the delay was the lengthy initial authorization of most pandemic unemployment programs, including PUA, which stretched through the end of December 2020.[103] That delayed an action-forcing legislative deadline for a full nine months after the CARES Act was enacted, following lawmakers' frequent practice of extending temporary programs through the end of the calendar year to increase the chances that they be continued.[104]

In the end, Congress approved bipartisan legislation in late December 2020 extending PUA and PEUC, restarting PUC, and creating a new Mixed Earner Unemployment Compensation (MEUC) program. Importantly, the new law required that, starting in February 2021, new PUA claimants provide proof of prior employment within 21 days of starting benefits

Figure 5. Initial Claims for PUA and State UI Benefits, January 2020–January 2022



Note: Data are not seasonally adjusted.
Source: Data from the US Department of Labor, "Unemployment Insurance Weekly Claims," press release, November 9, 2023, https://www.dol.gov/ui/data.pdf; US Department of Labor, Office of Inspector General, Pandemic Unemployment Assistance Activities, ETA 902P, https://oui.doleta.gov/unemploy/DataDownloads.asp; and US Department of Labor, "Report r539cy," https://oui.doleta.gov/unemploy/claims.asp.

or lose eligibility. States also were required to have procedures for verifying claimants' identity.[105]

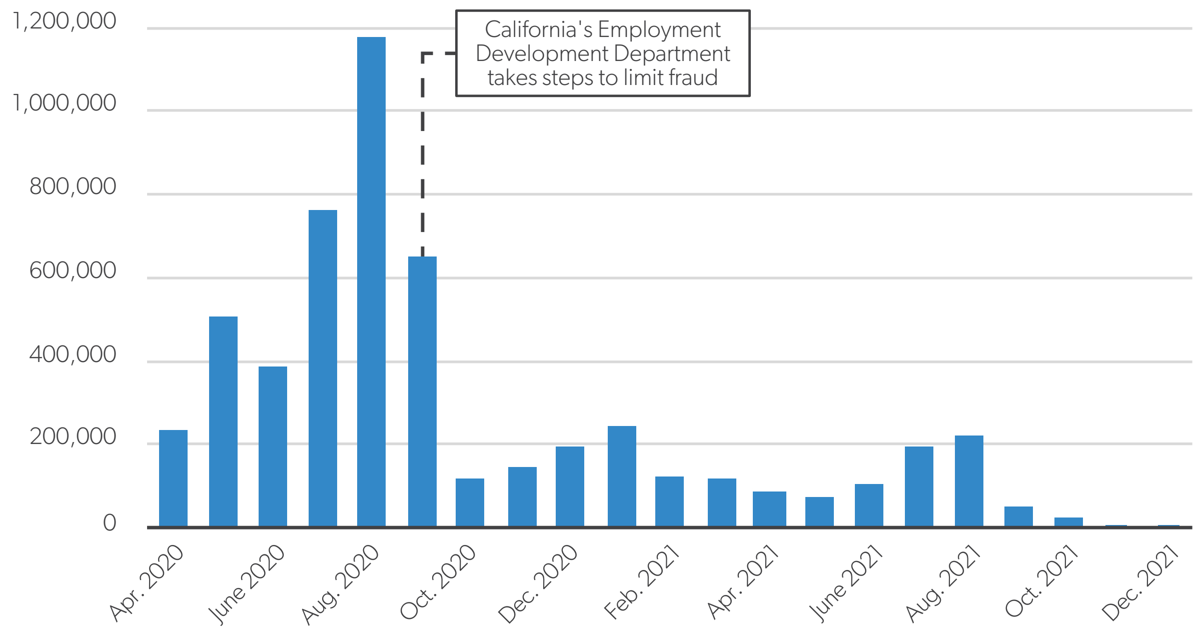
Those anti-fraud reforms had their intended effect. As displayed in Figure 5, the implementation of those changes was followed by a rapid decline in initial claims for PUA benefits—which fell at a faster pace than first-time claims for state UI benefits over the same period.

States also have some ability to make operational changes, which can result in a significant and immediate reduction in fraudulent claims volume. In some states, the effects of such state—and subsequent federal—changes were enormous. As displayed in Figure 6, in California, as a result of state-directed anti-fraud changes, initial claims for PUA dropped from 1.174 million in August 2020 to 114,000 in October 2020, a stunning 90 percent decline. After a comparatively modest rise in initial claims to 239,000 in January 2021, initial claims for PUA benefits in California then fell to 85,000 in April 2021 (a 64 percent decline) as federal anti-fraud initiatives were implemented. Both declines suggest many prior claims had been fraudulent and criminals ceased filing such claims in the face of strengthened application processes—or had those claims blocked.[106]

Policy Recommendations

The pandemic spotlighted a number of underlying, and often long-standing, issues with the nation's unemployment benefits system that merit federal and state attention and action. The proposals below describe how federal and state law and procedure should be reformed to prevent a repeat of the massive misspending and fraud inflicted in recent years on that system and the taxpayers who support it. Together, they would move the system from its past posture of reacting to events to a future in which

Figure 6. California Monthly PUA Initial Claims, April 2020–December 2021



Source: US Department of Labor, ETA 902, https://oui.doleta.gov/unemploy/DataDownloads.asp; and Chas Alamo, "The 2022–23 Budget: Assessing Proposals to Address Unemployment Insurance Fraud," California Legislative Analyst's Office, February 2022, https://lao.ca.gov/reports/2022/4542/Unemployment-Insurance-Fraud-021522.pdf.

technology advances simultaneously improve service delivery and reduce moral hazard.

Government benefit programs should generally make doing the right and truthful thing easy and the wrong or fraudulent thing difficult. Paradoxically, during the pandemic, it was often professional fraudsters who had the smoothest user experience, while eligible claimants, taxpayers, and state agency workers struggled to climb out of the technology vortex to resolve problems.

It is also important to recognize that the nation's UI system can and should learn from the experiences of other programs and private industries that successfully repel fraud. Any UI changes should be part of a broader cybersecurity strategy for all benefit programs that learns from and incorporates those lessons. Doing so will require effective partnerships between financial services organizations, law enforcement, and UI agencies—drawing on pandemic experiences to ensure better enforcement in the future.

Federal Legislative Issues. A number of federal legislative principles and changes are needed to improve the accuracy and responsiveness of unemployment benefits in the future.

Require Identity Verification Before Any Benefits Are Paid. A crucial first step is to address the vulnerability of the UI program and associated federal benefits to identity theft, which was so prominently on display during the pandemic. Unemployment benefits were not alone in being subject to such abuse. But unlike temporary federal loans and payroll payments legislated in response to the pandemic that have now expired, UI's permanent benefits remain payable today—and thus at continued risk.

Especially since they were required to implement identity verification in early 2021, many states worked with third parties to both screen out blatant fraudsters on the front end and verify identities before and while benefits were paid. Going forward, states should verify all claimants' identities before benefits are paid, and high-risk identities should be made to complete additional verification steps. However, these identity-verification requirements should not violate eligible claimants' rights to due process.

Technological advances in both claimant eligibility determination *and* fraudsters' instant global capabilities to fabricate or steal identities have started to make the payment "when due" guideline less useful.[107] Multiple commercial identity-solution providers can quickly flag the most suspicious identities in real time, often without any additional input from the claimant. The digital device info, velocity of data entry, and internet service provider address—all of these snippets communicate risk before a claimant enters a single piece of PII.

In short, payment when due should not mean payment regardless of clear indicators of fraud. The advances in identity-validation technology should allow states to at least separate higher-risk claimants from lower-risk claimants, and timeliness metrics should grant states some reporting grace period to do so while protecting benefits from abuse whenever possible.

Prevent Use of Self-Certification in Determining Eligibility. Self-certification as the statutory eligibility benefits standard was so easily abused that it was demonstrably equivalent to having almost no standard at all. The PUA program allowed claimants to self-certify their eligibility for benefits, but it failed to require proof of prior work or adequate identity verification. Those combined features meant PUA had none of the third-party or employer verification that state UI programs regularly depend on to ensure benefits are properly targeted.

As the DOL's inspector general summarized, PUA's "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."[108] Simply put, lawmakers should reject proposals to revive self-certification in the future, even in emergencies.

Ensure Benefit Levels Do Not Exceed Wages. Another operational lesson learned during the pandemic is to ensure benefits don't exceed prior wages, as was regularly the case while $600-per-week and even $300-per-week federal supplements were paid. Those supplements, especially combined with the availability of many weeks of back benefits, created an enormous incentive for criminals to fraudulently claim benefits, contributing to system overload that often effectively shut out rightful claimants.

As mentioned above, if policymakers wish to revive weekly supplements in a future recession or emergency, they should ensure the system can tailor such benefits to each individual as a share of prior wages, instead of offering flat supplements or flat guaranteed minimum PUA benefits. Lawmakers recognized flaws with this approach even before the CARES Act $600 supplements were enacted, but they proceeded with them anyway.[109]

This poorly targeted approach resulted from two policy factors—the desire to "make whole" individuals laid off as a result of the pandemic and often government-mandated business shutdowns and the UI system's inability to provide benefit increases specifically linked to each individual's prior earnings. It should be program reforms' goal to ensure that lawmakers do not have to adopt such similarly blunt (and, in the end, excessively expensive) policy options in the future. That is admittedly challenging, but it's nonetheless important.

Require Data Matching to Prevent Flagrant Abuse. Multiple administrations have proposed data-matching mandates, but there are few current statutory requirements. The OIG listed the lack, or temporary pausing, of such data matching as a key fraud driver during the pandemic. States understandably opted to skip additional data matching when under incredible pressure to dispense benefits; the department should use this moment to rectify deficiencies in current data-matching sources, publicize which states are not using the available data sources, and push states on voluntary adoption.

Congress is already considering legislation that would require states to use key data matches to ensure only intended recipients can collect benefits. The House of Representatives approved 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act, in May 2023. That legislation would require that states use the Integrity Data Hub (IDH) or an equivalent system to crossmatch unemployment benefit claimants to "prevent and detect fraud and improper payments."[110] According to the National Association of State Workforce Agencies (NASWA), the

> IDH was designed and is administered by the NASWA Integrity Center's group of unemployment insurance experts. The secure, centralized platform brings SWAs together in collective action to compare and analyze UI claims data for enhanced detection and prevention of fraud and improper payments. The IDH allows the SWAs to perform various cross-matches of UI data, such as, identifying claims filed in two or more states and claims filed using deceased persons' social security numbers. When the IDH detects suspicious or fraudulent claims, the IDH provides match results to the affected SWAs. However, IDH use is optional for SWAs.[111]

Under the House-passed legislation, states also must have procedures for comparing benefit claimants with the National Directory of New Hires, the State Information Data Exchange System, and databases of incarcerated and deceased individuals maintained by the Social Security Administration.

This legislation conforms to calls for such mandatory data matches made by the DOL inspector general, among others, and would close loopholes that contributed to the unprecedented losses to fraud during the pandemic.[112] For example, 2020 reports suggested that early in the pandemic, California was among 15 states that paid out unemployment benefits without comparing its unemployment benefit rolls with even its own state inmate rosters.[113] A November 2020 assessment by Sacramento County District Attorney Anne Marie Schubert found that fraudulent benefit claims by inmates inside California's prisons and jails "could reach $1 billion."[114]

Separately, the variation in state laws and systems also means variation in data elements. While challenging, standardizing data elements across states could improve the flow of data, not only inside the UI program but also across the broader workforce ecosystem.[115] This could also include requirements to obtain certain data elements—such as total wages—to provide flexibility in future policymaking. At a minimum, a review of existing data elements and definitions, such as what constitutes fraud and how it should be reported, would be a helpful starting point.

Give the Inspector General Permanent Statutory Access to All State UI Records. Another important reform is to provide the DOL inspector general permanent access to all state unemployment benefit records—including on state UI and, when payable, federal unemployment benefits. The inspector general has testified that one of the three biggest challenges his office faces in overseeing the UI program is a "lack of ongoing, timely, and complete access to UI claimant data and wage records" from state workforce agencies:

> This deficiency directly and adversely impedes the OIG's ability to provide independent oversight and combat fraud, waste, and abuse to help DOL reduce improper payments in its programs, including regular and temporary UI programs. The power and use of data and predictive analytics enables the OIG to continuously monitor DOL programs and operations to detect and investigate fraud. Continuous monitoring serves as a deterrent to fraud, allows the OIG to promptly discover areas of weakness, and assists DOL management to timely correct problems. However, the OIG's ability to proactively detect UI fraud through our audit and investigative activities continues to be impacted by these data concerns.[116]

DOL interprets current regulations as prohibiting the department from requiring state agencies to provide the OIG these data for both its audit and investigative work. Some temporary accommodations were made during the pandemic, but by the end of 2023, OIG access to these crucial data was once again impeded.

If not resolved through regulations, Congress can and should step in with a permanent legislative fix. For example, federal law could be amended to specifically permit information sharing while authorizing federal funding to cover the administrative cost and assuring employers of the confidentiality of the information shared.

Simplify the User Experience. The incredibly painful user experience during the pandemic highlights the need for simpler, clearer, and more functional UI technology. The program's technical policy nuances and historical technology underinvestment made user experience a lower-tier priority. That priority has now shifted with additional investments and the federal focus on user experience.[117]

Work search provides a quick case study. Each state defines what number and type of work search activities satisfy the weekly benefit recertification standard. Common activities include creating resumes, searching for job opportunities, applying or interviewing for jobs, and registering for the state's reemployment or workforce services. States typically require continuing claimants to complete somewhere between two and five activities per week.

As of 2022, multiple states either do not verify, do not verify routinely, or do not use electronic means to verify work search activities. The frequent discussion in red state legislatures over the required *number* of work search activities is somewhat moot if the verification process is inconsistent or prone to abuse.

Policymakers, state agency staff, and beneficiaries share a common goal of promoting appropriate, timely, adequate reemployment. Work search itself should be a meaningful and productive use of a claimant's time; reporting it and verifying it should not be burdensome. This approach, however, would require many states to invest in application development, data sharing, process improvement, user experience research, and the partnerships necessary to make work search more effective.

Maintain the Connection Between Benefits and Work. Policymakers should also reinforce the connection between unemployment benefits and past and future tax payments based on the claimant's work. For example, the PUA program offered first-time benefits to millions of recipients, such as the self-employed and independent contractors who did not previously pay payroll taxes into the system. If Congress chooses to revive extraordinary federal benefits such as PUA, it should ensure potential recipients pay experience-rated taxes into the system beforehand—as is the case under the state UI program.[118] That would also help resolve many of the identity-verification issues that plagued PUA, in addition to addressing some (but not all) of the return-to-work disincentives inherent in its benefits.

It is an unfortunate development that policymakers have increasingly trended away from this key social insurance program feature in the design of extraordinary benefits provided in recent recessions. As depicted in Figure 1, during the Great Recession and even more so during the pandemic, significant federal benefit expansions were paid out largely unconnected with state or federal payroll taxes. Indeed, during the pandemic, all major unemployment benefit expansions were supported by federal general revenues—a total of some $700 billion, or more than 20 times annual UI spending before the pandemic. This record spending was simply added to soaring federal deficits, in sharp contrast with how the UI system treated emergency federal benefits in the past.[119] Restoring the connection between federal benefits and payroll taxes would serve as a restraint on Congress providing excessively generous benefits using general revenues, as lawmakers would be forced to once again finance proposed benefit increases with future payroll tax hikes.[120]

Recent federal policy regarding the Extended Benefits program offers a similar case in point. In contrast with its history dating back to 1970, the Extended Benefits program was made 100 percent federally funded during each of the past two recessions—with sharply rising benefit costs supported by federal general revenues.[121] In the future, federal lawmakers should allow the Extended Benefits program to once again function as intended—that is, supported with 50 percent state funds and backed by state and federal payroll taxes. To reinforce the importance of states contributing to those benefits, future federal emergency programs should be made available only after individuals have collected and exhausted their Extended Benefits, not before.[122] These measures would ensure that federal extended benefits (that is, both under the permanent Extended Benefits program and any temporary expansion) are better targeted to where they are most needed and that those benefits are more connected to past and future payroll tax payments.

Extend Merit Staffing Flexibility. H.R. 1163, the House-passed Protecting Taxpayers and Victims of Unemployment Fraud Act, included an extension of the state staffing flexibilities first included in the Families First Coronavirus Response Act (FFCRA) and then extended through subsequent pandemic-era legislation. The flexibilities expired on September 6, 2021, when the CARES Act programs technically ended. The massive workload, however, continued beyond that date.[123]

Restricting states' ability to retain now-experienced contracted third-party resources in the face of that workload was, and likely continues to be, counterproductive. For example, there is ongoing demand for fraud investigation, prosecution, and recovery support, but states are not able (or incentivized) to fund permanent state positions—in an era of declining administrative funding—for a time-limited task. Investigation and recovery work is inherently later in the claims life cycle than is benefit delivery. The congressional focus on benefit *delivery* as the only portion of the process for which additional resources and staffing flexibility were needed is emblematic of the disconnect between the program's technical nuances and the structure of its resources.

More broadly, state UI laws must conform with the merit staff principles in Title III of the Social Security Act; the requirements are typically understood to require state employees to perform "inherently governmental" functions.[124] The state agency may contract out most but not all administrative functions, and there are ongoing policy debates about what this means in practice. Each state should be required to keep UI adjudication itself within the purview of state staff but otherwise be free to choose the staffing arrangements that best fit its needs.

Federal Funding. Federal lawmakers should address important administrative and other funding issues as well.

Address Administrative Funding Issues. One relative bright spot during the pandemic was that federal lawmakers were quick to recognize the need for additional administrative resources to process surging state and expanded federal benefit claims. State workforce agencies received significant infusions of cash for those extra administrative costs, starting with $1 billion through the FFCRA in early March 2020.

The CARES Act enacted later that month provided an ongoing source of funding for both administering the federal benefit programs (from their inception) and specifically to fight fraud (starting in August 2020). The CARES Act made clear that federal funds would fully cover states' administrative costs in implementing temporary federal pandemic benefits. For example, the authorizing legislation for the PUA program noted that federal funds would cover 100 percent of state administrative expenses incurred in implementing the program, including those related to processing applications for assistance, conducting identity verification or validation, and making timely and accurate payments.[125]

Similar language specified that federal funds would support state administrative expenses in providing federal PUC, PEUC, and short-time compensation benefits and federal funding of the first week of state UI benefits.

The CARES Act also provided the first pandemic federal funds specifically for certain anti-fraud expenses, appropriating $25 million to the DOL OIG "to carry out audits, investigations, and other oversight activities."[126] Future legislation would expand such dedicated anti-fraud funding and policymaking. For example, the March 2021 American Rescue Plan Act included a $2 billion modernization fund, some of which was dedicated to program integrity purposes.[127]

Before these onetime infusions, federal appropriations had been in long-term decline since the 1990s.[128] Set against this underlying trend line, the provision of onetime federal funds is not a substitute for a critical assessment of whether ongoing federal administrative funding is appropriate. Key questions involve whether the current administrative funding in this system leaves it adequately prepared for inevitable recessions and crises and whether the federal revenue in the system is spent as efficiently as it can be in the service of providing accurate and timely benefits. Figure 7 offers a case in point by comparing annual state and federal spending on unemployment benefits with spending on program administration since 2020.

Figure 7 shows that state agencies in recent years provided rapidly falling state and federal benefits—ranging from $575 billion in 2020 to $362 billion in 2021 and then just $32 billion in 2022, as the health and unemployment crisis abated and temporary federal programs expired. Meanwhile, the figure shows that federal funding for program administration *rose* modestly across these same years. The result reflects rapidly rising spending on administration as a share of benefits paid, especially after the crisis had passed. This does not include onetime grants for equity, access, and anti-fraud work from various statutory streams, including an initial $2 billion from the American Rescue Plan Act.

If they intend to continue directing the UI system to provide extraordinary temporary benefits during economic and other emergencies, policymakers should question whether the current system efficiently balances administrative means and ends, both in "normal" years and during recessions, when benefit spending rises sharply—along with misspending, as seen during the pandemic. An important first step would be to analyze system needs, specifically with regard to program integrity, that may exceed baseline spending for program administration. Related questions involve whether the division of federal administrative funding among the states can be improved, such as by better encouraging states to operate efficient systems instead of simply subsidizing states with the highest operating costs.

An additional consideration involves how these funds are targeted to individual states. Congressionally appropriated administrative funding typically includes a base funding amount, some reserved additional funds, and a claims-volume multiplier based on numerical thresholds of the average weekly insured unemployment estimates. States communicate their administrative funding needs to the DOL via the Resource Justification Model. The model is based on a complex, unwieldy Excel workbook designed to sum personnel and benefit costs by function, among other line items. The formula does not necessarily align well with the reality of UI operations, and many states find it most cost-effective to hire a subject matter expert to ensure they reach their administrative funding potential.[129] At a minimum, the Resource Justification Model should be updated to more fully address fixed costs and system needs.

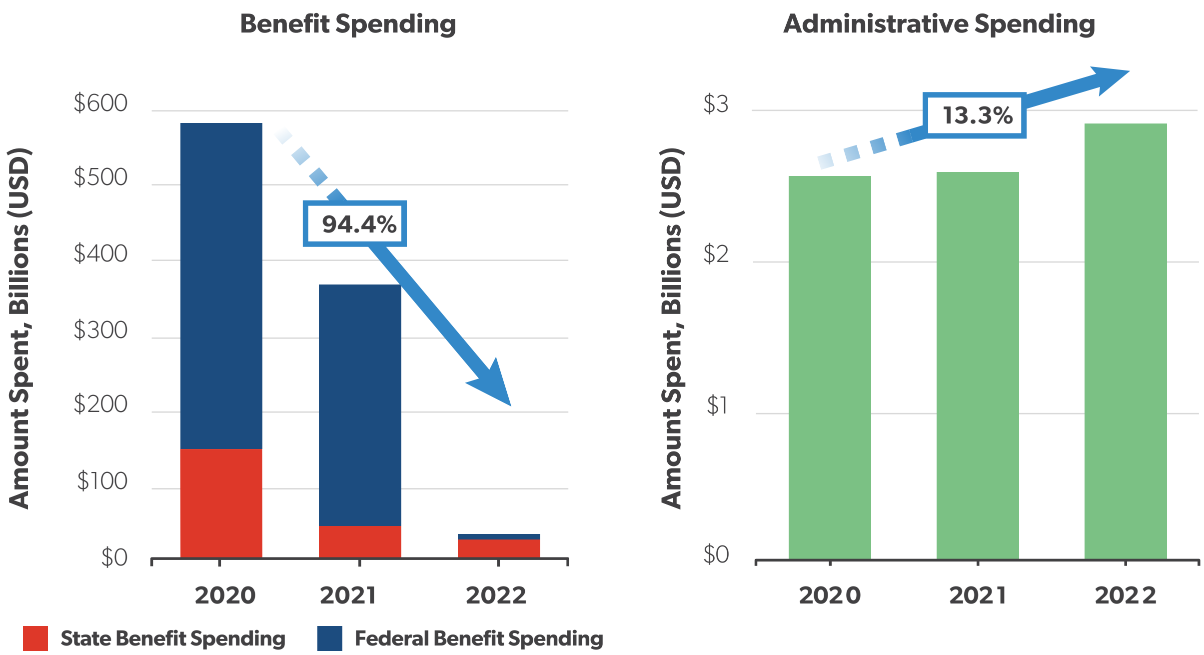
Provide Fraud-Specific Funding to Encourage State Prevention and Recovery Efforts. In addition to reviewing the provision of federal funds to states for program administration and benefit integrity, some lawmakers have proposed allowing states to dedicate a share of misspent federal funds they recover for that purpose.

In May 2023, the House of Representatives approved H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act. The legislation would prevent further fraud through better data matching and identity and income verification, closing loopholes that became evident during the pandemic. But the legislation's main focus is on encouraging states to recover more pandemic benefits lost due to fraud. As the House Ways and Means Committee describes in a summary, the legislation "allows states to retain 25 percent of fraudulent federal funds recovered," reversing current policies that offer states "little incentive to pursue costly investigations and prosecutions" involving federal funds.[130]

These proposals have a second purpose: creating an incentive for states to recover misspent funds. State agencies currently bear the responsibility—and expense—of recovering misspent state and federal pandemic benefits. Yet under current rules, if states recover misspent federal funds, they must return 100 percent of what they recover to the federal government. That gives states no incentive to go after the bulk of pandemic fraud.

That lack of an incentive to pursue pandemic losses has no doubt contributed to woeful levels of

Figure 7. Benefit vs. Administrative Spending Since 2020



Source: US Department of Labor, Employment and Training Administration, Monthly Program and Financial Data, https://oui.doleta.gov/unemploy/claimssum.asp; Congressional Research Service, "The Fundamentals of Unemployment Compensation," April 18, 2023, https://crsreports.congress.gov/product/pdf/IF/IF10336; and Congressional Research Service, "The Fundamentals of Unemployment Compensation," March 17, 2022, https://crsreports.congress.gov/product/pdf/IF/IF10336/7.

recovery. As of May 1, 2023—20 months after federal pandemic benefit programs expired—only pennies on the dollar in pandemic losses had been recovered; according to the GAO, $2.6 billion in state overpayments and just $3.2 billion in federal overpayments, out of what some believe to be $400 billion in total misspending, dominated by federal losses, had been recovered.[131] As federal programs continue to recede into the past, it will become increasingly difficult to recover remaining misspent funds. Given that international criminal groups intentionally targeted the largely undefended federal benefits, some significant share of fraudulent spending is likely unrecoverable.[132]

While H.R. 1163 (or its Senate companion, S. 1587) has yet to be acted on by the Senate, it is worth noting the legislation also proposes allowing states to retain 5 percent of future recovered misspending (and similarly devote that share of recovered funds to offsetting their costs, improving program integrity, and modernizing systems). President Joe Biden's proposed budget for fiscal year 2024 includes a similar provision allowing "states to use 5 percent of recovered fraudulent overpayments for improper payment prevention and recovery."[133] That congressional Republicans and the Biden administration propose creating a modest financial incentive for states to recover future misspent funds suggests both recognize this as an underlying weakness in current law. Lawmakers should adopt changes to prevent fraud as well as encourage more recovery of pandemic funds whenever possible and improve long-term state efforts to find and recover improper payments.

Other Federal Issues. Other federal issues, including setting key program standards and metrics, will contribute to improved system performance.

Nationalization vs. Interest-Driven Standardization. The tension of a UI program governed by state law but administered with federal funds drives interest in another recurring reform proposal: nationalization. Instead of 53 slightly different unemployment systems, proponents argue it would be more efficient to have one system administered at the national level. Such proposals fail to grapple with the massive statutory, regulatory, and operational complexities created by attempting nationalization.

True nationalization would require dissolution of the current statutory federal-state partnership, state laws, and state employer tax funding structures. Legislative agreement on that seems unlikely, so proponents have developed proposals seeking other forms of quasi-nationalization. For example, legislative proposals to require all state laws to conform to strict definitions of benefit levels and durations and covered employees and move toward centralized technology solutions are forms of soft nationalization. Such proposals would undermine important benefits of the current program's intentional federalism, which accounts for states' varying economic conditions, workforce demographics, and tax bases. As long as states are taxing employers to fund the system, state legislatures should necessarily have the deciding voice in shaping the program in their state.

Selected program standardization, rather than forced nationalization, could present a middle ground of feasible and productive steps toward a more smoothly functioning system. There are opportunities to streamline or simplify operations without forcing states to adopt identical benefit, coverage, or other policy positions or vendors. To that end, UI stakeholders could contribute to a set of common, policy-agnostic standards for technology and fraud prevention. Ideally, the DOL would be positioned, both in priorities and resources, to evaluate states against these standards and incentivize adherence.

The following are suggested areas for evaluation and standard setting:

- States should be required to demonstrate they have appropriate safeguards to defend against the most common fraud use cases and that fraud risk management practices are integrated into operational priorities. The DOL could require a set of fraud-specific metrics in parallel with benefit accuracy and timeliness measures.

- UI technology systems, by nature of state-specific law and high barriers to entry, tend to be self-contained monoliths. Without violating proprietary knowledge, state UI systems should be able to communicate easily with one another, relevant workforce systems, and shared, centralized technology resources such as the IDH. State data reporting should be credible and consistent.

- States should be accountable for meeting specific technology preparedness standards, especially if they wish to receive federal funds and provide federal benefits in recessions. Standards should include modernization progress, crisis readiness, and cybersecurity posture as key parts of operational success metrics. This could include third-party reviews with some public findings or results. States with low scores could get additional scrutiny and support in improving their performance.

Update Program Performance Metrics. An additional measure to improve the system's functioning is to better measure state UI performance. That performance is effectively graded on two elements, timeliness and accuracy, with most states opting for the former over the latter under pressure. The pandemic demonstrated that additional elements merit consideration as evidence of a properly functioning UI system, including appropriate, scalable fraud deterrence and prevention strategies; customer-centric processes or interfaces for claimants and employers; and an ability to continuously provide adequate data reporting.

Address Reporting Gaps. DOL can and should fix basic flaws in benefit recipient counting. Data reporting issues (including fraud and the counting of multiple back weeks of benefits) confounded efforts to understand the number of people collecting key unemployment benefits early in the pandemic.[134] As GAO concluded in November 2020, "Without an accurate accounting of the number of individuals who are relying on UI and PUA benefits in as close to real-time as possible, policy makers may be challenged to respond to the crisis at hand."[135] Instead of relying on users to divine the meaning of its data, DOL should either more clearly label its weekly initial claims reports (such as for "weeks of benefits claimed") or provide information that reflects the number of individuals claiming benefits—as the media regularly and inaccurately reported during the pandemic.

New emergency programs have their own reporting problems. Due to the PUA program's operational intensity and technology challenges, it is perhaps understandable that states did not give priority to reporting early in the pandemic. However, the PUA data as reported in the ETA 902-P form show that some states never fixed that gap. As of August 2023, 20 states had reported a total of zero for the "Overpayment Activity Related to Identity Theft" section across the six key metrics.[136] An additional nine states reported data for the first set of metrics but said that zero of the established overpayments were due to fraud. This is more striking given that other states were somehow able to report thousands of cases of fraud costing millions of dollars.

The inevitable question is how reliable any state PUA data truly are. DOL's August 2023 report only reinforced this concern, finding that, nearly two years after the PUA program ended, "17.4 percent of benefits could not be determined as valid, overpaid, or underpaid."[137] There are real technical, environmental, and resource obstacles to accurate reporting in temporary programs, but there is also a cost to not getting any data. Limited or inaccurate data can limit the capacity of policymakers, program stakeholders, and state leaders to define success, identify problems, and make needed program changes.

State Operational Lessons. In addition to federal legislative, funding, and other lessons, there are a number of clear operational takeaways for states. For understandable reasons, the standard state operating posture heading into the pandemic was not primarily focused on fraud prevention. Fraud made up a single-digit percentage of all improper payment causes, and agencies had not had previous experience defending against intense, sustained, evolving cybersecurity fraud threats.[138]

The early pandemic experience also did not allow for deliberate process improvement during the tsunami of claims in mid-2020. Often, technology solutions for new programs had to be created out of whole cloth or byzantine processes altered at a moment's notice.[139] The weight of experience, the incentives created by the funding structure, and the pandemic crisis mode all tilted the tables toward a more reactive posture. With the benefit of time and the pandemic experience, however, it is obvious that posture is not sustainable, regardless of initial claims levels.

Establish and Maintain a Proactive Security Posture. Going forward, states and their vendors should publicly demonstrate compliance with basic cybersecurity hygiene in technology design and ongoing program operation. There are numerous frameworks for evaluating alignment with industry-standard security practices, and the purpose of this report is not to determine or prescribe a specific framework. The broader issue is that neither states nor vendors have always demonstrated compliance.[140]

State agencies should pay close attention to the recent wholesale theft of multiple states' driver's license databases and retirement system information. For agencies storing vast amounts of PII or relying on such data to confirm identity or make benefit decisions, these risks are not theoretical.[141] This includes many state-administered cash or cash-equivalent benefit programs, all of which likely need public accountability measures on the cybersecurity front and additional support for such protections. Policymakers and legislators must grapple with the reality of persistent cybersecurity threats and the necessity of fraud prevention as much as customer-centric service delivery improvements.[142]

Federal lawmakers could operationalize this requirement by asserting that states that fail to satisfy basic operational standards will not qualify for full federal funding, such as when extraordinary federal benefits are paid during emergencies. This would offer significant leverage for change, as few state officials will wish to explain that their citizens are eligible for fewer weeks of federal extended unemployment benefits or lower benefit amounts because the state could not satisfy security requirements that neighboring states were able to master.

Borrow Program Advancements in Other Fields. The UI program can and should borrow progress on anti-fraud advancements from relevant fields. Banks and financial institutions have honed more targeted account monitoring, fraud detection, and investigation techniques in response to both fraud risks and legislative mandates. Many of these advancements are relevant for state agencies operating UI programs. In some cases, state agencies could take advantage of statewide technology solutions that would then allow UI technology and policy specialists to maintain focus on their core program mission.[143]

This is also relevant across technology service delivery, user-centric design, and business process simplification. For real and deeply entrenched reasons, most levels of government struggle on this front. Finding ways to facilitate and accelerate knowledge sharing from relevant fields should be a priority for state leaders.

Strengthen Partnerships, Especially with Financial Services Institutions and Law Enforcement, for Service Delivery and Fraud Prevention. State workforce agencies, law enforcement, and financial institutions must build or strengthen partnerships for service delivery and fraud prevention. Due to the previously rare nature of financial fraud in the UI program, there were not always established relationships between the state agencies making payments, the financial institutions facilitating or receiving payments, and the law enforcement agencies attempting to stop and prosecute fraud.[144]

The pandemic experience, however, created and strengthened law enforcement partnerships. UI fraud was a small portion of the DOL inspector general's pre-pandemic caseload; since the start of the pandemic, the OIG has opened over 200,000 cases.[145] The federal strike teams assembled to connect the dots between state agency data and relevant prosecutors have gradually gained traction.[146] This connective tissue is crucial for the program's post-pandemic attempts at prosecution and recovery.

Relationships with financial service institutions were perhaps less established. Of course, state agencies typically have a contract directly with a bank to distribute benefit payments via direct deposit, paper checks, or the production of debit cards.[147] The vast network of retail financial institutions accepting benefit deposits, however, does not have an established two-way communication channel with state agencies when fraud is suspected or established. Most retail financial institutions are required by law to monitor suspicious account activity and will often freeze or suspend accounts they suspect to be fraudulent. State agencies often do not have access to any of these insights or the bank's actions on a particular account. State agencies and retail financial service institutions need the properly fenced ability to communicate securely about these shared issues.

Although such communication may cause concern in some circles, the status quo often leaves consumers and claimants stuck with the consequences of noncommunication. Consider the legitimate claimants using fintech banking services or startups that lost access to their accounts when states, trying to respond to significant fraud flowing through such organizations, closed off all account-holding claimants using the service.[148] This was a serious and common problem during the pandemic and will require cross-sector attention to prevent recurrence. The status quo effectively punished legitimate claimants with accounts at these institutions due, in some part, to the inability for two-way communication.

In another example, California's debit-card issuer and bank tried to crack down on rampant benefit card fraud and, in the process, froze the accounts of many legitimate beneficiaries who had almost no timely recourse. The Consumer Financial Protection Bureau later punished the bank with over $200 million in fines.[149] Unfortunately, this highly targeted enforcement action against the state's bank does not address the dysfunction's root cause, nor does it incentivize the problem-solving partnership necessary to prevent recurrence.[150] Such targeted enforcement actions may also have the eventual side effect of reducing banks' interest in providing this service to states, which could also affect citizens' timely access to benefits.[151]

Conclusion

The coronavirus pandemic presented extraordinary economic and health challenges for all Americans. Congress's unemployment benefits response sought to alleviate financial hardship for tens of millions who found themselves suddenly unemployed or underemployed. An extraordinary number collected weekly benefits, which unfortunately included record cases of fraud involving these important and expensive programs. Overwhelmed systems and key program design flaws contributed to that unprecedented abuse, which Congress must address before it crafts any future response to recession. If Congress successfully incorporates the recommendations described in this report, it should significantly reduce the potential for future abuse—and better ensure that rightful recipients have timely access to benefits they deserve.

The federal lessons learned from this episode are many. Perhaps the most obvious lesson is to not repeat the mistakes legislated into pandemic programs' designs, especially the problematic PUA program. Those mistakes include permitting self-certification (of identity, prior earnings, and ultimately eligibility), which is an inappropriate standard for any program, especially a program in which eligibility is supposedly connected to prior work and earnings.

Simply put, unemployment benefit programs should require proof (along with verification) of identity and prior employment *before* benefits start to flow, not just within 21 days of their onset, and certainly not without that information ever being secured. In the event of another crisis, doing so may result in minor delays in the onset of benefits for some claimants—who would ultimately receive weeks of back benefits in a lump sum instead. But that slight delay would be justified if it prevents a repeat of the massive fraudulent claims for benefits and ultimately losses to fraud that taxpayers experienced during the pandemic.

This lesson extends beyond program specifics. Congress bears responsibility for creating—and expecting states to stand up—the massive new PUA program even as states were navigating the greatest surge in claims in the UI program's history. Indeed, within a few months, claims under the temporary PUA program exceeded claims under the regular UI program, which began in the 1930s.

Instead of alleviating what was already a challenging operational climate, PUA's creation made those administrative hurdles markedly worse. While well intended as a means of assisting the broad array of Americans displaced from work by the pandemic, design flaws opened the door to widespread fraud and abuse—resulting in the torrent of fraudulent applications that in turn prevented many deserving Americans from accessing benefits to which they were entitled. Adding to those challenges was the significant increase in benefits payable to state UI recipients and federal PUA claimants under the PUC program, which initially added $600-per-week supplements to those other unemployment checks.

Some have suggested that these flaws can best be addressed by making permanent the sort of temporary programs created during the pandemic, automatically triggered by elevated state or national unemployment rates.[152] But in addition to reviving and significantly extending the operation of extraordinarily expensive benefit programs, such proposals threaten to make permanent many of the features that contributed to massive fraud involving pandemic benefits, starting with elevated benefit levels that attracted criminals in the first place. That should be avoided at all costs.

Instead, policymakers should focus on strengthening fundamental features of the UI system. That includes ensuring the program has sufficient and timely administrative funding to provide prompt and proper payment of benefits. This should be combined with policies that defend program integrity by matching claimants against databases of those who should not be eligible, such as prisoners and other suspicious actors, individuals claiming benefits in multiple states, and people using the identities of the deceased, among others.

It also means re-grounding the program in its long-standing social insurance nature, under which workers are entitled to benefits supported through their work and employer payroll taxes.[153] During the pandemic, only a small fraction of all unemployment benefits were supported by state or federal payroll taxes, with the overwhelming majority of benefits being supported by federal general revenues unconnected with covered workers.

The PUA program is a prime example—but not the only one—of how pandemic programs violated those social insurance principles. States could address demand for its expanded array of benefits by incorporating PUA-like benefits (payable to independent contractors, the self-employed, and marginally employed individuals who don't earn enough to qualify for UI) in the standard operation of their UI program. If they do so, states should also be expected to expand the UI program's payroll tax base and experience-rating features to include those new would-be recipients as well—rather than presuming that federal general revenues will support such massive new benefit costs in the future. One suspects most states—and would-be benefit recipients—would find those tax costs prohibitive.

Fundamental questions also apply to this system's administrative financing. Beyond the recent provision of significant onetime funds or allowing states to retain more recoveries, those questions include how this system's long-term administrative needs can best be met. Federal payroll tax revenues are sufficient to provide for increased administrative funding, and in the end, it is the federal government's responsibility to ensure the system's administrative needs are met, including in the event of an inevitable future crisis.

Some lawmakers have proposed designing future benefit increases to replace a specific share of each recipient's prior wages, which state IT systems at the start of the pandemic were incapable of doing. That, in significant part, led lawmakers to provide flat $600-per-week supplements to all state and federal unemployment benefit recipients, which resulted in many people collecting more in benefits than they earned from working and created a huge financial target for criminals to attack. Could a reformed system accommodate those policy goals? If so, when and at what cost?

Unless Congress holds the short-term and long-term administrative funding it provides accountable for affirmatively answering such questions, policymakers in a future crisis may once again be forced to provide poorly targeted benefits in the name of rushing checks out the door, resulting in too many deserving recipients waiting in line behind those bent on defrauding the system. Benefit recipients and taxpayers deserve far better.

About the Authors

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Appendix A

The following provides a detailed timeline of the unfolding legislative and policy responses to the pandemic's immediate and widespread fallout.[154]

March 12, 2020. In response to novel COVID-19-related policy questions, the Department of Labor (DOL) issues Unemployment Insurance Program Letter (UIPL) 10-20 to address key questions around unemployment insurance (UI) benefits and program definitions.[155]

March 18, 2020. Congress enacts the Families First Coronavirus Response Act (FFCRA), including multiple initial pandemic response actions. Four days later, DOL issues the implementing guidance for FFCRA's Section D (Emergency Unemployment Insurance Stabilization and Access Act) in UIPL 13-20.[156] This pays $1 billion of onetime federal administrative funding to state workforce agencies and provides additional merit staffing flexibility, among other provisions.[157]

March 27, 2020. The $2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, the largest emergency aid package in US history, is enacted.[158] It creates, among other things, three new temporary federal unemployment benefit programs. All programs are fully federally funded and can be claimed retroactively to the week of unemployment ending January 27, 2020.[159] These programs include the following:

- Pandemic Unemployment Compensation (PUC) is a weekly $600 supplemental payment on top of other state and federal unemployment benefit payments.

- Pandemic Unemployment Assistance (PUA) is a new benefit program for individuals not covered by the regular UI program (including independent contractors such as gig platform workers, the self-employed, and others earning too little to qualify for state UI benefits). Recipients include those who were not working or not able to work due to specific COVID-19-related reasons.

- Pandemic Emergency Unemployment Compensation (PEUC) is an emergency program initially offering up to 13 weeks (and later as many as 53 weeks) of extended benefits for individuals exhausting up to 26 weeks of state UI benefits.[160]

April 5, 2020. DOL releases initial guidance on CARES Act programs (UIPL 14-20) and then releases specific initial guidance on PUA, PUC, and PEUC.[161] Most states go from initial guidance to paying benefits on a brand-new PUA program by the end of May 2020.[162] Evidence of widespread fraud in the program appears almost immediately.[163]

July 31, 2020. The CARES Act authorization for PUC $600 weekly supplements ends, with no legislative agreement on next steps. In the days leading up to July 31, Senate Republican leaders including Sen. Charles Grassley (R-IA), then chairman of the Senate Finance Committee, introduce a legislative proposal to close known loopholes in the PUA program, including asking PUA applicants to provide evidence of their identity and previous income.[164] Finance Committee Ranking Member Ron Wyden (D-OR) calls the proposal a "punch in the gut and a slap in the face for the 30 million Americans relying on lifeline unemployment benefits."[165] The bill does not advance.

August 5, 2020. President Donald Trump issues the Other Needs Assistance Presidential Memorandum, which prescribes up to $44 billion of Federal Emergency Management Agency (FEMA) disaster relief funds for distribution as $300 Lost Wages Assistance weekly supplements to underlying unemployment benefits in states that opt into the program.[166] This provides about six weeks of additional PUC-like benefits in most states. The Lost Wages Assistance program adds a new layer of complexity, as state payment records and FEMA's financial accuracy standards prove difficult to reconcile.[167]

December 27, 2020. As the original statutory expiration date of the temporary PEUC and PUA programs and related policies nears, Congress approves a consolidated appropriations bill, including the Continued Assistance Act, which contains several unemployment program extensions and changes:

- Extends the PUA program through March 14, 2021, and raises maximum weeks from 39 to 50;
- Requires the documentation of employment or self-employment earnings within 21 days of PUA application;
- Requires identity verification or validation for PUA applicants;
- Restarts the PUC program at $300 per week through mid-April 2021;
- Limits earliest claims backdating to December 1, 2020;
- Adds new program integrity provisions for PUA;
- Continues merit staff flexibility, the waiving of interest on Title XII loans, and the full federal funding of Extended Benefits and waiting week provisions; and
- Creates a new program called Mixed Earner Unemployment Compensation (MEUC), providing $100 per week (in addition to $300-per-week PUC payments) to individuals whose mixed income sources made them eligible for small UI benefits and thus ineligible for the relatively larger minimum PUA benefit.[168]

March 11, 2021. The American Rescue Plan Act becomes law and includes additional extensions to programs extended in the December 2020 Continued Assistance Act. The act:

- Extends the $300-per-week PUC program, along with PUA, PEUC, and MEUC, to September 6, 2021;
- Increases the maximum weeks of federal benefits from 50 to 79 weeks, available to those exhausting up to 26 weeks of state UI benefits;[169]
- Includes, as other continuations, merit staff flexibility, the waiver of interest on Title XII loans, and full federal funding of Extended Benefits and waiting week provisions; and
- Provides a $2 billion appropriation to the DOL to support equity, accessibility, and fraud prevention work; the funds have an unrestricted appropriations timeline.[170]

May 4, 2021. Montana becomes the first state to voluntarily withdraw from the CARES Act agreement between the states and the DOL. Eventually, 26 states announce their intention to voluntarily terminate some or all temporary federal pandemic programs before their scheduled September 6, 2021, expiration date.[171]

September 6, 2021. In accordance with the American Rescue Plan Act, the authorization for various temporary federal unemployment benefit programs (PUC, PUA, PEUC, and MEUC) and related flexibilities (including state staffing flexibility, waiver of Title XII interest, and full federal funding of Extended Benefits and a waiting week) expires.

Notes

1. There are 53 "state" unemployment insurance (UI) programs, including in the District of Columbia, Puerto Rico, and the US Virgin Islands.

2. For a full discussion, see Matt Weidinger, *Extended: A Review of the Current and Proposed Duration of "Pandemic" Unemployment Benefits*, American Enterprise Institute, June 3, 2020, https://www.aei.org/research-products/report/extended-a-review-of-the-current-and-proposed-duration-of-pandemic-unemployment-benefits.

3. The most recent US Department of Labor (DOL) comparison of state laws notes that 28 states, the District of Columbia, and Puerto Rico currently apply a tax for "UI administration or non-UI purposes." US Department of Labor, *The Comparison of State Unemployment Insurance Laws*, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/complete.pdf.

4. Julie Su, "A UI System for the Next Storm," US Department of Labor Blog, December 2, 2022, https://blog.dol.gov/2022/12/02/a-ui-system-for-the-next-storm.

5. Jim Van Erden, Julie Squire, and Hillary Hewko, "Unemployment Insurance Administrative Funding" (PowerPoint presentation, National UI Directors' Conference, National Association of State Workforce Agencies, Orlando, FL, November 6–9, 2017), 15, https://www.uwcstrategy.org/wp-content/uploads/bsk-pdf-manager/Julie_Squire_NASWA_PowerPoint_UI_Admin_Funding_Survey_UWC_final_143.pdf.

6. Recent use of federal general revenues deviates from the past, when Congress employed a series of temporary federal payroll tax hikes to finance emergency federal benefit expansions. For example, that was the original purpose of the 0.2 percent Federal Unemployment Tax Act "surtax" collected from 1977 through 2011. Julie M. Whittaker, *Unemployment Compensation: The Fundamentals of the Federal Unemployment Tax (FUTA)*, Congressional Research Service, October 25, 2016, https://crsreports.congress.gov/product/pdf/R/R44527/5. According to a 2020 review, if that practice had been repeated during the pandemic, "Today's federal UI tax of typically $42 per worker per year would grow to $482—a 1,048 percent increase—and stay there for a decade. The federal UI tax rate would skyrocket from 0.6 percent to 6.6 percent." While employers nominally pay payroll taxes, most economists believe they result in lower wages for workers. Matt Weidinger, "Paying the Bill for the Pandemic-Related Unemployment Benefits," The Bulwark, August 19, 2020, https://www.aei.org/op-eds/paying-the-bill-for-the-pandemic-related-unemployment-benefits.

7. William J. Congdon and Wayne Vroman, *The Unemployment Insurance System in Two Recent Economic Downturns*, Urban Institute, July 2022, https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/The_Unemployment_Insurance_System_in_Two_Recent_Economic_Downturns.pdf.

8. Tax Policy Center, "State Unemployment Insurance Tax Rates [as of January 2022]," June 13, 2022, https://www.taxpolicycenter.org/statistics/state-unemployment-insurance-tax-rates; and US Department of Labor, Office of Unemployment Insurance, Division of Fiscal and Actuarial Services, *State Unemployment Insurance: Tax Measures Report 2021*, March 2022, https://oui.doleta.gov/unemploy/pdf/sigmeasures/sigmeasuitaxsys21.pdf.

9. US Department of Labor, Office of Unemployment Insurance, *Unemployment Compensation: Federal State Partnership*, July 2023, 7, https://oui.doleta.gov/unemploy/pdf/partnership.pdf.

10. Fraud is a subset of the broader category of improper payments. Improper payments are defined by the Government Accountability Office as "payments that should not have been made or were made in the incorrect amount." UI fraud is defined by state law. See US Government Accountability Office, "Improper Payments," https://www.gao.gov/improper-payments; and Katelin P. Isaacs and Julie M. Whittaker, "Unemployment Insurance Program Integrity: Recent Developments," November 2, 2022, https://crsreports.congress.gov/product/pdf/IF/IF12243.

11. US Department of Labor, Office of Inspector General, "OIG Oversight of the Unemployment Insurance Program," February 8, 2023, https://web.archive.org/web/20230601191342/https://www.oig.dol.gov/doloiguioversightwork.htm.

12. Larry D. Turner, "The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud," testimony before the House Committee on Ways and Means, February 8, 2023, https://waysandmeans.house.gov/wp-content/uploads/2023/02/DOL-OIG-IG-Turner-Written-Testimony-HWM-_Final-02062023.pdf.

13. US Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, "Pie Chart—Causes of UI Overpayments," https://oui.doleta.gov/unemploy/pdf/Causes_UIOverpayments.pdf.

14. Office of Inspector General, "OIG Oversight of the Unemployment Insurance Program," endnote 15.

15. Federal Reserve Bank of St. Louis, Unemployment Rate, November 3, 2023, https://fred.stlouisfed.org/series/UNRATE.

16. US Department of Labor, Employment and Training Administration, "Unemployment Insurance Weekly Claims," press release, March 5, 2020, https://oui.doleta.gov/press/2020/030520.pdf.

17. Mariette Aborn, "Administrative Failures Plague State Unemployment Insurance Programs," Bipartisan Policy Center, July 1, 2020, https://bipartisanpolicy.org/blog/administrative-failures-plague-state-unemployment-insurance-programs.

18. For a detailed review of federal benefits paid during the pandemic, see Matt Weidinger, "Unprecedented: A Brief Review of the Extraordinary Unemployment Benefit Response to the Coronavirus Crisis," American Enterprise Institute, April 9, 2020, https://www.aei.org/research-products/report/unprecedented-a-brief-review-of-the-extraordinary-unemployment-benefit-response-to-the-coronavirus-crisis.

19. Official DOL documents often refer to this program as Federal Pandemic Unemployment Compensation.

20. Instead of providing the number of *individuals* collecting benefits (as was often reported), official data provided the total number of benefit *claims* in a week. As the DOL noted at the time, "Backdated claims data may be included in these figures." US Department of Labor, "Unemployment Insurance Weekly Claims," press release, October 21, 2021, https://www.dol.gov/sites/dolgov/files/OPA/media/ui-claims/20211902.pdf. Thus while total benefit claims reached over 30 million per week between May and July 2020, there were likely fewer individuals actually collecting benefits than that suggests. The massive surge in demand for state UI benefits, along with the rollout of the new federal Pandemic Unemployment Assistance (PUA) program, delayed first payments and contributed to the large back payments reflected in these data. Matt Weidinger, "State Pandemic Unemployment Assistance Data Are Wildly Fluctuating. What's Going On?," AEIdeas, July 24, 2020, https://www.aei.org/opportunity-social-mobility/state-pandemic-unemployment-assistance-data-are-wildly-fluctuating-whats-going-on.

21. US Department of Labor, Office of Inspector General, *Office of Audit Workplan: Fiscal Year 2023*, https://www.oig.dol.gov/public/reports/oa/2023/FY_23_OIG_Office_of_Audit_Workplan.pdf.

22. Matt Weidinger, "Unemployment Claims Continue to Surge," AEIdeas, April 9, 2020, https://www.aei.org/opportunity-social-mobility/unemployment-claims-continue-to-surge.

23. Minyvonne Burke, "Coronavirus: State Unemployment Websites Crash as Applications Surge," NBC News, March 18, 2020, https://www.nbcnews.com/news/us-news/coronavirus-state-unemployment-websites-crash-applications-surge-n1162731; Courtenay Brown and Kyle Daly, "Creaky Unemployment Systems Plague Jobless Americans," Axios, May 1, 2020, https://www.axios.com/2020/05/01/creaky-unemployment-systems-plague-jobless-americans; and Bobby Allyn, "'COBOL Cowboys' Aim to Rescue Sluggish State Unemployment Systems," NPR, April 22, 2020, https://www.npr.org/2020/04/22/841682627/cobol-cowboys-aim-to-rescue-sluggish-state-unemployment-systems.

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- Require SWAs [state workforce agencies] to cross-match UI claims against the National Directory of New Hires;
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