

**OFFICE OF STATE
INSPECTOR GENERAL**



**Act 141 of 2022 Report
Ability to Investigate UC Fraud**

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INTRODUCTION

Act 141 of 2022 amends Article V-A, “Office of State Inspector General,” of the Administrative Code (Act 175 of 1929). It requires that that the Office of State Inspector General (OSIG) produce a report regarding its ability “to investigate instances of actual or attempted fraud, theft, abuse, falsification of records, illicit payment and identity theft associated with the unemployment compensation program.” The report is to be done in consultation with the Department of Labor and Industry (L&I) and must include:

- (i) The estimated number of agents necessary to conduct investigations.
- (ii) The estimated cost for personnel, equipment and other operational needs related to investigations.
- (iii) The amount of time necessary to hire and train investigators.
- (iv) How cases would be coordinated with the Internal Audits Division within the Department of Labor and Industry and with other Federal and State law enforcement agencies investigating fraud within the unemployment compensation program.
- (v) Any Federal or State laws, regulations or guidance that may inhibit the ability to conduct investigations.
- (vi) An estimate of the amount of fraudulent payments made in unemployment compensation programs in this Commonwealth from March 1, 2020, through September 30, 2022, including the amount of fraudulent payments recovered up to the date of the report's submission.

OSIG and L&I worked collaboratively to assess L&I’s operations related to investigations of Unemployment Compensation (UC) fraud to produce this report. With the pandemic-driven increase in UC demand and subsequent fraud, L&I’s recent focus has been on assisting victims of UC fraud, rather than pursuing the perpetrators of that fraud. For in-state cases, L&I files private criminal complaints, with local District Attorney approval, with local Magisterial District Judges.

However, with the pandemic came new and more creative perpetrators of fraud, many of whom could only be pursued through national or international investigations. L&I has a close working relationship with the United States Department of Labor, Office of Inspector General, (USDOL-OIG) where it frequently refers potential interstate criminal cases. During the pandemic, L&I saw a ten-fold increase in referrals to USDOL-OIG due to the influx of out-of-state and international criminals working to defraud the UC system. USDOL-OIG is responsible for pursuing nearly all of the pandemic-era UC fraud, as L&I has neither the jurisdiction nor the resources to conduct these investigations. USDOL-OIG is also still working to track and recover the funds associated with this fraud.

Considering the foregoing background, OSIG provides the following answers to the questions posted in Act 141 of 2022.

(I) THE ESTIMATED NUMBER OF AGENTS NECESSARY TO CONDUCT INVESTIGATIONS.

OSIG estimates that it would require a total of 12 individuals dedicated to UC fraud during a pilot program during which time OSIG could monitor the demand and nature of UC fraud investigations.

(II) THE ESTIMATED COST FOR PERSONNEL, EQUIPMENT AND OTHER OPERATIONAL NEEDS RELATED TO INVESTIGATIONS.

A pilot program to investigate UC fraud would cost approximately \$1.515 million per year.

(III) THE AMOUNT OF TIME NECESSARY TO HIRE AND TRAIN INVESTIGATORS.

OSIG estimates that at least nine of the 12 UC fraud staff would need to be hired and trained, which would take approximately nine to 12 months. As such, UC fraud investigations would be fully operational within one year of this work being assigned to OSIG. A pilot program would conclude one year after UC fraud investigations are fully operational.

(IV) HOW CASES WOULD BE COORDINATED WITH THE INTERNAL AUDITS DIVISION WITHIN THE DEPARTMENT OF LABOR AND INDUSTRY AND WITH OTHER FEDERAL AND STATE LAW ENFORCEMENT AGENCIES INVESTIGATING FRAUD WITHIN THE UNEMPLOYMENT COMPENSATION PROGRAM.

While hiring and training UC fraud staff, OSIG would work simultaneously to develop a referral process with L&I. OSIG and L&I could work collaboratively to ensure a smooth information transmission process. OSIG might also work with the Office of Information Technology to quickly develop a fully automated referral process, as was done with the Department of Human Services. OSIG could also work with L&I and the Governor's Budget Office to develop a collection process for any necessary restitution.

(V) ANY FEDERAL OR STATE LAWS, REGULATIONS OR GUIDANCE THAT MAY INHIBIT THE ABILITY TO CONDUCT INVESTIGATIONS.

Allowing for OSIG to investigate and prosecute fraud involving federal funds conflicts with the express mandate of the Office of Inspector General of the United States Department of Labor (USDOL-OIG) to detect and prevent fraud, waste, and abuse in USDOL programs and operations. Unemployment Insurance Program Letter (UIPL) 21-90 explains that USDOL-OIG maintains the authority to investigate unemployment program fraud claims, including fictitious employer schemes, where federal funds are involved, and state workforce agency employee fraud

and abuse cases. Accordingly, the USDOL-OIG has the right of first refusal regarding the investigation and prosecution of suspected fraud concerning federal unemployment programs.

For example, with respect to Pandemic Unemployment Assistance, Federal Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Mixed Earners Unemployment Compensation, any allegations of fraud must be referred to the USDOL-OIG for investigation and subsequent criminal prosecution because these programs are federally funded. Likewise, any allegations of fraud regarding the first week of benefits paid to a claimant, in which the federal government reimbursed the state per Section 2105 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, must be referred to the USDOL-OIG. UIPL 04-17 re-affirms this authority of the USDOL-OIG to investigate and prosecute unemployment fraud in federal unemployment programs and sets forth the criteria for reporting suspected fraud to the USDOL-OIG.

Amendments to Article V-A of the Administrative Code would be required to grant OSIG jurisdiction and authority to pursue UC fraud. Title 18 may require an amendment to create more appropriate criminal charges related to UC fraud, and additionally Section 801(a) of the UC law may benefit from amendment converting the knowing filing of a false statement to obtain benefits from a summary offense to a misdemeanor or felony.

(VI) AN ESTIMATE OF THE AMOUNT OF FRAUDULENT PAYMENTS MADE IN UNEMPLOYMENT COMPENSATION PROGRAMS IN THIS COMMONWEALTH FROM MARCH 1, 2020, THROUGH SEPTEMBER 30, 2022, INCLUDING THE AMOUNT OF FRAUDULENT PAYMENTS RECOVERED UP TO THE DATE OF THE REPORT'S SUBMISSION.

There are significant challenges in obtaining accurate estimates related to pandemic-era UC fraud. Much of the reason for this is that the challenge in collecting these figures lies primarily with the United States Department of Labor (USDOL), and the data is not readily parsed in this way. While USDOL-OIG continues to pursue prosecution of perpetrators and recovery of funds, most published estimates of fraud seem to be based on a multiplier of unknown validity.

The below chart **estimates** fraudulent payments from March 1, 2020, through September 30, 2022 and recovered benefits from January 1, 2020 through December 31, 2022. The figures were as of February 3, 2023. Several things are important to note about this chart:

1. The \$6 billion dollar figure is an *estimate* across all programs. It is not deemed actual “fraud” until it has been adjudicated as such and the overpayment “established.”
2. Also, per the Government Accountability Office (GAO) report, estimates in this space are inherently unreliable. As noted by the GAO, “*it is not currently possible to combine existing estimates and measures to make meaningful statements about the extent of fraud in UI programs during the pandemic.*”
3. With respect to the estimate for regular UC, below, and as explained in the Independent Fiscal Office Report, the \$570 million is calculated using the official fraud rate from

USDOL for April 2020 through March 2021 (6.76%). In other words, 6.76 percent of regular UC benefits paid is *estimated* to be fraud.

4. This *estimated* PUA fraud rate for 2020 is 20.58% and includes three components:
 - o The first component (12.71%) represents fraudulent payments identified by the department after claims were paid.
 - o The second component is the traditional UC fraud rate (6.76%) estimated by USDOL and reflects additional fraud not identified by the department.
 - o The third component (1.11%) is an adjustment made by the Independent Fiscal Office to reflect the fact that PUA fraud is higher than traditional UC fraud due to less stringent eligibility criteria.
 - o The sum of those three components (20.58%) was used to estimate the amount of fraudulent PUA payments.
5. The *estimated* PUA fraud rate for 2021 reflects the same three elements but the first component is substantially lower due to the implementation of ID.me and other verification efforts.

Benefit type	Program ended	Funding source	Estimated fraudulent payments (\$)	Recovered funds (\$)
Regular Unemployment	N/A	State trust fund	*\$570,000,000 est. + \$33,276,829.06 established	\$127,372,524**
Pandemic Emergency Unemployment Compensation (PEUC) + Extended Benefits (EB)	PEUC = 9/4/21 EB = 5/15/21	Federal (EB temporarily federal)	*\$302,000,000	\$5,440,778**
Pandemic Unemployment Assistance (PUA)	9/4/21	Federal	*\$1,872,000,000	\$77,194,156***
Federal Pandemic Unemployment Compensation (FPUC) + Lost Wages Assistance (LWA) from UC payments ^a	FPUC = 7/25/20 & 9/4/21 LWA = 9/5/20	Federal	*\$675,648,000	\$2,175,218** + \$5,926,112.27 (as of 3/3/22, internal query)

Federal Pandemic Unemployment Compensation (FPUC) + Lost Wages Assistance (LWA) from PUA, PEUC, & EB payments ^a	FPUC = 7/25/20 & 9/4/21 LWA = 9/5/20	Federal	*\$2,588,352,000	(Included in the above)
Mixed Earners Unemployment Compensation (MEUC)	9/4/21	Federal	\$0	N/A
Disaster Unemployment Assistance (DUA)	3/12/22	Federal	\$0	N/A
TOTALS:			\$6,008,000,000	\$218,108,788.27

*http://www.ifo.state.pa.us/download.cfm?file=Resources/Documents/PBB_2022_DLI_REP_ORI.pdf

**From the ETA-227, a quarterly federal report.

***From the ETA-902P, a monthly report

^a Estimated total fraudulent FPUC and LWA payments are \$3,264,000,000. The estimate as to how much is attributable to regular UC versus the federal programs is based on the proportion of estimated fraudulent payments to the total:

- Regular UC = 20.7%
- PEUC & EB = 11%
- PUA = 68.3%

A similar fraud rate estimate came from the Independent Fiscal Office's (IFO) January 2022 Performance-Based Budget report of the Department of Labor and Industry (IFO Report). COMMONWEALTH OF PA. INDEP. FISCAL OFFICE, PERFORMANCE-BASED BUDGET: DEP'T OF LABOR & INDUS. (2022). As the following chart from the IFO Report shows, the IFO chose a pandemic-era fraud-rate multiplier significantly higher than the 6.76% chosen by USDOL. The IFO Report combined its findings into the following chart:

Estimated Fraudulent UC Benefit Payments

Program	Fraud Rate	2020 Q2-Q4		2021 Q1-Q3	
		Ben. Paid	Est. Fraud	Ben. Paid	Est. Fraud
Regular UC	6.76%	\$6,339	\$429	\$2,079	\$141
PEUC and EB	6.76	1,261	85	3,201	217
Trad. FPUC and LWA	6.76	<u>8,655</u>	<u>585</u>	<u>4,102</u>	<u>277</u>
Trad. Total		16,254	1,099	9,382	635
PUA					
2020	20.58	7,046	1,450	--	--
FPUC and LWA	20.58	9,377	1,930	--	--
2021	10.32	--	--	4,089	422
FPUC and LWA	10.32	--	--	<u>4,572</u>	<u>472</u>
PUA Total		16,422	3,380	8,660	894
Total		32,676	4,479	18,043	1,528

Note: Dollars in millions.

Source: U.S. Department of Labor and the Department of Labor & Industry. Calculations by the IFO.

(IFO Report, page 12).

As previously noted, the data in these charts is only an estimate of fraud based on pre-existing fraud rate multipliers. In a direct criticism of the use of a fraud rate multiplier, the United States Government Accountability Office’s December 2022 report on Unemployment Insurance, GAO-23-105523 (GAO Report) explained that “it is not currently possible to combine existing estimates and measures to make meaningful statements about the extent of fraud in UI programs during the pandemic” UNITED STATES GOV’T ACCOUNTABILITY OFFICE, REPORT TO CONG. REQUESTERS: UNEMPLOYMENT INS. (2022) (PAGE 29).

Unfortunately, the GAO Report did not offer a better option than to use a fraud rate multiplier. USDOL and USDOL-OIG have not produced any investigatory estimates of the amount of UC fraud. There seems to be no actual data available to provide an accurate estimate. The only option available is a fraud rate multiplier that the GAO Report considers inherently unreliable. With this in mind and based on the various other reports produced for and by L&I during the pandemic, it appears that most fraud-rate multiplier-based estimates place the amount of fraudulent payments made in UC programs in Pennsylvania from March 1, 2020 through September 30, 2022 to be approximately \$6 billion.

In conducting this research, OSIG also came across the following chart from the IFO Report. It compares Pennsylvania’s UC fraud performance with that of similarly sized and located states. IFO concludes that “Pennsylvania’s performance is comparable to the other states in most categories.” In fact, Pennsylvania’s fraud rate is significantly lower here than many other states.



pennsylvania

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State UC Performance Measures (2020)

State	Payments 14 Days	Non-Mon. ¹ 21 Days	Overpay. Rate	Fraud Rate	Recovery Rate
Virginia	87%	20%	44%	8%	53%
Illinois	77	59	13	6	42
New Jersey	77	70	13	1	84
Maryland	63	44	15	9	170
Pennsylvania	62	35	14	5	67
New York	58	37	19	13	81
Ohio	53	38	11	2	41

Notes:

1 Nonmonetary decisions.

Source: U.S. Department of Labor.

(IFO Report, page 14)

Finally, it is worth reemphasizing that OSIG is basing its estimates for UC fraud investigation work (the information in the first four sections) on a projection of a post-pandemic world. The numbers in this section, if accurate, could be informative of the previous state of Pennsylvania UC fraud. However, they are largely irrelevant to the potential investigative work of 2023 and beyond.

CONCLUSION

OSIG’s mission is to deter, detect, prevent and eradicate fraud, waste, misconduct and abuse in programs, operations, and contracting of executive agencies. As a law enforcement agency, OSIG currently investigates and criminally charges perpetrators of public assistance fraud. In order to do similar work for UC fraud, OSIG would require legislative amendments to its investigative and prosecutorial authority, a significant increase in resources, and at least a two-year pilot period to ensure the feasibility of the work. This pilot period would require OSIG to hire 12 additional full-time staff dedicated to investigating UC fraud, at a cost of approximately \$1.5 million per year.