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STATE OF NEW YORK
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June 17, 2024

Roberta Reardon
Commissioner
Department of Labor
W.A. Harriman State Campus, Building 12
Albany, NY 12240

Re: Controls and Management of the
Unemployment Insurance System
Report 2023-F-41

Dear Commissioner Reardon:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Labor (DOL or Department) to implement the recommendations contained in our initial audit report, *Controls and Management of the Unemployment Insurance System* (Report 2021-S-3).

Background, Scope, and Objective

One of DOL's key tasks in assisting the unemployed is administering the State's Unemployment Insurance (UI) program. The UI program is a joint federal–State initiative that provides benefits to eligible workers who become unemployed through no fault of their own (as determined under State law) and meet other eligibility requirements. In March 2020, Executive Order 202.8—New York State on PAUSE—directed the temporary closure of all non-essential businesses statewide to mitigate the spread of COVID-19. In addition, the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), also enacted in March 2020, created temporary programs, such as Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Extended Benefits (EB), that allowed for enhanced UI benefits for those affected by COVID-19. The COVID-19 pandemic and the addition of temporary federal benefit programs, like PUA, that had less stringent requirements than traditional UI contributed to a dramatic increase in UI claims. Collectively, these factors not only increased the demand for and the amount of UI benefits but also increased the risk of improper payments and fraud, largely the result of identity theft.

Further, even without considering claims from the temporary federal programs, according to information derived from the federal Benefit Accuracy Measurement program and reported on the U.S. Department of Labor (USDOL) website, for the period from April 1, 2021 to March 31, 2022, the estimated fraud rate in New York's UI program increased to 17.59%—up from 4.51% just 2 years earlier. Prior to and during the pandemic, DOL performed matches of applicant information against databases from agencies such as the Social Security Administration and the Department of Motor Vehicles to assist in verifying applicants' identities and eligibility and

identify potentially fraudulent claims. DOL officials also added new protocols to assist with identifying fraudulent claims, particularly those attributed to identity theft. In February 2021, DOL began using ID.me, Inc. (ID.me) to provide identity verification services.

Information reported by USDOL for April 1, 2022 to March 31, 2023 shows that the estimated fraud and improper payment rates for New York's UI program have fallen since the height of the pandemic, but continue to remain higher than pre-pandemic levels (see figure below). The estimated fraud rate for New York's UI program fell to 7.38% by March 31, 2023, but is still above the pre-pandemic rate of 4.51%. Similarly, the estimated improper payment rate for New York's UI program has fallen since the height of the pandemic to 18.6%, but remains well above the rate of 10% or less required for UI programs under the Payment Integrity Information Act of 2019.

Estimated Improper UI Payment and Fraud Rates, 2018–2023
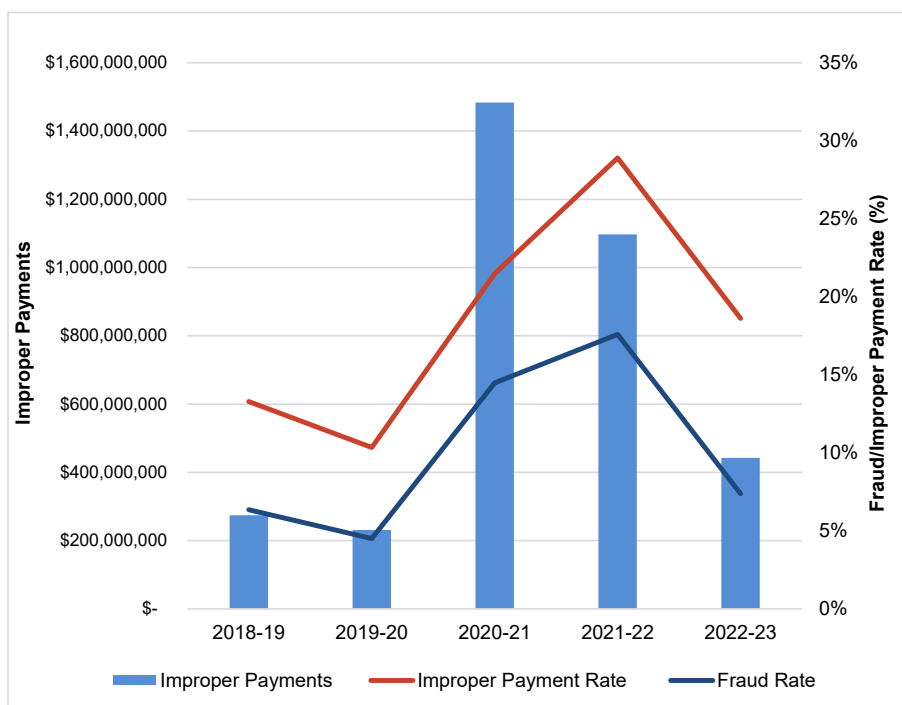
In addition to managing UI benefits and record claim volumes during the pandemic, DOL officials were still responsible for maintaining the UI system in accordance with appropriate standards, including those issued by the Office of Information Technology Services (ITS). As the owner of UI system data, DOL is responsible for classifying the data in its systems, determining the commensurate controls, and ensuring the controls are in place as needed. ITS maintains DOL's systems and is responsible for implementing those controls. From April 1, 2023 through March 31, 2024, DOL made UI payments totaling over $3.1 billion.

The objective of our initial audit, issued on November 15, 2022, was to determine whether DOL took appropriate steps to oversee and manage the UI system and to comply with selected portions of the New York State Information Security Policy and Standards. The audit covered the period from January 2020 to March 2022. Overall, DOL's deficiencies in its oversight and management of its UI system ultimately compromised its ability to effectively mitigate risks related to the processing of claims—fraudulent claims in particular—and system and data security. During the pandemic, faced with the high demand for UI benefits and the

need to process claims quickly, DOL resorted to stop-gap measures to compensate for system limitations, which ultimately proved to be costly to the State. DOL's workarounds resulted in misclassification of claims as State instead of federal liabilities, overpayment of claims, and supplemental spending to maintain the outdated UI system infrastructure while the new system was in development. In addition, DOL could have better captured information on the details of its implementation of ID.me to ensure it not only prevented fraudulent claims but also balanced the ease of access for legitimate applicants. Further, DOL's UI system also prevented it from capturing sufficient and useful information about languages used by Limited English Proficient (LEP) claimants. Additionally, DOL did not take some fundamental, critical steps established in the Security Policy and the Classification, Encryption, Authentication, and Logging Standards to secure its UI system and data. Finally, we noted that DOL's slow response to certain requests —in some cases, up to 6 months after the fact—delayed our findings and recommendations and, in turn, DOL's ability to promptly address serious problems.

The objective of our follow-up was to assess the extent of implementation, as of May 2024, of the six recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOL officials made some progress in addressing the problems we identified in the initial audit report. Of the initial report's six audit recommendations, two were implemented, three were partially implemented, and one was not implemented.

Follow-Up Observations

Recommendation 1

Continue the development of the replacement UI system and ensure its timely implementation.

Status – Partially Implemented

Agency Action – Since our initial audit, DOL has continued development of the replacement UI system. While DOL stated it is actively engaged in user acceptance testing with the vendor, it could not provide an estimated date for when it expects the replacement UI system to be fully implemented. DOL's previous estimates for completing the new system have been extended multiple times. Our original report stated that DOL officials expected the new UI system to be available in fall 2023. In their required 180-day response to our initial audit, dated May 2023, DOL officials stated they anticipated the new system would go live in less than a year, or by May 2024. According to DOL officials, the date the new system is placed in service will depend on the satisfactory completion of testing and the resolution of any defects. We encourage DOL to expedite the full implementation of its replacement UI system in order to mitigate the risks identified in our initial audit related to the processing of claims and system and data security. The replacement system will also help avoid the need to create costly workarounds to compensate for the limitations of its current antiquated system.

Recommendation 2

Take steps, including collecting and analyzing data related to the identity verification process, to ensure the correct balance between fraudulent identity detection and a streamlined process for those in need of UI benefits.

Status – Implemented

Agency Action – DOL staff have obtained access to a dashboard that provides information on ID.me activity, including who used the self-service, use trends, and where individuals are in the verification process. According to DOL officials, staff review this information weekly to identify unusual trends and meet with ID.me officials regularly to discuss the dashboard information. Further, key factors that led to the implementation of ID.me have changed since our initial audit, including the end of the COVID-19 pandemic and the temporary federal UI programs that accounted for most of the UI fraud. As a result, a return to a more traditional claim volume has diminished reliance on ID.me as a primary source of identity verification for UI benefit applicants. While applicants currently have more options to verify their identity, including doing so in person if ID.me should become an obstacle, DOL will continue to offer ID.me as an option for potential claimants to verify their identity.

Recommendation 3

Follow up on the questionable claims identified by our audit to ensure adjustments have been made so they are paid from the proper funding source and overpayments are recovered, as warranted.

Status – Not Implemented

Agency Action – DOL has not followed up on questionable claims identified in our initial audit to ensure that adjustments have been made so they are paid from the proper funding source or overpayments have been recovered. Our initial audit found $2.8 million in improperly paid claims and questioned another $41.2 million in payments ($44 million) made to 8,798 claimants whose payments appeared to be in excess of the maximum allowed amounts for traditional UI. Specifically, our initial audit questioned whether the claims were paid correctly and if the appropriate funding source (State or federal) was used. To assess the actions DOL officials have taken to follow up on the questionable claims, we provided DOL with a sample of 100 of the 8,798 claimants identified in our initial audit. DOL officials reviewed and corrected information on the UI system in April and May 2024—shortly after we provided the sample list—to show the appropriate CARES Act program (PUA, PEUC, and EB) for 98 of the 100 claimants. Information for one additional claimant had already been adjusted. We estimate these 99 claimants were improperly paid $1.67 million through the State's traditional UI program. As of May 2024, DOL was still investigating payments made to the remaining claimant in our sample. Further, DOL could not provide any evidence of follow-up on the questionable payments to the remaining 8,698 claimants, whom we did not specifically ask about during this follow-up. Officials stated they had not made any specific effort to review payments made to those claimants but suggested that some may have been corrected during the normal course of business. In addition, DOL has not taken any steps to seek reimbursement from the proper federal funding source for the payments that were improperly paid from State funds. DOL officials argued that State Labor Law precludes them from redetermining claims after 1 year unless there is evidence of fraud or misrepresentation.

<u>Recommendation 4</u>

Develop and implement a process to include specific language access information in the UI system to provide the Department with appropriate, current, complete, accurate, accessible, and timely information on LEP individuals.

Status – Partially Implemented

Agency Action – DOL has taken steps to incorporate language access information into the replacement UI system for LEP individuals. DOL applied for and was awarded federal grants for projects that will incorporate specific language accessibility features into the new system to permit filing of new UI claims in the 13 most commonly spoken languages in New York. As part of another project, DOL will use funds to review its website to ensure UI-related information is easily accessible by users who require language access services as well as individuals with a disability. Although these accessibility updates are in progress, because the replacement UI system hasn't been implemented, these features were not yet available as of April 2024.

<u>Recommendation 5</u>

Ensure the current and new UI system and data comply with provisions of the Security Policy, the Classification, Authentication, Encryption, and Logging Standards, as well as the Change Management Process and Policy by:

- *Performing a data classification for the systems and data related to the UI process.*

- *Ensuring encryption has been employed where necessary on the UI system.*

- *Reviewing and modifying as necessary the procedures for granting system access.*

- *Separating duties for administrators of UI applications or implementing appropriate compensating controls.*

- *Establishing a formal log monitoring and review process to support operations, maintain awareness of security events, and verify compliance.*

- *Ensuring changes to the UI system are fully documented.*

Status – Partially Implemented

Agency Action – DOL has taken some steps to comply with provisions of the Security Policy, the Classification, Authentication, Encryption, and Logging Standards, and the Change Management Process and Policy, but more needs to be done. Since our initial audit, DOL has implemented encryption where necessary on the UI system. However, DOL did not provide sufficient evidence that it performed data classifications for the systems and data related to the UI process. Additionally, DOL has not reviewed or modified its procedures for granting system access, which can help minimize instances of people having system access not commensurate with their job responsibilities. In addition, DOL has not yet established a formal log monitoring and review process for certain activities. Further, DOL has not ensured that changes to the UI system are fully documented. For a sample of five changes made to the UI system since our initial audit, we determined authorization for the changes was documented; however, there was no evidence that the changes were tested prior to being incorporated into the production system. We

communicated certain other findings directly to the agency that are not addressed here due to their confidential nature. Finally, while DOL has developed a security plan to incorporate requirements of the Security Policy and other IT standards into the new UI system, we could not observe or verify that the proposed controls over the new system were implemented because the system was not yet in place.

Recommendation 6

Improve the timeliness of cooperation with authorized State oversight inquiries to ensure transparent and accountable agency operations.

Status – Implemented

Agency Action – Overall, DOL has improved the timeliness of cooperation with State oversight inquiries to ensure transparent and accountable agency operations. DOL generally improved the timeliness of access to people and the provision of requested records throughout our follow-up.

Major contributors to this report were Justin Dasenbrock, Brian Krawiecki, Anthony Calabrese, Amos Odju, and Cullen Spang.

DOL officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of DOL for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Andrea LaBarge
Audit Manager

cc: Donald Temple, DOL