

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DL
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 4-17

TO: STATE WORKFORCE AGENCIES
STATE UI PROGRAM DIRECTORS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Disclosure of Confidential Unemployment Compensation (UC) Information to the Department of Labor's Office of Inspector General (OIG)

1. **Purpose.** To advise states that disclosure of confidential UC information to the Department of Labor's (DOL) Office of Inspector General (OIG) for the purpose of investigating UC fraud is mandatory.

2. **References.**

- Federal Unemployment Tax Act (FUTA), as amended, 26 U.S.C. 3301, et seq.;
- Section 303(a), Social Security Act (SSA), 42 U.S.C. 503(a);
- Improper Payments Information Act of 2002, Pub. L. 107-300, 31 U.S.C. 3321 note;
- Improper Payments Elimination and Recovery Act of 2010, Pub. L. 111-204, 31 U.S.C. 3301 note;
- Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. 112-248, 31 U.S.C. 3321 note;
- Inspector General Act of 1978, Pub. L. 95-452, as amended;
- Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. 91-373, as amended, 26 U.S.C. 3304 note;
- 20 CFR part 603, *Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information*;
- Unemployment Insurance Program Letter (UIPL) No. 04-01, *Payment of Compensation and Timeliness of Determinations during (sic) a Continued Claims Series*; and
- UIPL No. 29-05, *Memorandum of Understanding Regarding Unemployment Insurance Criminal Investigations Between the U.S. Department of Labor's Office of Inspector General and the Employment and Training Administration*.

3. **Background.** The Employment and Training Administration (ETA) is concerned about the escalating sophistication of fraud schemes being perpetrated against the UC program. While a certain amount of fraud, such as the failure to report earnings while filing for benefits, has

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historically been a problem with UC claims, advances in technology have made it easier for multi-claimant fraud schemes to impact a significant number of states.

ETA National and Regional offices currently work with State Workforce Agencies to coordinate information sharing about the characteristics of fraudulent UC claims and fraud schemes. The OIG's Office of Labor Racketeering and Fraud Investigations (OLRFI) plays an important role in working collaboratively with the federal-state UC program to investigate and prosecute fraud. A July 2015 OIG Investigative Advisory Report identified four types of fraud schemes related to the UC program: single claimant benefit fraud; multiple claimant identity theft fraud; fictitious employer fraud; and fraudulent employer fraud. While each of these types of fraud is significant, multi-claimant fraud is of particular concern since it takes advantage of specific vulnerabilities in state UC systems by using stolen personally identifiable information and exploiting the anonymity of the Internet. The proliferation of multi-claimant fraud schemes and the involvement of organized crime in these activities lend importance to leveraging OLRFI's investigatory expertise and authorities in our combined efforts to protect the integrity of the UC program.

A Memorandum of Understanding between ETA and OIG provides an effective means of addressing integrity issues. See UIPL No. 29-05, which transmitted the ETA-OIG MOU to State Workforce Agencies. The OIG has a statutory mandate under the Inspector General Act, as amended (Public Law 95-452), and under other laws and delegations by the Secretary of Labor, to prevent and detect fraud, waste, and abuse in DOL's programs and operations. To carry out this mandate, the OIG is authorized to conduct, supervise, and coordinate investigations and audits of the UC program, and to refer any findings to the appropriate program official for action, or to the Department of Justice, U.S. Attorney, or appropriate prosecutor for criminal or civil prosecution.

The OIG OLRFI receives UC fraud referrals from the states and, in some instances, works jointly with state investigators to conduct proactive investigations using state data and records. These partnerships may ultimately lead to Federal prosecutions, as well as referrals for investigation by other Federal programs that are also victimized by multiple claimant identity theft fraud.

The OIG reports that it has conducted 750 UC fraud investigations nationwide over the past five years. Those investigations have resulted in 1,200 criminal convictions and identified over \$67.5 million in improper UC payments.

Further, nothing in this guidance should be construed to affect the authority of DOL's OIG to obtain confidential UC data for any authorized OIG purpose through the issuance of administrative subpoenas to states, as permitted by 20 CFR sections 603.5(h) and 603.7(b).

- 4. Required disclosure of confidential UC information to DOL's OIG for investigation of criminal fraud in the UC program.** Section 303(a)(1), SSA, requires that, as a condition of a state receiving administrative grants for its UC program, state law provide for "methods of administration. . . found by the Secretary of Labor to be reasonably calculated to insure (sic) full payment of benefits when due." UIPL No. 04-01 interprets the "when due" requirement

in section 303(a)(1), SSA, to also require accuracy to ensure that payment of benefits is not made when payment is not due.

Disclosure of confidential UC information is governed by 20 CFR part 603. Section 603.6(a) requires that state UC agencies make such disclosures of confidential UC information as are necessary for the proper administration of the UC program. Since investigations of fraud involving the UC program by claimants, employers, and state staff are necessary for the proper and efficient administration of the UC program, disclosure of confidential UC information to the DOL OIG OLRFI – solely for the purpose of investigating fraud in the UC program – is required. This mandatory disclosure to DOL’s OIG for the purpose of investigating fraud in the UC program applies to regular UC, Unemployment Compensation for Federal Employees, Unemployment Compensation for Ex-servicemembers, Extended Benefits (as provided for in 26 U.S.C. 3304 note), Disaster Unemployment Assistance, and any temporary UC program enacted by Congress that requires the collection of confidential information.

In most instances, disclosures of confidential UC information to DOL’s OIG for purposes of investigating criminal fraud in the UC program should be on a request-only basis. However, there may be instances where a state may request the assistance of DOL’s OIG on an ongoing basis, and grant access for those purposes.

5. **Records Disclosure Agreement.** Section 603.10 describes the minimum content of agreements that the state or state UC agency enters into with the recipients of confidential UC information to establish the terms and conditions under which the data exchange will occur. Included in section 603.10 is a requirement for reimbursement, and a requirement that the recipient safeguard the information consistent with section 603.9, including maintaining a system subject to audit by the UC agency. Other provisions to be addressed in the agreement include a description of the specific information to be disclosed, the purpose for the disclosure, the methods and timing of the requests for information and the responses to those requests, and a provision for on-site inspections.

State UC agencies must enter into an agreement with DOL’s OIG OLRFI before any disclosures of confidential UC information are made. Reimbursement for the costs of providing the information is not required for these disclosures, as DOL’s OIG is acting on behalf of the state UC agency in detecting fraud in the UC program. However, the agreement must limit the purpose for which the disclosed information may be used to fraud investigations in the UC program. Finally, the agreement must also address destruction or return of the data when the purpose for the disclosure is finished, as described in section 603.9(b)(vi).

Nothing in this guidance should be construed to affect existing agreements between a state UC agency and DOL’s OIG where the purpose of the OIG request is unrelated to UC fraud investigations. Neither should this guidance be construed to limit or prevent states from entering into agreements with DOL’s OIG, or the OIG of any other Department or agency, for disclosure of data for the audit or investigation of any other program, if such agreement meets the provisions of 20 CFR part 603.

6. **Action Requested.** State administrators should take steps to ensure that requests for information from DOL's OIG, for purposes of investigating criminal fraud in the UC program, are processed consistent with this guidance, and that all state employees responsible for disclosing confidential UC information are informed of this guidance.
7. **Inquiries.** Inquiries should be directed to the appropriate ETA Regional Office.