



STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

September 16, 2019

Ms. Roberta Reardon  
Commissioner  
Department of Labor  
State Office Campus  
Building 12, Room 500  
Albany, NY 12240

Re: Report 2019-UI-01

Dear Commissioner Reardon:

Our Office examines Department of Labor (Department) Unemployment Insurance (UI) benefit payments on a daily basis. The objectives of our examination are to determine if the payments are appropriate and comply with applicable Federal and State laws and regulations and Department policies and procedures. This annual report summarizes the findings related to our examination of UI benefit payments that were confirmed by the Department during calendar year 2018.

In addition to our daily examination of UI benefit payments, we used data analytics to identify and facilitate the Department's recovery of UI overpayments made to New York State employees. We also followed up on the recommendation made in our 2017 annual report that the Department work collaboratively with this Office to identify and implement opportunities to help detect and prevent erroneous UI benefit payments.

**A. Results of Examination**

Our Office identified 2,115 overpayments totaling \$788,487. Based on our findings, the Department assessed penalties valued at \$1,110,430 against certain claimants who received these overpayments. We also identified 267 underpayments totaling \$48,728.

In addition, we identified five fraudulent UI benefit claims established by three claimants who received inappropriate payments totaling \$35,478. We also prevented \$19,945 in additional inappropriate payments to these claimants. In April 2018 our Office requested a meeting with

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<sup>1</sup> We performed our examination in accordance with the State Comptroller's authority set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8(1) and (7), and Article VII, Section 111 of the State Finance Law and Article 18, Section 550 of the State Labor Law.

Department officials to discuss why these frauds went undetected. The Department indicated they would complete an internal review of the fraud cases prior to meeting with this Office. To date, the Department has not scheduled a meeting on this issue. However, in March 2019 we found the Department approved another potentially fraudulent claim that was established by one of the same claimants.

As a result of our data analytic efforts, the Department recovered \$370,264 in calendar year 2018 from 202 NYS employees who were previously overpaid UI benefits. We also identified an additional \$336,845 in potential future recoveries of UI benefit overpayments made to newly hired NYS employees.

We previously recommended the Department work with our Office to identify and implement opportunities to detect and prevent erroneous UI benefit payments. While the Department agreed to work with our Office to improve overall system integrity, to date there has been no progress on several OSC proposals to expand use of data analytics. Routine joint staff meetings have ceased as well. We believe opportunities exist to work more closely such as when significant findings are identified such as the fraud cases indicated above.

We shared a draft report with Department officials and considered their comments (Attachment C) in preparing this final report. The comments of the State Comptroller's Office on the Department's response are included in Attachment D.

## **B. Background and Methodology**

UI benefits provide temporary income to people who are unemployed through no fault of their own; have sufficient prior wages to establish a claim for benefits; are ready, willing and able to work immediately; and are actively seeking work. Claimants may receive UI benefits for a maximum of 26 full weeks during a one-year period.

A claimant who willfully makes a false statement or representation to obtain UI benefits has committed fraud. A claimant who commits fraud will forfeit future days of UI benefits and will be charged a monetary penalty and required to pay back the overpayment.

The Department has the primary responsibility for reviewing and approving claims for benefits, investigating potential fraud cases, assessing penalties, and collecting overpayments. The Department also collects mandatory contributions to the UI Fund from employers and, subject to audit by our Office, directs the disbursement of UI benefits from the UI Fund. This Office exercises

its statutory authority to examine UI benefits on a pre- and post-payment basis to determine if payments are just, due and owing to the claimants.

To accomplish our objectives, we used data analytics to examine current and historic payments, as appropriate, that met predetermined risk criteria. We also reviewed pertinent supporting documentation, such as Department of Taxation and Finance wage reporting information, employer payroll information and various information maintained in the Department's mainframe applications.

### **C. Details of Findings**

#### **1. Daily Examination of Payments**

##### **a. Overpayments and Underpayments**

As part of our daily examination of UI benefit payments, we identified 2,115 overpayments totaling nearly \$788,487 (see Attachment A). This includes: (i) \$545,726 in overpayments made prior to the date of our audit, including \$535,614 the Department will pursue for recovery and \$10,112 the Department determined was not recoverable; (ii) \$100,859 in inappropriate current payment requests that were stopped; and (iii) \$141,902 in potential overpayments over the life of the claims that were prevented because the Department took corrective actions based on our findings.

We also identified 267 underpayments totaling \$48,728 to claimants who did or will receive their full benefits because the Department took corrective actions based on our findings.

Based on the overpayments we identified in the current reporting period, the Department assessed penalties of \$1,110,430 against claimants who willfully misrepresented pertinent information to obtain UI benefits to which they were not entitled. This includes \$81,783 in monetary penalties and 11,633 forfeited benefit days with a potential offset value of \$1,028,647. In addition, based on the overpayments we identified during current and past reporting periods, the Department offset \$97,118 in forfeited benefits against UI payments during the current reporting period.

##### **b. Fraudulent Claims and Payments**

Our Office identified five fraudulent UI benefit claims established by three claimants who willfully misrepresented their identities to receive 85 fraudulent UI benefit payments totaling \$35,478 (see Attachment B). These payments were approved by the Department between 2015 and 2018. We prevented an additional 47 fraudulent payments, totaling \$19,945, because the Department

took corrective actions based on our findings. Subsequently, the Department assessed the claimants \$5,321 in monetary penalties and 576 forfeited benefit days with a potential offset value of \$48,440.

When we identified the fraudulent claims, we immediately informed the Department of the identity of the claimants. In April 2018, we requested a meeting with the Department to discuss the failure of existing internal controls to detect the fraud and how to prevent a reoccurrence of the fraud. Department officials indicated they wanted to conduct an internal review prior to meeting with this Office. While over one year has passed, the Department has not scheduled such a meeting and we are unable to determine whether the Department took action to prevent the reoccurrence of this fraud. In March 2019, the Department approved another potentially fraudulent claim that was established by one of the same claimants we previously referred to the Department (See Attachment B, Claimant B). We rejected the initial payment on the new claim and again referred the matter to the Department.

## 2. New York State Employee Overpayments

Our Office worked with the Department to identify and recover UI benefit overpayments due and owing to the Department from NYS employees (employees) with previous UI claims. As a result of our use of data analytics during current and prior reporting periods, we identified and the Department recovered \$370,264 from 202 employees in calendar year 2018. During the same period, we identified an additional \$336,845 in previous UI benefit overpayments made to newly hired employees. The Department will take action to recoup the overpayments from these employees. These results were achieved as a result of our Offices working together.

## 3. Prior Recommendations

In the 2017 annual report, our Office recommended the Department work collaboratively with our Office to detect and prevent erroneous UI benefit payments. To date, we can report only limited progress. In 2018, we proposed additional opportunities to collaborate and reduce the risk of fraud, waste or abuse in the UI program that can be jointly identified through: (i) periodic meetings to share new audit approaches and/or high risk areas for examination; (ii) internal control and process assessment meetings to identify the root cause(s) of one-time and reoccurring erroneous, inappropriate or fraudulent payments; and (iii) expanding our ability to perform data analytics using data provided by the Department.

We believe there are measurable impacts to the efficiency and effectiveness of protecting the integrity of the UI Fund when the Department and our Office work together. We look forward to

continuing the development of our collaborative relationship with the Department and assisting the protection of the UI Fund.

**Recommendations**

1. *Recoup outstanding overpayments and monetary assessments from claimants identified in this report, as appropriate.*
2. *Act immediately to determine appropriate steps to prevent reoccurrence when fraudulent payments or other significant issues are identified.*
3. *Meet timely with this Office to discuss the cause when significant findings are identified and steps taken to address them.*
4. *Work with this Office to identify and implement opportunities to detect and prevent erroneous, inappropriate or fraudulent UI benefit payments, as detailed above.*

Please provide a response to this final report by October 16, 2019 indicating any actions planned to address the recommendations in this report. We thank you for your assistance in this matter.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Encl: Attachment A  
Attachment B  
Attachment C  
Attachment D

cc: Stephen Geskey  
Mary Batch  
Wendy Luft  
Erin Murphy

**Department of Labor  
Unemployment Insurance Benefits  
Overpayments Confirmed by DOL in 2018**

Finding	Total Overpayment Findings (excluding Penalties Assessed)					Penalties Assessed		
	Overpayments Made (\$)	Current Overpayments Stopped (\$)	Future Overpayments Prevented (\$)	Overpayment Summary		Monetary Penalties (\$)	Forfeit Day (Count)	Potential Forfeit Day Value (\$)
				(\$)	(Count)			
Claimants were fully or partially employed	\$467,818	\$0	\$0	\$467,818	1,184	\$70,428	9,688	\$856,409
Wage, benefit rate, rate adjustment, payment and repayment errors	6,009	43,917	104,503	154,429	515	0	0	0
Identity Issues/Inappropriate use of a social security number	36,566	1,740	25,210	63,516	88	5,622	604	51,485
Claimants were out of the country	30,597	16,712	0	47,309	151	5,733	1,341	120,753
Disqualification, eligibility and entitlement issues	3,649	13,988	12,189	29,826	55	0	0	0
Weekly benefits exceed the four-day maximum allowed	435	16,757	0	17,192	56	0	0	0
Duplicate payments	652	7,745	0	8,397	66	0	0	0
<b>TOTAL</b>	<b>\$545,726</b>	<b>\$100,859</b>	<b>\$141,902</b>	<b>\$788,487</b>	<b>2,115</b>	<b>\$81,783</b>	<b>11,633</b>	<b>\$1,028,647</b>

**Department of Labor  
Unemployment Insurance Benefits  
Fraudulent Claims Confirmed by DOL in 2018**

Finding	Total Fraudulent Payment Findings (excluding Penalties Assessed)								Penalties Assessed		
	Fraudulent Payments Made		Current Fraudulent Payments Stopped		Future Fraudulent Payments Prevented		Fraudulent Payments Summary				
	(\$)	(Count)	(\$)	(Count)	(\$)	(Count)	(\$)	(Count)	Monetary Penalties (\$)	Forfeit Day (Count)	Potential Forfeit Day Value (\$)
<b>Claimant A:</b> Claimant used a deceased individual's social security number to establish two fraudulent claims	\$17,500	41	\$0	0	\$4,730	11	\$22,230	52	\$2,625	336	\$22,620
<b>Claimant B:</b> Claimant used fabricated social security numbers to establish two fraudulent claims	17,136	42	435	1	4,676	11	22,247	54	2,570	160	17,400
<b>Claimant C:</b> Claimant used a fabricated social security number to establish one fraudulent claim	842	2	0	0	10,104	24	10,946	26	126	80	8,420
<b>TOTAL</b>	<b>\$35,478</b>	<b>85</b>	<b>\$435</b>	<b>1</b>	<b>\$19,510</b>	<b>46</b>	<b>\$55,423</b>	<b>132</b>	<b>\$5,321</b>	<b>576</b>	<b>\$48,440</b>

**WE ARE YOUR DOL**



Andrew M. Cuomo, Governor  
Roberta L. Reardon, Commissioner

August 12, 2019

Bernard J. McHugh  
Director of State Expenditures  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Dear Mr. McHugh:

This is in response to your letter dated July 10, 2019, regarding Draft Report 2019-UI-01. Your draft report summarized the findings and recommendations from your office's ongoing examination of Unemployment Insurance (UI) benefit payment requests evaluated in 2018.

For the period from January 1, 2018 through December 31, 2018, The New York State Department of Labor (Department) processed over 6.6 million payments, totaling more than \$2.15 billion dollars. The errors detected in this examination amount to .04% of all benefit payment dollars processed by the Department. The Department has continued to reduce improper payments and has maintained focus on the recovery of overpayments.

**Recommendations and Responses:**

Below are the Comptroller's recommendations and the Department's responses:

**Comptroller's Recommendation**

1. Recoup outstanding overpayments and monetary assessments from claimants identified in this report, as appropriate.

**Department's Response**

All debts owed are thoroughly acted upon for recovery by utilizing techniques including, but not limited to; judgements, payment plans, referrals for civil and criminal action, and the activities noted below:

- Continued use of the Treasury Offset Program (TOP) to intercept Federal Tax refunds;
- Continued use of the Statewide Offset Program (SWOP); and
- Identification of claimants currently collecting benefits in other states who owe the New York State Department of Labor for UI prior overpayments.

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W. Averell Harriman State Office Campus  
Building 12, Room 500, Albany, NY 12240  
[www.labor.ny.gov](http://www.labor.ny.gov)

The Comptroller's report should clarify that the potential offset value of forfeit days is only applicable when an individual with those forfeit days claims benefits again within two-years following assessment. The Department's Research and Statistics Division has shown that only 16% to 17% of forfeit days are used within two years of assessment. The Comptroller's report, showing a potential offset value of \$1,028,647, is misleading as this is an amount outside of the Department's ability to control to recoup and is never realized. Based on the statistics above, a figure of \$174,869 would be more reasonable.

\*  
**Comment  
1**

**Comptroller's Recommendation**

2. Act immediately to determine appropriate steps to prevent reoccurrence when fraudulent payments or other significant issues are identified.

**Department's Response**

The Department greatly appreciates any additional information from the Comptroller's Office that will prevent the reoccurrence of fraudulent payments. New York DOL is currently a recognized national leader in early identification of fraud and coordination with federal and state authorities in the prosecution of perpetrators. Existing methodologies have been largely successful in thwarting identity thieves and in protecting the personal information of customers. Among the methods used are advanced data analytics and queries, cross matching with other state and federal agencies and existing data, and thorough adjudication of identity issues that may arise. The Department continues to explore new methods for enhancing identity verification in light of growing coordinated schemes aimed at stealing identities and illegally obtaining benefits. These new methods include, but are not limited to, work with the National Integrity Center's Integrity Data Hub, further enhancement to cross matching, and elimination of various commonly used fraud vectors.

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**Comment  
2**

**Comptroller's Recommendation**

3. Meet timely with this office to discuss the cause when significant findings are identified.

**Department's Response**

The Department is committed to working with all its partners when new avenues of fraud are identified. In addition to ongoing improvements in the state economy, the overwhelming decline in the Comptroller's findings since 2011 (about 2,100 findings in the current report versus over 9,700 findings in the 2011 report) indicates the Department's improvements and focus on preventive measures has been largely successful. This is facilitated by a sharing of methods and tools with partners. We request that going forward, OSC rapidly advise the Department of emerging patterns, how they were identified, and the tools used to detect those patterns, so the Department may consider like implementation.

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**Comment  
2**

**Comptroller's Recommendation**

4. Work with this office to identify and implement opportunities to detect and prevent erroneous, inappropriate or fraudulent UI benefit overpayments as detailed above.

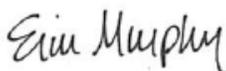
**Department's Response**

Cooperation between our offices has led to a 78% reduction in the total dollar amount of overpayments discovered annually from 2015 to 2018. We anticipate that these outcomes will continue to improve, and our relationship will strengthen through future collaborative efforts.

The Department proposes the reestablishment of quarterly meetings to address detection and prevention of erroneous UI benefit payments. A regular meeting schedule will further the development and implementation of effective strategies to reduce UI benefit overpayments.

If you have any comments, please contact Stephen Geskey, Director Unemployment Insurance Division (518) 457-2979.

Sincerely,



Erin Murphy  
Director of Internal Audit

Cc: Nathaalie Carey  
Mary Batch  
Stephen Geskey  
James Konicki  
Diane Taylor  
John Triller

\*  
**Comment  
3**

State Comptroller's Office Comments on Auditee Response

1. For the purposes of the audit, OSC's forfeited benefit day recoverable calculation is derived from New York State Labor Law. OSC recognizes there are a number of factors that could affect these recoveries. Consequently, our recommendation relies on the Department to take action as appropriate to recoup monetary assessments.
2. As the report states, the Department wanted an opportunity to review the cases and response to OSC thereafter. To date, the Department has not met with our auditors or shared the status or results of their internal review of the fraud cases we identified in this report. When our auditors have the opportunity to evaluate this evidence, they may be able to provide the Department with additional information to prevent the reoccurrence of fraudulent payments.
3. We appreciate the Department's willingness to work more collaboratively. In addition to re-establishing regular quarterly meetings, our auditors need to be able to meet with appropriate Department staff to conduct root cause analysis when significant issues or fraudulent payments are identified. Also, the additional data to be provided by DOL will enable our office to further offer recommendations to strengthen the UI program.