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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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May 8, 2024

## **VIA ELECTRONIC TRANSMISSION**

The Honorable Julie Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 20210

Dear Acting Secretary Su:

We write to express our concern that the U.S. Department of Labor (DOL) may be preventing the recovery of federal unemployment insurance funds lost to fraud by California's Employment Development Department (EDD).

While serving as Secretary for the California Labor & Workforce Development Agency (LWDA), you waived basic fact-checking and fraud prevention requirements for federal pandemic-related unemployment insurance (UI) payments.<sup>1</sup> DOL guidance later clarified that such requirements "must be adhered to" and are "critical to the operations of the UI-related CARES Act programs."<sup>2</sup> Even California's own state auditor found that "[d]espite repeated warnings, EDD did not bolster its fraud detection efforts until months into the pandemic, and it suspended a critical safeguard."<sup>3</sup> As a result of EDD's failures, including to verify claimants' identities, it is estimated to have mistakenly paid approximately \$32.6 billion in fraudulent UI payments during the pandemic.<sup>4</sup> This is more than double the annual budget of DOL.

Under your leadership as Acting Secretary, DOL issued Unemployment Insurance Program Letter No. 05-24 stating that, to allow states to "be forward looking," the agency will "defer to states to apply their finality laws to the CARES Act UC programs."<sup>5</sup> As the guidance notes, the terms of the agreements that states entered to administer federal pandemic UI programs require them to

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<sup>1</sup> Memorandum from Secretary Julie Su to Director Sharon Hilliard (Apr. 23, 2020), <https://www.labor.ca.gov/wp-content/uploads/sites/338/2020/04/4.23.20-JS-letter-to-SH-re-UI-Online--FINAL.pdf>.

<sup>2</sup> John Pallasch, Unemployment Insurance Program Letter (UIPL) No. 23-20, at 2, U.S. DEP'T OF LAB., (May 11, 2020), [https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL\\_23-20.pdf](https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_23-20.pdf).

<sup>3</sup> Elaine Howle, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Auditor of the State of California (Jan. 28, 2021), <https://www.auditor.ca.gov/pdfs/factsheets/2020-628.2.pdf>.

<sup>4</sup> Eric Westervelt, *Pandemic-related fraud totaled billions. California is trying to get some of it back*, NPR (Oct. 18, 2022), <https://www.npr.org/2022/10/18/1128561539/pandemic-fraud-billions-california>.

<sup>5</sup> Brent Parton, Unemployment Insurance Program Letter (UIPL) No. 05-24, at 3, U.S. DEP'T OF LAB., (Dec. 29, 2023), <https://www.dol.gov/agencies/eta/advisories/uipl-05-24>.

take “such actions as reasonably may be necessary to recover for the account of the United States all benefit amounts erroneously paid.”<sup>6</sup> EDD, which paid out approximately \$32.6 billion in fraudulent claims, determined that it has taken all such actions to collect monies lost to fraud that are “reasonably necessary,” and therefore California’s finality laws should be applied and the lost amounts should be forgiven. However, the California State Controller noted that because EDD “had inadequate control over its financial reporting for federally funded unemployment insurance benefits ... [the State] is unable to provide complete and accurate information” for federally funded UI accounts.<sup>7</sup>

DOL’s guidance therefore appears to allow California to shift the consequences of a still unknown amount of federal funds that was lost under your leadership as Secretary of LWDA to the American taxpayer. California’s 2022 Annual Comprehensive Financial Report maintains that “[o]nce federal approval is received, approximately \$29.0 billion in federal liabilities will be removed from future financial statements in addition to a portion of the remaining \$26.0 billion in federal liabilities, which would also be subject to state finality laws.”<sup>8</sup> This action by California is especially concerning, given the State’s own unemployment insurance law indicates that its finality laws “*shall not apply in any case of fraud, misrepresentation or willful nondisclosure.*”<sup>9</sup>

We ask that you answer the following questions, on a question-by-question basis, and provide all responsive documents requested by May 29, 2024:

1. California’s 2022 Annual Comprehensive Financial Report notes “EDD is waiting on final federal approval of EDD’s request as indicated in the February 2024 letter before the event [applying finality laws to CARES Act claims] can be recognized in financial statements as a forgiveness of debt.”<sup>10</sup>
  - a. What is the current status of DOL’s review of California’s request to apply finality laws to outstanding liabilities incurred to the federal government?
  - b. What steps is the DOL taking to ensure that California’s application of finality law is not being applied to suspected or confirmed benefit claims involving fraud, misrepresentation, or willful nondisclosure?
2. Detail all actions of which DOL is aware that California’s EDD has taken to recover all fraudulently paid UI funds provided by the federal government through the CARES Act.
  - a. Does DOL believe such steps constitute all reasonably necessary actions to recover those funds?

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<sup>6</sup> *Id.*, at 2.

<sup>7</sup> CALIFORNIA STATE CONTROLLER, 2022 ANNUAL COMPREHENSIVE FINANCIAL REPORT (Mar. 15, 2024), at 186, <https://www.sco.ca.gov/Files-ARD/ACFR/acfr22web.pdf>.

<sup>8</sup> *Id.*, at FINANCIAL SECTION.

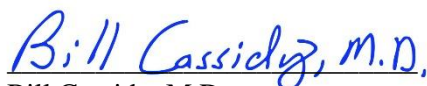
<sup>9</sup> CAL. UNEMP.INS. § 1332.5 (2023).

<sup>10</sup> 2022 ANNUAL COMPREHENSIVE FINANCIAL REPORT, at 186.

- b. If not, what additional steps does DOL believe EDD must undertake to recover the lost funds?
3. Describe all retroactive actions DOL required the State of California to implement pursuant to DOL's authority under the CARES Act.
  - a. Prior to issuing Unemployment Insurance Program Letter No. 05-24, did the State of California successfully implement all such retroactive requirements?
  - b. If not, which requirements did the State of California fail to implement?
4. Describe any (1) modernization and (2) anti-fraud efforts or recommendations DOL has advised the State of California to implement using funds from the American Rescue Plan Act of 2021.
  - a. Prior to issuing Unemployment Insurance Program Letter No. 05-24, did the State of California successfully implement all such modernization efforts?
  - b. If not, which efforts did the State of California fail to implement?
5. Since 2020, how much funding did the State of California receive from the DOL to recover UI fraud under the American Rescue Plan Act and the CARES Act?
6. Have you discussed the funds lost to UI fraud administered by EDD with any California state government officials since becoming Deputy Secretary of Labor on July 13, 2021?
  - a. If so, please detail with whom you discussed UI fraud losses, when you had that discussion(s), and a general summary of what was discussed.
  - b. Provide all written correspondence or evidence of any scheduled conversations regarding funds lost to UI fraud in California since 2020.
7. Please provide all correspondence between the DOL and California state government officials regarding Unemployment Insurance Program Letter No. 05-24.

Thank you for your prompt attention to this important matter.

Sincerely,



Bill Cassidy, M.D.  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor, and Pensions



Michael D. Crapo  
Ranking Member  
U.S. Senate Committee on Finance