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Pandemic Oversight: The Biden Administration's New Anti-Fraud Proposal

June 15, 2023

Congressional Research Service

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R47593



R47593

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Pandemic Oversight: The Biden Administration's New Anti-Fraud Proposal

On March 2, 2023, the Biden Administration released a new proposal with 17 components intended to enhance the response to fraud against COVID-19 pandemic relief programs and apply lessons learned during the pandemic to prevent fraud moving forward. There is evidence that some key pandemic relief programs, which were notable both for the amount of funding they distributed and the speed with which they did so, were targets for substantial fraudulent claims, perhaps totaling hundreds of billions of dollars in improper payments. Criminal investigators and oversight officials are still working to address those issues by prosecuting offenders and attempting to recoup funds.

The Administration's plan includes administrative policy changes, proposals for new legislation, and a total of \$1.6 billion in potential new funding. The actions in the proposal are divided into three broader categories:

1. Support for pandemic program fraud investigations and prosecutions,
2. Fraud and identity theft prevention for government programs, and
3. Help for identity theft victims.

Specific components of the proposal include increasing the capacity of Department of Justice prosecutors and inspectors general to pursue fraud investigations, strengthening program controls in key departments (such as the Department of Labor and Small Business Administration), and improving federal tools intended to prevent identity theft.

While agencies may be able to implement some components of the Administration's proposal without further congressional action, many would require either legislation, additional appropriations, or both. As Congress considers the options put forward by the Administration, it may consider the cost, feasibility, and potential benefits of individual components. More broadly, Congress might also consider how these proposal components compare to alternatives and if they are compatible with Congress's preferred strategies. At least some components of the proposal also have implications beyond fraud prevention and recovery that Congress may examine.

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Introduction

The COVID-19 pandemic was one of the largest crises to face the United States in its history, described by one Member of Congress as “the worst public health crisis since the 1918 flu pandemic” and the “worst economic crisis since the great depression.”¹ While the public health emergency tied to the pandemic has ended, the effects of the pandemic continue. The federal government’s response to these events included about \$5 trillion approved by Congress for purposes such as bolstering frontline medical services,² supporting rapid development and distribution of effective vaccines,³ and funding programs to support businesses and families.⁴

Many of these programs proved susceptible to fraud, and some of the largest were particularly vulnerable. While policymakers anticipated these issues and created capacity to respond, the scale of this oversight is substantial, and officials have called for additional resources and authority to manage the workload. The Biden Administration, on March 2, 2023, announced a package of new resources, legislative actions, and other initiatives to increase the government’s capacity to respond to fraud in pandemic programs.⁵ The Administration’s proposal calls for further support for oversight that has been in place throughout the pandemic, expansion of approaches that have been developed and tested during the pandemic, and new strategies based on lessons learned during the pandemic response.

This report analyzes and offers context for key components of the proposal. The report also identifies some issues that Congress may consider as it continues to monitor the government response to pandemic program fraud and is asked to consider both funding and legislation to enable the new strategy.

Pandemic Program Oversight: The First Three Years

During the initial response to the COVID-19 pandemic, Congress passed several pieces of responsive legislation, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),⁶ which formed the legal structure for most of the federal response. Those legislative acts also established much of the oversight framework for pandemic programs. Congress chose to bolster existing oversight across the government, in both the executive and legislative branches, and create new offices tasked with specific oversight duties and focused entirely on pandemic programs.

¹ U.S. Congress, House Committee on Oversight and Reform, Select Subcommittee on the Coronavirus Crisis, *Moving Beyond the Coronavirus Crisis: The Biden Administration’s Progress in Combating the Pandemic and Plan for the Next Phase*, 117th Cong., 2nd sess., March 30, 2022 (Washington: GPO, 2022), p. 2.

² U.S. Government Accountability Office (GAO), *COVID-19 Relief: Funding and Spending as of Jan. 31, 2023*, GAO-23-106647, February 2023, <https://www.gao.gov/assets/820/817807.pdf>.

³ See, for example, CRS In Focus IF11951, *Domestic Funding for COVID-19 Vaccines: An Overview*.

⁴ See, for example, CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*.

⁵ The White House, “Fact Sheet: President Biden’s Sweeping Pandemic Anti-Fraud Proposal: Going After Systemic Fraud, Taking on Identity Theft, Helping Victims,” March 2, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-president-bidens-sweeping-pandemic-anti-fraud-proposal-going-after-systemic-fraud-taking-on-identity-theft-helping-victims/>.

⁶ P.L. 116-136.

Oversight Capacity

Congress's COVID-19 response bills provided funding and authority for oversight officials to monitor pandemic programs. This included funding for offices of inspector general (OIGs) and the Government Accountability Office (GAO).⁷ The potential advantages of using existing oversight systems, especially in fast-moving situations, are reflected in the Administration's new proposal.

Congress also created new, pandemic-focused oversight capacity, including

- the Pandemic Response Accountability Committee (PRAC), whose functions include coordinating pandemic oversight performed by OIGs and making financial information about pandemic programs available to the public;⁸
- the Special Inspector General for Pandemic Recovery (SIGPR), who provides oversight and audits for specified Department of the Treasury pandemic programs;⁹ and
- the Congressional Oversight Commission, which conducts oversight of Treasury and Federal Reserve activities under the Coronavirus Stabilization Act.¹⁰

Additionally, during the 116th, 117th, and 118th Congresses, the House organized select subcommittees to conduct pandemic oversight within the Committee on Oversight and Accountability.¹¹

Improper Payments and Fraud in Pandemic Programs

There has been considerable reporting from oversight officials, Congress, and the media regarding improper payments in pandemic programs. While the risk of improper payments and instances of fraud extended across pandemic relief programs,¹² particular attention has been focused on large-scale programs making direct payments to individuals and business, including the Small Business Administration's (SBA's) Paycheck Protection Program (PPP) and Economic Injury Disaster Loan Program (EIDL) as well as Unemployment Insurance (UI) programs across the country.¹³

⁷ See CRS Insight IN11236, *Oversight Provisions in H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act*. This strategy can be seen in other legislation such as the Infrastructure Investment and Jobs Act (P.L. 117-58), which included funds for OIGs for most agencies that received appropriations in the legislation.

⁸ P.L. 116-136 §15010. See also CRS Insight IN11343, *The Pandemic Response Accountability Committee: Organization and Duties*.

⁹ P.L. 116-136 §4018. See also CRS Insight IN11328, *Special Inspector General for Pandemic Recovery: Responsibilities, Authority, and Appointment*.

¹⁰ P.L. 116-136 §4020. See also CRS Insight IN11304, *COVID-19 Congressional Oversight Commission (COC)*.

¹¹ During the 116th and 117th Congresses this was the Select Subcommittee on the Coronavirus Crisis; see H.Res. 935 (116th Congress) and H.Res. 8 (117th Congress). For the 118th Congress the new House established the Select Subcommittee on the Coronavirus Pandemic; see H.Res. 5 (118th Congress).

¹² GAO, *Emergency Relief Funds: Significant Improvements Are Needed to Address Fraud and Improper Payments*, GAO-23-106556, February 1, 2023, <https://www.gao.gov/products/gao-23-106556>.

¹³ See, for example, SBA OIG, *SBA's Handling of Potentially Fraudulent Paycheck Protection Program Loans*, May 26, 2022, <https://www.oversight.gov/sites/default/files/oig-reports/SBA/SBA-OIG-Report-22-13.pdf>; Office of the Inspector General, Department of Labor, *Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 billion*, September 21, 2022, <https://www.oversight.gov/sites/default/...> (continued...)

Many reports indicate that a significant amount of federal funds were improperly paid to ineligible recipients, many of whom saw the large pool of available money as an opportunity for fraud. In many instances, this fraud was facilitated by identity theft.¹⁴ While these risks and vulnerabilities existed before the pandemic, the large scale of COVID-19 programs has brought new attention to fraud of this type.

Biden Administration Proposal

The Biden Administration refers to its plan as an “anti-fraud proposal” that responds to “ill-considered decisions” regarding fraud management in the early period of the pandemic. In the spring of 2020, as businesses, schools, and other public places in most parts of the country closed due to the pandemic, policymakers opted to prioritize speed in delivery of aid to those who needed it rather than internal controls to combat fraud.¹⁵ According to the SBA OIG, at least some of the fraudulent payments from pandemic programs can be tied directly to that decision.¹⁶

The Administration’s proposal is divided into three prongs: fraud response, fraud prevention, and victim support. Each prong has a number of components that include plans to (1) increase funds and personnel, (2) propose accountability-enabling legislation, (3) strengthen capacity in the oversight community, and (4) support identity theft prevention and recovery. It appears that the Administration already has the authority and resources to implement some of these actions, while others require action by Congress.

The proposal also illustrates the shifting focus toward resolution of pandemic fraud through prosecutions and recovery actions and applying lessons learned during the pandemic to future oversight. While that shift is not entirely new, the proposal’s focus on building capacity and modernizing authorities and systems indicates that oversight activities may be entering a new phase.

General Issues for Congress

In addition to issues that Congress may consider regarding specific components of the Administration’s proposal, this section briefly discusses considerations that apply to the proposal as a whole.

Funding and Timing

The proposal calls for \$1.6 billion in new appropriations to support anti-fraud activities in FY2024 and states that a further \$1.6 billion in funds already appropriated to the Department of

files/oig-reports/DOL/19-22-005-03-315.pdf; and CRS Insight IN12117, *Unemployment Insurance Fraud: Background and Recent Data*.

¹⁴ The PRAC has created a page on its website dealing specifically with identity fraud: <https://www.pandemicoversight.gov/spotlight/identity-theft-in-pandemic-benefits-programs>.

¹⁵ See Russell T. Vought, Acting Director, Office of Management and Budget, *Implementation Guidance for Supplemental Funding Provided in Response to the Coronavirus Disease 2019 (COVID-19)*, April 10, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf>.

¹⁶ See, for example, Statement for the Record of Small Business Administration Inspector General Hannibal “Mike” Ware, in U.S. Congress, House Committee on Small Business, Subcommittee on Oversight, Investigations, and Regulations, *Office of Inspector General Reports to Congress on Investigations of SBA Programs*, 118th Cong., 1st sess., April 19, 2023, https://www.sba.gov/sites/sbagov/files/2023-05/Statement%20for%20the%20Record%2004-19-2023_0.pdf.

Labor (DOL) was projected to be available to states by June 2023 to support program integrity and fraud prevention in the UI system.¹⁷ Given the potential for recovery of funds lost to improper payments and increased capacity to prevent future improper payments, Congress might anticipate that some portions of the proposal may “pay for themselves” in whole or in part.

Additional and Alternative Responses

Congress may explore other options regarding the government’s response even if there is broad support for the goals and actions laid out in the Administration proposal. If so, Congress might seek to further develop its own legislative responses to pandemic fraud generally or to specific parts of the proposal.¹⁸ Even if Congress supported a broadly similar set of responses, it is likely to have its own ideas regarding the details of those responses, which might be enhanced by the deliberative process and could lead to substantially revised or alternative strategies.¹⁹

Collaboration Across Agencies

One emphasis of oversight during the first three years of the pandemic was encouraging officials, particularly IGs, to collaborate on cross-cutting issues and leverage their collective data, expertise, and capacity. This strategy is particularly evident in the work of the PRAC as well as collaborations between Department of Justice (DOJ) prosecutors and investigators addressing fraud in other agencies. Several components of the proposal emphasize the potential benefits of this strategy.²⁰ Congress may consider how it might facilitate such work via statutory authority and whether to establish limitations on other controls.

Pandemic Fraud Response

The proposal’s fraud response prong includes actions that would support law enforcement and oversight officials working to address fraud and other improper payments that have already occurred in pandemic relief programs.

Department of Justice COVID-19 Fraud Strike Force Teams²¹

The Administration’s proposal includes a request for \$300 million to add 10 new COVID-19 Fraud Strike Force Teams at DOJ. The Administration states that these new teams would focus efforts on “criminal syndicates and major fraudulent actors.”²²

In September 2022, DOJ announced that it had formed three COVID-19 Fraud Strike Force Teams to “enhance the department’s existing efforts to combat and prevent COVID-19 related

¹⁷ However, Section 24 of the Fiscal Responsibility Act of 2023 (P.L. 118-5) permanently rescinds \$1 billion in unobligated funds from this already-appropriated UI funding source.

¹⁸ As discussed throughout this report, some aspects of the Administration’s proposal reflect actions that Congress is already considering.

¹⁹ Legislation has already been introduced during the 118th Congress that takes similar and alternative approaches to different aspects of the proposal. See, for example, S. 659, Administrative False Claims Act of 2023; S. 1018, Pandemic Unemployment Fraud Recoupment Act; and H.R. 1163, Protecting Taxpayers and Victims of Unemployment Fraud Act, which was passed by the House on May 11, 2023.

²⁰ For example, see “Expand ‘Do Not Pay’ Service and Codify SBA Tax Record Verifications.”

²¹ This section authored by Nathan James, Analyst in Crime Policy.

²² The White House, “Fact Sheet: President Biden’s Sweeping Pandemic Anti-Fraud Proposal.”

fraud.”²³ The teams are a part of DOJ’s overall efforts to investigate and prosecute pandemic related fraud. DOJ reported that, as of September 2022, their efforts in this area have resulted in “criminal charges against over 1,500 defendants with alleged losses exceeding \$1.1 billion; the seizure of over \$1.2 billion in relief funds; and civil investigations into more than 1,800 individuals and entities for alleged misconduct in connection with pandemic relief loans totaling more than \$6 billion.”²⁴

The teams are comprised of DOJ prosecutors and special agents from the DOL OIG, SBA OIG, the Department of Homeland Security (DHS) OIG, the Federal Bureau of Investigation (FBI), the U.S. Secret Service, DHS’s Homeland Security Investigations, Internal Revenue Service Criminal Investigations, and the U.S. Postal Inspection Service, with assistance from the PRAC and the SIGPR.²⁵

Increasing Statutes of Limitations for Fraud Against Pandemic Programs²⁶

The proposal calls upon Congress to increase to 10 years the statutes of limitations for select pandemic-program fraud, which will allow more time for federal agencies to conduct investigations and prosecutions. Oversight and law enforcement officials have estimated that it may take up to 10 years to work through the pandemic-program fraud cases they have already identified and expect to identify in the future.²⁷ Under current law, the statutes of limitations for many of these offenses is five years.²⁸

Congress has already passed legislation increasing from five years to 10 years the statutes of limitations for frauds regarding the PPP²⁹ and the EIDL program.³⁰ The current proposal calls upon Congress to increase the statute of limitations for fraud involving pandemic UI programs but also contemplates extensions for other pandemic programs.

Issues for Congress

The proposal leaves open some questions as to the scope of action the Administration is proposing or would support. The proposal specifically calls upon Congress to increase the statute of limitations to 10 years for pandemic UI program fraud. Legislation has already been introduced during the 118th Congress that would do so.³¹ While the PPP, EIDL, and pandemic UI

²³ DOJ, “Justice Department Announces COVID-19 Fraud Strike Force Teams,” press release, September 14, 2022, <https://www.justice.gov/opa/pr/justice-department-announces-covid-19-fraud-strike-force-teams>.

²⁴ DOJ, “Justice Department Announces COVID-19 Fraud Strike Force Teams.”

²⁵ DOJ, “Justice Department Announces COVID-19 Fraud Strike Force Teams.”

²⁶ This section authored by Ben Wilhelm, Analyst in Government Organization and Management.

²⁷ See, for example, U.S. Congress, House Committee on Small Business, *Update on SBA’s Pandemic Response Programs*, 117th Cong., 1st sess., April 20, 2021, SBC Doc. No. 117-008 (Washington: GPO, 2021), pp. 6-7.

²⁸ 18 U.S.C. §3282. See, for example, testimony of PRAC Chairman Michael E. Horowitz, in U.S. Congress, House Committee on Ways and Means, *The Greatest Theft of Taxpayer Dollars: Unchecked Unemployment Fraud*, 118th Cong., 1st Sess., February 8, 2023.

²⁹ P.L. 117-166, PPP and Bank Fraud Enforcement Harmonization Act of 2022.

³⁰ P.L. 117-165, COVID-19 EIDL Fraud Statute of Limitations Act of 2022.

³¹ See, for example, H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act, which was passed by the House on May 11, 2023, and S. 1587, a Senate companion bill to H.R. 1163. The bill also includes a number of proposals related to UI overpayment and fraud recovery and other UI program integrity measures. Among other proposals, S. 1018, the Pandemic Unemployment Fraud Recoupment Act, would also extend the statute of limitations for criminal prosecution of pandemic UI fraud. For more details on these bills, see CRS Report R47575, *Unemployment Insurance: Legislative Issues in the 118th Congress*.

appear to be the largest targets for pandemic fraud, Congress may also consider whether other programs would benefit from similarly increased statutes of limitations.³²

Reform the Program Fraud Civil Remedies Act³³

The proposal endorses a reform of the Program Fraud Civil Remedies Act (PFCRA) that would increase the maximum amount agencies may seek to recover through administrative action.³⁴ The PFCRA is a legal mechanism for agencies to use administrative process, instead of the courts, to respond to certain false claims valued up to \$150,000.³⁵ The proposal calls for legislation to increase the cap for PFCRA false claims to \$1 million. The IG community³⁶ and some Members of Congress have supported reform of this kind in recent years.³⁷ According to recent testimony by PRAC Chair and DOJ Inspector General Michael Horowitz, there are “at least over one million pandemic awards, totaling about \$362 billion, that ranged from \$150,000 to \$1,000,000.”³⁸ In the 118th Congress, legislation has been introduced in the Senate that would increase the PCRFA cap.³⁹

Ensure Department of Labor OIG Access to Multistate UI Data⁴⁰

The proposal states that the Administration will ensure that the DOL OIG “can easily access multi-state data to detect instances of multi-state fraud where the same identity is inappropriately used to apply for benefits in multiple states.” This proposal is similar to an existing recommendation from the DOL OIG.⁴¹ Currently, as a condition of receipt of DOL grants funded by the American Rescue Plan Act of 2021 (ARPA),⁴² states are required to provide data to the DOL OIG on Unemployment Compensation (UC) programs from the beginning of the pandemic through 2025.⁴³

In its April 27, 2023, guidance to states, DOL discussed the required disclosure of UC data to the DOL OIG:

³² For an example, see discussion of fraud against the Main Street Lending Program in SIGPR, *Quarterly Report to Congress: January 1, 2021-March 31, 2021*, April 30, 2021, p. 40, <https://www.oversight.gov/sites/default/files/oig-reports/SIGPR/SIGPR-Quarterly-Report-Congress-March-31-2021.pdf>.

³³ This section authored by Ben Wilhelm, Analyst in Government Organization and Management.

³⁴ 31 U.S.C. §3801 et seq.

³⁵ 31 U.S.C. §3802 (covered acts) and 31 U.S.C. §3803(c) (monetary cap on PFCRA actions).

³⁶ The Council of the Inspector General on Integrity and Efficiency (CIGIE) has included PFCRA reform on as one of its “legislative priorities” for the last several Congresses. See, for example, Kathy A. Buller, Chair, CIGIE Legislation Committee, letter to Lesley A. Field, Acting Executive Chairperson, CIGIE, January 28, 2021, p. 4, <https://oig.justice.gov/sites/default/files/2023-02/02-08-2023.pdf>.

³⁷ See Administrative False Claims Act of 2021, S. 2429 (117th Cong.).

³⁸ Testimony of Michael E. Horowitz, in U.S. Congress, House Committee on Ways and Means, *The Great Theft of Taxpayer Dollars: Unchecked Unemployment Fraud*, 118th Cong., 1st Sess., February 8, 2023, https://waysandmeans.house.gov/wp-content/uploads/2023/02/PRAC-Written-Statement-Chair-Michael-Horowitz_FINAL_02-08-23.pdf.

³⁹ S. 659, Administrative False Claims Act of 2023.

⁴⁰ This section authored by Katelin Isaacs, Specialist in Income Security; Julie Whittaker, Specialist in Income Security; and Natalie Keegan, Analyst in American Federalism and Emergency Management Policy.

⁴¹ See DOL OIG, *OIG Oversight of the Unemployment Insurance Program*, <https://www.oig.dol.gov/doloiguioversightwork.htm#recom>.

⁴² P.L. 117-2.

⁴³ For an overview of UC, see CRS In Focus IF10336, *The Fundamentals of Unemployment Compensation*.

As a condition of receiving funding ... the state must agree to continue to provide all confidential UC information to DOL-OIG for purposes of both investigating fraud and performing audits through weeks of unemployment ending before December 31, 2025.⁴⁴

Issues for Congress

In a September 21, 2022, Alert Memorandum, DOL OIG expressed concerns about direct access to state UI data on a permanent (vs. temporary) basis, including delays due to DOL Employment and Training Administration's (ETA) interpretation of current federal regulations:

Despite the OIG's continued efforts to identify potentially fraudulent payments to ineligible claimants, we continue to experience delays in obtaining the needed UI data. These delays impede our ability to perform our statutory duty to effectively and timely conduct audits and investigations of the UI program. The Department of Labor's (DOL or the Department) reading of applicable federal regulations, which ETA has adopted, contributes to the delays. Specifically, the Department interprets regulations at 20 Code of Federal Regulations (C.F.R.) Part 603 as prohibiting ETA from informing SWAs [state workforce agencies that administer UI] they are required to provide UI data to the OIG for both audit and investigative purposes. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan Act of 2021 (ARPA), ETA issued guidance providing for both audit and investigative access, but only on a temporary basis.⁴⁵

In its response, DOL ETA disagreed with DOL OIG's characterization of the situation:

ETA is concerned that the OIG's mischaracterization of the Department's efforts to provide the OIG access to state UI data portrays ETA as opposing or obstructing the effort to provide such access. This characterization is not fair and is not reflective of ETA's actions. The UI confidentiality regulation does not obstruct the OIG from accessing state UI data. ETA has acted to provide the OIG the requested access but is limited by the Administrative Procedure Act (APA) in what it can do immediately and continues to pursue ongoing efforts in good faith to provide access. In addition, contrary to what is conveyed in this alert memorandum, ETA has not changed its interpretation of its UI confidentiality regulations or created any type of exemption to the regulations.⁴⁶

DOL ETA has stated that it is committed to changing the relevant UI confidentiality regulations but asserts that it must go through notice and comment rulemaking.⁴⁷ DOL OIG reports that DOL ETA has estimated a projected effective date of February 2025 for updated regulations.⁴⁸ To the extent that Congress would prefer that this policy issue be resolved more quickly, it may consider statutory changes to provide DOL OIG with direct access to state UI data.

Provide Additional Funding for PRAC and Other IGs⁴⁹

The proposal calls for at least \$300 million to increase staffing for select OIGs specifically to support investigations of fraudulent payments from pandemic programs and to "pursue special cases of organized pandemic fraud and to support the interagency strike forces led by the DOJ

⁴⁴ DOL, *Unemployment Insurance Program Letter No. 22-21, Change 2*, April 27, 2023, p. 22, <https://www.dol.gov/agencies/eta/advisories/uipl-22-21-change-2>.

⁴⁵ DOL OIG, *Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 billion*, September 21, 2022, p. 2, <https://www.oversight.gov/sites/default/files/oig-reports/DOL/19-22-005-03-315.pdf>.

⁴⁶ *Ibid.*, p. 19.

⁴⁷ *Ibid.*, p. 20.

⁴⁸ *Ibid.*, p. 3.

⁴⁹ This section authored by Ben Wilhelm, Analyst in Government Organization and Management.

Chief Pandemic Fraud Prosecutor.” The proposal calls for at least \$100 million each for the SBA and DOL OIGs and additional funding for the PRAC. The President’s budget request for FY2024 provides some additional funding for both the SBA and DOL OIGs.

Fraud and Identity Theft Prevention

The second prong of the proposal includes actions intended to improve the ability of agencies to prevent fraud—including identity-theft-based fraud—by providing more funding and authority to oversight officials, improving agency technology, and promoting risk management in program implementation.

Expand the Pandemic Analytics Center of Excellence⁵⁰

The proposal calls for data and analytic capabilities for the IG community that are analogous to PRAC’s Pandemic Analytics Center of Excellence (PACE). Currently, PACE provides data sharing and data analysis—such as data matching, network analysis, natural language processing, machine learning, and risk modeling—to IGs. PRAC’s data scientists analyze data for trends, patterns, and anomalies.⁵¹ PACE supports the investigative work of IGs and the PRAC Fraud Task Force by analyzing data to identify potential fraud and further investigate leads. For its work, PACE largely uses datasets contributed by various agency IGs, including public and non-public data. These datasets include information on applicants and recipients of benefits and pandemic program funding.

Issues for Congress

President Biden is proposing to establish a data and analytics platform for overseeing *future disaster relief* and emergency funding. The exact criteria for what types of disaster relief and emergency funding would qualify for an analytics platform for oversight may be an issue for Congress.

Congress may consider the funding model for a platform that is situation dependent and how to ensure the infrastructure is ready to be deployed efficiently and effectively. Congress may also consider the staffing model and how to ensure the availability of data analysts, data scientists, and other personnel to begin providing the platform’s data services.

Data to be contributed to the platform established under the Biden Administration’s proposal may be different from what PACE has used for pandemic relief funding. The data to be available for future use may depend on data collection requirements, which may be established by law, by the agency administering a program, or both.

Congress may consider whether it should establish guidelines on future data sharing among IGs, including requirements for what data offices must share and when, whether to require memorandums of understanding among IGs to support that sharing, and any limitations or conditions that might be included in such memorandums. The design of data sharing to support future programs such as PACE may impact the degree to which an analytics platform can be deployed in an emergency or disaster. Congress may also consider whether data standards could help facilitate the readiness of data to be used in oversight of an emergency situation or disaster.

⁵⁰ This section authored by Natalie R. Ortiz, Analyst in Government Organization and Management.

⁵¹ More information on PACE is available at <https://www.pandemicoversight.gov/spotlight/pandemic-analytics-center-excellence>

Expand “Do Not Pay” Service and Codify SBA Tax Record Verifications⁵²

The Administration’s proposal would add “significant” new funds to increase capacity at the Treasury’s Do Not Pay (DNP) website to “identify, prevent, and recover improper payments and related fraudulent activity.” Treasury’s Bureau of Fiscal Service operates DNP. DNP has been part of a series of executive and congressional actions to reduce improper payments.⁵³

The Payment Integrity Information Act of 2019 (PIIA)⁵⁴ requires that federal agencies have access to and use DNP to verify eligibility for an award or a payment prior to issuing such award or payment.⁵⁵ The PIIA permits federally funded state-administered programs the same access and use of DNP.⁵⁶

DNP consists of several services that are provided at no cost to federal agencies and federally funded state-administered programs.⁵⁷ Services include database searches of individuals or entities to verify eligibility prior to award or payment and analyses of DNP datasets for various purposes (e.g., to detect anomalies in information provided by an individual or organization and information in DNP datasets).

The proposal also calls for codification of verification checks for loans and grants over \$25,000. Under long-standing program rules, SBA has used potential borrowers’ tax returns and tax transcripts to verify financial information before making business⁵⁸ or disaster loans.⁵⁹ The CARES Act, however, allowed SBA to approve EIDL applications solely based upon credit scores and barred SBA from requiring an applicant to submit a tax return or tax transcript.⁶⁰ SBA OIG found that during this period, SBA may have approved ineligible borrowers because they did not have access to tax returns that “verify applicant eligibility, proving even the existence or ownership of a business.”⁶¹ In December 2020, Congress eliminated the provision barring SBA from checking tax returns or transcripts with the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.⁶²

⁵² This section authored by Natalie R. Ortiz, Analyst in Government Organization and Management, and Anthony Cilluffo, Analyst in Public Finance.

⁵³ For example, President Barack Obama established a “network of databases ... collectively known as the ‘Do Not Pay List’” via presidential memorandum (Executive Office of the President, “Enhancing Payment Accuracy Through a ‘Do Not Pay List,’” presidential memorandum, June 18, 2010, *75 Federal Register* 35953). The Improper Payments Elimination and Recovery Improvement Act of 2012 (P.L. 112-248) established the Do Not Pay Initiative (126 Stat. 2393). The Payment Integrity Information Act of 2019 (P.L. 116-117) repealed the act (134 Stat. 133).

⁵⁴ P.L. 116-117.

⁵⁵ 31 U.S.C. §3354(a)(2).

⁵⁶ 31 U.S.C. §3354(b)(3)(C).

⁵⁷ The federal judicial and legislative branches also have the authority to use DNP.

⁵⁸ SBA, “Lender and Development Company Loan Programs,” October 1, 2020, pp. 204-207, <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>.

⁵⁹ SBA, “Disaster Assistance Program,” May 31, 2018, p. 95, <https://www.sba.gov/document/sop-50-30-9-disaster-assistance-program>.

⁶⁰ P.L. 116-136, §1110(d).

⁶¹ SBA OIG, “Follow-Up Inspection of SBA’s Internal Controls to Prevent COVID-19 EIDLs to Ineligible Applicants,” September 29, 2022, <https://www.sba.gov/sites/sbagov/files/2022-09/SBA%20OIG%20Report%2022-22.pdf>.

⁶² P.L. 116-260, §332.

Issues for Congress

The PIIA requires DNP to include certain databases for federal agencies to review to verify eligibility.⁶³ The director of the Office of Management and Budget (OMB) or his or her designee⁶⁴ may specify other databases for use by DNP. As of February 2023, DNP includes 20 databases from commercial, nonprofit, and federal government data sources.⁶⁵

In its FY2024 Congressional Budget Justification, Treasury includes several legislative proposals that would expand DNP's access to additional datasets.⁶⁶

One of Treasury's proposals is to permit DNP to facilitate the exchange of National Directory of New Hires (NDNH) data when an agency is authorized by the Social Security Act to access NDNH. This data would identify individuals who are receiving federal payments, are ineligible to receive payments, or are receiving erroneous payments. There have been concerns that effective use of NDNH data by some types of programs might be hindered by computer capacity or capability to use NDNH.⁶⁷ Thus, DNP might facilitate access to NDNH data in a way that addresses these concerns.

A second proposal from Treasury calls for an amendment to the Fair Credit Reporting Act⁶⁸ to authorize DNP to use data aggregators, such as credit reporting agencies, for income and residency data to verify eligibility and assist agencies and programs, such as Supplemental Nutrition Assistance Program and Medicaid, in identifying improper payments. States may currently request data from the Social Security Administration (SSA) for income and eligibility purposes in the administration of federally funded programs.⁶⁹ The U.S. Postal Service also maintains all change of address requests and provides access to corresponding data on such address changes for a fee to certain types of companies.⁷⁰

Modernize Identity Verification Systems⁷¹

The proposal states that the Administration will provide at least \$300 million to modernize identity verification systems to *prevent* identity theft in public benefits. Specifically, the funding

⁶³ 31 U.S.C. §3354(a)(2). These databases include (1) death records maintained by the commissioner of Social Security, (2) System for Award Management Exclusion Records of the General Services Administration, (3) Debt Check Database of the Treasury, (4) Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development, (5) List of Excluded Individuals/Entities of the Department of Health and Human Services, and (6) certain information regarding incarcerated individuals maintained by the commissioner of Social Security. *Ibid.*

⁶⁴ This person must also be the head of an executive agency.

⁶⁵ Federal data sources include those that are publicly available as well as those whose access is restricted.

⁶⁶ Department of the Treasury, Bureau of Fiscal Service, *Congressional Budget Justification and Annual Performance Plan and Report FY 2024*, <https://home.treasury.gov/system/files/266/17.-Fiscal-Service-FY-2024-CJ.pdf>, p. 10.

⁶⁷ For more information, see CRS Report RS22889, *The National Directory of New Hires: In Brief*, pp. 8-9.

⁶⁸ 15 U.S.C. §1681 et seq.

⁶⁹ 42 U.S.C. §1320b-7. The exchange and use of such data is regulated by the Computer Matching and Privacy Protection Act of 1988 (P.L. 100-503), which is discussed in CRS Report R47325, *Computer Matching and Privacy Protection Act: Data Integration and Individual Rights*.

⁷⁰ U.S. Postal Service, *Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management*, Section C. Index of Systems of Records, Part II. Customer Systems, 800.000, https://about.usps.com/handbooks/as353/as353apdx_041.htm#ep1181400. See also U.S. Postal Service, "NCOALink," <https://postalpro.usps.com/mailling-and-shipping-services/NCOALink>.

⁷¹ This section authored by Clare Cho, Analyst in Industrial Organization and Business, and Natalie Ortiz, Analyst in Government Organization and Management.

would “facilitate improved data sharing” and enhance “attribute validation services.” These two objectives could be accomplished using different approaches, including

- directing a specific federal agency to validate information provided by other federal government agencies or nonfederal administrators of a public benefit program,
- matching multiple attributes of an individual using multiple datasets from various sources, and
- establishing policies for the components of an identity that must be validated by public benefits programs.

Issues for Congress

Congress may consider which federal agency or agencies would verify an individual’s identity. Some agencies already offer identity verification services for some entities. For example, SSA offers several verification services to federal and state agencies using various legal authorities, including verifications through the State On-line Query/State On-line Query-Internet and State Verification and Exchange System.⁷² The General Services Administration (GSA) provides an identification service—Login.gov—to some federal agencies as well as state, local, and territory governments.⁷³

Depending on the number of verifications an agency would be expected to perform, some agencies may need additional funding or support to facilitate data exchanges and validate identities. Some agencies rely on the institution requesting an identity verification to pay a fee for the service. For example, SSA uses reimbursable agreements in combination with other data exchange agreements⁷⁴ and generally considers the return on investment for any data exchange.⁷⁵ Login.gov charges users a cost-recovery fee to provide its services.⁷⁶

Congress may also consider how to match records across datasets. Some government agencies and entities in the private sector rely on Social Security Numbers (SSN) to identify individuals, but a government-wide initiative has attempted to reduce the collection, use, and display of SSNs to help protect against identity theft.⁷⁷ While the federal government could create a separate unique identifier that is not the SSN, each agency would need to use the same identifier to match the data and verify it, which could raise the same identity theft concerns as SSNs. Alternatively, Congress may consider combining multiple sources of identity in verification processes. Any identification number, however, may also be at risk of theft.

Identity verifications performed by federal agencies may be considered *matching programs*—computerized comparisons of information to determine eligibility for a federal benefit program.⁷⁸ If Congress were to legislate a role for a particular federal agency or agencies or establish a particular federal process to verify identity for a benefit program, Congress may need to

⁷² SSA, “Data Exchange Applications,” <https://www.ssa.gov/dataexchange/applications.html>.

⁷³ GSA, “Does Login.gov partner with state, local, and territory governments?,” Login.gov, <https://www.login.gov/partners/faq/#a-5>.

⁷⁴ SSA, “Administrative Agreements,” https://www.ssa.gov/dataexchange/agreement_types.html.

⁷⁵ SSA, “Data Exchange,” <https://www.ssa.gov/dataexchange/index.html>.

⁷⁶ GSA, “Funding and Cost Recoverability,” Login.gov Handbook, <https://handbook.login.gov/articles/cost-recoverability.html>.

⁷⁷ GAO, Social Security Numbers: OMB Actions Needed to Strengthen Federal Efforts to Limit Identity Theft Risks by Reducing Collection, Use, and Display, July 2017, <https://www.gao.gov/assets/gao-17-553.pdf>.

⁷⁸ 5 U.S.C. §552a(a)(8).

determine whether identity verifications should be considered a matching program or not for the purposes of the Computer Matching and Privacy Protection Act of 1988.⁷⁹ Among several other provisions that create administrative processes to protect individual privacy, the act requires a federal agency to execute a matching agreement with another government entity,⁸⁰ which takes time to develop and expires on a time interval specified in the law.⁸¹

Congress may consider whether the identity verification processes used by state governments to administer federal benefit programs should conform to the prevailing standards for digital identity verification—such as those developed by National Institute of Standards and Technology (NIST)⁸²—and how to balance the federal government’s involvement in particular processes that states use.

Increase Funding for Some OIGs⁸³

The proposal states that the Administration will seek \$150 million in additional funding for select OIGs that are “under-resourced.” The proposal identifies the OIGs for the Department of Energy, Department of Agriculture, and Environmental Protection Agency as recipients of additional funding in the President’s budget proposal. The President’s budget for FY2024 includes budget increases for many OIGs, including \$14 million (12.8%) for the Department of Agriculture, \$79 million (92.0%) for the Department of Energy, and \$20 million (46.6%) for the Environmental Protection Agency.⁸⁴

Expand and Formalize “Gold Standard” Meetings⁸⁵

In December 2021, OMB issued a memorandum that encouraged agencies to discuss preventing improper payments and other risks with their OIGs during the implementation of infrastructure programs.⁸⁶ At the time, OMB reported that working with OIGs to manage risks earlier in the policy implementation process was a “lesson learned” from the early implementation of pandemic relief programs.⁸⁷ In April 2022, OMB included this strategy in its guidance on the implementation of infrastructure legislation passed during the 117th Congress.⁸⁸

These risk management meetings are now termed “Gold Standard” meetings by the Administration. OIG expertise in both auditing programs and investigating fraud may help guide agencies to program designs and implementation plans that are less vulnerable to fraud. The

⁷⁹ P.L. 100-503.

⁸⁰ 5 U.S.C. §552a(o).

⁸¹ For more information on the act, its provisions, and matching agreements, see CRS Report R47325, *Computer Matching and Privacy Protection Act: Data Integration and Individual Rights*.

⁸² For more information on these standards, see NIST, *Digital Identity Guidelines*, SP 800-63-3, June 2017. NIST is in the process of revising these guidelines, and it has issued a draft revision that will eventually supersede current standards. As of June 2023, no date has been set for when the revision will be finalized.

⁸³ This section authored by Ben Wilhelm, Analyst Government Organization and Management.

⁸⁴ OMB, *Budget of the United States, Fiscal Year 2024, Budget Appendix*, March 2023, pp. 69, 404-405, 1083, https://www.whitehouse.gov/wp-content/uploads/2023/03/appendix_fy2024.pdf.

⁸⁵ This section authored by Ben Wilhelm, Analyst Government Organization and Management.

⁸⁶ OMB, *Promoting Accountability through Cooperation among Agencies and Inspectors General*, December 3, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-04-IG-Cooperation.pdf>.

⁸⁷ See CRS Insight IN11863, *OMB Issues New Guidance on Agency Engagement with Inspectors General*.

⁸⁸ OMB, *Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act*, April 29, 2022, pp. 3-4, <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-12.pdf>.

proposal states that these meetings have led to “major new anti-fraud controls” and suggests that the Administration will apply the model to “new major programs.”

Issues for Congress

Congress may benefit from learning more about how these meetings are organized and how agencies use OIG recommendations. Congress may also gather information on the effectiveness of the meetings as a risk management tool. In addition to ensuring that these meetings are worth the time and resources, Congress may benefit from the knowledge that is developed and exchanged. Congress is a key stakeholder in preventing fraud as it designs programs through legislation and conducts oversight.

Additionally, while the Inspector General Act provides that one function of OIGs is to recommend anti-fraud policies to agency leadership,⁸⁹ Congress may monitor these engagements to ensure that they do not undermine the independence of OIGs. Independence relies upon all the involved stakeholders, including Congress, to ensure that OIGs can conduct their audits and investigations with appropriate separation from agency leaders and that they are not involved in agency decision-making.

Improve State Unemployment Insurance Systems⁹⁰

The COVID-19 pandemic and resulting economic recession triggered a robust response from the federal-state UI system. Permanent-law UI programs—Unemployment Compensation and Extended Benefits—automatically responded to the mass layoffs and business closures at the onset of the COVID-19 pandemic. Additionally, Congress authorized a suite of temporary (now-expired), augmented, and expanded UI benefits in response to COVID-19: Federal Pandemic Unemployment Compensation, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, and Mixed Earner Unemployment Compensation.⁹¹ Program integrity issues have long been of concern for the permanent-law UI programs. The enhanced UI benefits created in response to COVID-19 exacerbated program integrity concerns related to improper payments and fraud.⁹²

All UI programs and benefits are administered by states with oversight performed by DOL ETA. The Biden Administration’s anti-fraud proposal includes two sets of UI-specific policies intended to improve state UI administration: (1) legislative reforms to strengthen UI program integrity, as detailed in the President’s budget request for FY2024; and (2) DOL deployment of existing funding for states under the ARPA. (Two additional anti-fraud components—“Increasing Statutes of Limitations for Fraud Against Pandemic Programs” and “Ensure Department of Labor OIG Access to Multistate UI Data”—also involve UI programs and benefits and are summarized elsewhere in this report.)⁹³

⁸⁹ 5 U.S.C. §402(b)(2).

⁹⁰ This section was authored by Katelin Isaacs, Specialist in Income Security, and Julie Whittaker, Specialist in Income Security.

⁹¹ For details on all of these UI programs and benefits, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

⁹² For an overview of UI program integrity fraud concerns, see CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*; and CRS Insight IN12117, *Unemployment Insurance Fraud: Background and Recent Data*. For additional background on this policy issue, see CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*.

⁹³ For more information on the President’s budget request for FY2024 and UI program integrity legislation in the 118th Congress, see CRS Report R47575, *Unemployment Insurance: Legislative Issues in the 118th Congress*.

Legislative Reforms in President's Budget Request for FY2024

As noted in the Administration's proposal, the President's budget for FY2024 includes a "package of legislative reforms to more effectively prevent, detect, and recover improper payments." These legislative changes to improve UI program integrity would⁹⁴

- Codify the requirement for states to use data matching with NDNH (administered by the Department of Health and Human Services) and the Prisoner Update Processing System (administered by the SSA) to ensure that UI benefits are correctly paid only to eligible individuals in a timely manner.⁹⁵
- Require states to disclose information to the DOL OIG in order to streamline its ability to conduct audits and investigations of the UI system. This includes authorizing DOL OIG to have direct access to the Interstate Connection Network, which is used for the electronic transmission of interstate claims, as well as the Integrity Data Hub system, which is used in cross-matching UI claimants against other databases to prevent and detect fraud and improper payments.⁹⁶
- Allow the Secretary of Labor to require a portion of the state's administrative grant be used to correct failing performance and/or require the state to participate in technical assistance activities offered by DOL.⁹⁷
- Authorize states to retain up to 5% of recovered fraudulent UI overpayments for program integrity use.⁹⁸
- Require states to use penalty and interest collections solely for UI administration.⁹⁹
- Authorize a state to issue a formal warning when a UI claimant is unclear on the work search requirements.¹⁰⁰

⁹⁴ DOL, "FY2024 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations," pp. 24-26, <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-07.pdf>.

⁹⁵ One way that states can ensure that UI benefits are correctly paid to eligible individuals in a timely manner is by accessing available data sources to match claimant information with eligibility-related characteristics. States are currently required, via *DOL program guidance*, to use NDNH to make sure, for instance, that UI claimants have not returned to work. (For permanent-law UI programs, see DOL, ETA, "National Effort to Reduce Improper Payments in the Unemployment Insurance (UI) Program," June 10, 2011, <https://wdr.doleta.gov/directives/attach/UIPL/UIPL19-11.pdf>; and DOL, ETA, "National Directory of New Hires (NDNH) and State Directory of New Hires (SDNH) Guidance and Best Practices," June 17, 2019, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-19.pdf.) Yet there is currently *no statutory requirement* for states to use NDNH or several other related data cross-matches.

⁹⁶ For background on recent DOL OIG challenges related to direct access to state UI data, see the section on "Data Access" available at <https://www.oig.dol.gov/doloiguioversightwork.htm>.

⁹⁷ For an overview of the federal funding of state UI administration, see CRS In Focus IF10838, *Funding the State Administration of Unemployment Compensation (UC) Benefits*.

⁹⁸ For an overview of UI fraud recovery issues, see CRS Insight IN12127, *Unemployment Insurance Overpayment and Fraud Recovery and H.R. 1163*.

⁹⁹ In some situations, states apply fines and civil penalties when fraud is involved with UI benefit overpayments. See DOL, *2022 Comparison of State Unemployment Insurance Laws*, Table 6-3, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/overpayments.pdf#page=6>.

¹⁰⁰ Under federal law (Social Security Act §303(a)(12)), each state's UI laws must require individuals to be able to work, available for work, and actively seeking work as a condition of benefit eligibility among other requirements.

- Allow states to use contract support in recovery efforts under the Treasury Offset Program.¹⁰¹

Deployment of ARPA Funding

Section 9032 of ARPA, which created a new Section 2118 of the CARES Act, as amended,¹⁰² provided \$2 billion in additional UI administrative funding to DOL in FY2021 to “detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits.” This funding is available until expended and may be used for (1) federal administrative costs, (2) system-wide infrastructure, and (3) grants to states and territories administering all UI benefits for program integrity and fraud prevention purposes, including for identity verification and faster claims processing.

As of March 2, 2023, according to the Administration’s proposal, \$1.6 billion of this ARPA funding was projected to have been made available to states by June 2023,¹⁰³ including

- \$246 million for “tiger teams to help states identify risks and implement fraud prevention solutions, such as improved identity verification,”¹⁰⁴
- \$380 million for anti-fraud grants and identity theft prevention,¹⁰⁵
- \$600 million to modernize state IT systems,¹⁰⁶
- \$100 million for “solutions to help states reduce common mistakes and improper payments,” and
- \$249 million for “equity enhancements that improve payment accuracy.”¹⁰⁷

Section 24 of the Fiscal Responsibility Act of 2023,¹⁰⁸ however, rescinds \$1 billion in unobligated funding from Section 2118 of the CARES Act, as amended. According to DOL, this rescission reduces the \$2 billion ARPA funding to \$1 billion. Approximately \$500 million remains to be awarded via grants to states or use for investments in system-wide infrastructure.¹⁰⁹

¹⁰¹ Under federal law (Social Security Act §303(m)), states must recover UI overpayments due to fraud and overpayments due to misreported work from an individual’s federal income tax refund through the Treasury Offset Program. States may use contractors for recovery of state unemployment tax debts but are prohibited from using contractors for recovery of UC and EB payments. For details, see DOL, ETA, “Recovery of Certain Unemployment Compensation Debts under the Treasury Offset Program,” December 12, 2018, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-02-19>.

¹⁰² 15 U.S.C. §9034(a).

¹⁰³ According to direct communication with DOL on June 2, 2023, however, the funds are not considered obligated until states have applied for and received funding through a notice of reward. As of June 2, 2023, approximately \$500 million of the \$2 billion in funding has been obligated.

¹⁰⁴ See DOL, *Tiger Team Updates*, <https://www.dol.gov/agencies/eta/ui-modernization/tiger-teams>.

¹⁰⁵ DOL, *Tiger Team Updates*.

¹⁰⁶ See DOL, *Unemployment Insurance Modernization*, <https://www.dol.gov/agencies/eta/ui-modernization#examples>.

¹⁰⁷ See, for example, DOL, “US Department of Labor Announces up to \$200M in Available Grants to States to Strengthen Unemployment Insurance Programs; Prevent, Detect Fraud,” press release, April 27, 2023, <https://www.dol.gov/newsroom/releases/eta/eta20230427-0>; and DOL, “Promoting Equitable Access to Unemployment Compensation Programs: Overview of State Equity Grants,” https://oui.doleta.gov/unemploy/pdf/AIR_ARPA_StateEquityGrantsSummaryMemo_Final.pdf.

¹⁰⁸ P.L. 118-5 (enacted June 3, 2023).

¹⁰⁹ Email communication with DOL, May 31, 2023.

Issues for Congress

Some of the legislative reforms proposed by the Biden Administration are long-standing UI program integrity proposals.¹¹⁰ For example, codifying the requirement for states to use NDNH and other data matching has been part of a suite of UI program integrity proposals included in budgets from both the Trump and Biden Administrations,¹¹¹ a legislative recommendation from DOL OIG,¹¹² and legislation introduced in the 117th Congress.¹¹³

On May 11, 2023, the House passed the Protecting Taxpayers and Victims of Unemployment Fraud Act (H.R. 1163) after the House Committee on Rules added an amendment on May 10, 2023. As passed by the House, H.R. 1163 includes the proposal to codify the requirement for states to use NDNH and other data matching. This version of H.R. 1163 also includes the proposal to authorize states to retain up to 5% of recovered overpayments of permanent-law UI benefits and use those retained amounts for certain program integrity purposes, among other proposals.¹¹⁴

Helping Identity Theft Victims

GSA Pilot of Identity Theft “Early Warning System”¹¹⁵

The President’s proposal requests funding that would enable GSA to create government-wide recommendations for an early warning system and pilot this system with certain agencies. The early warning system would notify individuals and entities when their identity information is being used to access federal or state public benefits programs. Upon receiving this notification, the individual or entity may flag fraudulent transactions and report them to law enforcement.¹¹⁶

GSA currently offers agencies identity protection services via the multiple award schedule (also known as the federal supply schedule), but these services do not include an early warning

¹¹⁰ For a longer discussion of UI program integrity policy options, see the section on “Tools to Address Program Integrity Concerns” in CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*.

¹¹¹ The President’s detailed budget proposal for UC in FY2021 is accessible at <https://www.dol.gov/general/budget/index-2021>. The President’s budgets for FY2019 and FY2020 included substantively similar UC proposals and are accessible at <https://www.dol.gov/general/budget/index-2019> and <https://www.dol.gov/general/budget/index-2020>.

¹¹² See DOL OIG, “OIG Oversight of the Unemployment Insurance Program,” <https://www.oig.dol.gov/doloiguioversightwork.htm>.

¹¹³ For example, in the 117th Congress, see S. 1699, S. 4507, H.R. 3268, H.R. 8000, and H.R. 8661. For additional information on UI program integrity bills introduced in the 117th Congress, see CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*, and CRS Report R47393, *Unemployment Insurance: Legislative Issues in the 117th Congress, Second Session*.

¹¹⁴ In addition, H.R. 1163, as passed by the House, would impact the \$2 billion in ARPA funding for DOL. This legislation would repeal Section 2118 of the CARES Act, as amended, which would eliminate the remaining unobligated funding for UI program integrity purposes. It would also deposit an amount equal to the retained recovered overpayments (from permanent-law UI benefits) into the state’s account in the federal Unemployment Trust Fund. (For information on the federal Unemployment Trust Fund, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.) These new deposits would be paid for by redirecting the rescinded, unobligated funds. The Fiscal Responsibility Act of 2023 (P.L. 118-5; enacted June 3, 2023), however, has already provided for a \$1 billion rescission of unobligated funds from the \$2 billion in UI ARPA funding.

For additional details on current law with regard to UI overpayment and fraud recovery as well as additional provisions of H.R. 1163, see CRS Insight IN12127, *Unemployment Insurance Overpayment and Fraud Recovery and H.R. 1163*.

¹¹⁵ This section authored by Dominick Fiorentino, Analyst in Government Organization and Management.

¹¹⁶ The White House, “Fact Sheet: President Biden’s Sweeping Pandemic Anti-Fraud Proposal.”

system.¹¹⁷ Additionally, the President's budget request for FY2024 did not request additional GSA funding to support an early warning system pilot.

Issues for Congress

If Congress is interested in establishing an early warning system pilot program at GSA, additional appropriations and authorities may be required. Additionally, in light of recent deficiencies at GSA related to management of its Login.gov services, Congress may consider oversight options related to the pilot program. In March 2023, the GSA OIG found that GSA knowingly misled customer agencies about Login.gov's known noncompliance with the NIST digital identity guidelines.¹¹⁸

Enhancing IdentityTheft.gov¹¹⁹

In 1998, Congress passed the Identity Theft and Assumption Deterrence Act of 1998,¹²⁰ which criminalized identity theft at the federal level. The act also provided penalties for individuals who either committed or attempted to commit identity theft and provided for forfeiture of property used or intended to be used in the fraudulent use of stolen identities. It also directed the Federal Trade Commission (FTC) to establish a "centralized complaint and consumer education service for victims of identity theft."¹²¹ As part of this centralized complaint system, the act specifically directed FTC to establish procedures to (1) collect complaints from individuals who reasonably believed they were victims of identity theft, (2) disperse information about identity theft, and (3) refer complaints to appropriate law enforcement agencies and consumer reporting agencies. This centralized complaint system is available at IdentityTheft.gov. Reports of identity theft submitted through this system are housed in FTC's Consumer Sentinel report database, through which they can then be shared with appropriate entities.¹²² In 2022, the FTC received 5.2 million fraud reports, including 1.1 million identity theft reports.¹²³

In October 2014, Executive Order 13681, *Improving the Security of Consumer Financial Transactions*, directed federal agencies to work with FTC to enhance the functionality of IdentityTheft.gov, including to maintain consolidated resources for victims of identity theft and to streamline the reporting and remediation process.¹²⁴ In January 2016, FTC announced that it had made significant enhancements to IdentityTheft.gov, "allowing consumers who are victims of identity theft to rapidly file a complaint with FTC and then get a personalized guide to recovery

¹¹⁷ GSA, "Identity Protection Services," <https://www.gsa.gov/buy-through-us/products-services/professional-services/buy-services/identity-protection-services-ips>. The multiple award schedule is a list of goods and/or services provided by multiple GSA-selected vendors at various prices (41 U.S.C. §152(3)). Using competitive procedures, GSA awards indefinite delivery contracts to firms that, in turn, will provide goods or services through schedules.

¹¹⁸ GSA OIG, "GSA Misled Customers on Login.gov's Compliance with Digital Identity Standards," March 7, 2023, <https://www.gsaig.gov/content/gsa-misled-customers-logingovs-compliance-digital-identity-standards>.

¹¹⁹ This section authored by Kristin Finklea, Specialist in Domestic Security.

¹²⁰ P.L. 105-318.

¹²¹ This is codified at 18 U.S.C. §1028 note.

¹²² Statistics from the Consumer Sentinel database are available at <https://www.ftc.gov/news-events/topics/identity-theft>.

¹²³ FTC, *Identity Theft Reports*, <https://public.tableau.com/app/profile/federal.trade.commission/viz/IdentityTheftReports/TheftTypesOverTime>.

¹²⁴ Executive Order 13681, "Improving the Security of Consumer Financial Transactions," October 17, 2014.

that helps streamline many of the steps involved.”¹²⁵ Previously, the site had not allowed consumers to transition directly from filing complaints to receiving personalized recovery plans.

The Biden Administration’s proposal indicates that it will support FTC’s enhancements of IdentityTheft.gov to serve both purposes of (1) acting as a site to report identity-related crimes and (2) offering personalized identity theft recovery assistance to victims.¹²⁶ Details on forthcoming enhancements are not yet publicly available.

Offering Grants for Additional Services to Victims of Identity Theft¹²⁷

The Crime Victims Fund (CVF)¹²⁸ was established by the Victims of Crime Act of 1984 (VOCA)¹²⁹ to provide funding for state victim compensation and assistance programs. VOCA has been amended several times to support additional victim-related activities, but the primary two grant programs funded by the CVF remain the Victim Compensation and Victim Assistance formula grant programs. DOJ’s Office for Victims of Crime (OVC) administers these programs.¹³⁰ Of these two programs, the Victim Assistance Formula Grant Program has been used to support victims of identity theft.¹³¹

Through the Victim Assistance Formula Grant Program, OVC provides grants to state crime victim assistance programs to administer funds for state- and community-based victim service program operations.¹³² The grants support direct services to crime victims, including information and referral services, crisis counseling, temporary housing, criminal justice advocacy support, and other assistance needs. States distribute assistance grants according to guidelines established by VOCA. States are required to prioritize the following groups: (1) underserved populations of victims of violent crime,¹³³ (2) victims of child abuse, (3) victims of sexual assault, and (4) victims of spousal abuse.¹³⁴

OVC has clarified through the rulemaking process that states may use victim assistance formula grant funds to support services for victims of identity theft, but they cannot count those services toward meeting the required allocation for the underserved victim category.¹³⁵ OVC has also

¹²⁵ FTC, “FTC Announces Significant Enhancements to IdentityTheft.gov,” press release, January 28, 2016, <https://www.ftc.gov/news-events/news/press-releases/2016/01/ftc-announces-significant-enhancements-identitytheftgov>.

¹²⁶ The White House, “Fact Sheet: President Biden’s Sweeping Pandemic Anti-Fraud Proposal.”

¹²⁷ This section was authored by Lisa Sacco, Analyst in Illicit Drugs and Crime Policy.

¹²⁸ Deposits to the CVF come from criminal fines, forfeited appearance bonds, penalties, and special assessments collected by the U.S. Attorneys’ offices, federal courts, and the Federal Bureau of Prisons. Since 2002, Congress has allowed gifts, bequests, and donations from private entities to be deposited into the CVF. Since July 2021, deposits include any funds that would otherwise be deposited in the general fund of the Treasury collected pursuant to a deferred prosecution agreement or a non-prosecution agreement. See 34 U.S.C. §20101.

¹²⁹ P.L. 98-473.

¹³⁰ For more information about VOCA and the CVF, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*.

¹³¹ VOCA compensation funds may not be used to compensate for property loss (with limited exceptions), so compensation formula grant funds are generally not used to compensate victims of identity theft and fraud. See DOJ, “Victims of Crime Act Victim Compensation Program,” 66 *Federal Register* 27162, May 16, 2001.

¹³² 34 U.S.C. §20103(c).

¹³³ States have flexibility in determining the populations of victims of violent crimes that may be deemed underserved in their respective states.

¹³⁴ 34 U.S.C. §20103(a).

¹³⁵ DOJ, OVC, “Victims of Crime Act Victim Assistance Program,” 81 *Federal Register* 44515-44535, July 8, 2016.

highlighted examples of how victim assistance formula grant funds may be used to support services to victims of identity theft and fraud, including

- developing policies and procedures for protecting victims' privacy;
- creating self-help materials for victims;
- developing an intake process for case management;
- supporting case handling and documentation;
- supporting legal assistance/pro bono representation;
- training victim service providers and allied professionals;
- building partnerships with federal, state, and local agencies and other organizations;
- supporting public awareness and outreach; and
- developing tools/resources for victims.¹³⁶

The Administration's proposal states that it will offer grants for additional services to victims of identity theft and fraud. OVC would administer these grants, and the "additional funding would be available to state and local non-profits and legal services organizations that provide direct services to victims ... and will help scale on-the-ground support for victims and existing partnerships."¹³⁷ The Administration did not indicate if these funds would come from the CVF or from appropriated funds from the Treasury. Further, the Administration did not clarify if these grants would be an expansion of the Victim Assistance Formula Grants or if they would be considered new discretionary grants.¹³⁸

¹³⁶ DOJ, OVC, *Expanding Services to Reach Victims of Identity Theft and Financial Fraud: Lessons from the Field*, October 2010, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/ID_theft/victimassistance.html.

¹³⁷ The White House, "Fact Sheet: President Biden's Sweeping Pandemic Anti-Fraud Proposal."

¹³⁸ VOCA also authorizes discretionary grants. According to VOCA, discretionary grants must be distributed for (1) demonstration projects, program evaluation, compliance efforts, and training and technical assistance services to crime victim assistance programs; (2) financial support of services to victims of federal crime; and (3) nonprofit victim service organizations and coalitions to improve outreach and services to victims of crime. OVC awards discretionary grants each year through a competitive application process. See 34 U.S.C. §20103(c).

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