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REPORT FRAUD
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KDOL Response to LPA First Audit - Summary

LPA's estimate of fraud is flawed in both its underlying assumptions and methodologies. LPA also misunderstands important distinctions between the new federal pandemic unemployment insurance programs and existing state unemployment insurance program. LPA also misunderstands KDOL's measures to combat fraud.

It cannot be emphasized enough that fraud has been occurring across all 50 states, Washington D.C., and United States territories, not just in Kansas. Conservative estimates by USDOL estimates that fraud across all state unemployment trust funds and the PUA program totals at least $36 billion. Kansas is not alone in the fight to protect the integrity of the UI program, and addressing UI fraud is of paramount importance to KDOL and the nation.

LPA's estimate of $600 million in potential fraud is seriously flawed, and should be withdrawn.

LPA's Estimate of Fraud

LPA estimated the level of potential fraud by taking the number of claims KDOL identified as fraudulent (157,000), dividing by the total number of initial claims filed between March through November of 2020 (650,000), to arrive at an estimated fraud rate of 24%.

LPA then applied this fraud rate to the total amount of benefits paid out in federal and state benefits ($2.6 billion) to arrive at an estimate of $600 million. In generating this estimate, LPA ignored several factors.

(1) **Not all of the 157,000 identified potential fraud claims paid out.** This number represents those claims that were flagged as potential fraud, and in a majority of cases were stopped before funds were paid on the claim. Therefore, applying the 24% number to payments made is flawed methodology.
(2) LPA then applied the flawed 24% calculation to all programs equally, not acknowledging that the new federal programs have different eligibility rules that make them more susceptible to fraud, and that the checks and balances in place differ between programs.

Despite these factors, LPA provided estimates of potential state and federal fraud. **LPA did not use the data KDOL provided to develop an estimate rooted in more realistic data**. For example, LPA could have taken the list of claimants with fraudulent codes placed and cross-referenced that with the list of payments made, then provided a margin of error.

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However, LPA did not use the data available to them and instead chose to use a flawed methodology that fundamentally misunderstands KDOL's fraud prevention process.

KDOL's Fraud Detection Efforts

KDOL has traditionally employed a number of fraud detection strategies, including the Social Security Administration Cross-Match tool and employer notices and response. Prior to the implementation of new federal programs, the primary form of fraud that KDOL experienced was in the form of non-identity-theft individual claim fraud (i.e., a claimant who kept collecting benefits after returning to work, or who applied for benefits while working "under the table.")

The new federal programs introduced the opportunity for identity theft when fraudsters use valid social security numbers and valid names—obtained through previous large nationwide data breaches like Target, Equifax, or the U.S. Office of Personnel Management—to file for unemployment insurance benefits.

This type of identity theft in unemployment claims is a nationwide problem. **The Audit needs to provide the national context for this issue, and the Audit should not suggest that KDOL was "clearly not well prepared to address" the spike in unemployment claims because it suggests some state was.**

KDOL's fraud detection processes complies with USDOL's guidance, and if LPA had examined the efficacy of these processes, LPA would have recognized that many of them—even if automated—would not have rapidly and proactively prevented, detected, and investigated fraudulent activity in the PUA program.

A more apt description is that KDOL was not sufficiently resourced to be in a position to respond to the demands of the new federal programs, which are now acknowledged to have been originally drafted with serious vulnerabilities for exploitation and fraud.

KDOL has been proactive in finding and stopping fraudulent claims and referring cases to federal partners for prosecution.

Federal Restrictions on Fraud Efforts

The original statute and guidance from the federal government instructed states not to require proof of employment or self-employment for PUA claimants. **Requiring claimants to provide documentation is one of the most effective anti-fraud tools, and KDOL was prevented by the US Department of Labor from utilizing it throughout 2020.**

Recognizing that states were hampered to combat PUA fraud, Congress amended the law on December 27, 2020. The updated law requires claimants to provide documentation to substantiate their employment or self-employment to be eligible to receive PUA. KDOL now requires all PUA claimants, those who previously received PUA payments and those who will file new PUA claims, to provide employment/self-employment documentation.

Other Factual Errors

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KDOL also identified numerous material factual inaccuracies in the Audit. A few call outs include that employers will not be charged for claims KDOL identifies as fraudulent; and that KDOL does not raise payroll taxes and that any increases are a function of the fund balance and by operation of law.

Since March 15, 2020 KDOL has paid out over 4 million weekly claims totaling over $2.7 billion between regular unemployment and the federal pandemic programs. For more information, or to apply for unemployment benefits, go to www.GetKansasBenefits.gov.

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