

U.S. Department of Labor

Office of the Chief Financial Officer  
Washington, D.C. 20210



July 2, 2021

**MEMORANDUM FOR:** CAROLYN R. HANTZ  
Assistant Inspector General for Audit

**FROM:** KEVIN L. BROWN   
Acting Chief Financial Officer

**SUBJECT:** Response to the Office of Inspector General's draft report "THE U.S. DEPARTMENT OF LABOR COMPLIED WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2020, BUT REPORTED UNEMPLOYMENT INSURANCE INFORMATION DID NOT REPRESENT TOTAL PROGRAM YEAR EXPENSES" (Report No. 22-21-007-13-001)

The Department of Labor's (DOL or the Department) Office of the Chief Financial Officer (OCFO) thanks the Office of Inspector General (OIG) for its annual review of the Department's compliance with requirements under the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and Payment Integrity Information Act of 2019 (PIIA), and for the opportunity to respond to its draft Fiscal Year (FY) 2020 report entitled "THE U.S. DEPARTMENT OF LABOR COMPLIED WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2020, BUT REPORTED UNEMPLOYMENT INSURANCE INFORMATION DID NOT REPRESENT TOTAL PROGRAM YEAR EXPENSES" (Report No. 22-21-007-13-001).

The Department appreciates the OIG's acknowledgement of the steps management has taken to become fully compliant with IPERA and PIIA standards for the first time since these standards were implemented. The Department is committed to good stewardship of public funds and takes seriously its responsibility to prevent, detect, and recover improper payments (IP) in its programs and to report fully and accurately on those efforts. However, we find that the title of this report and related statement that the reported Federal-State Unemployment Insurance (UI) program rate is "*not representative of the total unemployment expenses for program year 2020*" to be inaccurate and potentially confusing to readers. The Sampling and Estimation Methodology (Methodology) used by the Department accounted for all UI outlays for the 2020 program year.

The Pandemic led to an historic increase in Unemployment Insurance (UI) claims which severely squeezed State resources. To ensure limited State resources were focused on providing necessary benefits to unemployed workers during a national emergency, the Department, with the approval of the Office of Management and Budget (OMB), allowed an exception to the requirement that State UI benefit staff conduct payment integrity reviews from April 2020 through June 2020. This burden reduction initiative not only helped ensure the safety of State UI staff by eliminating the need to travel and physically meet at the same location early in the Pandemic, but also ensured staff could devote their full attention to providing unemployed workers the benefits for which they were eligible, and to implementing the new unemployment compensation benefits mandated by Congress. Under PIIA, OMB has the authority to approve changes to Agencies' Methodology Plans. OMB reviewed multiple options for the FY 2020 UI estimation and determined that extrapolating the payment integrity review sampling for the period July 1, 2019, to March 31, 2020 to the full 2020 outlays was the most appropriate means of reporting an IP

estimate within the constraints of the National Emergency. All UI outlays for the 2020 reporting period are included in the Department's payment integrity reporting, only the sampling for April-June 2020 (program year quarter 4) was limited. This limitation was clearly disclosed in DOL's FY 2020 Agency Financial Report (AFR) and associated PaymentAccuracy.gov reporting.

Additionally, the Department notes that the new temporary unemployment compensation benefits authorized by the Coronavirus Aid, Relief, and Economic Security Access (CARES) Act of 2020 were found to be separate from the Federal-State UI Program in FY 2020 and we agree with OIG's determination that IP information was not required to be published for these benefits prior to 12 full months of operations. In FY 2021 the Department, in consultation with OMB, will determine if these temporary benefits which are scheduled to lapse in September 2021 meet PIIA reporting requirements.

We thank and appreciate the OIG for their continued efforts in investigating and prosecuting suspected unemployment compensation fraud schemes. DOL will continue to work with states to implement payment integrity efforts, especially to combat fraud, while ensuring American workers in need receive benefits to which they are entitled.

*Recommendation #1: Maintain management's current focus on increasing its technical assistance and funding to states to improve the improper payment reduction strategies in order to ensure compliance with the improper payments estimate rate threshold.*

The OIG is correct to note that the Federal-State UI program reported an estimated improper payment rate of 9.17 percent – significantly less than the 10 percent compliance threshold for the FY 2020 reporting period.

The UI program is a federal-state partnership and the significant majority of UI payments are made by states, under state law, using state funds. In FY 2021, the Department will continue its efforts to improve implementation of an aggressive and ever evolving Program Integrity Strategic Plan to address the leading root causes of improper payments.

In FY 2020 one of the Department's Agency Priority Goals (APG) was to decrease UI improper payments. Specifically, the APG stated that by September 30, 2021, the UI improper payment rate will be 9.0 percent. In FY2020 the UI Program was well on the path to meeting this target. While the impact of Pandemic on Federal and State UI systems may delay achieving this goal by September 30, 2021, the Department is committed to addressing this complex and challenging issue.

As noted above, the historic increase in UI claims related to the Pandemic and the need to create entirely new processes for delivering unemployment compensation benefits mandated by the CARES Act, placed an unprecedented burden on State UI administrations. Therefore, the Department allowed a process exception for payment integrity review sampling for April-June Quarter 4 of 2020. Full payment integrity review sampling recommenced in Quarter 1 of 2021 and there is no reason to believe this concern will persist into FY 2021 reporting.

Despite the Department's efforts, certain program features serve as structural barriers that hinder states' ability to further reduce IP. Section 303(a)(1) of the Social Security Act requires states to make UI benefit payments "when due". The presumption of continued eligibility after the initial eligibility is determined requires states to provide a claimant notice

and the opportunity to be heard before it can stop payments to the individual.<sup>1</sup> As OIG has pointed out, this creates structural issues which further impact the top three root causes of IP.

There are strong public policy reasons for these program design and structural requirements. They promote the effectiveness of the critical UI safety net by getting benefit payments to eligible unemployed individuals for whom suitable work is not available during periods between jobs. Additionally, by providing temporary partial wage replacement, the program plays a vital role in maintaining purchasing power and in stabilizing local economies during periods of economic downturn.

The Department believes strategic efforts to reduce the IP rate constitute a strong and cost effective approach to improving financial integrity in the Federal-State UI partnership and we look forward to collaborating with the OIG and other stakeholders to do more.

*Recommendation #2: We recommend that DOL management develop procedures to ensure changes to its improper payment process are communicated to OMB in a timely manner and those communications are properly maintained for subsequent review and inspection.*

The Department acknowledges that OMB circular A-123 Appendix C<sup>2</sup> required that changes to Agencies' Sampling and Estimation Methodology Plans be submitted by June 30 of the reporting year. In FY 2020 the emergency process exception for Quarter 4 sampling began informally with OMB prior to this date. However, the nature of the final reporting was not formally approved by OMB until October of 2020. Unfortunately, given the historic nature of the increase in unemployed workers in the spring and early summer of 2020, and the need to ensure that benefits continued to flow to these individuals, the Department was not able to formally meet the deadline in OMB guidance to submit this process exception to the UI Program's Methodology. In discussing this process exception with OMB and in their subsequent formal approval, OMB expressed no concerns regarding this timeline issue. We thank the OIG for recognizing in this Report that this process was compliant with legal requirements.

The Department policy and procedures indicated at the time and continue to require that IP reporting agencies submit changes to Sampling and Estimation plans in advance of the June 30 deadline. In FY 2021, OCFO will request reporting agencies certify in advance of the deadline that, based on current conditions, no changes to their Sampling and Estimation Plan is required. Under PIIA, OMB has the authority to approve Sampling and Estimation Plans and requires no specific timeline to do so.

*Additional Improvement Observation: We suggest that DOL enhance its process for selecting the estimation methodology for new programs. Specifically, DOL should evaluate proposed methodologies and ensure the underlying data will be available and sufficient to properly estimate an annual amount of improper payments for the associated program.*

The Department appreciates OIG's observations and recognizes there is always potential for improvement. OCFO and ETA recognized and reported in both the FY 2019 and 2020 AFR limitations in the Single Audit Act reporting used to estimate an IP rate per the

<sup>1</sup> See *California Dep't of Human Res. Dev. v. Java*, 402 U.S. 121, 130-35 (1971).

<sup>2</sup> M-18-20, June 26, 2018. <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-20.pdf>

Sampling and Estimation Methodology used for the National Disaster Workforce Grant program. DOL notes that this Methodology is materially identical to the estimation process used for previous DOL grants and disaster response programs, and was approved by OMB for four different programs. However, should the Department be required to implement similar payment integrity reporting in the future, we will consult OIG experts during the development of a new Sampling and Estimation Methodology Plan.

If you have any further questions or require additional information on the Department's payment integrity efforts, please contact myself or Chris Polen at (202) 693-6800.