U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE OFFICE OF THE CHIEF FINANCIAL OFFICER

THE U.S. DEPARTMENT OF LABOR DID NOT MEET THE REQUIREMENTS FOR COMPLIANCE WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2022

KPMG LLP's report included herein was prepared under contract with the U.S. Department of Labor, Office of Inspector General, and by acceptance, it becomes a report of the Office of Inspector General.

Carolyn R. Hantz

Assistant Inspector General for Audit
U.S. Department of Labor

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Office of Inspector General
Washington, D.C. 20210

INSPECTOR GENERAL'S REPORT

June 9, 2023

Mr. Kevin Brown
Deputy Chief Financial Officer
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

The United States Department of Labor (DOL) Office of Inspector General (OIG) contracted with the independent certified public accounting firm of KPMG LLP (KPMG) to conduct a performance audit related to DOL's compliance with the Payment Integrity Information Act of 2019 (PIIA) for Fiscal Year (FY) 2022, which was the year ended September 30, 2022.

The objective of KPMG's performance audit was to evaluate DOL's compliance with the requirements of PIIA as defined in Title 31 of the United States Code (U.S.C), section 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of the Office of Management and Budget;

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial

statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

KPMG concluded DOL met four of the six requirements for compliance with PIIA for the Unemployment Insurance (UI) program, two of the six requirements for the Pandemic Unemployment Assistance (PUA) program, and all six requirements for the Federal Employees' Compensation Act (FECA) program as shown in the table below.

The following criteria was addressed by KPMG:

Table 1: OMB Compliance Status Table[1]

			Criteria Met?	
	OMB Compliance Criteria	**Unemployment Insurance**	**Pandemic Unemployment Assistance**	**Federal Employees' Compensation Act**
1	Published payment integrity information with the annual financial statement and in the accompanying materials to the annual financial statement of the agency for the most recent FY in accordance with OMB guidance	YES	YES	YES
	Posted the annual financial statement and accompanying materials required under guidance of OMB on the agency website	YES	YES	YES
2	Conducted improper payment risk assessments for each program with annual outlays greater than $10,000,000 at least once in the last three years	YES	YES	YES
	Adequately concluded whether the program is likely to make improper payments (IPs) and unknown payments (UPs) above or below the statutory threshold	YES	YES	YES
3	Published IP and UP estimates for programs susceptible to significant IPs and UPs in the accompanying materials to the annual financial statement	YES	NO	YES

[1] This table, which presents the specific details of each PIIA criteria, is required by OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*.

4	Published corrective action plans for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement	YES	NO	YES
5	Published an IP and UP reduction target for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement	NO	NO	YES
	Demonstrated improvements to payment integrity or reached a tolerable IP and UP rate	NO	NOT APPLICABLE	YES
	Developed a plan to meet the IP and UP reduction target	YES	NO	YES
6	Reported an IP and UP estimate of less than 10 percent for each program for which an estimate was published in the accompanying materials to the annual financial statement	NO	NO	YES

As noted in our prior year report,[2] DOL continued to report the State Unemployment Insurance program, which includes the Pandemic Emergency Unemployment Compensation program and the Federal Pandemic Unemployment Compensation payment activity collectively as one program—the UI program—based on OMB's approval.

KPMG noted the UI program did not meet requirement 5, as it did not demonstrate improvement from the improper payment target rate published in FY 2021. DOL reported a 21.52 percent improper payment rate and an unknown[3] payment rate of 0.68 percent for a combined total rate of 22.20 percent in FY 2022 for the UI program compared to a combined total rate of 18.92 percent in FY 2021. As the rate was above 10 percent, the UI program also did not meet Requirement 6.

In addition to not meeting requirements 5 and 6, the PUA program also did not meet requirement 3 to publish improper payment (IP) and unknown payment (UP) estimates for programs susceptible to significant IPs and UPs and did not meet requirement 4 to publish corrective action plans. Although DOL determined PUA to be susceptible to improper payments in FY 2021, DOL did not include PUA improper payment information in its FY 2022 reporting. OMB stated the initial PUA methodology required further analysis and requested DOL continue working to develop a sufficient methodology. The PUA program had outlays of $18.9 billion for the 2022 program year, and $137.7 billion since its inception in FY 2020.

[2] Report No. 22-22-007-13-001, *The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2021*

[3] An unknown payment is defined as a payment that could be either proper or improper, but the agency is unable to discern whether the payment was proper or improper as a result of insufficient or lack of documentation.

We note that management's response disagreed with the inclusion of the PUA program in the analysis of improper payments, as well as the conclusion noted for criteria 5 of the PIIA. As highlighted in KPMG's report, the OMB guidance and data call instructions support the conclusions reached.

We appreciate the cooperation and courtesies the Office of the Chief Financial Officer, Employment and Training Administration, and Office of Workers' Compensation Programs extended KPMG and the OIG during this audit.

Carolyn R. Hantz
Assistant Inspector General for Audit

PERFORMANCE AUDIT REPORT

KPMG LLP
Suite 12000
1801 K Street, NW
Washington, DC 20006

Acting Secretary and Inspector General
U.S. Department of Labor

This report presents the results of our work conducted to address the performance audit objective related to the United States Department of Labor's (DOL) compliance with the requirements contained in the Payment Integrity Information Act of 2019 (PIIA). Our work was primarily performed during the period of January 25, 2023, through May 24, 2023, and our scope period was for the fiscal year ended September 30, 2022.

We conducted this performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and the American Institute of Certified Public Accountants' *Standards for Consulting Services*. *Government Auditing Standards* require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The objective of our audit was to evaluate DOL's compliance with the requirements of PIIA as defined in Title 31 of the United States Code (U.S.C.), section 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of the Office of Management and Budget (OMB);

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

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(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

Based on the performance audit procedures conducted and the results obtained, we have met our audit objective. Specifically, we evaluated DOL's compliance with PIIA and determined the following:

Table 2: PIIA Criteria

			Criteria Met?	
	PIIA Criteria	**Unemployment Insurance**	**Pandemic Unemployment Assistance**	**Federal Employees' Compensation Act**
1	Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB	YES	YES	YES
2	Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required)	YES	YES	YES
3	Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required)	YES	NO	YES

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		Criteria Met?		
	PIIA Criteria	**Unemployment Insurance**	**Pandemic Unemployment Assistance**	**Federal Employees' Compensation Act**
4	Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement	YES	NO	YES
5	Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets	NO	NO	YES
6	Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c)	NO	NO	YES

We noted DOL continued to report the Federal State Unemployment Insurance (SUI) program, which included the Federal Pandemic Unemployment Compensation (FPUC) payment activity, and the Pandemic Emergency Unemployment Compensation (PEUC) program collectively as one program—the unemployment insurance (UI) program—for fiscal year (FY) 2022. In reporting the improper payment information for the PEUC and FPUC outlays, DOL utilized the improper payment rate obtained from its Benefit Accuracy Measurement sampling methodology for the SUI program.

The Pandemic Unemployment Assistance (PUA) program was determined susceptible to improper payments based on the risk assessment DOL performed in FY 2021. DOL submitted a Sampling and Estimation Methodology Plan (S&EMP) for estimating the PUA program's improper payment rate and amount to the OMB in June 2022. In October 2022, OMB requested that DOL conduct further analysis to ensure the plan met all the requirements of the PIIA. As such, DOL did not include PUA improper payment information in the FY 2022 reporting.

Management's response to our report is included as Appendix A. In their response, management disagreed with the inclusion of the PUA program as part of the FY 2022 PIIA reporting, as well as our conclusion of PUA program noncompliance with criteria 5 of the PIIA, because they interpret the trigger for reporting as the

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acceptance of the S&EMP by OMB and the required reduction target reporting of criteria 5 to be the year subsequent to the publication of a baseline IP rate. We note, however, that OMB guidance states it is the OIG's responsibility to determine compliance,[4] and that OMB does not issue formal approval to agencies over their S&EMP.[5]

Furthermore, with regards to the disagreement with criteria 5, we note that OMB's data call instruction workflow[6] requires a reduction target to be included with the data call if the agency establishes a baseline and does not specifically state reporting should occur in the subsequent year. Lastly, although management stated in their response that the pandemic programs have expired, we note that payments for those programs have continued and there were approximately $694.7[7] million in benefits paid after the end of the 2022 program year covered by this report. These payments would be subject to reporting and the implementation of our recommendations. The conclusions in our report were not changed as a result of management's response.

This performance audit did not constitute an audit of financial statements or an attestation level report as defined under *Government Auditing Standards* or AICPA professional standards. KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate. This report is intended solely for the use of the DOL Secretary and Inspector General, Comptroller General of the United States, OMB, and relevant congressional committees; and is not intended to be and should not be relied upon by anyone other than these specified parties.

KPMG LLP

June 9, 2023

[4] OMB Circular No. A-123, Appendix C, Part II.B.2: The program will be responsible for producing an IP and UP estimate that is accurate and appropriate given program characteristics and it will be the OIG's responsibility to evaluate whether the explanation provided by the program and the S&EMP without point estimates and confidence intervals around those estimates warrants compliance during the annual OIG compliance review.
[5] OMB Circular No. A-123, Appendix C, Part II.B.7: It is important to note that OMB will not be issuing a formal approval to the agency for the statistically valid S&EMP as it is the agency's responsibility to produce a statistically valid S&EMP and load it to the appropriate Max site. … Once the agency has loaded the statistically valid S&EMP and accompanying checklist package to their Max site the agency may begin to execute the S&EMP.
[6] OMB FY2022 Payment Integrity Annual Data Call Instructions, Program Level Appendix, Current Year Results – Estimates and Targets Question Details
[7] Source: ETA data downloads: ETA 2112 reports for the period July 1, 2022 through April 30, 2023; data as of June 7, 2023.

BACKGROUND

The Payment Integrity Information Act of 2019 (PIIA) requires federal agencies to identify programs susceptible to significant improper payments, estimate the improper payments for those programs, and report on actions to reduce the improper payments in those programs. PIIA repealed several previous improper payment statutes, including the Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010; and the Improper Payment Elimination and Recovery Improvement Act of 2012. The Office of Management and Budget (OMB) is required to prescribe guidance on implementation of the requirements under PIIA. OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, was the applicable OMB guidance in effect for fiscal year (FY) 2022.

The United States Department of Labor (DOL) established an agency-wide risk assessment process to assess its programs with outlays over $10 million for susceptibility to significant improper payments. Each year, DOL assesses one third of all its programs to ensure each program is assessed at least once every three years. DOL's policies define significant improper payments as gross annual payments exceeding: (1) both 1.5 percent and $10 million of all program payments; or (2) $100 million regardless of percentage of program payments, which complies with the relevant OMB guidance.

Based on its risk assessment process, DOL identified three programs that were susceptible to significant improper payments for FY 2022. The programs identified were:

- the Federal State Unemployment Insurance (SUI) program, which included Federal Pandemic Unemployment Compensation (FPUC) payments and the Pandemic Emergency Unemployment Compensation (PEUC) program, (hereinafter referred to as the UI program);
- the Pandemic Unemployment Assistance (PUA) program; and
- the Federal Employees' Compensation Act (FECA) Program.

DOL assessed the PUA program as susceptible to improper payments based on the risk assessment DOL performed in FY 2021. DOL submitted a Sampling and Estimation Methodology Plan for estimating the PUA program's improper payment rate and amount to the OMB on June 30, 2022. On October 26, 2022, OMB requested that DOL conduct further analysis to ensure that the estimate and methodology met all of the statutory requirements of the PIIA. As such, this information was not included in DOL's improper payment reporting for FY 2022.

The programs that were deemed susceptible to improper payments in FY 2022 are described further below.

UI Program

The UI program (i.e., SUI, FPUC, and PEUC) provides partial wage replacement for eligible unemployed workers who become unemployed through no fault of their own and meet certain other eligibility requirements. The state workforce agencies (SWA) for each U.S. state, the District of Columbia, and certain U.S. territories administer their own UI program under guidelines established by federal statute. The UI program year runs from July 1 through June 30. For the 2022 program year, DOL reported total outlays of $85.2[8] billion and estimated improper payments of $18.3[8] billion and unknown payments of $0.6[8] billion for the UI program. This included $38.0[9] billion in FPUC outlays and $15.7[9] billion in PEUC outlays.

The reported improper payment estimate was developed from the SUI program's Benefit Accuracy Measurement (BAM) program. The BAM program is a payment integrity assessment survey in which SWAs perform quarterly audits on a sample of SUI benefit payments for every program year. Each SWA is expected to review a sample of 360-480 claims every year, resulting in approximately 24,000 audited claims for the annual survey. The SWAs report their survey results in the BAM database, and this data is then analyzed to determine the national improper payment rate and related causes for the program year. The results of the analysis are then applied to total outlays and reported as required. The sample sizes ranged from 121 to 520 claims for states, resulting in approximately 22,754 claims for the program year 2022 analysis.

We noted that DOL continued to report the SUI program, the PEUC program and the FPUC payment activity collectively as one program, the UI program, for its FY 2022 improper payments reporting. To develop the gross improper payment amount for the combined UI program, DOL used the SUI improper payment rate based on its BAM sampling methodology, and applied it to the outlays for SUI, FPUC, and PEUC. As we noted in our prior year report, FPUC and PEUC payments associated with the PUA program were included in the gross improper payment amount.

PUA Program

The PUA program provided up to 39 weeks of unemployment benefits to qualifying individuals who did not qualify for regular unemployment compensation and were unable to continue working as a result of COVID-19, such as self-employed workers, independent contractors, and gig workers. The PUA outlays totaled $18.9 billion for program year 2022.[10]

[8] Source: DOL FY 2022 improper payment information reported on PaymentAccuracy.gov
[9] Source: ETA data downloads: ETA 2112 reports for the period July 1, 2021 through June 30, 2022; data as of March 13, 2023.
[10] Total payments for the PUA program since its inception was $137.7 billion (2112 Report, as of March 1, 2023).

As noted above, DOL submitted a Sampling and Estimation Methodology Plan to OMB for approval. The improper payment estimate was to be developed based on a sample of PUA payments within randomly selected paid benefit weeks for 26 states, including the 10 states with the largest PUA outlays, and the 16 remaining states, randomly selected, for a total of 2,540 payments. The sampled benefit cases were to be reviewed for key eligibility factors.

After review of the plan, OMB requested that DOL conduct further analysis of the expected outcomes from the plan before producing an estimate of improper payments. As such, DOL did not report PUA improper payment information in its reporting for FY 2022 as required in criteria 3 through 6.

FECA Program

The FECA program provides workers compensation coverage (i.e., wage-loss compensation and payment for medical treatment) to federal and postal workers for employment-related injuries and occupational diseases. DOL's Division of Federal Employees' Compensation manages the FECA program. For the 2022 program year, the FECA program reported total outlays of $2.9[11] billion, estimated improper payments of $88.46[11] million, and unknown payments of $3.26[11] million.

The improper payment estimate was developed from a random sample of approximately 500 medical and 500 compensation payments from the FECA program. The payments were assessed against the program's criteria, and the supporting documentation was maintained in the electronic case management system. Results from the sample were then extrapolated over the entire population to determine the improper payment rate.

OBJECTIVES, SCOPE AND METHODOLOGY

The objective of our audit was to evaluate DOL's compliance with the requirements of PIIA as defined in Chapter 33 of Title 31, United States Code (U.S.C), section 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB;

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

[11] Source: DOL FY 2022 information reported on PaymentAccuracy.gov

(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

SCOPE AND METHODOLOGY

The scope of our performance audit was DOL's FY 2022 improper payment reporting data required under guidance of the OMB reported on PaymentAccuracy.gov.

During our planning and testing phase, we conducted interviews, collected and inspected auditee-provided documentation and evidence, and participated in process and control walkthroughs with the programs identified as susceptible. A summary of the procedures we performed is as follows:

- Obtained an understanding of DOL's improper payments reporting process and associated controls through inquiries with management;
- Reviewed DOL's policies and procedures over the PIIA reporting process;
- Reviewed management's agency-wide risk assessment for all agency disbursements/programs;
- Reviewed applicable legislation and regulations, increases in funding levels, or changes to the program-specific risk assessment process for each program or activity;
- Reviewed the statistically-determined improper payments estimates for each program deemed susceptible to improper payments and the underlying sampling methodologies;
- Confirmed and reviewed a sample of SWA-submitted BAM claims data;
- Reviewed FECA benefit payments;
- Reviewed DOL's corrective action plans as reported on the PaymentAccuracy.gov website; and

- Reviewed any OMB waivers, exemptions, or communications for improper payments reporting, if applicable.

In carrying out this methodology, we obtained sufficient, appropriate evidence to provide a reasonable basis for our conclusions related to our audit objective.

RESULTS AND CONCLUSIONS

Based on our audit procedures performed, we determined that DOL met four of six PIIA compliance requirements for the UI program, six of six requirements for the FECA program, and two of six requirements for the PUA program. See below for additional details of our results.

- Requirement 1 – Determine if DOL published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB.

DOL published its Agency Financial Report (AFR) for FY 2022 on December 13, 2022 and posted the AFR on its public-facing website.[12] The AFR included a Payment Integrity section with a link to PaymentAccuracy.gov for the accompanying materials required under guidance of the OMB. The information presented in accompanying materials agreed to the supporting documentation for the UI and FECA programs. As noted in the Background section, OMB requested further analysis to be performed on the PUA sampling plan before requiring DOL to report PUA improper payment information.

- Requirement 2 – Determine if DOL conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a).

DOL conducted a risk assessment based on the requirements in the applicable guidance issued by OMB. DOL continued to identify the SUI, which included the FPUC and PEUC programs, PUA, and FECA programs as susceptible to improper payments.

DOL assessed 14 other programs as part of its FY 2022 risk assessment. The 14 programs were identified as not susceptible to significant improper payments. The remaining DOL programs were not assessed in FY 2022 because they were evaluated within the last two years and were determined to be not susceptible to significant improper payments.

[12] Agency Financial Reports are available at: https://www.dol.gov/agencies/ocfo/resources

- Requirement 3 – Determine if DOL published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement.

DOL published an improper payment rate of 21.52 percent for the UI program, which resulted in an estimated $18.3 billion in reported gross improper payments. Additionally, DOL published an unknown payment rate of 0.68 percent, which resulted in estimated unknown payments of $582 million. This estimate was based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 3 percent. DOL continued to report PEUC and FPUC program outlays as part of the SUI program in FY 2022.

DOL did not publish an improper payment rate for the PUA program; therefore, the PUA program did not meet this criterion in FY 2022.

DOL published an improper payment rate of 3.03 percent for the FECA program, which resulted in an estimated $88.46 million in gross improper payments. Additionally, DOL reported an unknown payment rate of 0.11 percent, which resulted in estimated unknown payments of $3.26 million. These estimates were based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 3 percent.

See the Findings and Recommendations section for additional details.

- Requirement 4 – Determine if DOL published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statements.

DOL reported corrective actions for each of the reported root causes in the accompanying materials posted to PaymentAccuracy.gov for the UI and FECA programs. Specifically, DOL reported corrective actions related to the following UI root cause categories: Inability to Access Data/Information needed, and Failure to Access Data/Information needed. In addition, DOL reported corrective actions related to the following FECA root cause categories: Data/Information Does Not Exist and Inability to Access Data/Information. DOL did not meet this criterion related to the PUA program as a corrective action plan for the PUA program was not reported in FY 2022. See the Findings and Recommendations section for additional details.

- Requirement 5 – Determine if DOL published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statements for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets.

DOL did not publish a FY 2023 UI improper and unknown payment reduction target in the FY 2022 OMB payment integrity data call as the OMB data call did not include a data input field for the payment reduction target for the UI program. However, DOL did report an estimated FY 2023 rate for the UI program of 22.27 percent. Furthermore, DOL did not meet the established FY 2022 UI reduction target of 17.00 percent published in the DOL FY 2021 OMB payment integrity data call, nor did the rate improve from the FY 2021 published rate. The UI rate increased from 18.71 percent to 21.52 percent and thus did not demonstrate improvement for the UI program.

DOL did not meet this criterion related to the PUA program in FY 2022.

DOL published a FY 2023 FECA improper and unknown payment reduction target in the FY 2022 OMB payment integrity data call of 3.25 percent. Additionally, DOL did meet the established FY 2022 FECA improper payment reduction target of 3.18 percent.

DOL developed plans for meeting the reduction targets for both the UI and FECA program for FY 2023.

See the Findings and Recommendations section for additional details.

- Requirement 6 – Determine if DOL reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

The UI program did not meet the requirement as the estimated improper payment rate for the program was 21.52 percent, and the unknown payment rate was 0.68 percent, for a combined total rate of 22.20 percent. DOL did not meet this criterion related to the PUA program in FY 2022. The FECA program met the requirement with an estimated improper payment rate of 3.03 percent and unknown payment rate of 0.11 percent, for a combined total rate of 3.14 percent.

See the Findings and Recommendations section for additional details.

FINDINGS AND RECOMMENDATIONS

Our 2022 performance audit identified two findings, which are presented below. We discussed the findings with management and received their response, which is included in the appendix of this report.

Finding No. 22-01: Continued improvements needed to meet certain required PIIA thresholds

As noted in the Results and Conclusion section above, DOL reported a combined improper and unknown payment rate of 22.20 percent for the DOL UI program, which exceeded the 10 percent threshold established by PIIA. Additionally, the UI program did not meet its FY 2022 target improper payment (IP) rate of 17.00 percent, demonstrating no improvement in the rate. As a result, DOL was not in compliance with Requirements 5 and 6 of the PIIA.

PIIA Section 3351.Definitions (2), Compliance, states:

> The term “compliance” means that the agency –
>
> (E.) …has demonstrated improvements and developed a plan to meet the reduction targets; and
>
> (F.) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

UI management indicated that compliance with the payment "when due" provisions of Section 303(a)(1) of the Social Security Act creates structural issues resulting in the barriers that impeded their ability to maintain a gross improper payment rate of less than 10 percent related to the inability to access the necessary date or information, and the failure to verify UI claimants return to work status.

<u>*Finding No. 22-02:*</u> *Continued improvements needed in the development of improper payment estimates*

As noted in the Results and Conclusions section above, DOL continued to report the FPUC payment activity and PEUC program within the FY 2022 UI program improper payment information submitted on PaymentAccuracy.gov. DOL management stated that the FPUC and PEUC programs had similar program requirements as the SUI program and, therefore, determined it was appropriate to utilize the IP rate generated by the existing BAM methodology for those outlays. However, this method did not adequately consider the following factors with regards to the FPUC and PEUC programs:

- The FPUC provided an additional payment to those claimants who were deemed eligible to receive benefits under the SUI or PUA programs. As such, the outlays used to calculate the reported UI gross improper payment amount included outlays based on claims related to the PUA program. The PUA-derived FPUC outlays should have been excluded from the calculation.

- Claimants were eligible for the additional FPUC payment if they received any benefit amount from the SUI, PUA, or PEUC programs. Therefore, any portion of the improper payment rate derived from claims that were paid correctly, at least in part, (e.g., underpayments or payments incorrectly calculated) would still have been eligible for the FPUC payment. The impact of these identified errors should have been removed from the IP rate used for the FPUC outlays.

- The PEUC program provided additional weeks of unemployment benefits for claimants who had exhausted benefits under the SUI or PUA programs. The PUA-derived portion of PEUC outlays should have been excluded from the calculation.

Furthermore, OMB requested DOL perform further analysis on its Sampling and Estimation Plan for the PUA program before reporting PUA improper payment information.

As a result, DOL was not in compliance with Requirement 3 through 6 of the PIIA for the PUA program.

PIIA Section 3352, Estimates of improper payments and reports on actions to reduce improper payments (c), Estimation of Improper Payments (1) Estimation, states:

> the head of the relevant executive agency shall—
>
> > (A) produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget, of the improper payments made under the program or activity;

OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, Part II.B.1, states:

> The main purpose of an IP estimate is to reflect the annual estimated known IPs made by the program.

OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, Part II.B.2, states:

> The program will be responsible for producing an IP and UP estimate that is accurate and appropriate given program characteristics and it will be the OIG's responsibility to evaluate whether the explanation provided by the program and the S&EMP [sampling and estimation methodology plan] without point estimates and confidence intervals around those estimates warrants compliance during the annual OIG compliance review.

DOL indicated that they had discussed this approach with OMB and obtained approval in FY 2021.

RECOMMENDATIONS

We recommend that DOL management:

1. Maintain its current focus on increasing technical assistance and funding to states to improve the improper payment reduction strategies in order to reduce the improper payments estimate rate below the 10 percent threshold, and demonstrate improvement on the rate;

2. Revise the methodology used to calculate the improper payment information for the FPUC program; and

3. Continue to work with OMB to develop an approved Sampling and Estimation Methodology Plan for the PUA program, and publish the resulting improper payment information.

PRIOR YEAR RECOMMENDATIONS

The following recommendations were issued in the report titled *The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2021*, which was issued by the OIG on July 1, 2022. We followed up with management on the status of the recommendations.

- Maintain management’s current focus on increasing its technical assistance and funding to states to improve the improper payment reduction strategies in order to reduce the improper payments estimate rate below the 10 percent threshold.

  Status: This finding was reissued in the current year.

- Revise the methodology used to calculate the improper payment information for the FPUC program.

  Status: This finding was reissued in the current year.

APPENDIX A: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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

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

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

SUBJECT: Response to the Draft Report on DOL's Compliance with the Payment Integrity Information Act of 2019 for Fiscal Year (FY) 2022; Draft Report No. 22-23-006-13-001

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 Payment Integrity Information Act of 2019 (PIIA), and for the opportunity to respond to its draft Fiscal Year (FY) 2022 report entitled "THE U.S. DEPARTMENT OF LABOR DID NOT MEET THE REQUIREMENTS FOR COMPLIANCE WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2022" (Report No. 22-23-006-13-001).

The Department appreciates the OIG's acknowledgement of the steps management has taken to ensure the highest standards of payment integrity, transparency, and to become fully compliant with Payment Integrity Information Act of 2019 (PIIA) [1] standards. 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.

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.

However, we must note a concern regarding OIG's evaluation of the Pandemic Unemployment Assistance (PUA) program's compliance with PIIA's six-part compliance criteria (see Table 1, below) since an improper payment estimate for the PUA program has not yet published. DOL considers this assessment to be an incorrect interpretation of PIIA, and Office of Management and Budget's (OMB) M-21-19 [2] guidance. OIG concluded that PIIA's requirement to report, and therefore their requirement to assess compliance, is triggered by the program's finding on susceptibility and submission of an estimation methodology. DOL however interprets the trigger point in M-21-19 as OMB's acceptance of an estimation of a methodology and subsequent acceptance of an OMB Integrity DataCall submission based on the accepted methodology. M-21-19 does not provide definitive guidance on this, and the Department simply disagrees with OIG's interpretation of the trigger point.

[1] https://www.congress.gov/bill/116th-congress/senate-bill/375/text
[2] https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf

Table 1: PIIA Compliance Criteria

#	Compliance Criteria
1a.	Published payment integrity information with the annual financial statement and in the accompanying materials to the annual financial statement of the agency for the most recent FY in accordance with OMB guidance;
1b.	Posted the annual financial statement and accompanying materials required under guidance of OMB on the agency website
2a.	Conducted improper payment risk assessments for each program with annual outlays greater than $10,000,000 at least once in the last three years
2b.	Adequately concluded whether the program is likely to make IPs and UPs above or below the statutory threshold
3.	Published IP and UP estimates for programs susceptible to significant IPs and UPs in the accompanying materials to the annual financial statement;
4.	Published corrective action plans for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement
5a.	Published an IP and UP reduction target for each program for which an estimate above the statutory threshold was published in the accompanying materials to the annual financial statement
5b.	Demonstrated improvements to payment integrity or reached a tolerable IP and UP rate
5c.	Developed a plan to meet the IP and UP reduction target
6	Reported an IP and UP estimate of less than 10 percent for each program for which an estimate was published in the accompanying materials to the annual financial statement

In addition, DOL believes that OIG's assessment that PUA was not compliant with compliance criteria 5a thru 5c is incorrect. Per M-21-19, "*OMB does not expect the program to publish a reduction target until a baseline has been established and reported*."[3] In other words, in year one a baseline is "*established and reported*", and in year two a reduction target is to be published. Even if PUA improper payment estimates had been published in FY22, it would only have reported the baseline rate OMB expects. Subsequent year reporting would have included reduction targets (criteria 5a), reported a demonstrated improvement (criteria 5b), and based on the reported rate developed a plan to meet that reduction target (criteria 5c). We also note that this point is largely moot – the PUA program existed for less than one-year and expired in law on September 6, 2021 – guidance only requires the program to report once for its less than year of existence, there will be no ongoing reporting; it's not possible to have a "reduction target" for a program that no longer exists.

[3] p.47, https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf

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Recommendation #1: Maintain its current focus on increasing technical assistance and funding to states to improve the improper payment reduction strategies in order to reduce the improper payments estimate rate below the 10 percent threshold, and demonstrate improvement on the rate.

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 2023, the Department will continue its efforts to improve implementation of an aggressive and ever-evolving UI Program Integrity Strategic Plan to address the leading root causes of improper payments. A public version of the UI Integrity Strategic Plan is found at: https://oui.doleta.gov/unemploy/integrity_plan.asp.

Despite the Department's efforts, certain program features will continue to 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.[4]

There are also 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.

We appreciate OIG's acknowledgement of these structural issues that further impact the top root causes of IP. The Department also 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: Revise the methodology used to calculate the improper payment information for the FPUC program.

The CARES Act UI benefit programs, including PUA, Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC), expired on September 6, 2021, though some states chose to end participation earlier. Therefore, as reported in FY22, no further payment integrity reporting is required under PIIA and OMB M-21-19 for FY23.

Recommendation #3: Continue to work with OMB to develop an approved Sampling and Estimation Methodology Plan for the PUA program, and publish the resulting improper payment information.

As OIG notes in this Report, ETA-OUI submitted a statistically-valid sampling and estimation methodology for OMB approval for the PUA program by the June 30, 2022

[4] *See California Dep't of Human Res. Dev. v. Java,* 402 U.S. 121, 130-35 (1971).

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deadline under M-21-19. OMB reviewed and determined that more work needed to be done to ensure that the estimate and methodology meet all of the statutory requirements of PIIA. DOL strongly shares the OIG's concerns expressed in this recommendation and we will continue to work with our partners in OMB to develop a satisfactory sampling and estimation methodology to produce transparent, accurate, and cost-effective data for OMB to report on PaymentAccuracy.gov as soon as possible. The PUA program expired in law on September 6, 2021. Once OMB approved reporting has been published, there will be no ongoing reporting in subsequent years.

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.

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Address
Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210