

Appendix D

OCFO's Response to Draft Report

Thank you for the opportunity to comment on the Department of Labor's (DOL) Office of Inspector General (OIG) Draft Report, *"The Department of Labor's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2012 Agency Financial Report"* (Report No. 22-13-014-13-001) issued February 28, 2013.

Responses to OIG Comments/Recommendations Included in the Report

Unemployment Insurance Program

1. OIG Comment [p.5]:

6. Did the Department report a gross improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published in the PAR or AFR?

"The Department reported an actual improper payment rate of 11.42 percent for the UI benefit program."

Response:

During Fiscal Year (FY) 2012, the Employment and Training Administration (ETA) developed an alternative metric to measure improper payments that takes into account the "net" effect of Unemployment Insurance (UI) overpayment recoveries. The alternative metric was proposed to the Office of Management and Budget (OMB) for their review and approval. On December 13, 2012, OMB informed ETA that it approved the alternative rate methodology beginning with FY 2013 IPIA reporting. The alternative rate includes the two components in the rate currently reported annually in the Department's Annual Financial Report (AFR) as part of Improper Payments Information Act (IPIA) reporting requirements - total overpayments plus total underpayments - and subtracts the amount of overpayments recovered by state workforce agencies.

- Overpayments include fraud, non-fraud recoverable, and non-fraud non-recoverable overpayments.
- Underpayments include benefits payable to the claimant and underpayments not payable due to state finality rules or other disqualifying issues.
- Both the overpayment and underpayment rates include all improper payment causes.
- Currently, the Department reports overpayment and underpayment rates estimated from the results of the Benefits Accuracy Measurement (BAM) survey. The alternative measure includes two components - improper payments, which will continue to be estimated from BAM, and overpayment recoveries, which are based on actual amounts reported by the state workforce agencies on the ETA 227 Overpayment Detection and Recovery report for State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX).

The following table summarizes the current BAM rate and the alternative BAM - 227 report rate for the 2012 IPIA reporting period (July 2011 to June 2012).

Current BAM and Alternative IPIA UI Improper Payment Rates

UI Improper Payment Rates	2012 IPIA Rate
IPIA Rate (Current: Overpayment rate (OP) + Underpayment rate (UP))	11.42%
Alternative IPIA rate	9.22%

On January 29, 2013, ETA published UI Program Letter (UIPL) No. 09-13 to provide information regarding the alternative rate and establish two UI Performs core measures for UI Integrity. The UIPL can be accessed at:

http://wdr.doleta.gov/directives/attach/UIPL/UIPL_9_13.pdf

Using the alternative rate methodology approved by OMB, the following targets have been established for FY 2013 – FY 2015.

FY 2013 – FY 2015 Alternative IPIA Target Rates

	FY 2013	FY 2014	FY 2015
Alternative IPIA rate	9.23%	9.13%	9.03%

ETA has been aggressively promoting the use of the Treasury Offset Program (TOP) by states for the recovery of UI overpayments. Currently, TOP has been implemented by 30 states and 17 states are in various stages of implementation. Using TOP, the total recoveries of overpayments to date is over \$265 million. ETA expects that the alternative metric, which takes into account the overpayment recoveries, will help achieve the IPERA requirement that the Department reports a UI improper payment rate below 10 percent in the future years.

2. OIG Comment, C. Performance in Reducing and Recapturing Improper Payments – UI [pp. 8-10], Paragraph 2 [p.10]:

“While the Department has developed multiple and overlapping strategies to address the root causes of improper UI payments, the strategies do not include cost benefit analyses or anticipated return on investment for those strategies. Without such information, it will be difficult for the Department to determine those strategies that are working well and those that are not.”

Response:

ETA believes that it has provided informal cost benefit analysis for strategies, where feasible. The strategies designed for reducing overpayments are focused on the areas where states have the most control to reduce improper payments and where there is the potential for the greatest impact. Performing formal cost benefit analysis for each corrective action is time consuming and expensive and has the potential to delay action. In addition, it is challenging due to the complexity of the UI program. The many variables that affect improper payments limit the usefulness of a formal cost benefit analysis in establishing a quantifiable link between any specific strategy and a reduction in improper payments.

3. OIG Recommendation [pp. 10-11]

Report No. 18-12-001-03-315, *“Recovery Act: ETA is Missing Opportunities to Detect and Collect Billions of Dollars in Overpayments Pertaining to Federally-Funded Emergency Benefits,”* issued January 31, 2012, recommend that ETA:

“Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the federally-funded emergency programs, or alternatively, consider expanding its sampling methodology to include all UI benefit payments regardless of funding source.”

Response:

Currently, UI improper payment rates are estimated based on the results of the Benefit Accuracy Measurement survey, which includes payments from the State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX) programs, but does not include Emergency Unemployment Compensation 2008 (EUC08), Extended Benefits (EB), and Federal Additional Compensation (FAC) payments. However, because the claims processes and eligibility requirements are very similar for the additional benefits paid to unemployed individuals under the EUC08, EB, and FAC programs, the estimated improper payment rates are assumed to generally reflect the accuracy of these benefit payments.

ETA is conducting a comprehensive study of the BAM survey including exploring whether the existing BAM sampling and estimation methodology can be expanded to apply to future temporary federal programs.

A contractor was selected in September 2012 to assist with the study. The first kickoff meeting with the contractor was held on October 15, 2012. On December 4, 2012, ETA conducted a webinar to inform the states regarding the study and solicit their input. During the past quarter, ETA worked closely with the contractor for the development of the work plan. As part of this study, the contractor is conducting site visits with eight selected states - Alabama, Delaware, Louisiana, Maine, Minnesota, Texas, Washington, and West Virginia. These states were selected to ensure diversity with respect to

workload, UI payment integrity rate, and geography. The contract has begun these on-site interviews and plans to complete them by April 2013. Through interviews with staff and observations of the BAM investigation process in these states, the study team will collect data on BAM procedures, gather insights on challenges and promising practices, and document staff suggestions for program improvements. Based on the revised work plan, the draft study report is now due by June 2013 and the final report is due by September 2013.

Any modifications to the BAM survey will be based on the outcomes from the study. Should it be determined that an expanded BAM program is feasible, implementation, if a future temporary emergency program is enacted, depends on how that program is structured and the extent to which administrative resources are available to support the sampling and audit process for the new program.

4. OIG Recommendation [p.11]

Report No. 22-12-016-13-001, "*The Department of Labor's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2011 Agency Financial Report*", issued March 15, 2012, recommend that the Department:

"Consider developing and including cost benefit and return on investment analyses for the various improper payment reduction strategies."

Response:

ETA believes that it has provided informal cost benefit analysis for strategies for reducing UI improper payments, where feasible.

Additionally, as stated in the ETA response to the OIG's "*Review of Report on Improper Payments in the Unemployment Insurance (UI) Program (Report No. 22-10-020-03-315)*", ETA's strategies for reducing overpayments are focused on the areas where states have the most control to reduce improper payments and where there is the potential for the greatest impact. Performing formal cost benefit analysis for each corrective action is time consuming and expensive and has the potential to delay action. In addition, it is challenging due to the complexity of the UI program. The many variables at play limit the usefulness of a formal cost benefit analysis. ETA believes the better investment of our scarce resources is to actively collaborate with states to identify those strategies that have the potential to have the greatest impact and to provide technical assistance and support to states.

ETA conducted a cost-benefit analysis in 2012, which updated the methodology of a cost-benefit analysis conducted in 2001. This analysis indicates that an additional \$6.52 will be recovered for every \$1 invested in state Benefit Payment Control (BPC) activities, based on the inflation-adjusted average returns on investment for the period FY 2001 to FY 2011. In addition to the methodology replicating the FY 2001 study, regression models were constructed to identify variables with statistical associations with UI overpayment detections and recoveries. The period of analysis was FY 2007 to FY 2011 for all states and territories excluding the U.S. Virgin Islands. The model for UI

overpayment detections indicates that estimated overpayments (from the BAM survey) explained the largest proportion of the variance, followed by Extended Benefits (EB) payments, and BPC funding. This indicates that state BPC operations can detect additional overpayments as the pool of overpayments expands up to a point using existing resource levels. The model indicates that agencies will establish a little more than \$5 in overpayments for every additional dollar in BPC funding they receive.

With respect to overpayment recoveries, the model suggests that recoveries are largely a function of the pool of overpayments and the amount of those overpayments that the agency establishes. The model also indicates that recoveries are unresponsive to changes in BPC resource levels, although these resources are important to support additional overpayment detections, which are in turn significant with respect to recoveries.

5. OIG Recommendation [p.11]

Report No. 04-12-001-03-315, *“ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections”*, issued September 28, 2012, recommended that ETA:

“Ensure that overpayment detection management information measure for EB is implemented and accurately report detectable overpayment activities.”

Response:

Please refer to ETA’s response provided to this report at:

<http://www.oig.dol.gov/public/reports/oa/2012/04-12-001-03-315x.pdf>

In November 2012, ETA began publishing the overpayment detection and recovery management information measure on the Office of Unemployment Insurance (OUI) Web site. Please see link below for reference:

http://oui.doleta.gov/unemploy/info_measures.asp

ETA believes the corrective actions related to this recommendation have been fully addressed and requested the OIG close this recommendation.

6. OIG Recommendation [p.11]

Report No. 04-12-001-03-315, *“ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections”*, issued September 28, 2012, recommended that ETA:

“Ensure that states properly cross match BAM samples to NDNH.”

Response:

Currently, all states including California are matching BAM cases with the National Directory of New Hires (NDNH). California implemented the NDNH cross match for BAM in December, 2012.

ETA's Regional Offices continue to conduct the biennial Methods and Procedures review of the states' BAM programs. This formal review and ongoing monitoring is used to determine if the state agency's BAM operations are being administered in compliance with BAM organizational and methodological requirements in the BAM State Operations Handbook (ETA Handbook 395), including the NDNH requirements.

ETA believes the corrective actions related to this recommendation have been fully addressed and requested the OIG close this recommendation.

7. OIG Recommendation [p.11]:

Report No. 04-12-001-03-315, "*ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections*", issued September 28, 2012, recommended that ETA:

"Develop and implement clear guidance for states on properly conducting data validation."

Response:

Please refer to ETA's response provided to this report at:

<http://www.oig.dol.gov/public/reports/oa/2012/04-12-001-03-315x.pdf>

In June 2012, National Association of State Workforce Agencies (NASWA)'s Information Technology Support Center (ITSC) selected a contractor to conduct a comprehensive assessment of the states' UI Data Validation (DV) program. In the fall of 2012, in consultation with ETA, the contractor developed an assessment plan. Currently, the DV contractor has finished its field work and has prepared a draft assessment report, which is being reviewed by OUI and ITSC staff; the final report is expected to be available in March 2013. The report will contain updated DV status and 2013 outlook information on all states. Based on an analysis of reasons states have given for their status, it will contain recommended training, technical assistance and other steps to facilitate and enable further progress in the DV program. The second phase of the contract will address the training and technical assistance activities necessary to further assist states with the DV program.

8. OIG Recommendation [pp.11-12]:

Report No. 04-12-001-03-315, "*ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections*", issued September 28, 2012, recommended that ETA:

"Ensure all states conduct data validation for actual overpayment data as required by ETA Handbook 361."

Response:

Please refer to ETA's response provided to this report at:

<http://www.oig.dol.gov/public/reports/oa/2012/04-12-001-03-315x.pdf>

ETA continues to provide technical assistance to the states for the DV program. OUI conducted a webinar on September 19, 2012 to provide technical assistance on the changes to the ETA 227 report. In February 2013, ETA conducted a webinar on DV Data Element Validation to facilitate state compliance with this important component of UI DV.

9. OIG Recommendation [p.12]:

Report No. 04-12-001-03-315, “*ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections*”, issued September 28, 2012, recommended that ETA:

“Ensure regional offices perform effective monitoring of states’ efforts for conducting data validation properly.”

Response:

Please refer to ETA’s response provided to this report at:

<http://www.oig.dol.gov/public/reports/oa/2012/04-12-001-03-315x.pdf>

ETA believes the corrective actions related to this recommendation have been fully addressed and requested the OIG close this recommendation.

10. OIG Recommendation [p.12]:

Report No. 04-12-001-03-315, “*ETA Did Not use Compatible Data Which Overstated the Effectiveness of Its Overpayment Detections*”, issued September 28, 2012, recommended that ETA:

“Ensure regional offices timely close reviews of the states’ sampled BAM survey cases used in their estimates of detectable overpayments.”

Response:

OUI will continue to work collaboratively with our Regional leadership and the BAM coordinators to ensure that monitoring of BAM cases fully meets the requirements of ET Handbook 396. OUI staff schedule quarterly conference calls with the Regional BAM coordinators to provide guidance and technical assistance to improve the BAM monitoring process.

ETA believes that it has taken the necessary actions to address this recommendation and has requested for the OIG to close this recommendation.

11. OIG Recommendation [p.12]

Report No. 04-13-001-03-315, “*Georgia Department of Labor Missed Opportunities to Detect and Recover Unemployment Insurance Overpayments*”, issued March 15, 2013, recommended that ETA:

“Ensure the Georgia Department of Labor has implemented NDNH cross matching for detecting overpayments.”

Response:

Based on data provided by the Office of Child Support Enforcement, U. S. Department of Health and Human Services, which administers the NDNH, ETA has documented that the Georgia DOL began submitting files of UI payments for cross matching on April 4, 2008. The National Office has reviewed sample records from the files that the Georgia agency submitted for NDNH matching and has verified that they meet the specifications in UIPL No. 3-07 (October 11, 2006) and UIPL No. 3-07, Change 1 (February 27, 2008) for BAM NDNH matching.

ETA revised the Overpayment Detection and Recovery report (ETA 227) with the publication of UIPL No. 8-12, issued January 11, 2012, to support the separate reporting of UI overpayments detected through the NDNH and the State Directories of New Hires (SDNH). Georgia began reporting NDNH and SDNH data on the June 2012 quarterly ETA 227 report. For the period April to December 2012, Georgia's Benefit Payment Control (BPC) operation detected over \$300,000 in UI overpayments using NDNH, nearly two-thirds of all overpayments detected through new hire matching.

While outside the audit period, ETA believes that it has completed all the corrective actions necessary to ensure that the Georgia DOL has implemented NDNH cross matching for detecting UI overpayments and has processes in place to ensure Georgia DOL complies moving forward. We have requested that the final report reflect that ETA has already addressed this recommendation.

12. OIG Recommendation [p.12]

Report No. 04-13-001-03-315, "Georgia Department of Labor Missed Opportunities to Detect and Recover Unemployment Insurance Overpayments", issued March 15, 2013, recommended that ETA:

"Ensure the Georgia Department of Labor conducts data validation of overpayment data in accordance with ETA Handbook 361 requirements."

Response:

Georgia has submitted and passed the DV populations associated with the overpayment data for Validation Year (VY) 2013 in accordance with ETA Handbook 361 requirements.

ETA has completed or initiated several actions to ensure that all state agencies fully meet the requirements of the DV program including issuance of the UI DV Monitoring Guide (ETA Handbook 412) on February 22, 2012, for establishing a vigorous monitoring program to ensure the validity of DV results, conducting webinars to provide technical guidance to states on changes to the DV software to reflect changes in the ETA 227 Overpayment Detection and Recovery report, and contracting with National Association of State Workforce Agencies' ITSC to conduct a comprehensive assessment of and support for UI DV, with particular emphasis on the validation of data covering overpayments established, recovered, and reconciled that states report on the ETA 227 report.

Information on reasons for success will be disseminated to all states as best-practice guidance. During the final phase of the project, the contractor will develop a Technical Assistance Plan (TAP), which will include its recommended approach for delivering training and technical assistance to all states, and specifically ensure that at least five states are trained on DV methodology and ten states are provided technical assistance in conducting DV tasks. The TAP will identify specific state needs, including grouping the states by common conditions that can be addressed collectively. The plan will identify recognized system-wide problems and develop solutions.

13. OIG Recommendation [p.12]

Report No. 04-13-001-03-315, “Georgia Department of Labor Missed Opportunities to Detect and Recover Unemployment Insurance Overpayments”, issued March 15, 2013, recommended that ETA:

“Develop an acceptable level of performance for recovery of overpayments.”

Response:

ETA has met the recommendation with the publication of UIPL No. 9-13 on January 29, 2013. The UIPL establishes an acceptable level of performance (ALP) for recovery of overpayments:

The Department conducted an analysis of the UI payment, overpayment detection, and recovery data and established recovery targets of 55 percent for the 2013 IPIA reporting period, and 58 percent for the 2014 IPIA reporting period. These targets were reviewed by OMB and published in the Department’s FY 2012 AFR on page 181.

The performance period will be based on the ETA 227 and ETA 227 EUC data for the IPIA period (July 1 to June 30 of the IPIA reporting year). The first measurement period will be July 1, 2012 to June 30, 2013. States failing to meet the ALP for the 2013 IPIA reporting period will be expected to develop a CAP as part of the FY 2015 SQSP.

ETA has requested that the OIG acknowledge in the report that ETA’s actions taken prior to receipt of the report have fully responded to the recommendation.

Workforce Investment Act Grant Program

14. OIG Comment [p.7]

Report No. 22-12-016-13-001, “*The Department of Labor’s Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2011 Agency Financial Report*”, issued March 15, 2012, commented that:

“The methodology relies primarily on questioned costs identified in OMB Circular A-133 Single Audit Act Reports (A-133 reports). However, A-133 audits typically do not project likely total questioned costs for the grant or entity audited, but simply report those questioned costs identified for the specific sample items

reviewed during the audit. As a result, Single Audit Act reports do not provide a valid proxy for improper payments in the WIA grant program. Due to the lack of information on likely questioned costs for individual grants, it is impossible for the Department to make a valid projection of total likely improper payment for all WIA grants.”

15. OIG Recommendation [p.11]:

Report No. 22-12-016-13-001, “*The Department of Labor’s Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2011 Agency Financial Report*”, issued March 15, 2012, recommend that the Department:

“Consider methods for improving the WIA sampling methodology to provide a more complete estimate of improper payments, and include information on the limitations of the data used in the estimation of WIA overpayment in the AFR.”

Response:

IPERA and OMB guidance require an overall estimate be made for the WIA program. Since financial records and other documentation supporting WIA expenditures are located at the grantee and sub-grantee locations rather than at DOL, direct sampling of payments to derive a statistical projection is not practical and is cost prohibitive. The Department uses an alternate OMB-approved methodology to estimate the improper payment rate. This methodology is based on analysis of improper payments (questioned costs) identified in (1) a statistically valid, stratified sample of A-133 audit reports, (2) monitoring results reported by each of the six regional offices of the WIA program, and (3) DOL OIG questioned costs for the three most recent years. The use of non-statistical approaches is allowed by Circular A-123, Part C, with OMB approval.

DOL considered the option of selecting a nationwide, statistically valid sample of WIA grantees and performing audits to estimate the improper WIA payment rate. In 2009, the Department worked with the DOL OIG to design such an approach. DOL estimated the cost to perform these audits would be several million dollars. Based on the high cost to perform these audits, this option is not considered cost-effective.

DOL believes it is appropriate to use questioned costs in A-133 reports as a proxy for improper payments for the WIA program. In addition, DOL augments the A-133 report statistically valid estimate by including three-year moving averages of WIA questioned costs identified in OIG reports and in regional monitoring reports. Use of a three-year average for these items reduces the impact of anomalies that may occur in a given year. All OIG reports which discuss WIA are analyzed, whether related to fraud or any other basis of improper payments. Regional monitoring on-site reviews, quarterly reviews, and desk reviews are based on assessed risk and improper payments reported from these activities are included in the estimation of the improper payment rate.

The major types of errors found in the WIA program are primarily administrative in nature. ETA focuses its internal grant management and regional monitoring processes on administrative items to reduce and prevent improper payments. Whenever

deficiencies or problems are identified, ETA works with the grantees on corrective actions. In addition, ETA also reviews direct grantee A-133 reports and OIG reports for questioned costs and follows through on resolution. The resolution status of these questioned costs is considered in the estimation of the improper payment rate.

Although DOL believes questioned costs reported in A-133 reports are a valid proxy for improper payments, DOL included information on the limitations of the data used in the estimation of WIA improper payments in the Department's FY 2012 AFR and continues to seek ways to improve the methodology. Finding better ways to collect, analyze, and incorporate more data on questioned costs and their resolutions are the key to improving the accuracy of the estimated rate.

Preventing and recovering improper payments is a priority for DOL. The Department will continue to integrate improper payment prevention strategies into the day-to-day program operations and internal control processes to help reduce improper payments.

Federal Employees' Compensation Act Benefit Program

16. OIG Comment [p7]:

Report No. 03-12-001-04-431, "*OWCP's Efforts to Detect and Prevent FECA Improper Payments Have Not Addressed Known Weaknesses*", issued February 15, 2012, found that:

"The improper payments estimation method used for FECA may not be sufficient to meet IPERA requirements".

Response:

The methodology used to estimate the improper payment rate for the Federal Employees Compensation Act (FECA) program is currently based on a statistically valid sample of payments for a fiscal year and meets IPERA requirements. However, the Department is reviewing the methodology and will consider the additional factors noted by the OIG, such as fraudulent payments.

Additionally, the Office of Workers' Compensation Programs (OWCP) has requested funding to establish an Integrity and Compliance Program to focus on the FECA program. As a preparation for this initiative, OWCP will evaluate the use of Do Not Pay Solution Data Analytics Services to determine if they provide additional value and would be cost effective.

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