

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE OFFICE OF THE
CHIEF FINANCIAL OFFICER



THE DEPARTMENT OF LABOR'S COMPLIANCE WITH THE IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT OF 2010 IN THE FY 2013 AGENCY FINANCIAL REPORT

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BRIEFLY...

Highlights of Report Number 03-14-004-13-001, issued to the Acting Chief Financial Officer for the U.S. Department of Labor (DOL).

WHY READ THE REPORT

“Improper payments” occur when: funds go to the wrong recipient; the right recipient receives the incorrect amount of funds (including overpayments and underpayments); documentation is not available to support a payment; or the recipient uses funds in an improper manner. Although not all improper payments are fraud, and not all improper payments represent a loss to the government, all improper payments degrade the integrity of government programs and compromise citizens’ trust in government.

The Improper Payments Elimination and Recovery Act of 2010 (IPERA) requires federal agencies to identify and reduce improper payments (over and underpayments) and report annually on their efforts.

In its Fiscal Year (FY) 2013 Agency Financial Report (AFR), DOL estimated the Unemployment Insurance (UI) benefit program made \$7.68 billion in improper payments and identified it as susceptible to significant improper payments. The cluster of Workforce Investment Act (WIA) grant programs and the Federal Employees Compensation Act (FECA) program have been classified as at risk by OMB, but DOL’s annual risk assessments have not supported the high-risk designation.

This report summarizes actions DOL has taken to comply with IPERA, as well as OIG’s continuing concerns regarding the methodologies used by DOL to estimate improper payments in the UI, FECA, and WIA programs.

WHY OIG CONDUCTED THE AUDIT

IPERA requires each federal agency’s Inspector General to annually review its agency’s improper payment reporting in the AFR and accompanying materials, to determine whether the agency complied with IPERA. This report provides our assessment of DOL’s compliance with IPERA reporting requirements.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2014/03-14-004-13-001.pdf>.

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WHAT OIG FOUND

The OIG found that DOL met IPERA reporting requirements to publish its AFR and post it on the DOL website, conduct specific risk assessments for each program and activity, publish improper payment estimates for programs identified as susceptible to significant improper payments, publish programmatic corrective action plans in the AFR, and report information on its efforts to recapture improper payments.

DOL did not quite meet its annual reduction target for the UI program. The target UI improper payment rate was 9.23 percent, while DOL reported an actual rate of 9.32 percent. DOL used a new OMB-approved methodology to determine its reported UI improper payment rate of 9.32 percent, which met IPERA’s “less than 10 percent” requirement. However, by offsetting UI overpayments with subsequent recoveries, the new methodology understated the UI improper payment rate. Without this netting, the FY 2013 UI improper payment rate would have been 11.5 percent.

As noted by DOL in its AFR, the UI program is administered by states and DOL has limited authority to ensure states pursue improper payment activities. Nonetheless, DOL made UI payment integrity a priority in FY 2013 and coordinated with states to recover \$1.5 billion in overpayments.

The report also discusses concerns related to the use of questioned costs from Single Audit Act and OIG reports as a proxy for improper payments in the WIA grant programs. In response to concerns we previously raised about the methodology used to estimate improper payments in the FECA program, DOL will test a new methodology in FY 2014.

WHAT OIG RECOMMENDED

Three recommendations from prior OIG work related to improper payments in the UI, WIA, and FECA programs remain open. Completing the corrective actions related to these recommendations would address the concerns we continue to raise in this report. We did not make any additional recommendations.

In its response to the draft report, OCFO maintained that the methodologies the Department used were valid and approved by OMB in accordance with its guidance.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



April 15, 2014

Inspector General's Report

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The Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA),¹ requires federal agencies to identify and reduce improper payments and report annually on their efforts according to guidance promulgated by the Office of Management and Budget (OMB) in Circular A-123, Appendix C. Improper payments are a drain on federal agencies' resources and reduce the funding available to meet agencies' missions. Section 3 of IPERA and OMB guidance specify that each agency's Inspector General should review agency improper payment reporting in the Agency Financial Report (AFR), and accompanying materials, to determine if the agency complied with IPERA. This report provides our assessment of the Department of Labor's (DOL) compliance.

Background

IPIA, amended, and related regulations require federal agencies to systematically review their programs and activities to identify those that may be susceptible to significant improper payments. In performing this task, DOL reviewed applicable audit reports, detailed risk assessments, budget documents and other materials, documenting weaknesses or other issues potentially impacting the amount of improper payments, to identify programs that may exceed the improper payments threshold for risk susceptibility in Fiscal Year (FY) 2013.

Based on DOL's risk assessments, only the Unemployment Insurance (UI) benefit program was identified to be susceptible to significant improper payments. The

¹ IPIA, Public Law (P.L.) 107-300; IPERA, P.L. 111-204; IPERIA, P.L. 112-248. All three laws are codified at 31 United States Code (U.S.C.) 3321. IPERIA requirements intensified the government's efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within federal spending. The President signed IPERIA into law on January 10, 2013, and, while most provisions are not effective until FY 2014, portions related to the implementation of the Do Not Pay (DNP) initiative were effective in June 2013 and, therefore, in the scope of this review.

Workforce Investment Act (WIA) grants² and the Federal Employee Compensation Act (FECA) programs are classified as susceptible to significant improper payments in OMB's former Circular A-11, Section 57, due to their annual level of expenditures; however, DOL reported that its risk assessments have not supported such a designation.

IPERA generally defines significant improper payments exceeding \$10 million of all program or activity payments made during the FY reported and 2.5 percent of program outlays, or \$100 million.³ For each program and activity identified as susceptible to significant improper payments, DOL is required to produce a statistically valid estimate of the improper payments or an estimate that is otherwise approved by OMB and include such estimates in the accompanying materials to its annual financial statements.⁴

DOL is required to prepare a report on actions it took to reduce improper payments for programs with significant improper payments.⁵ The report must include : (1) a description of the causes of improper payments, actions planned or taken to correct those causes, and the planned or actual completion date of actions taken to address those causes; and (2) program and activity-specific targets for reducing improper payments that have been approved by the Director of OMB.⁶

IPERA requires the OIG to review improper payment reporting in DOL's AFR, to determine if it complies with IPERA, as defined in Section 3(a)(3). IPERA and OMB's guidance⁷ for IPERA requires the OIG to determine if DOL has:

- Published an AFR for the most recent fiscal year and posted that report and any accompanying material required by OMB on the agency website;
- Conducted a program specific risk assessment for each program activity that conforms with Section 3321 of Title 31 U.S.C.;
- Published improper payment estimates for all programs or activities susceptible to significant improper payments under its risk assessment;
- Published programmatic corrective action plans in the AFR;

² WIA grants fund nearly a dozen different programs with similar compliance requirements. For purposes of improper payments analysis, DOL focused on the programs included in the OMB Circular A-133 Single Audit Act "WIA Cluster," which consisted of the WIA formula grant programs – Adult, WIA Youth Activities, and Dislocated Worker, authorized by Title I of WIA.

³ Public Law No. 111-204 Section 2(a)(3), 124 Stat. 2224-2225 (2010). However, with respect to fiscal years following September 30, 2013, as determined by OMB, those improper payments in the program or activity in the preceding fiscal year shall be considered significant if they have exceeded \$10 million of all program or activity payments made during that fiscal year and 1.5 percent of program outlays; or \$100 million.

⁴ Public Law No. 111-204 Section 2(b), 124 Stat. 2224, 2225 (2010)

⁵ Public Law No. 111-204 Section 2(c), 124 Stat. 2224, 2225-2226 (2010)

⁶ Public Law No. 111-204 Sections 2 (c) (1) and (4), 124 Stat. 2224, 2225-2226 (2010)

⁷ OMB Circular A-123, Appendix C

- Reported an improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was published in the AFR; and
- Reported information on its efforts to recapture improper payments.

In November 2009, the President issued Executive Order 13520, Reducing Improper Payments, which, in part, required agencies to review payments and awards in its programs against specific databases to identify ineligible recipients and prevent improper payments. This was referred to as the Do Not Pay (DNP) initiative. OMB directed agencies to develop plans for using the DNP Solution, a master database managed by the Department of Treasury (Treasury), with final plans due to OMB by August 31, 2012. DOL submitted its original DNP implementation plan to OMB by the due date and focused on gaining access Treasury's master database in the DNP portal using phased approach. IPERIA codified the DNP initiative into law in January 2013 and added a requirement that all payments were to be reviewed through DNP starting June 1, 2013. To meet this requirement Treasury began matching all payments against the DNP database after the payment was made. This post-payment review was designed to test the usefulness of the DNP database and create business rules for deciding if the payments were proper.

Objectives

Our objectives were to:

- A) Determine whether DOL complied with all requirements of IPERA in its Improper Payments Information section in the FY 2013 AFR;
- B) Evaluate DOL's accuracy and completeness of reporting in the Improper Payment Information Section of the FY 2013 AFR;
- C) Evaluate the DOL's performance in reducing and recapturing improper payments;
- D) Determine if DOL met the implementation timelines in the DNP plan it submitted to OMB in August 2012; and
- E) Determine the status of DOL's execution of its corrective action plans in order to address prior-year findings and recommendations.

RESULTS

A) Compliance With IPERA

DOL did not comply with all IPERA requirements. According to IPERA Section 3(a)(3), compliance means that DOL has:

1. Published its AFR for the most recent fiscal year (FY 2013) and posted that report and any accompanying materials required by OMB on DOL's website;
2. Conducted a specific risk assessment for each program or activity that conforms with Section 3321 of Title 31 U.S.C (if required);
3. Published improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessment (if required);
4. Published programmatic corrective action plans in the AFR (if required);
5. Published and has met, annual reduction targets for each program assessed to be at risk and measured for improper payments;
6. Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under Section 2(b) of IPIA; and
7. Reported information on its efforts to recapture improper payments.⁸

For FY 2013, DOL complied with item numbers 1, 2, 3, 4, and 7. DOL did not quite meet the annual reduction target for the UI program – target 9.23/actual 9.32 – and, therefore, was not in compliance with item number 5. With regard to item number 6, DOL used a new OMB-approved methodology to determine its UI improper payment rate of 9.32 percent, which met the IPERA requirement of “less than 10 percent.” The new methodology allowed DOL to offset UI improper payments with subsequent recoveries. The OIG believes this methodology understates the actual improper payment rate. Without this netting, the UI improper rate would have been 11.50 percent. See page 7 for further discussion of this issue.

Our specific results for each IPERA requirement are shown on the following pages.

⁸ OMB Circular A-123, *Management's Responsibility for Internal Controls*, Appendix C, Part II, *Compliance with the Improper Payment Requirements*, April 2011. As previously noted in this report IPIA has been amended by IPERA.

1. Did DOL publish its AFR for the most recent FY and post that report and any accompanying materials required by OMB on the agency website?

Yes. DOL published its AFR for FY 2013 on December 16, 2013. The report and accompanying materials required by OMB were posted on the agency website at: <http://www.dol.gov/sec/media/reports/annual2013/2013annualreport.pdf>.

2. Did DOL conduct a specific risk assessment for each program or activity that conformed with IPERA (if required)?

Yes. DOL's FY 2013 review of major programs and activities included reviewing:

- the prior three years' results of IPIA risk assessments and detailed tests;
- Office of Inspector General (OIG) and Government Accountability Office (GAO) audit reports issued for DOL programs to identify control weaknesses or other issues that could potentially impact improper payments;
- results of DOL's OMB Circular A-123 internal control assessment to identify control weaknesses that could potentially impact improper payments for DOL programs; and
- DOL programs' FY 2010 through FY 2012 funding levels for significant changes that may impact improper payments.

DOL's risk assessment for the UI program found it to be at risk of significant improper payments according to OMB criteria.

DOL's risk assessment for the WIA grant program found it to be below IPERA's threshold of a risk-susceptible program. However, the WIA grants program was classified as at risk in OMB's Circular A-11, Section 57, due to the program's annual level of expenditures. Although DOL's risk assessment over the past several years did not support a high-risk designation for the WIA program, the Office of the Chief Financial Officer (OCFO) and Employment and Training Administration (ETA) continue to perform and report improper payment analyses each year.

The FECA program was also classified as at risk in OMB's Circular A-11, Section 57. OMB granted DOL a waiver from reporting on FECA under IPERA through FY 2014. According to the waiver, the next report for FECA is due for FY 2015 and DOL only needed to perform a FECA risk assessment every three years. DOL conducted FECA risk assessments in FYs 2011 and 2012 and determined that the program was not susceptible to significant improper payments.

3. Did DOL publish improper payment estimates for all programs and activities identified as susceptible to significant improper payments under their risk assessments (if required)?

Yes. DOL published improper payment estimates for the UI benefit program and WIA Title I grant programs, as required. However, the OIG has concerns about how the estimates were determined.

The UI Benefit Program's estimated annual improper payments for 2013 were \$6.225 billion (9.32 percent) consisting of \$7.347 billion in overpayment less \$1.456 billion in overpayment recoveries plus \$334 million in underpayments. For the WIA Title 1 grant programs, estimated annual improper payments were \$5.8 million (0.194 percent).

See pages 9 and 10 of this report for further discussion of issues the OIG identified regarding the methodology DOL used to determine the improper payment estimates for the UI and WIA Title I grant programs.

4. Did DOL publish programmatic corrective action plans in the AFR (if required)?

Yes. DOL published corrective action plans to reduce and collect improper payments, as required.

For the UI benefit program, DOL developed a Strategic Plan to address several root causes of improper payments. In September 2013, DOL awarded \$176.4 million in supplemental funding to 40 states for the detection, prevention, and recovery of improper UI benefit payments. According to DOL, these incentive funds will improve state performance; address outdated information technology system infrastructures necessary to improve UI program integrity; and enable states to expand or implement reemployment and eligibility assessment programs. OIG is conducting audits of the effectiveness of states' internal controls to detect, reduce, and report the recovery of UI improper payments and will issue separate reports when the audits are completed.

For WIA Title I grant programs, DOL indicated the major types of errors found were primarily administrative in nature, including unallowable costs, participant eligibility, and sub-recipient monitoring. Grant operations are monitored on a continuing basis to ensure that grant activities conform to requirements. Monitoring activities include annual risk assessments, on-site monitoring visits, and annual and quarterly desk reviews, all of which are tracked electronically in the Grants Electronic Management System. The ETA Division of Policy Review and Resolution processes each grant at closeout to determine whether the grant objectives were accomplished and all funds expended as authorized. Questioned expenditures are resolved through the normal determination process and disallowed costs are forwarded for collection. Finally, ETA's audit resolution staff

receives copies of Single Audit reports and resolves questioned costs and administrative weaknesses identified.

5. Has DOL published, and met, annual reduction targets for each program assessed to be at risk and measured for improper payments?

No. DOL published, but did not quite meet the annual reduction targets for the UI benefit program. The target rate for the WIA Title I grant programs was met. However, we questioned the methodologies DOL used to measure the improper payment rates for both of these programs.

The target improper payment rate for the UI benefits program was 9.23 percent, but DOL reported a slightly higher rate of 9.32 percent. However, DOL, in computing the UI improper payment rate, subtracted the amount of overpayments recovered from the amount of estimated overpayments. DOL did this in consultation with and approval from OMB. However, the use of such methodology gives the appearance that the occurrence of improper payments is lower than it actually is. Further, IPERIA will require DOL to discontinue this netting beginning in FY 2014.⁹ Without netting the subsequent recoveries, the UI improper payment rate would have been 11.50 percent for FY 2013.

For WIA Title I grant programs, DOL published and met the annual reduction target. The target improper payment rate for FY 2013 was 0.44 percent. DOL reported an actual rate of 0.194 percent. However, the target rates and estimates were based in part on using Single Audit Act reports results, which were not valid. See page 10 for further discussion of this issue.

6. Did DOL 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 AFR?

While DOL's reported improper payment rate for the UI program was 9.32 percent, as previously noted it used a methodology that reduced the improper payment rate by the amount of subsequent improper payment recoveries. Without netting the subsequent recoveries the UI improper payment rate would have been 11.50 percent, exceeding 10 percent.

DOL estimated UI benefit program outlays in FY 2013 were \$66.79 billion. It estimated UI improper benefit payments for FY 2013 were \$6.225 billion, consisting of \$5.891 billion in net overpayments (\$7.347 billion in overpayments minus \$1.456 billion in overpayment recoveries) plus \$334 million in underpayments.

⁹ IPERIA Section 3(b)(2)(D) requires agencies to include all identified improper payments in the reported estimate, regardless of whether the improper payment in question has been or is being recovered.

DOL reported 0.194 percent for the WIA Title I grant programs and since it concluded FECA was not susceptible to significant improper payments, DOL was not required to report an improper payment rate for the program. However, we noted concerns with how DOL estimated its improper payment rate for FECA in previous years as discussed on page 10.

7. Did DOL report information on its efforts to reduce and recapture improper payments?

Yes. DOL reported information on its efforts to reduce and recapture improper payments in the UI benefit and the WIA grants programs.

For the UI benefit program, DOL coordinated with states to recover \$1.5 billion of UI benefit overpayments. Benefit Payment Control operations identified overpayments for recovery through such methods as cross-matching claimant Social Security Numbers with the State and National Directories of New Hires, employer quarterly wage records, and other state databases for workers' compensation and incarcerated individuals. States collected overpaid UI claims through offsets against current UI benefits, federal income tax refund offsets under the U.S. Department of the Treasury Offset Program (TOP), state income tax offsets, and direct cash reimbursements from claimants. As of September 2013, 36 states had implemented TOP and 11 other states had received supplemental funding, but had not yet implemented the program. An estimated \$323.8 million in UI overpayments were recovered through TOP in FY 2013. As previously mentioned, OIG is conducting audits of the effectiveness of states' internal controls to detect, reduce, and report the recovery of UI improper payments and will issue separate reports when these audits are completed.

For the WIA Title I grant programs, overpayments are identified for recovery primarily through onsite grant monitoring activities, as well as agency follow up on Single Audit Act reports and OIG audits. For questioned costs noted in Single Audit Act and OIG reports, the Grant Officer issues a Final Determination that identifies the costs the Grant Officer concludes are improper. After the Final Determination is issued, it is referred to ETA's accounting office to establish a debt. The ETA accounting office performs standard collection activities to collect the debt, and if it is unable to collect, the office refers the debt to Treasury for further collection efforts.

B) Accuracy and Completeness of Reporting

Our evaluation of DOL's accuracy and completeness of reporting in the FY 2013 AFR found several issues continued from prior years regarding the methodologies to estimate improper payments rates for UI and WIA. DOL developed a new estimation methodology for FECA, which it plans to implement in FY 2014.

UI

DOL estimates the UI improper payment rate through the Benefit Accuracy Measurement (BAM) program, which is a statistical survey of paid and denied UI claims. Under BAM, states conduct comprehensive audits of samples of claims to verify claimant eligibility and determine the accuracy of decisions to pay or deny UI benefits. A previous OIG audit report identified concerns regarding how DOL determined the UI improper payment estimate because it did not test payments for temporary or episodic programs, such as Emergency Unemployment Compensation (EUC) and Extended Benefits (EB).

For FY 2013, DOL estimated that payments under the EUC and EB programs totaled \$25.43 billion and \$77 million, respectively. Because these payments were not tested as part of DOL's methodology for estimating improper payment rates, the estimate may have been inaccurate during periods of significant funding for temporary programs, as has occurred in the last several years. OIG recommended DOL consider expanding the BAM sample to include all UI benefit payments regardless of funding source. By doing so, ETA would ensure that future estimated overpayment rates are based on all UI programs, including any temporary federally-funded emergency programs that may be put into place.

DOL is working to address this issue and procured a contractor to conduct a comprehensive review of the BAM survey methodology. The review included exploring the feasibility of integrating temporary and episodic federal programs, such as EUC and EB. At the time of this review, the contractor completed the study and provided the final report to ETA on April 2, 2014.

In December 2012, OMB approved the use of a revised methodology for estimating the UI improper payment rate by subtracting the amount of overpayments recovered from the amount of estimated overpayments. In FY 2013, the UI improper payment rate without netting the subsequent recoveries would have been 11.50 percent. When the requirements of IPERIA go into effect in FY 2014, DOL will no longer be permitted to subtract overpayment recoveries from improper payments in calculating the improper payment rate. DOL is working with OMB to revise its improper payment rate methodology to comply with IPERIA in FY 2014.

WIA

For FY 2013, as in past years, DOL determined that questioned costs as a result of grant monitoring and grant audits could be used as a proxy to estimate improper payments. Therefore, results of OMB Circular A-133 Single Audit Act reports, along with ETA regional monitoring reports and OIG audit reports data, were used to determine the improper payment rate for the WIA Title I grant programs. This methodology resulted in an estimated improper payment rate of 0.194 percent and estimated improper WIA payments of \$5.8 million.

In our FY 2011 and FY 2012 IPERA reviews, we questioned the methodology DOL used to compute the improper payments for the WIA Title I grant programs.¹⁰ For FY 2013, DOL made changes to improve the accuracy of its estimation methodology by stratifying its sample of Single Audit Act reports to capture all possible reports with questioned costs, increasing the confidence interval, and heavily weighting findings from OIG reports. With WIA's complex funding stream, in which federal funds are granted to states and then passed through to localities and Workforce Investment Boards and then to service providers, DOL believed that leveraging Single Audit Act reports was the only cost-effective means of estimating improper payments. However, Single Audit Act reports 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. Neither are OIG audits a systematic study of the allowability of grant costs that can be projected to all grants. As a result, these audit reports do not provide a valid proxy for improper payments in the WIA grant program. OIG continues to recommend that DOL develop a valid methodology for estimating improper payments in the WIA program.

FECA

DOL was not required to complete an improper payment estimate for FECA since 2008 because of a waiver from OMB. However, as reported in our FY 2012 IPERA review, we found that the improper payments estimation method DOL used for FECA prior to the waiver was not sufficient to meet IPERA requirements. Specifically, the improper payment estimates reported in FYs 2005 to 2008 fluctuated widely and appeared to be low in comparison to the fraud and abuse found by DOL's OIG investigations, as well as other federal agencies' OIG investigations. Furthermore, OWCP's methodology did not encompass all the risks associated with improper payments, such as those identified in the GAO's February 2008 audit¹¹ — late or no notice of when claimants returned to work, late or no notice of when claimants or their survivors died, unverified self-reported data on wage earnings and other federal benefits, and inaccurate data from employing agencies.

¹⁰ OIG Reports, *The Department of Labor's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the FY Year 2011 Agency Financial Report*, Report No. 22-12-016-13-001, March 15, 2012; and *The Department of Labor's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the FY 2012 Agency Financial Report*, Report No. 22-13-014-13-001, March 15, 2013.

During FY 2013, OWCP officials developed a new methodology to estimate improper payments for the FECA program that will be initially tested in July 2014. OIG will evaluate DOL's new methodology and its implementation in our FY 2014 review of DOL's compliance with IPERA.

C) Performance in Reducing and Recapturing Improper Payments

In FY 2013, DOL developed a strategy for reducing and recapturing improper payments for the UI program. For FECA and the WIA Title I grant program, DOL conducted pilot payment recapture audits but ultimately concluded that recapture audits were not cost effective for these programs.

UI

While DOL made UI payment integrity a priority, it did not quite meet its FY 2013 goals for reducing the improper payment rate in the UI program. DOL reported a FY 2013 rate of 9.32 percent versus its goal of 9.23 percent. However, as previously noted, this rate was net of subsequent recoveries, without which the improper payment rate for FY 2013 would have been 11.50 percent. Further, the improper payment rate for FY 2012 was 10.78 percent.

DOL coordinated with states to recover UI overpayments and during FY 2013 they recovered \$1.5 billion in overpayments, including an estimated \$323.8 million through TOP. In September 2013, DOL awarded \$176.4 million in supplemental funding to 40 states to: support the prevention, detection, and recovery of improper UI benefit payments; improve state performance; address outdated IT systems infrastructures necessary to improve UI program integrity; and enable states to expand or implement Reemployment and Eligibility Assessment programs.

DOL stated it implemented an aggressive strategic plan to work with states to control UI improper payments. These strategies, documented in ETA's Operating Plan, targeted the four largest root causes of UI improper payments, as summarized below:

1. Payments to individuals who continue to claim benefits after they have returned to work.
 - Strategy 1.1 State implementation of prevention strategies
 - Strategy 1.2 Implementation of new state performance measures for integrity
 - Strategy 1.3 Pilot the use of financial data sources that may indicate a claimant's return to work
 - Strategy 1.4 Implementation of federal TOP
 - Strategy 1.5 Pilot the use of the Do Not Pay portal

2. Failure of employers, or their third party administrators, to provide timely and adequate information on the reason for an individual's separation from employment.

Strategy 2.1 Promote implementation and use of the State Information Data Exchange System (SIDES)

3. Failure to register the claimant with state's Employment Services (ES) pursuant to the state's law.

Strategy 3.1 Targeted technical assistance and monitoring of states with the highest percentage of ES registration improper payments

4. Failure of claimant to comply with the states' work search requirements.

Strategy 4.1 Convene work search working group

Strategy 4.2 Provide funding for a work search pilot

Additionally, DOL stated it has: (1) Established a Department website to depict state performance and progress in addressing UI improper payments; (2) enhanced the state quality service planning process by incorporating improper payment prevention strategies; (3) annually identified high-priority states (states with persistently high improper UI payment rates) and work with these states to reduce improper payments; (4) offered states the opportunity to apply for supplemental budget requests to target specific causes and identify integrity strategies to reduce improper payments; and (5) proposed a legislative package called the New Integrity Act to require state implementation of various UI integrity initiatives such as TOP, SIDES, and the National Directory of New Hires (NDNH).

As DOL noted in the Improper Payments section of the AFR, states administer the UI program and set operational priorities. Therefore, DOL has limited authority to ensure states pursue improper payment activities.

OIG is currently conducting audits in a sample of seven states to determine if they are able to demonstrate the effectiveness of DOL's core strategies in reducing the rate of improper UI benefit payments and recovering overpayments. The results of these audits should provide a basis for determining the effectiveness of DOL's efforts in reducing and recovering improper UI benefit payments.

WIA Grants and FECA

DOL conducted a research and analysis pilot for payment recapture for both WIA Title I grant programs and FECA. The results of both research and analysis pilots showed it was not cost effective to conduct recapture audits for WIA grantees and FECA.

D) Implementation Timelines in DOL's Do Not Pay Plan

DOL submitted its original DNP implementation plan to OMB by the August 31, 2012, due date. DOL changed its DNP plan because of the passage of IPERIA and the post-payment review initiative. IPERIA added a requirement that all payments were to be reviewed through DNP starting June 1, 2013.

As mentioned above, Executive Order 13520, Reducing Improper Payments, issued in 2009, required agencies to review payments against specific databases to identify ineligible recipients and prevent improper payments, the DNP initiative. OMB and Treasury developed the DNP Solution to provide federal agencies with a web-based, single-entry, access portal to existing databases to facilitate their use to review payments and awards, and provide additional data analytics. According to Section 5 of IPERIA, the following databases should be used at a minimum and before issuing any payment and award: (A) The SSA Death Master File; (B) The Excluded Parties List System of the General Services Administration (GSA); (C) Debt Check Database of Treasury; (D) Credit Alert System or Credit Alert Interactive Voice Response System of the Department of Housing and Urban Development; and (E) List of Excluded Individuals/Entities of OIG, the Department of Health and Human Services (HHS).

OMB directed agencies to develop plans for using the DNP Solution by August 31, 2012. DOL's original DNP Implementation plan was submitted timely to OMB and focused on gaining access to the DNP Portal through a phased approach. IPERIA codified the DNP initiative into law in January 2013 and added a requirement that all payments were to be reviewed through DNP starting on June 1, 2013. To meet this statutory requirement, Treasury began matching all payments against the DNP database after payment was made. This process, called "Post-Payment Review," was designed to test the usefulness of the DNP database and to create business rules for adjudicating payments. Passage of IPERIA and the post-payment review initiative fundamentally changed DOL's approach to implementing DNP during 2013, shifting from a focus on gaining access to the DNP Portal to adjudicating all payments.

According to DOL's DNP plan, the OCFO is responsible for monitoring compliance and any changes. In FY 2013, DOL experienced several issues, particularly the passage of IPERIA and introduction of Post-Payment reviews, which will impact the DNP plan.

While the DNP Solution and DNP Portal are new initiatives, the underlying databases have been in use by DOL for payment integrity for years. For example, DOL was already using the SSA Death Master File for beneficiaries in OWCP's Black Lung, FECA, and Energy Employees Occupational Illness Compensation (EEOIC) programs. It was also using the HHS OIG List of Excluded Individuals/Entities for OWCP's Central Bill Processing, which pays all medical bills for the Black Lung, FECA, and EEOIC programs, and the GSA Excluded Parties List Systems (now referred to as the System for Award Management), for its procurement process. The purpose of the DNP Solution was to consolidate these databases into one to create easier access to data and single point of reference.

DOL's original DNP plan addressed its three major businesses and was designed to be implemented in three phases over a three-year period.

In Phase 1, completed September 30, 2013, DOL selected the following pilot programs for each of the three major business areas:

- Benefits Programs – OWCP and UI
- Grant Programs – ETA grants
- Contracts – DOL procurement and contract activities

Treasury began Post-Payment reviews in May 2013 by sending lists of potential matches of payees to the DNP Solution database. DOL worked with Treasury to address several issues it experienced using the DNP Solution. For example, matches to the GSA System for Award Management (the replacement system for the Excluded Parties List System, or EPLS, which is named in both the Executive Order and IPERIA), which includes the HHS-OIG List of Excluded Individuals/Entities and several other databases, identified an excessive number of erroneous matches because the DNP Solution matched first and last names only. DOL worked with Treasury to develop an approach to create business rules to better cull the DNP Solution files.

Based on the government-wide changes to the DNP approach, DOL is currently making necessary adjustments to the original DNP plan and continuing to track milestones. During 2013, DOL established a continuous monitoring connection for the OWCP Black Lung program, established a single online search capability to check grantees prior to award for ETA grant programs, completed monthly Post-Payment Reviews and developed business rules. With regard to contract award procedures, DOL contracting officers are to check the private version of the GSA's System for Award Management list, which is more comprehensive than the public list included in the DNP Solution. DOL also selected two pilot states, Arizona and Colorado, to use the DNP Solution for the UI program. In November 2013, Treasury placed a hold on the pilot while it reviewed the legal authority to provide its DNP services to states. In late January 2014, Treasury notified Arizona that it may resume using the DNP solution and at the time of OIG's review, Treasury did not provide a timeline when Colorado could resume using the DNP Solution. In addition to monitoring the DNP Plan, DOL continues to perform monthly Post-Payment reviews and develop business rules.

E) Previous Recommendations

During the past two fiscal years we have issued five reports with recommended actions DOL should take to help it prevent and recover improper payments. As of March 2014, the following three reports have recommendations that are not closed:

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, recommended that ETA:

- **Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the federally-funded emergency programs.**

ETA procured a contractor in September 2012 to assist it in studying the methodology needed to address the recommendation. During FY 2013 the contractor conducted site visits to eight states to collect information and solicit state officials' recommendations concerning the BAM methodology to include federally-funded emergency programs. In December 2013, the contractor submitted the draft report to ETA for review and comment. In January 2014, ETA also shared the draft report with the states the contractor visited and solicited their input and comments. The final report was issued to ETA April 2, 2014. The OIG will assess what actions DOL takes as a result of this report in our FY 2014 review of DOL's compliance with IPERA.

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, recommended 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.**

DOL did not agree with the recommendation because it said direct sampling of payments to derive a statistical projection is not practical and cost prohibitive. DOL believes it is appropriate to use questioned costs in Single Audit Act reports as a proxy for WIA improper payments. During FY 2013, DOL said it made changes to improve the accuracy of its WIA estimation by stratifying its sample of Single Audit Act reports to capture all possible reports with questioned costs. DOL stated that its use of non-statistical approaches to estimate WIA improper payments is allowed by OMB. The actions, however, do not address the fundamental problem that single audits and OIG audits are not designed as systematic assessments of the allowability of WIA grant costs.

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, recommended that OWCP:

- **Develop effective procedures, including seeking legislative authority to conduct matches with Social Security Administration (SSA) retirement records, to ensure that claimants who receive SSA retirement benefits are identified timely and their FECA benefits are adjusted accordingly.**

During FY 2013, OWCP created a workgroup with SSA and the Office of Personnel Management to explore methods of creating a data match for retirement benefits. The results of the workgroup were not available at the time of this audit.

The preceding three, prior recommendations remain open and continue to address the concerns raised in this report. We do not have any additional recommendations.

OCFO's Response to the Draft Report and OIG Conclusion

The OCFO stated that the OIG's commentary about the methodology used to estimate FY 2013 UI improper payments implies that the methodology used was not in accordance with law and policy. OCFO further stated that the Department's methodology was developed in full compliance with IPIA, IPERA, and guidance provided by OMB.

We recognize that the Department developed its UI improper payment methodology with the approval of OMB and in accordance with its guidance. However, this does not change the fact that the methodology understates the total rate of improper payments in the UI program. As we state in the report, due to the passage of IPERIA, the Department will not be permitted to subtract overpayment recoveries from the total amount of overpayments when calculating its estimated UI improper payment rate beginning in FY 2014.

Although OCFO stated it believes the Department's WIA estimation methodology was valid, the agency acknowledged limitations of the data used and the need to seek ways to improve the methodology.

OCFO's response to the draft report is included in its entirety in Appendix D.

We appreciate the cooperation and courtesies that DOL personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

Appendices

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Appendix A

Background

IPERA became law on July 22, 2010, and amended IPIA of 2002. IPERA and OMB Circular A-123 require that each agency periodically review and identify all programs and activities that may be susceptible to significant improper payments. The Act also significantly increased requirements for payment recapture efforts by expanding the types of payments that must be reviewed and by lowering the threshold of annual outlays that require agencies to conduct payment recapture audit programs.

OMB issued government-wide guidance for implementing IPERA on April 14, 2011, which updated requirements for measuring and remediating improper payments. Agencies are required to report on improper payments and OIGs are required to review agency reporting.

UI Benefit Program

The UI program is designed to provide benefits to individuals out of work, generally through no fault of their own, for periods between jobs. In order to be eligible for benefits, jobless workers must show that they were separated from work through no fault of their own, and met minimum length of time and wage requirements before they were separated. The program is administered at the state level, but is funded by both state and federal monies. The UI program represents one of the largest benefit programs in the United States, with a total of approximately \$67 billion in benefit payments made to beneficiaries in FY 2013. Because the improper payments for UI are above \$750 million, the UI program is classified as a “high priority” program, the only program with this designation within DOL.

WIA Grant Program

In FY 2013, ETA provided \$2.995 billion for the WIA Title I grant programs – Adult, Dislocated Worker, and Youth. WIA adult employment and training services are provided through formula grants to states and territories or through competitive grants to service providers to design and operate programs for disadvantaged, often unemployed persons. ETA also awards grants to states to provide re-employment services and retraining assistance to individuals dislocated from their employment. Youth programs are funded through grant awards that support program activities and services to prepare low-income youth for academic and employment success, including summer jobs.

FECA

Within OWCP, Division of Federal Employees’ Compensation adjudicates new claims for benefits and compensation benefits to injured workers and survivors, and helps injured employees return to work when they are medically able to do so. In FY 2013, OWCP provided approximately \$3 billion in compensation and medical benefits to federal workers and survivors for work-related injuries or illnesses.

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Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

Our objectives were to:

- A) Determine whether DOL complied with all requirements of IPERA in its Improper Payments Information section in the FY 2013 AFR;
- B) Evaluate DOL’s accuracy and completeness of reporting in the FY 2013 AFR;
- C) Evaluate DOL’s performance in reducing and recapturing improper payments;
- D) Determine if DOL met the implementation timelines in its DNP plan that it submitted to OMB in August 2012; and
- E) Determine the status of DOL’s execution of its corrective action plans in order to address prior year findings and recommendations.

Scope

DOL, in accordance with IPIA, as amended by IPERA, was required to include a report on improper payments in its FY 2013 AFR. The OIG conducted this review in accordance with guidance issued by OMB Memorandum M-11-16 to determine if DOL was in compliance with IPERA.

Methodology

We reviewed DOL’s FY 2013 AFR – Improper Payment for compliance with the seven items under IPERA DOL must meet in order to be in compliance with IPERA. In addition, we:

- reviewed DOL’s FY 2013 AFR and accompanying material required by OMB on DOL’s website for compliance with IPERA;
- reviewed the program specific risks assessments that conforms with Section 3321 of Title 31 U.S.C.;
- reviewed and evaluated DOL’s information on its efforts to recapture improper payments;
- reviewed and ensured DOL published improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessments;

- reviewed the published programmatic corrective action plans in the AFR and any additional supplemental materials; and
- interviewed key personnel regarding DOL's plan to meet the reduction targets and conduct recapture audits for UI and WIA.

Criteria

We used the following criteria to perform this review:

- IPERA of 2010 – Public Law (P.L.) No. 111-204
- IPIA of 2002 – P.L. No. 107-300)
- IPERIA of 2012 – P.L. No. 112-248
- OMB Circular A-11 Section 57, dated 2002, "Information on Erroneous Payments"
- OMB Memorandum M-11-04, dated November 16, 2010, "Increasing Efforts to Recapture Improper Payments by Intensifying and Expanding Payment Recapture Audits"
- OMB Memorandum, M-10-13, dated March 22, 2010, "Issuance of Part III to OMB Circular A-123, Appendix C"
- OMB Memorandum 11-16, dated April 14, 2011, "Issuance of Revised Parts I and II to Appendix C of OMB Circular A-123"
- Executive Order 13520, dated November 20, 2009, "Reducing Improper Payments"

Appendix C**Acronyms and Abbreviations**

AFR	Agency Financial Report
BAM	Benefit Accuracy Measurement
CFO	Chief Financial Officer
DOL	U.S. Department of Labor
DNP	Do Not Pay
EB	Extended Benefits
ES	Employment Services
ETA	Employment and Training Administration
EUC	Emergency Unemployment Compensation
FECA	Federal Employees' Compensation Act
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
HHS	U.S. Department of Health and Human Services
IPERA	Improper Payment Elimination and Recovery Act of 2010
IPERIA	Improper Payment Elimination and Recovery Improvement Act of 2012
IPIA	Improper Payments Information Act of 2002
NDNH	National Directory of New Hires
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
OMB	Office of Management and Budget
OWCP	Office of Workers' Compensation Programs
P.L.	Public Law
SIDES	State Information Data Exchange System
SSA	Social Security Administration
TOP	Treasury Offset Program
TREASURY	U.S. Department of the Treasury
UI	Unemployment Insurance
WIA	Workforce Investment Act

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OCFO's Response to Draft Report

U.S. Department of Labor

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



April 15, 2014

MEMORANDUM FOR: ELLIOT P. LEWIS

Assistant Inspector General for Audit

FROM:


KAREN TEKLEBERHAN
Chief Financial Officer

SUBJECT:

OIG Draft Report, "The Department of Labor's Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the Fiscal Year 2013 Agency Financial Report, Audit Report No. 03-14-004-13-001, issued on April 15, 2014

Thank you for the opportunity to comment on the Draft Report. We greatly appreciate the dialogue between OIG and the Department and look forward to continuing our work together to address program integrity issues.

While the IPERA discussion focuses on certain numbers, rates, or other specific data points, it is important to examine the Department's comprehensive efforts to address program integrity – particularly in the UI program.

As a Federally-funded, state-administered program, UI program integrity depends on cooperation by the states. In fact, eligibility is determined at the state level, meaning that UI is actually 53 separate programs from both an eligibility standpoint and a recovery standpoint. The Department uses all tools at its disposal to work with states across many fronts – from targeted communication and rulemaking to assistance with data analytics and budget requests for information technology improvements.

Just as there are many causes of improper payments in the UI program, there are many solutions. The Department focuses on systemic issues and prevention, targeted to the four largest root causes: Benefit Year Earnings, Separation, Work Search, and Employment Services Registration.

UI's integrity efforts pre-date the Improper Payments Information Act by 50 years. States have been conducting Benefit Payment Control (BPC) reviews in accordance with Department guidance on every single UI payment since 1952. The BAM statistical measure was created in the 1980s as a program improvement tool. The UI program uses both these measures as a two-step process to support states and continuously monitor and improve improper payments detection and prevention. To monitor the effectiveness of BPC reviews, actual BPC results are compared to BAM estimations. Part of each state's performance plan is how closely BPC rates (actual results) compare to expectations derived from BAM estimates. Since BAM reviewers

have the luxury of time and full information to conduct a full review of sampled cases, the results are naturally more comprehensive than results from BPC reviews. For example, states are expected to detect a minimum of 50% of BAM cases but not more than 95% to ensure that states are not “gaming” the system. The level of sophistication helps the Department gain real information about individual states. Unfortunately, this is the type of information that is not captured when program integrity is only defined by a single metric.

The result of the Department’s decades of effort is a robust analysis that looks at root causes and systemic issues to develop the most effective tools to increase program integrity.

Responses to OIG Comments/Recommendations Included in the Report

Unemployment Insurance Program

The Department is concerned and would like to provide context with regards to the assertions made in Results, (A) Compliance with IPERA, including those in the results summary and sections 5 and 6, of the Office of Inspector General (OIG) Report Number 03-14-004-13-001: *The Department of Labor’s Compliance with the Improper Payments Elimination and Recovery Act of 2010 in the FY 2013 Agency Financial Report*. Our main concern is that these assertions are not based on the law governing improper payment reporting requirements for the period covered by the AFR which is the subject of the report. These comments appear throughout the report, as highlighted below:

OIG Comment on page 4, Paragraph 8:

“For FY 2013, DOL complied with item numbers 1, 2, 3, 4, and 7. The Department did not quite meet the annual reduction target for the UI program – target 9.23 percent/actual 9.32 – and therefore was not in compliance with item number 5. With regard to item number 6 [reporting an improper payment rate of less than 10 percent for each program], the Department used a new OMB-approved methodology to determine its UI improper payment rate of 9.32 percent, which met the IPERA requirement of ‘less than 10 percent.’ The new methodology allowed DOL to offset UI improper payments with subsequent recoveries. The OIG believes this methodology understates the actual improper payment rate; without this netting, the UI improper rate would have been 11.50 percent.”

OIG Comment on Page 7, Paragraph 4:

“...[T]he use of such methodology [i.e., netting recoveries] gives the appearance that the occurrence of improper payments is lower than it actually is.

OIG Comment on Page 7, Paragraph 6:

“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 AFR?”

“While the Department’s reported improper payment rate for the UI program was 9.32 percent, as previously noted it used a methodology that reduced the improper payment rate by the amount of subsequent improper payment recoveries. Without netting the subsequent recoveries the UI improper payment rate would have been 11.50 percent, exceeding 10 percent.”

OIG Previous-Year (2012) Recommendation on Page 15, Paragraph 3:

“Develop and implement a valid and reliable method for estimating the rate of detectable overpayments in the federally-funded emergency programs.”

Response to Comments and Recommendation:

The OIG’s commentary about the appearance of the methodology implies that the methodology used was not in accordance with law and policy. The Department complied fully with the reporting requirements of the Improper Payment Information Act of 2002 (IPIA) (Pub. L. 107-300) and the Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111-204), which amended the IPIA. The Department’s methodology for calculating the improper payment rate was developed in full compliance with these statutes and guidance provided by the Office of Management and Budget (OMB).

Section 2 of IPERA explicitly states that OMB may approve appropriate methodologies proposed by agencies to produce statistically valid improper payment rate estimates. The law states:

(b) ESTIMATION OF IMPROPER PAYMENTS.—With respect to each program and activity identified under subsection (a), the head of the relevant agency shall—

(1) 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 by each program and activity.

OMB issued revised Parts I and II to Appendix C of OMB Circular A-123 on April 14, 2011, to provide guidance to federal agencies for compliance with IPERA. Part I, section A (2) of Appendix C states:

In limited cases, and with prior approval from OMB, an agency may implement a measurement approach that excludes improper payments that have been subsequently corrected and recovered from the annual total reported in its Performance and

Accountability Report (PAR) or Annual Financial Report (AFR). If an agency receives such approval from OMB, it should report this in its annual PAR or AFR. (Emphasis added).

During 2012, the Department developed a new metric to measure improper payments that as permitted in the above quoted OMB guidance takes into account the “net” effect of Unemployment Insurance (UI) overpayment recoveries. This measure includes the two components that have been reported annually as part of the IPIA reporting requirements - total overpayments plus total underpayments and subtracts the amount of overpayment recoveries. On December 13, 2012, the Controller of OMB informed the Department that this methodology is consistent with OMB’s IPERA implementing guidance (OMB memorandum M-11-16) and approved the use of this new methodology to begin with FY 2013 reporting.

It should also be noted that the Department, consistent with the transparency requirements of Executive Order 13520, *Reducing Improper Payments*, included a full description of the OMB approval process and the definition of the approved improper payment rate definition in the Department’s Fiscal Year (FY) 2013 *Agency Financial Report* (p. 157-158).

The Department’s new methodology was proposed because it supports good policy – promoting the recovery of improper payments. In the context of the federal/state UI program, it provides a strong lever to improve state performance. In working with states to reduce UI improper payments, the Department now imposes the same 10% threshold for compliance as that imposed by the IPERA on Federal programs. Enabling the netting of recoveries provides a strong incentive for states to increase efforts to detect and recover improper payments. Many of the strategies that support detection and recovery, such as increased cross-matching with data bases such as the National Directory of New Hires, also support prevention of improper payments as well, which helps drive down the improper payment rate.

In a memorandum from the Deputy Secretary to the Controller of OMB (April 16, 2012), the Department noted that the proposed improper payment rate is consistent with the OMB-approved practices of other federal agencies, such as the Social Security Administration, to exclude recovered overpayments from their improper payments reporting. The Department also noted that the “Middle Class Tax Relief and Job Creation Act of 2011” further emphasizes the recovery of UI overpayments by requiring states to offset overpayments against benefit payments due to an individual.

In addition, the Department asserted that the proposed improper payment rate provides linkages to two UI integrity measures -- meeting the IPERA improper payment target of less than 10 percent, and meeting the UI overpayment recovery target. As such, the approved methodology supports good public policy by encouraging state agencies to aggressively pursue the recovery of UI overpayments.

The UI program has one of the most rigorous data collection systems related to improper payments in the Federal government to estimate and track improper payments. The change in the methodology to calculate the rate has no impact whatsoever on the Department’s data

collection and ability track state and national progress with regard to reduction of improper payments.

The Department respectfully requests that the Inspector General revise the report to reflect that the UI improper payment rate was reported in the Department's AFR in accordance with law and policy..

Additionally, the Department recovered 56.5 percent of the overpayments established for recovery, which exceeded its FY 2013 IPERA recovery target of 55 percent. This information was reported in the FY 2013 AFR, p. 168. We request that this information be included specifically in Section (A) 7 and section C, Performance in Reducing and Recapturing Improper Payments.

We also request a correction in Appendix A of the report which states:

Because the improper payments for UI are above \$750 million and are estimated to exceed 10%, the UI program is classified as a "high priority" program, the only program with this designation within the DOL.

We note that this statement does not conform to the reasons a program may be designated as "high priority" in Part I, section A(7) of the revised Appendix C of OMB Circular A-123. Designation as high priority is not tied to whether the program's improper payment rate exceeds 10 percent.

Workforce Investment Act Grant Programs

OIG Comment on Page 7, Paragraph 5:

"5. Has the Department published, and met, annual reduction targets for each program assessed to be at risk and measured for improper payments?"

"For WIA Title I grant programs, the Department published and met the annual reduction target. The target improper payment rate for FY 2013 was 0.44 percent. The Department reported an actual rate of 0.19 percent. However, the target rates and estimates were based in part on using Single Audit Act report results, which were not valid."

OIG Comment on Page 10, Paragraph 2:

"For FY 2013, the Department made changes to improve the accuracy of its estimation methodology by stratifying its sample of Single Audit Act reports to capture all possible reports with questioned costs, increasing the confidence interval and heavily weighting findings from OIG reports. With WIA's complex funding stream, in which Federal money is granted to states then passed through to localities and Workforce Investment Boards

and then awarded to service providers, the Department believed that leveraging Single Audit Act reports was the only cost-effective means of estimating improper payments. However, Single Audit Act reports 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. OIG continues to recommend that the Department develop a valid methodology for estimating improper payments in the WIA program.”

OIG Previous-Year (2012) Open Recommendation on page 12:

“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 to Comments and Recommendation:

The OIG implies that the WIA Title I rate is not valid because it is based in part on the use of Single Audit Act reports, which the IG states is “not valid.” While we agree that the use of Single Audit reports do not project total potential IPs, ETA believes the use of Single Audit Reports is in accordance with M-11-16, which states, “Working with other Entities. In addition, agencies should consider working with entities (i.e., grant recipients) that are subject to A -133 audits to leverage ongoing audits to assist in the process to estimate an improper payment rate and amount.”

In addition to the completion of Step I from OMB Memorandum M-11-16, the OIG report acknowledges ETA’s enhanced estimation methodology, including ongoing grant operations monitoring, risk assessments, on-site visit, and annual and quarterly desk reviews.

The Department does not agree that the OIG study proved these activities to be invalid or inaccurate. OMB has accepted the use of Single Audit Data Base analysis as an acceptable methodology for estimating Improper Payments. Other programs are using it as an Improper Payments tool. Further, over the years, the Department has made repeated improvements to the estimation methodology in response to OIG’s concerns, yet the low rate stays consistent. We request that the OIG not classify the WIA rate as invalid and acknowledge that this extremely low level is an achievement rather than something to continue to fix and adjust.

Further, the Department maintains that the structure of WIA as a grant program of assistance is not one that is susceptible to improper payments per se, since the funding goes to the administration and delivery of services, not as direct payments to individuals. We note that most other government programs that are not going to individuals are not evaluated for Improper Payments beyond the initial Federal outlays. We take our program integrity

responsibility seriously and evaluate our program for this risk. While we are not requesting this be acknowledged in this report, we will continue to take actions to remove this program from the high-risk categorization for annual review.

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 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 Department recognizes that questioned costs are not a one-to-one proxy for improper payments; however, the methodology makes adjustments to glean useful information and calculate an estimated level of improper payments. The Department made the following improvements to the methodology based on last year's OIG report:

- Increased the stratified sample size of A-133 audits to capture all reports with questioned costs;
- Extrapolated the rate of questioned costs in the most "risky" stratum to the entire population to set the upper limit, thereby increasing the overall average (point estimate)
- Heavily weighted the results of OIG audit reports, which are calculated on a three-year rolling average
- Counted all questioned costs in the improper payments estimate, including those that relate only to reporting requirements (e.g., sub-recipient reporting to USA Spending), thereby purposefully overstating the likelihood and amount of improper payments

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 to estimate 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

OIG Comment on page 10:

“... [T]he improper payments estimation method used for FECA may not be sufficient to meet IPERA requirements. Specifically, the improper payment estimates reported in 2005 and 2008 fluctuated widely and appeared to be low in comparison to the fraud and abuse found by DOL OIG investigations, as well as other agencies' OIG investigations. Furthermore, OWCP's methodology did not encompass all the risks associated with improper payments, such as those identified in the GAO's February 2008 audit.”

Response to OIG Comment:

OWCP suggests that these comments on FECA be deleted as the referenced report is from 6 years ago. In addition, OMB considered the IPERA estimation methodology valid enough to grant the waiver from reporting, despite the OIG and GAO concerns. OWCP suggests that more emphasis should be put on current efforts, including the development of the new methodology currently being implemented.

OIG Prior-Year (2012) Open Recommendation, Page 16:

“Develop effective procedures, including seeking legislative authority to conduct matches with Social Security Administration (SSA) retirement records, to ensure that

claimants who receive SSA retirement benefits are identified timely and their FECA benefits are adjusted accordingly.”

Response to Recommendation:

The Department concurs with this recommendation and, as referenced in the audit report, has created a workgroup with SSA officials and the Office of Personnel Management to explore methods of creating a data match for retirements. Additionally, OWCP has worked with OPM to propose legislative reforms that would allow SSA to share earnings data with the FECA program.

Again, the Department appreciates the opportunity to respond to this report and to provide details on our comprehensive program integrity efforts.

Cc: Gay Gilbert, ETA
Ron Sissel, ETA
Sam Shellenberger, OWCP
Robert Balin, OCFO

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Appendix E

Acknowledgements

Key contributors to this report were Michael Hill (Audit Director), Michael Elliott (Audit Manager), Jen Varvel, and Christine Allen.

TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

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