

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:


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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.

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