U.S. Department of Labor | Office of the Chief Financial Officer
Washington, D.C. 20210

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

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

SUBJECT: Response to the Draft Report on DOL's Compliance with the Payment Integrity Information Act of 2019 for Fiscal Year (FY) 2021; Draft Report No. 22-22-007-13-001

The Department of Labor's (DOL or the Department) Office of the Chief Financial Officer (OCFO) thanks the Office of Inspector General (OIG) for its annual review of the Department's compliance with requirements under the Payment Integrity Information Act of 2019 (PIIA), and for the opportunity to respond to its draft Fiscal Year (FY) 2021 report entitled "THE U.S. DEPARTMENT OF LABOR DID NOT MEET THE REQUIREMENTS FOR COMPLIANCE WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2021" (Report No. 22-22-007-13-001).

The Department appreciates the OIG's acknowledgement of the steps management has taken to ensure the highest standards of payment integrity, transparency, and to become fully compliant with PIIA standards. The Department is committed to good stewardship of public funds and takes seriously its responsibility to prevent, detect, and recover improper payments (IP) in its programs and to report fully and accurately on those efforts.

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

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

The UI program is a federal-state partnership and the significant majority of UI payments are made by states, under state law, using state funds. In FY 2022, the Department will continue its efforts to improve implementation of an aggressive and ever evolving Program Integrity Strategic Plan to address the leading root causes of improper payments.

Despite the Department's efforts, certain program features serve as structural barriers that hinder states' ability to further reduce IP. Section 303(a)(1) of the Social Security Act requires states to make UI benefit payments "when due". The presumption of continued eligibility after the initial eligibility is determined requires states to provide a claimant notice and the opportunity to be heard before it can stop payments to the individual.[1] As OIG has pointed out, this creates structural issues which further impact the top root causes of IP.

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

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

Recommendation #2: Revise the methodology used to calculate the improper payment information for the FPUC program.

The CARES Act UI benefit programs, including FPUC and PEUC, expired on September 6, 2021, though some states chose to end participation earlier. Therefore, no further payment integrity reporting is required under PIIA and OMB Circular A-123 Appendix C.

The Department acknowledges OIG's concern regarding the possible effect of inclusion of PUA-derived FPUC outlays on the SUI IP estimation and accepts that this could have been disclosed in reporting to OMB with greater transparency. However, we note that the BAM methodology to derive the IP rate was based on regular UI benefits, not on PUA-derived FPUC. Therefore, the reported IP rate was correct – but the inclusion of PUA-derived FPUC outlays did logically result in an overestimate of IP dollars in the UI program for FY21. Due to technical limitations, states were not able to differentiate PUA-derived from UI-derived FPUC payments at the time of reporting. OIG has acknowledged that payment integrity reporting for the PEUC program was not required by law nor OMB guidance for FY21 but was provided in FY21 in response to OIG's frequent requests. We greatly appreciate OIG's finding in their most recent Semiannual Report to Congress[2] (p.30) that providing reporting in FY21 was "consistent with our recommendation".

ETA-OUI plans to submit a statistically-valid sampling and estimation methodology for OMB approval for the PUA program. Reporting based on this methodology is currently anticipated in FY22 end of fiscal year payment integrity reporting. We will take the OIG's concern, which we share, into account in this methodology to ensure transparent, accurate, and cost-effective reporting for this expired program.

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

[1] *See California Dep't of Human Res. Dev. v. Java,* 402 U.S. 121, 130-35 (1971).
[2] DOL OIG Semiannual Report to Congress, Volume 87, Oct. 1, 2021 – March 31, 2022. https://www.oig.dol.gov/public/semiannuals/87.pdf