



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

FROM: KEVIN L. BROWN
Deputy Chief Financial Officer

A handwritten signature in black ink, appearing to read "K. Brown", written over the printed name and title.

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

The Department of Labor's (DOL or the Department) Office of the Chief Financial Officer (OCFO) thanks the Office of Inspector General (OIG) for its annual review of the Department's compliance with requirements under the Payment Integrity Information Act of 2019 (PIIA), and for the opportunity to respond to its draft Fiscal Year (FY) 2022 report entitled "THE U.S. DEPARTMENT OF LABOR DID NOT MEET THE REQUIREMENTS FOR COMPLIANCE WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2022" (Report No. 22-23-006-13-001).

The Department appreciates the OIG's acknowledgement of the steps management has taken to ensure the highest standards of payment integrity, transparency, and to become fully compliant with Payment Integrity Information Act of 2019 (PIIA) ¹ standards. The Department is committed to good stewardship of public funds and takes seriously its responsibility to prevent, detect, and recover improper payments (IP) in its programs and to report fully and accurately on those efforts.

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

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

¹ <https://www.congress.gov/bill/116th-congress/senate-bill/375/text>

² <https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf>

Table 1: PIIA Compliance Criteria

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

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

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

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

The UI program is a federal-state partnership and the significant majority of UI payments are made by states, under state law, using state funds. In FY 2023, the Department will continue its efforts to improve implementation of an aggressive and ever-evolving UI Program Integrity Strategic Plan to address the leading root causes of improper payments. A public version of the UI Integrity Strategic Plan is found at: https://oui.doleta.gov/unemploy/integrity_plan.asp.

Despite the Department's efforts, certain program features will continue to serve as structural barriers that hinder states' ability to further reduce IP. Section 303(a)(1) of the Social Security Act requires states to make UI benefit payments "when due". The presumption of continued eligibility after the initial eligibility is determined requires states to provide a claimant notice and the opportunity to be heard before it can stop payments to the individual.⁴

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

We appreciate OIG's acknowledgement of these structural issues that further impact the top root causes of IP. The Department also believes strategic efforts to reduce the IP rate constitute a strong and cost-effective approach to improving financial integrity in the federal-state UI partnership and we look forward to collaborating with the OIG and other stakeholders to do more.

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

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

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

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

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

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

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