U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE OFFICE OF THE CHIEF FINANCIAL OFFICER

THE U.S. DEPARTMENT OF LABOR DID NOT MEET THE REQUIREMENTS FOR COMPLIANCE WITH THE PAYMENT INTEGRITY INFORMATION ACT FOR FY 2023

KPMG LLP's report included herein was prepared under contract with the U.S. Department of Labor, Office of Inspector General, and by acceptance, it becomes a report of the Office of Inspector General.

Carolyn R. Hantz

Assistant Inspector General for Audit
U.S. Department of Labor

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INSPECTOR GENERAL'S REPORT

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The U.S. Department of Labor (DOL) Office of Inspector General (OIG) contracted with the independent certified public accounting firm of KPMG LLP (KPMG) to conduct a performance audit related to DOL's compliance with the Payment Integrity Information Act of 2019 (PIIA) for Fiscal Year (FY) 2023, which was the year ended September 30, 2023.

The objective of KPMG's performance audit was to evaluate DOL's compliance with the requirements of PIIA as defined in 31 U.S.C. § 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of the Office of Management and Budget (OMB);

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

KPMG concluded DOL met five of the six requirements for compliance with PIIA for the Unemployment Insurance (UI) program, three of the six requirements for the Pandemic Unemployment Assistance (PUA) program, and all six requirements for the Federal Employees' Compensation Act (FECA) program. DOL's compliance results with OMB criteria are summarized in Table 1.

Table 1: DOL's Compliance Status[1]

	OMB Compliance Criteria	Unemployment Insurance Program	Pandemic Unemployment Assistance Program	Federal Employees' Compensation Act Program
1	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	YES	NO	YES
	Posted the annual financial statement and accompanying materials required under guidance of OMB on the agency website	YES	YES	YES
2	Conducted improper payment risk assessments for each program with annual outlays greater than $10,000,000 at least once in the last three years	YES	YES	YES
	Adequately concluded whether the program is likely to make improper payments (IPs) and unknown payments (UPs) above or below the statutory threshold	YES	YES	YES
3	Published IP and UP estimates for programs susceptible to significant IPs and UPs in the accompanying materials to the annual financial statement	YES	YES	YES

[1] This table, which presents the specific details of each PIIA criteria, is required by OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*.

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	YES	YES	YES
5	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	YES	NO	YES
	Demonstrated improvements to payment integrity or reached a tolerable IP and UP rate	YES	NOT APPLICABLE[2]	YES
	Developed a plan to meet the IP and UP reduction target	YES	NO	YES
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	NO	NO	YES

Source: OMB Circular A-123, Appendix C

As noted in our prior year report,[3] DOL continued to report the Federal State Unemployment Insurance program, which includes the Pandemic Emergency Unemployment Compensation program and the Federal Pandemic Unemployment Compensation payment activity collectively as one program—the Unemployment Insurance program—based on OMB's approval.

DOL reported a 14.83 percent improper payment rate and an unknown[4] payment rate of 1.64 percent, for a combined total rate of 16.47 percent, in FY 2023 for the Unemployment Insurance program—compared to a combined total rate of 22.20 percent in FY 2022. As the rate was above 10 percent, the Unemployment Insurance program did not meet requirement 6.

The PUA program was determined to be susceptible to improper payments based on the risk assessment DOL performed in FY 2021. DOL submitted a Sampling and Estimation Methodology Plan (S&EMP) for estimating the PUA

[2] DOL did not report PUA information in the prior year; as such no reduction target was established for FY 2023 and this criterion is not applicable.

[3] 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 (June 9, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/22-23-006-13-001.pdf

[4] An unknown payment is defined as a payment that could be either proper or improper, but the agency is unable to discern whether the payment was proper or improper as a result of insufficient or lack of documentation.

program's improper payment rate and amount to the OMB in June 2022. In October 2022, OMB stated the initial PUA methodology required further analysis and requested DOL to continue working to develop a sufficient methodology. DOL updated its PUA S&EMP during FY 2023 and resubmitted it to OMB as required by the annual June 2023 S&EMP submission deadline. After receiving no additional comments from OMB on the revised S&EMP, DOL published the information on the S&EMP and the improper payment estimate for the PUA program for the period April 2020 through September 2021, in the FY 2023 OMB data call.

For this period of the PUA program, DOL reported an 18.53 percent improper payment rate and an unknown payment rate of 17.40 percent for a combined total rate of 35.93 percent. As the rate was above 10 percent, the PUA program did not meet requirement 6.

DOL only reported PUA program outlays from its inception until September 2021, when the program expired. Outlays reported for that period were $121.2 billion. However, the PUA program has continued to have residual outlays for eligible claims of $7.4 billion from its expiration through September 30, 2023.

In response to a draft of this report DOL management agreed, in part, with 2 of our 3 recommendations. However, DOL management did not concur with Finding 23-03 and its recommendation. KPMG reviewed management's response; however, management's comments did not result in any changes to the finding or recommendation. We look forward to working with DOL management to ensure the intent of the recommendation is addressed.

The agency's response to the draft report is included in its entirety in Appendix A. We appreciate the cooperation and courtesies the Office of the Chief Financial Officer, Employment and Training Administration, and Office of Workers' Compensation Programs extended us during this audit.

Carolyn R. Hantz

Carolyn R. Hantz
Assistant Inspector General for Audit

CONTRACTOR PERFORMANCE AUDIT REPORT

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This report presents the results of our work conducted to address the performance audit objective related to the U.S Department of Labor's (DOL) compliance with the requirements contained in the Payment Integrity Information Act of 2019 (PIIA). Our work was primarily performed during the period of December 13, 2023, through May 10, 2024, and our scope period was for the fiscal year (FY) ended September 30, 2023.

We conducted this performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and the American Institute of Certified Public Accountants' *Standards for Consulting Services*. *Government Auditing Standards* require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The objective of our audit was to evaluate DOL's compliance with the requirements of PIIA as defined in 31 U.S.C. § 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of the Office of Management and Budget (OMB);

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

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(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

Based on the performance audit procedures conducted and the results obtained, we have met our audit objective. Specifically, we evaluated DOL's compliance with PIIA and summarized the results in Table 2.

Table 2: DOL's Compliance with PIIA Criteria

	PIIA Criteria	Unemployment Insurance	Pandemic Unemployment Assistance	Federal Employees' Compensation Act
1	Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB	YES	NO	YES
2	Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required)	YES	YES	YES
3	Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required)	YES	YES	YES

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	PIIA Criteria	Unemployment Insurance	Pandemic Unemployment Assistance	Federal Employees' Compensation Act
4	Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement	YES	YES	YES
5	Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets	YES	NO	YES
6	Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c)	NO	NO	YES

Source: Payment Integrity Information Act of 2019

We noted DOL continued to report the Federal State Unemployment Insurance (SUI) program, which included the Federal Pandemic Unemployment Compensation (FPUC) payment activity, and the Pandemic Emergency Unemployment Compensation (PEUC) program collectively as one program—the unemployment insurance (UI) program—for FY 2023. In reporting the improper payment information for the PEUC and FPUC outlays, DOL utilized the improper payment rate obtained from its Benefit Accuracy Measurement sampling methodology for the SUI program.

The Pandemic Unemployment Assistance (PUA) program was determined susceptible to improper payments based on the risk assessment DOL performed in FY 2021. DOL submitted a Sampling and Estimation Methodology Plan (S&EMP) for estimating the PUA program's improper payment rate and amount to the OMB in June 2022. In October 2022, OMB requested that DOL conduct further analysis to ensure the plan met all the requirements of the PIIA. As such, DOL did not include PUA improper payment information in the FY 2022 reporting. DOL updated its PUA S&EMP during FY 2023 and resubmitted it to OMB as required by the annual June 2023 S&EMP submission deadline. After receiving no additional comments from OMB on the revised S&EMP, DOL published the information on the S&EMP and the improper payment estimate for the PUA program for the period April 2020 through September 2021, in the FY 2023 OMB data call.

Management's response to the findings and related recommendations is included as Appendix A. Our review of the response is included in the Analysis of Management's Response section.

This performance audit did not constitute an audit of financial statements or an attestation level engagement as defined under *Government Auditing Standards* or the American Institute of Certified Public Accountants' professional standards. KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate. This report is intended solely for the use of the DOL Secretary and Inspector General, Comptroller General of the United States, OMB, and relevant congressional committees; and is not intended to be and should not be relied upon by anyone other than these specified parties.

KPMG LLP

May 29, 2024

BACKGROUND

The Payment Integrity Information Act of 2019 requires federal agencies to identify programs susceptible to significant improper payments, estimate the improper payments for those programs, and report on actions to reduce the improper payments in those programs. PIIA repealed several previous improper payment statutes, including the Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010, and the Improper Payment Elimination and Recovery Improvement Act of 2012. OMB is required to prescribe guidance on implementation of the requirements under PIIA. OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, was the applicable OMB guidance in effect for FY 2023.

DOL established an agency-wide risk assessment process to assess its programs with outlays over $10 million for susceptibility to significant improper payments. Each year, DOL assesses one third of all its programs to ensure each program is assessed at least once every three years. DOL's policies define significant improper payments as gross annual payments exceeding: (1) both 1.5 percent and $10 million of all program payments; or (2) $100 million regardless of percentage of program payments, which complies with the relevant OMB guidance.

Based on its risk assessment process, DOL identified three programs that were susceptible to significant improper payments for FY 2023. The programs identified were:

- the SUI program, which included FPUC and PEUC;
- the PUA program; and
- the Federal Employees' Compensation Act (FECA) program.

The programs that were deemed susceptible to improper payments in FY 2023 are described further below.

UI Program

The UI program (i.e., SUI, FPUC, and PEUC) provides partial wage replacement for eligible unemployed workers who become unemployed through no fault of their own and meet certain other eligibility requirements. The state workforce agencies (SWA) for each U.S. state, the District of Columbia, and certain U.S. territories administer their own UI program under guidelines established by federal statute. The UI program year runs from July 1 through June 30. For the 2023 program year, DOL reported total outlays of $28.1 billion and estimated improper payments of $4.2 billion and unknown payments of $0.5 billion for the

UI program. [5] This included offsetting recoveries of $82.9 million in FPUC and $33.8 million in PEUC outlays. [6]

The reported improper payment estimate was developed from the SUI program's Benefit Accuracy Measurement program. The Benefit Accuracy Measurement program is a payment integrity assessment survey in which SWAs perform quarterly audits on a sample of SUI benefit payments for every program year. Each SWA is expected to review a sample of 360 to 480 claims every year, resulting in approximately 24,000 audited claims for the annual survey. The SWAs report their survey results in the Benefit Accuracy Measurement database, and this data is then analyzed to determine the national improper payment rate and related causes for the program year. The results of the analysis are then applied to total outlays and reported as required. The sample sizes ranged from 37 to 530 claims for states, resulting in approximately 23,234 claims for the program year 2023 analysis.

We noted that DOL continued to report the SUI program, PEUC program, and FPUC payment activity collectively as one program for its FY 2023 improper payments reporting. To develop the gross improper payment amount for the combined UI program, DOL used the SUI improper payment rate based on its Benefit Accuracy Measurement sampling methodology and applied it to the outlays for SUI, FPUC, and PEUC. As we noted in our prior year report, FPUC and PEUC payments associated with the PUA program were included in the gross improper payment amount.

PUA Program

The PUA program provided up to 39 weeks of unemployment benefits to qualifying individuals who did not qualify for regular unemployment compensation and were unable to continue working as a result of COVID-19, such as self-employed workers, independent contractors, and gig workers. DOL reported PUA outlays of $121.2 billion for the period April 2020 through September 2021.[7] DOL assessed the PUA program as susceptible to improper payments based on the risk assessment DOL performed in FY 2021.

DOL submitted a S&EMP for the PUA program's improper payment rate and amount to the OMB in June 2022. At that time, OMB requested that DOL conduct further analysis to ensure that the estimate and methodology met all the statutory requirements of the PIIA. As such, DOL did not include PUA information in its

[5] This DOL FY 2023 improper payment information was reported on PaymentAccuracy.gov.
[6] This information was provided through ETA data downloads, specifically *ETA 2112 UI Financial Transaction Summary* reports for the period of July 1, 2022, through June 30, 2023, and data as of March 11, 2024.
[7] This DOL FY 2023 improper payment information was reported on PaymentAccuracy.gov.

improper payment reporting for FY 2022. DOL updated the PUA S&EMP during FY 2023 and in June of that year resubmitted the plan to OMB as the finalized plan for its improper payment reporting. The S&EMP improper payment estimate was developed based on a sample of PUA payments, for the period April 2020 through September 2021, within randomly selected paid benefit weeks for 26 states, including the 10 states with the largest PUA outlays, and the 16 remaining states randomly selected, for a total of 2,540 payments. The sampled benefit cases were reviewed for key eligibility factors by the DOL Office of Unemployment Insurance.

FECA Program

The FECA program provides workers compensation coverage (i.e., wage-loss compensation and payment for medical treatment) to federal and postal workers for employment-related injuries and occupational diseases. DOL's Division of Federal Employees' Compensation manages the FECA program. For the 2023 program year, the FECA program reported total outlays of $3.3 billion, estimated improper payments of $79.48 million, and no unknown payments.[8]

The improper payment estimate was developed from a random sample of approximately 500 medical and 500 compensation payments from the FECA program. The payments were assessed against the program's criteria, and the supporting documentation was maintained in the electronic case management system. Results from the sample were then extrapolated over the entire population to determine the improper payment rate.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our audit was to evaluate DOL's compliance with the requirements of PIIA as defined in 31 U.S.C. § 3351.2. This included determining whether DOL:

(1) Published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB;

(2) Conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a) (if required);

[8] This DOL FY 2023 information was reported on PaymentAccuracy.gov.

(3) Published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement (if required);

(4) Published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statement;

(5) Published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets; and

(6) Reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

Scope and Methodology

The scope of our performance audit was DOL's FY 2023 improper payment reporting data, which is required by OMB guidance and reported on PaymentAccuracy.gov.

During our planning and testing phase, we conducted interviews, collected and inspected auditee-provided documentation and evidence, and participated in process and control walkthroughs with the programs identified as susceptible. A summary of the procedures we performed is as follows:

- Obtained an understanding of DOL's improper payments reporting process and associated controls through inquiries with management;

- Reviewed DOL's policies and procedures over the PIIA reporting process;

- Reviewed management's agency-wide risk assessment for all agency disbursements/programs;

- Reviewed applicable legislation and regulations, increases in funding levels, or changes to the program-specific risk assessment process for each program or activity;

- Reviewed the statistically determined improper payments estimates for each program deemed susceptible to improper payments and the underlying sampling methodologies;
- Confirmed and reviewed a sample of SWA-submitted Benefit Accuracy Measurement claims data;
- Reviewed FECA benefit payments;
- Confirmed and reviewed a sample of PUA cases;
- Reviewed DOL's corrective action plans as reported on the PaymentAccuracy.gov website; and
- Reviewed any OMB waivers, exemptions, or communications for improper payments reporting, if applicable.

In carrying out this methodology, we obtained sufficient, appropriate evidence to provide a reasonable basis for our conclusions related to our audit objective.

RESULTS AND CONCLUSIONS

Based on our audit procedures performed, we determined DOL met five of six PIIA compliance requirements for the UI program, six of six requirements for the FECA program, and three of six requirements for the PUA program. See below for additional details of our results.

- Requirement 1 – Determine if DOL published improper payments information with the annual financial statement of DOL for the most recent fiscal year, and posted on the website of DOL that statement and any accompanying materials required under guidance of OMB.

DOL published its Agency Financial Report (AFR) for FY 2023 on November 14, 2023, and posted the AFR on its public-facing website.[9] The AFR included a Payment Integrity section with a link to PaymentAccuracy.gov for the accompanying materials required under guidance of the OMB. The information presented in accompanying materials agreed to the supporting documentation for the UI, PUA, and FECA programs, except for those matters noted in the Findings and Recommendations that impacted compliance.

[9] Agency Financial Reports are available at: https://www.dol.gov/agencies/ocfo/resources.

- Requirement 2 – Determine if DOL conducted a program-specific risk assessment for each program or activity that conforms with the requirements of section 3352(a).

DOL conducted a risk assessment based on the requirements in the applicable guidance issued by OMB. DOL continued to identify the SUI program, which included FPUC and PEUC; the PUA program; and the FECA program as susceptible to improper payments.

DOL assessed 11 other programs as part of its FY 2023 risk assessment. The 11 programs were identified as not susceptible to significant improper payments. The remaining DOL programs were not assessed in FY 2023 because they were evaluated within the last 2 years and were determined to be not susceptible to significant improper payments.

- Requirement 3 – Determine if DOL published improper payment estimates for all programs and activities identified under section 3352(a) in the accompanying materials to the annual financial statement.

DOL published an improper payment rate of 14.83 percent for the UI program, which resulted in an estimated $4.2 billion in reported gross improper payments. Additionally, DOL published an unknown payment rate of 1.64 percent, which resulted in estimated unknown payments of $462 million. This estimate was based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 1.00 percent. DOL continued to report PEUC and FPUC program outlays as part of the SUI program in FY 2023.

DOL published an improper payment rate of 18.53 percent for the PUA program, which resulted in an estimated $22.5 billion in reported gross improper payments. Additionally, DOL published an unknown payment rate of 17.40 percent, which resulted in estimated unknown payments of $21.1 billion. This estimate was based on a statistical estimation approach, approved by OMB, that met a 95 percent confidence level, plus or minus 2.80 percent. DOL's reported PUA outlays for the period April 2020 through September 2021, the month the program expired, was $121.2 billion. The PUA program continued to have residual[10] outlays of $7.4 billion from the expiration through September 30, 2023.

DOL published an improper payment rate of 2.44 percent for the FECA program, which resulted in an estimated $79.48 million in gross improper payments.

[10] Residual outlays are expected to occur for claims that were related to the eligible period under the program but have not yet been processed or are still undergoing an appeal by the claimant. As of April 2024, an additional $31.8 million in residual outlays have been made for FY 2024.

Additionally, DOL reported an unknown payment rate of zero percent, resulting in no unknown payments. These estimates were based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 2.50 percent.

See the Findings and Recommendations section for additional details.

- Requirement 4 – Determine if DOL published programmatic corrective action plans prepared under section 3352(d) that DOL may have in the accompanying materials to the annual financial statements.

DOL reported corrective actions including mitigation strategies taken and/or planned for the UI and FECA programs. Specifically, for the UI program, DOL reported taken and planned mitigation strategies in the following categories: Audit, Automation, Behavioral/Psychological Influence, Change Process, Cross Enterprise Sharing, Predictive Analytics, Statutory Change, and Training.

DOL reported corrective actions it had taken including mitigation strategies for PUA in the following categories: Cross Enterprise Sharing and Training. DOL did not report planned mitigation strategies as the PUA program expired in September 2021, and only residual outlays were expected to occur.

Lastly, DOL reported training as both the taken corrective action and planned mitigation strategy for the FECA program.

- Requirement 5 – Determine if DOL published improper payments reduction targets established under section 3352(d) that DOL may have in the accompanying materials to the financial statements for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets.

DOL published an FY 2024 UI improper and unknown payment rate reduction target of 15.00 percent in the FY 2023 OMB payment integrity data call. Although DOL did not publish a reduction rate for FY 2023 UI improper and unknown payments in the FY 2022 OMB payment integrity data, DOL did report an estimated FY 2023 rate for the UI program of 22.27 percent. DOL's actual reported combined FY 2023 improper payment and unknown payment rate of 16.47 percent was below that estimate and thus the UI program demonstrated improvement.

DOL did not publish a FY 2024 PUA improper and unknown payment reduction target in FY 2023 as the PUA program expired in September 2021 and only residual outlays were expected. Additionally, no plan to meet a reduction target was developed as no reduction target was reported. DOL did not have an established FY 2023 reduction target from its FY 2022 improper payment reporting. OMB guidance[11] states a reduction target is not expected to be published until a baseline has been established and reported as it was in FY 2023. As such, there was no reduction target applicable for FY 2023.

DOL published an FY 2024 FECA improper and unknown payment rate reduction target of 3.15 percent in the FY 2023 OMB payment integrity data call. Additionally, DOL did meet the established an FY 2023 FECA improper payment rate reduction target of 3.25 percent.

DOL developed plans for meeting the reduction targets for both the UI and FECA programs for FY 2023.

See the Findings and Recommendations section for additional details.

- Requirement 6 – Determine if DOL reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).

The UI program did not meet the requirement, as the estimated improper payment rate for the program was 14.83 percent and the unknown payment rate was 1.64 percent—resulting in a combined total rate of 16.47 percent. The PUA program also did not meet the requirement, as the estimated improper payment rate for the program was 18.53 percent and the unknown payment rate was 17.40 percent, for a combined total rate of 35.93 percent. The FECA program met the requirement with an estimated improper payment rate of 2.44 percent and unknown payment rate of zero percent, for a combined total rate of 2.44 percent.

See the Findings and Recommendations section for additional details.

FINDINGS AND RECOMMENDATIONS

Our 2023 performance audit identified three findings, which are presented below. We discussed the findings with management and received their response, which is included in Appendix A.

<u>Finding No. 23-01</u>: Continued improvements needed to meet certain required PIIA thresholds

As noted in the Results and Conclusion section above, DOL reported a combined

[11] OMB M-21-19, Part VI.A.5a

improper and unknown payment rate of 16.47 percent for the UI program and 35.93 percent for the PUA program, which both exceeded the 10 percent threshold established by PIIA. As a result, DOL was not in compliance with requirement 6 of PIIA.

PIIA states the following:

> The term “compliance” means that the agency –
>
> > (F.) has reported an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under section 3352(c).[12]

UI management indicated that compliance with the payment “when due” provisions of Section 303(a)(1) of the Social Security Act creates structural issues resulting in the barriers that impeded their ability to maintain a gross improper payment rate of less than 10 percent. These issues include the inability to access necessary data or information and the failure to verify UI claimants’ return to work status. UI management also indicated that, for the PUA program, a contributing cause for the improper and unknown payments was a number of states failing to perform or document performance of key data crossmatches.

<u>Finding No. 23-02:</u> *Improvements needed in the reporting of improper payment information*

During our review of the improper payment information reported through the OMB data call, we noted DOL management did not identify or correct the following differences in its supporting schedules:

- FECA program: The omission of $43.4 million in reported fraud for the FECA program from the OMB data call.
- FPUC and PEUC programs: The exclusion of $2.8 billion in established overpayments and $602.1 million in recoveries for these two programs.

Government Accountability Office’s (GAO) *Standards for Internal Controls in the Federal Government* states:

> Management designs control activities for appropriate coverage of objectives and risks in the operations. Operational processes

[12] PIIA, Section 3351, Definitions (2), Compliance

> transform inputs into outputs to achieve the organization's objectives. Management designs entity-level control activities, transaction control activities, or both depending on the level of precision needed so that the entity meets its objectives and addresses related risks.[13]

The errors occurred because DOL's review procedures were not designed at a level of precision to identify necessary changes to the calculated formulas used within the supporting schedules for its OMB data call reporting.

Finding No. 23-03: Improvements needed in completeness of PUA reporting

As noted in the Results and Conclusion section above, DOL reported outlays for the period April 2020 through September 2021; however, outlays[14] above the statutory threshold have continued for the program beyond this date. Additionally, DOL did not report a reduction target for FY 2024 for the PUA program, and accordingly DOL did not publish a plan to meet a reduction target. As a result, DOL was not in compliance with requirements 1 and 5 of PIIA.

PIIA states the following:

> The term "compliance" means that the agency –
>
> (A.) (i) published improper payments information with the annual financial statement of the executive agency for the most recent fiscal year; and targets
>
> (E.) publishes improper payments reduction targets established under section 3352(d) that the executive agency may have in the accompanying materials to the annual financial statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets[15]

In addition, OMB Circular A-123, *Requirements for Payment Integrity Improvement*, states:

> Section II.B.3. Reporting Timeframe: To the extent possible, data used for estimating IPs [improper payments] and UPs [unknown

[13] Government Accountability Office (GAO), *Standards for Internal Controls in the Federal Government*, GAO-14-704G (September 2014), Section 10.08, available at: https://www.gao.gov/assets/gao-14-704g.pdf

[14] The PUA program has continued to have residual outlays for claims of $7.4 billion from the expiration of the program through September 30, 2023.

[15] PIIA, Section 3351, Definitions (2), Compliance

> payments] in a given program should coincide with the FY being reported (for example, the estimate reported in the FY 2021 Annual Data Call would be based on data from FY 2021 (October 2020 through September 2021). The 12-month timeframe represented in the reported estimate should be documented in the S&EMP submission. For consistency purposes, the agency should continue using the same timeframe (i.e. October through September) for subsequent reporting years, unless a different timeframe needs to be used. If the timeframe needs to change for subsequent reporting years then the agency should resubmit their S&EMP and accompanying checklist with certification with the updated 12-month timeframe.
>
> Section VI, 5.a: If a program's reported IP estimate plus the UP estimate is above the statutory threshold, the program is required to establish and publish an IP and UP reduction target for the following FY in the accompanying materials to the annual financial statement.
>
> Section VI, 5.c: If the program reported an IP and UP estimate above the statutory threshold in the CY [calendar year], and established an IP and UP reduction target for the following FY, the program is responsible for developing a plan to meet the reduction target established.

UI management indicated that, because the program was expired, no further benefits were eligible after September 2021, and as such no reporting is required for the expired program.

Recommendations

We recommend DOL management:

1. Maintain its current focus on increasing technical assistance and funding to states to improve the improper payment reduction strategies to reduce the improper payments estimate rate below the 10 percent threshold.

2. Update review procedures to ensure formulas are specifically confirmed as part of the annual review process and before the final submission of the Office of Management and Budget data call.

3. Update its policies and procedures over the reporting of PUA information to include outlays after the expiration of the program, until such time as the outlays are no longer greater than the statutory threshold.

ANALYSIS OF MANAGEMENT'S RESPONSE

In response to a draft of this report, included as Appendix A, DOL management agreed, in part, with 2 of our 3 recommendations and did not concur with Finding 23-03 and its recommendation. We reviewed management's response; however, management's comments did not result in any changes to our finding or recommendation. Synopses of management's comments and our corresponding responses are detailed as follows:

Management did not concur with our conclusion on PUA program's compliance with PIIA requirements 1 and 5. Management asserted the following:

- The PUA S&EMP plan, as well as other DOL annual reporting, stated that because the PUA program expired in September 2021, no further reporting would be required, and that this had been communicated with OMB.
- OMB had indicated no issue with the proposed plan, and reviewed and accepted that the methodology met all of the statutory requirements of PIIA.
- Providing a reduction target for the PUA program was also not possible because there could be no possible reductions to a program that has been expired for two years.

Although management did provide documentation of their communications and meetings with OMB during the development of the S&EMP, they were unable to provide supporting documentation of OMB's affirmative agreement that the PUA program would require no future reporting. OMB guidance states that the OIG is responsible for the evaluation and "adequacy of the S&EMP when determining program compliance."[16] This report addresses the evaluation of the S&EMP. As we noted in our finding, the PUA program has continued to have outlays beyond the expiration of the program that are above the statutory threshold.[17] As such, without any affirmative waiver from OMB, the current guidance requires that DOL continue reporting improper payment information for the PUA program. This reporting therefore requires a reduction target and plan to meet that target for any residual outlays above the statutory threshold in the current year.

[16] OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*, Section VI.C.

[17] The PUA program continued to have residual outlays of $7.4 billion from its expiration through September 30, 2023. As of April 2024, an additional $31.8 million in residual outlays have occurred for FY 2024.

PRIOR YEAR RECOMMENDATIONS

The following recommendations were issued in the report titled *The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2022*, which was issued by the OIG on June 9, 2023. We followed up with management on the status of the recommendations.

- Maintain management's current focus on increasing its 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.

  Status: This finding was updated and reissued in the current year.

- Revise the methodology used to calculate the improper payment information for the FPUC program.

  Status: This finding was closed in the current year.

- 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.

  Status: This finding was closed in the current year.

APPENDIX A: AGENCY'S RESPONSE TO THE REPORT

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 Draft Report No. 22-24-007-13-001, *The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2023*

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) 2023 report entitled "The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2023" (Report No. 22-24-007-13-001).

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 Payment Integrity Information Act of 2019 (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, and continuously improve fraud risk mitigation 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 Tables 1 and 2 of this Draft Report). In FY22 we respectfully disagreed with OIG's determination PUA did not comply with the Criteria 1 requirement to "*publish payment integrity information…*" because in FY22 OMB indicated DOL was not allowed to publish information until DOL and OMB could work together to improve the estimation methodology needed to produce fulsome integrity reporting. In FY23 OIG continues to assert this criteria was not met despite DOL and OMB having worked together to develop and published the PUA Estimation Methodology and Report, and transparent publication of full PUA reporting per the published estimation methodology in both the FY23 OMB Payment Integrity DataCall and DOL's FY23 Agency Financial Report (AFR). OIG is correct that "*DOL only reported PUA program outlays from its inception until September 2021, when the program expired.*" This was exactly what was described in the estimation methodology DOL and OMB developed, was reported in the FY23 Datacall, and was described in the FY23 AFR which OIG audited without comment on this subject.

Similarly, we disagree with OIG's determination of non-compliance with Criteria 5 parts A and C regarding publishing an "*IP… reduction target*" and "*plan to meet the… reduction target*". Per the published estimation plan, FY23 DataCall, the FY23 AFR, and High-Priority Scorecard reporting, "*the PUA program expired in law September 2021, and many states discontinued administering the PUA program prior to the expiration date. As a result, no additional actions are possible and no additional quarterly information can be provided for the PUA program.*" In addition, DOL Management's Response to OIG's FY22 PIIA Compliance Report (no. 22-23-006-13-001) also indicated the PUA program, "*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*."

The PUA program expired in law in September of 2021 – no new beneficiaries remain to service and the only payments still being made are to those who were eligible for weeks of unemployment through September 6, 2021 but whose payments were delayed due to adjudication issues. In addition, the published estimation methodology makes it clear it was a one-time review of the full universe of payments possible to review for the lifetime of the program prior to its legal expiration in 2021 – it is simply not physically or logically possible to implement the review again now that the program does not exist in law and new benefits are not being paid for weeks of unemployment beyond September 6, 2021. It is not possible to provide a "reduction target" for a program which no longer exists and which will not provide future reporting. We appreciate the OIG's insistence that M-21-19 guidance requires a "reduction target", but DOL points out that publishing a "reduction target" for a temporary, emergency program that has not existed for two years, and can provide no further reporting would amount to "doublethink" – that which does not exist any longer cannot be reduced – it seems nonsensical, lacks any use in practice, and would be logically inconsistent.

The Department simply disagrees with OIG's interpretation.

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

DOL agrees with this Recommendation.

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 2024, 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.

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

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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: Update review procedures to ensure formulas are specifically confirmed as part of the annual submission process and before the final submission of the Office of Management and Budget data call.

DOL agrees, in part, with this Recommendation.

OIG offers two findings supporting this Recommendation. With regard to the "*omission of $43.4 million in reported fraud for the FECA program from the OMB data call*", DOL acknowledges a regrettable math error in the formula to consolidate DOL-wide reported fraud. We requested OMB update DataCall reporting to correct this omission when uncovered by OIG and have implemented enhanced review and error checks internally to avoid future errors.

Regarding the "*exclusion of $2.8 billion in established overpayments and $602.1 million in recoveries for*" the PEUC and FPUC programs, ETA provided reporting believed to be consistent with OMB guidance at the time. We acknowledge with the benefit of the auditor's hindsight a different conclusion could have been reached. DOL places the highest priority on clear, transparent, compliant integrity reporting.

Recommendation #3: Update its policies and procedures over the reporting of PUA information to include outlays after the expiration of the program, until such time as the outlays are no longer greater than the statutory threshold.

DOL disagrees with this Recommendation.

OMB reviewed and accepted that the PUA IP estimation methodology met all statutory requirements of PIIA. The PUA program expired in law on September 6, 2021, and the estimation plan clearly indicated that no ongoing reporting could be produced for subsequent years. DOL communication with OMB, dated October 2, 2023, and shared with OIG in the course of this audit, summarized our agreement that "*PUA was determined to be a separate program, it was going to report in FY22 but rejected by OMB. OUI & OMB worked together to address concerns with the PUA S&EMP, and OMB agreed to changes last summer – the S&EMP and IP rates were reported publicly in August. The S&EMP covered the entire life of the program which expired 9/6/21. PUA will complete a DataCall Survey in FY23 and that will [be] the end of its reporting.*" – OMB indicated no issue with this plan. DOL's responses to OMB's FY23 Payment Integrity DataCall clearly reported, "*this program expired in law on 9/6/2021. It is no longer paying out benefits & cannot be reformed now to improve integrity. This Survey reflects a review of the full life of the program - no further reporting is possible.*" In addition, DOL's FY23 AFR included the following, "*Since this methodology reflects a one-time review of claims for the full span of the program's existence, ongoing reporting in FY 2024 is neither possible nor appropriate.*" Neither OMB nor OIG auditors who reviewed this AFR reporting when in draft expressed any

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concerns. Similarly, DOL's Management's Response to OIG's FY22 PIIA compliance report also clearly stated that "*there will be no ongoing reporting in subsequent years*." The PUA methodology, including the provision that it could only be applied to the life of the program prior to expiration in law, was accepted by OMB as compliant with law and reviewed by OIG without comment.

The only possible means of attempting to meet this Recommendation would be to simply apply the FY23 determined rate to any residual outlays. In this same vein, the only "reduction target" DOL could apply would be to repeat that same IP rate since there can be no possible reductions to a program over two-years dead – DOL believes this seems nonsensical, lacks any use in practice, and would be logically inconsistent. DOL will comply with OMB guidance for FY24 reporting.

Again, we appreciate OIG's efforts in reviewing DOL's compliance with PIIA, being a partner in payment integrity, and for their efforts in investigating and prosecuting fraud. 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.

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