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

2

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

3

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.