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 2021

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

July 1, 2022

Mr. Kevin Brown
Deputy Chief Financial Officer
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

The United States 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 (PIIA) of 2019 for Fiscal Year (FY) 2021, which was the year ended September 30, 2021.

The objective of KPMG's performance audit was to evaluate DOL's compliance with the requirements of PIIA as defined in Title 31 of the United States Code (U.S.C.), section 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[1] 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

[1] OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*

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 addressed this criteria in relation to DOL's unemployment insurance (UI) program and the Federal Employees Compensation Act (FECA) program. KPMG concluded DOL met three of the requirements for compliance with PIIA for the UI program and all six requirements for the FECA program, as shown in the table below.

Table 1: OMB Compliance Status Table[2]

		Criteria Met?	
OMB Compliance Criteria		**Unemployment Insurance**	**Federal Employees' Compensation Act**
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	YES
	Posted the annual financial statement and accompany materials required under guidance of OMB on the agency website	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
	Adequately concluded whether the program is likely to make Improper Payments (IP) and Unknown Payments (UP) above or below the statutory threshold	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;	NO	YES

[2] 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*.

	OMB Compliance Criteria	Criteria Met? Unemployment Insurance	Criteria Met? Federal Employees' Compensation Act
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
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	YES
	Demonstrated improvements to payment integrity or reached a tolerable IP and UP rate	NO	YES
	Developed a plan to meet the IP and UP reduction target	YES	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	YES

KPMG determined Requirement 3 was not met for the UI program. DOL reported the Federal State Unemployment Insurance (SUI) program, which included 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 fiscal year (FY) 2021 with approval from OMB. DOL also utilized the improper payment rate derived from the SUI program to calculate the improper payments for the combined outlays of the UI program. However, this methodology did not take into account that a portion of FPUC outlays were associated with Pandemic Unemployment Assistance (PUA) claims rather than SUI claims. The impact of including the portion of FPUC activity related to PUA claims could not be determined because the PUA improper payment was not required to be reported for FY 2021.

For Requirement 5, KPMG noted the UI program did not demonstrate improvement from the improper payment target rate published in FY 2020, as the overall improper payment rate increased from FY 2020. DOL reported an 18.71 percent improper payment rate and an unknown rate of 0.21 percent in FY 2021 for the UI program—compared to improper payment rate of 9.17 percent[3] in FY 2020. As the sum of these rates is above 10 percent, the UI program also did not meet Requirement 6.

[3] An unknown rate was not required to be reported for FY 2020.

We appreciate the cooperation and courtesies the Office of the Chief Financial Officer, Employment and Training Administration, and Office of Workers' Compensation Programs extended KPMG and the OIG during this audit.

Carolyn R. Hantz
Assistant Inspector General for Audit

CONTRACTOR PERFORMANCE AUDIT REPORT

KPMG LLP
Suite 12000
1801 K Street, NW
Washington, DC 20006

Secretary and Inspector General
U.S. Department of Labor

This report presents the results of our work conducted to address the performance audit objective related to the United States Department of Labor's (DOL) compliance with the requirements contained in the Payment Integrity Information Act of 2019 (hereinafter referred to as PIIA). Our work was primarily performed during the period of December 17, 2021, through May 18, 2022, and our scope period was for the fiscal year ended September 30, 2021.

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' (AICPA) *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 objective. We believe 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 Title 31 of the United States Code (U.S.C.), section 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).

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 determined the following:

Table 2: PIIA Criteria

		Criteria Met?	
PIIA Criteria		**Unemployment Insurance**	**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	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
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)	NO	YES
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

		Criteria Met?	
PIIA Criteria		**Unemployment Insurance**	**Federal Employees' Compensation Act**
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	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	YES

We noted, with approval from OMB, DOL reported 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 fiscal year (FY) 2021. 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. However, as noted in the Findings and Recommendations section of our report, this methodology did not consider that a portion of FPUC outlays were associated with Pandemic Unemployment Assistance (PUA) claims rather than SUI claims. The impact of including the portion of FPUC activity related to PUA claims could not be determined because the PUA improper payment information was not required to be reported for FY 2021.

This performance audit did not constitute an audit of financial statements or an attestation-level engagement as defined under *Government Auditing Standards* or AICPA professional standards. KPMG cautions that projecting the results of our evaluation to future periods is subject to the risk 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. It is not intended to be, and should not be, relied upon by anyone other than these specified parties.

KPMG LLP

July 1, 2022

BACKGROUND

The PIIA 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 2021.

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[4].

Based on its risk assessment process, DOL reported four programs that were susceptible to significant improper payments in FY 2021. The programs identified were:

- the Federal State Unemployment Insurance (SUI) program, which included Federal Pandemic Unemployment Compensation (FPUC) outlays;
- the Pandemic Emergency Unemployment Compensation (PEUC) program;
- the Pandemic Unemployment Assistance (PUA) program; and
- the Federal Employees' Compensation Act (FECA) program.

In accordance with OMB guidance, improper payment information was not required to be reported for the PEUC and PUA programs until FY 2022 because they were not determined to be susceptible to significant improper payments[5]

[4] OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*
[5] OMB Circular No. A-123 Appendix C, Part II.C.2: When an agency determines through the IP [improper payment] risk assessment that the total annual IPs PLUS the UPs [unknown payments] for the program are likely to be above the statutory threshold, the program will report an IP and UP estimate in the FY following the FY in which the risk assessment determination was made.

until FY 2021; however, DOL elected to report information for the PEUC program in combination with the SUI program for FY 2021.

We noted that the improper payment information for the SUI program, including FPUC outlays, and the PEUC program were collectively reported as one program (hereinafter referred to as the UI program) for FY 2021.

The programs for which improper payment information was reported in FY 2021 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 2021 program year, DOL reported total outlays of $413.0[6] billion, estimated improper payments of $77.2[6] billion and unknown payments[7] of $864.6 million for the UI program. As previously noted, DOL was not required to report any PUA improper payment information for FY 2021. The PUA program outlays totaled $97.5[8] billion (19 percent of total UI related outlays of $510.4 billion) for program year 2021.

The reported improper payment estimate for the UI program was developed from the SUI program's Benefit Accuracy Measurement (BAM) program. The BAM 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 360-480 claims every year, resulting in approximately 24,000 audited claims for the annual survey. The SWAs report their survey results in the BAM 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 72 to 520 claims for states, resulting in approximately 22,430 claims for the program year 2021 analysis.

[6] Source: DOL FY 2021 improper payment information reported on PaymentAccuracy.gov
[7] OMB Circular No. A-123 Appendix C defines an unknown payment 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.
[8] Source: ETA data downloads: ETA 2112 reports for the period July 1, 2020 through June 30, 2021; data as of May 2, 2022.

With approval from OMB, DOL reported the SUI program, including the FPUC outlays, and the PEUC program collectively as one UI program for its FY 2021 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 BAM sampling methodology, and applied it to the outlays for SUI, FPUC, and PEUC.

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 2021 program year, the FECA program reported total outlays of $2.9[9] billion, estimated improper payments of $79.21[9] million, and unknown payments of $2.5 million.

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 Chapter 33 of Title 31, U.S.C. section 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);

(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);

[9] Source: DOL FY 2021 information reported on PaymentAccuracy.gov

(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 2021 improper payment reporting data required under guidance of the OMB reported on PaymentAccuracy.gov.

During our planning and testing phases, 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 BAM claims data
- Reviewed FECA benefit payments;
- Reviewed DOL's corrective action plans as reported on the PaymentAccuracy.gov website; and

- Obtained any OMB waivers/exemptions for improper payments reporting, as 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 three of the six PIIA compliance requirements. 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.

Yes. DOL published its annual financial statements in its Agency Financial Report (AFR) for FY 2021 on November 19, 2021 and posted the AFR on its public-facing website.[10] 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.

- 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).

Yes. DOL conducted a risk assessment based on the requirements in the applicable guidance issued by OMB. DOL continued to identify the SUI and FECA programs as susceptible to improper payments.

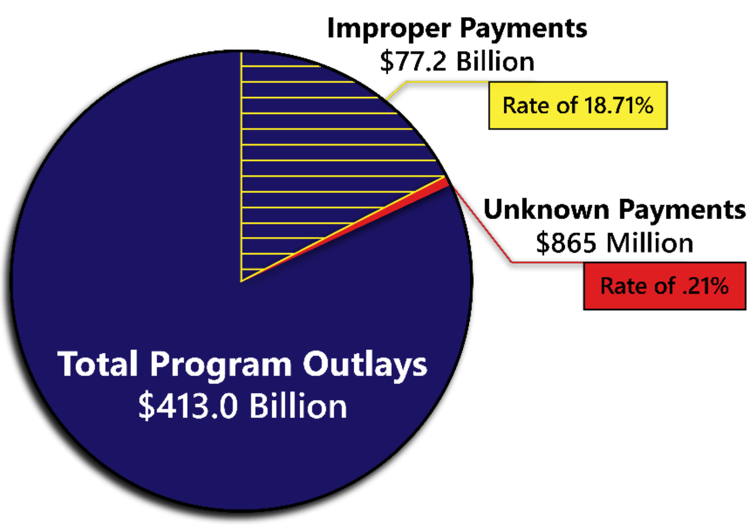
DOL assessed 17 other programs as part of its FY 2021 risk assessment. As a result, the PEUC and PUA programs were assessed as susceptible to improper payments. The remaining 15 programs were identified as not susceptible to significant improper payments. We noted DOL assessed the FPUC outlays as a part of the SUI program and not as a separate program because the only eligibility requirement was to have an eligible claim for SUI, PUA, or PEUC. The remaining DOL programs were not assessed in FY 2021 because they were evaluated within the last 2 years and were assessed as not susceptible to significant improper payments.

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

- 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.

No. DOL published an improper payment rate of 18.71[11] percent for the UI program, which resulted in an estimated $77.2 billion in reported gross improper payments. Additionally, DOL published an unknown payment rate of 0.21 percent, which resulted in estimated unknown payments of $865 million. These estimates were based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 3 percent.

Figure 1: UI Improper and Unknown Payments



Source: DOL FY 2021 information reported on PaymentAccuracy.gov

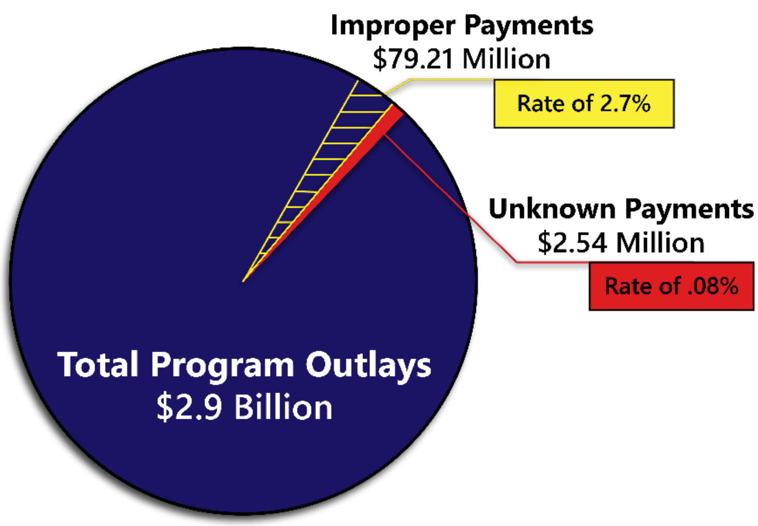
Although not required under OMB guidance to report improper payment information for the PEUC program until FY 2022, DOL elected to report PEUC program outlays as part of the SUI program in FY 2021. Additionally, as previously mentioned, the FPUC outlays were included with the SUI program. Separate estimated improper payment rates were not calculated or published for the FPUC or PEUC outlays—rather OMB approved DOL's methodology of applying the SUI improper payment rate (determined using SUI BAM methodology) to the combined SUI, FPUC, and PEUC outlays for the calculation of the estimated gross improper payment.

[11] Source: DOL FY 2021 information reported on PaymentAccuracy.gov

DOL's justification for this approach was that FPUC and PEUC outlays had similar eligibility requirements to the SUI program. However, we noted DOL did not consider that a portion of FPUC outlays were based on PUA claims rather than SUI claims. Since this impact was not assessed or quantified, we determined DOL did not meet this criterion. See the Findings and Recommendations section for additional details.

The FECA program did comply with this requirement. DOL published[12] an improper payment rate of 2.70 percent for the FECA program, which resulted in an estimated $79.21 million in gross improper payments. Additionally, DOL reported an unknown payment rate of .08 percent, which resulted in estimated unknown payments of $2.54 million. These estimates were based on a statistical estimation approach that met a 95 percent confidence level, plus or minus 3 percent.

Figure 2: FECA Improper and Unknown Payments



Source: DOL FY 2021 information reported on PaymentAccuracy.gov

- 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 statement.

Yes. DOL reported corrective actions for each of the reported root causes in the accompanying materials posted to PaymentAccuracy.gov. Specifically, DOL reported corrective actions related to the following UI root cause categories:

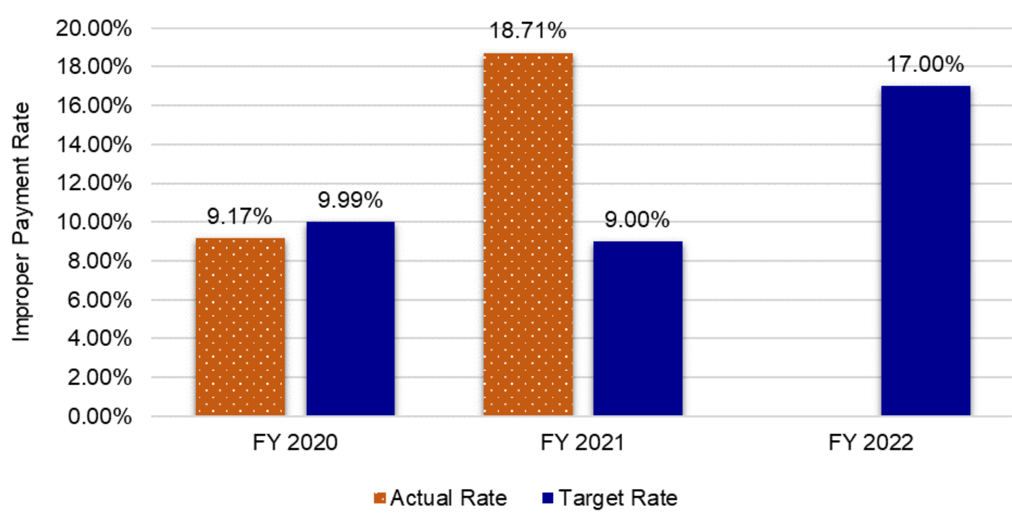
[12] Source: DOL FY 2021 information reported on PaymentAccuracy.gov

Inability to Access Data/Information needed and Failure to Access Data/Information needed. In addition, DOL reported corrective actions related to the following FECA root cause categories: Data/Information Does Not Exist and Inability to Access Data/Information.

- 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 statement for each program or activity assessed to be at risk, and has demonstrated improvements and developed a plan to meet the reduction targets.

No. DOL did publish a FY 2022 UI improper and unknown payment reduction target in the FY 2021 OMB payment integrity data call of 17.00 percent. However, DOL did not meet the established FY 2021 UI improper payment reduction target rate of 9.00 percent that was published in the DOL FY 2020 OMB payment integrity data call. DOL also did not demonstrate improvement to the UI improper payment rate from the actual rate in FY 2020. The UI improper payment rate increased from 9.17 percent to 18.71 percent.

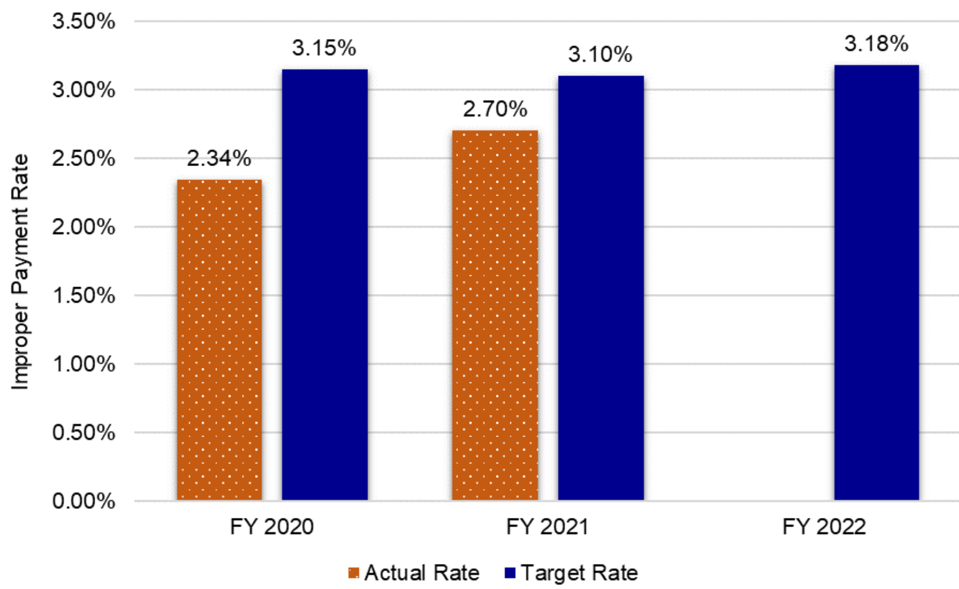
Figure 3: UI Target and Actual Improper Payment Rates by Fiscal Year



Source: DOL FY 2021 information reported on PaymentAccuracy.gov

DOL published a FY 2022 FECA improper and unknown payment reduction target in the FY 2021 OMB payment integrity data call of 3.18 percent. Additionally, DOL did meet the established FY 2021 FECA improper payment reduction target of 3.10 percent.

Figure 4: FECA Target and Actual Improper Payment Rates by Fiscal Year



Source: DOL FY 2021 information reported on PaymentAccuracy.gov

Lastly, DOL developed plans for meeting the reduction targets for both the UI and FECA program for FY 2022.

- 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).

No. The UI program did not meet the requirement as the estimated improper payment rate for the program was 18.71 percent, and the unknown rate was 0.21 percent, for a combined total rate of 18.92 percent. The FECA program met the requirement with an estimated improper payment rate of 2.70 percent and unknown payment rate of 0.08 percent, for a combined total rate of 2.78 percent.

FINDINGS AND RECOMMENDATIONS

We identified two findings, which are presented below.

Finding No. 21-01: Continued improvements needed to meet certain required PIIA thresholds

As noted in the Results and Conclusions section above, DOL reported a combined improper and unknown payment rate of 18.92 percent for the DOL UI program, which exceeded the 10.00 percent threshold established by PIIA.

Additionally, the UI program did not meet its FY 2021 target IP rate of 9.00 percent, demonstrating no improvement in the rate. As a result, DOL was not in compliance with Requirements 5 and 6 of the PIIA.

PIIA Section 3351.Definitons (2), Compliance, states:

> The term “compliance” means that the agency –
>
> (E.) …has demonstrated improvements and developed a plan to meet the reduction targets
>
> (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).

UI management indicated 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 related to the inability to access the necessary date or information, and the failure to verify UI claimants’ return to work status.

Finding No. 21-02: Improvements needed in the development of improper payment estimates

As previously noted in the Results and Conclusions section, DOL reported both the FPUC outlays and PEUC program within the FY 2021 SUI program improper payment information submitted on PaymentAccuracy.gov. DOL management stated the FPUC and PEUC programs had similar program requirements as the SUI program, and therefore determined it was appropriate to utilize the improper payment rate generated by the existing BAM methodology for those outlays. However, this method did not adequately consider the following factors with regards to the FPUC program:

- The FPUC provided an additional payment to those claimants who were deemed eligible to receive benefits under the SUI or PUA programs. As such, the outlays used to calculate the reported UI gross improper payment amount included outlays based on claims related to the PUA program. PUA-derived FPUC outlays should have been excluded from the calculation.

- Claimants were eligible for the additional FPUC outlays if they received any benefit amount from the SUI, PUA, or PEUC programs. Therefore, any portion of the improper payment rate derived from claims that were paid correctly, at least in part, (e.g., underpayments or payments incorrectly calculated) would still have been eligible for the FPUC payment. The impact of these identified errors should have been removed from the improper payment rate used for the FPUC outlays.

As a result, DOL was not in compliance with Requirement 3 of the PIIA.

PIIA Section 3352, Estimates of improper payments and reports on actions to reduce improper payments (c), Estimation of Improper Payments (1) Estimation, states:

> the head of the relevant executive agency shall—
>
> (A) 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 under the program or activity

OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, Part II.B.1, states:

> The main purpose of an IP estimate is to reflect the annual estimated known IPs made by the program.

OMB Circular No. A-123, Appendix C, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, Part II.B.2, states:

> The program will be responsible for producing an IP and UP estimate that is accurate and appropriate given program characteristics and it will be the OIG's responsibility to evaluate whether the explanation provided by the program and the S&EMP [sampling and estimation methodology plan] without point estimates and confidence intervals around those estimates warrants compliance during the annual OIG compliance review.

DOL indicated they had discussed this approach with OMB and obtained approval. However, the discussions did not include sufficient specific information about the approach.

Recommendations

We recommend the Principal Assistant Secretary of ETA:

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; and

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

PRIOR YEAR RECOMMENDATIONS

The following recommendation was included in the report titled *The U.S. Department of Labor Complied with the Payment Integrity Information Act for FY 2020, but Reported Unemployment Insurance Information Did Not Represent Total Program Year Expenses*, which was issued by the OIG on August 6, 2021.[13] 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.

  Status: This finding was reissued in the current year.

- We recommend that DOL management develop procedures to ensure changes to its improper payment process are communicated to OMB in a timely manner and those communications are properly maintained for subsequent review and inspection.

  Status: Closed. DOL implemented a requirement for agencies to report changes prior to the certification date.

We discussed the findings and recommendations with management and received their response, which is included in the appendix of this report. Management's response states the improper payment rate would "logically result in an overestimate of IP dollars in the UI program." However, as noted in our report, the impact of including the portion of FPUC activity related to PUA claims could not be determined because the PUA improper payment information was not required to be reported for FY 2021. In addition, management's response cites

[13] The U.S. Department of Labor Complied with The Payment Integrity Information Act for FY 2020, but Reported Unemployment Insurance Information Did Not Represent Total Program Year Expenses, Report No. 22-21-007-13-001 (August 6, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/22-21-007-13-001.pdf

the OIG Semiannual Report to Congress.[14] Although that OIG report stated the reporting of an IP rate that included the pandemic programs was consistent with their recommendation, it also noted the rate would likely be higher than the reported 18.71 percent. Furthermore, the OIG did not assess the appropriateness of the methodology used in calculating the IP rate.

[14] DOL OIG Semiannual Report to Congress, Volume 87, Oct. 1, 2021 – March 31, 2022. https://www.oig.dol.gov/public/semiannuals/87.pdf

APPENDIX: 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 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

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