Appendix D

## OCFO'S Response to Draft Report

**U.S. Department of Labor** Office of the Chief Financial Officer

May 14, 2015

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: KAREN TEKLEBERHAN
Acting Chief Financial Officer

SUBJECT: Response to the Office of the Inspector General's "DOL Could Do More to Reduce Improper Payments and Improve Reporting", Report 03-15-001-13-001

The Office of the Chief Financial Officer (OCFO) would like to thank the Office of the Inspector General (OIG) for the opportunity to respond to its report *DOL Could Do More to Reduce Improper Payments and Improve Reporting*. The Department is committed to being a responsible steward of public funds, and we take very seriously our obligations under the Improper Payment Elimination and Recovery Improvement Act and other statutes to reduce improper payments in the Unemployment Insurance (UI), Federal Employees' Compensation Act (FECA) and other programs. To that end we have implemented a number of important steps in the past several years –many of which are outlined in the OIG report – to reduce improper payments, improve reporting, and build capacity in states to enhance their detection, prevention, and recovery of improper payments. Among other efforts, we have funded the creation of a UI Integrity Center of Excellence which is developing innovative integrity strategies, based on new technologies and data analytics, to prevent and detect UI fraud across the country. These measures are aimed at addressing the root causes of improper payments, and we expect to reduce the rate of those payments over time.

Responses to the OIG's recommendations follow and additional detail can be found in the attached documentation. Attachment 1 covers specific responses from the Department's FECA program. Attachment 2 covers specific responses from the Department's UI program.

**OIG Recommendations:**

1. **Improve the estimation methodology for the FECA program to ensure its completeness by including the initial payments made in the first 90 days of compensation and compensation payments for non-imaged cases.**

**Management Response:** The Department is dedicated to ensuring that beneficiaries receive the benefits they are entitled to in a timely manner. In recognition of the potential hardship to individuals served if initial payments are not timely, the Department has made the policy decision to prioritize timeliness of payments during the initial 90 day period and must rely on the accuracy of payment data being reported by federal agencies and their injured employees. We believe this policy decision is consistent with our commitment to ensuring that all requirements imposed by Congress through IPERA and IPERIA, and other similar guidance by Office of Management and Budget (OMB), are met. OWCP's improper payment estimation methodology for the FECA program was developed in consultation with the OIG and OCFO, was approved by OMB as required by OMB Circular A-123 Appendix C, it is consistent with the Office of Personnel Management's OMB approved methodology for the Federal Retirement Program based on similarities in initial payments, and we understand the OPM IG has found no fault with this methodology.

The Department has concluded that pursuing information on non-imaged cases (older than 15 years) would require an undue use of limited resources for a statistically insignificant benefit. Please see Attachment 1 for more information. However, we welcome further discussion on ways to better meet the requirements of IPERA while ensuring beneficiaries are served timely.

2. **Report in the AFR any limitations with the sampling methodology for the FECA program.**

   **Management Response:** The Department is strongly committed to transparency and completeness in its financial reporting. OCFO and OWCP will ensure that all material limitations to improper payment sampling methodologies are more clearly explained in the Department's Agency Financial Report (AFR).

3. **Incorporate an estimate of undetected fraud in the FECA improper payment estimate.**

   **Management Response:** OWCP is strongly committed to the accuracy and effectiveness of its analysis and reporting. In the Congressional Budget Office's (CBO) report entitled "How Initiatives to Reduce Fraud in Federal Health Care Programs Affect the Budget" (10/2014), CBO found "…although fraud that has been successfully prosecuted can be quantified, there is no reliable method to estimate the amount of fraud that goes undetected…". Given the unreliability of such an estimate, OWCP has concluded that the most appropriate use of limited resources is to focus on using data analytics to understand the types of improper payments, and to look for correlations and anomalies in order to understand causes and potential remedies. Given our shared analytics capabilities, OWCP, OCFO, and the OIG have the opportunity to make great strides together in this effort that will reduce the occurrence of improper payments. Please see Attachment 1 for more information.

It is worth noting that the Department and OMB reached agreement on a revised UI improper payments estimation methodology that does not net recovered improper payments, an agreement that occurred after the window of time considered by this report. In addition, as noted in the report, the Department is pleased that during Fiscal Year (FY) 2014 it coordinated with states to recapture UI overpayments totaling $1.42 billion in FY 2014 and FECA overpayments totaling $32.93 million. The Department continues to prioritize prevention, detection and recovery of improper UI benefit payments and improve state performance and as discussed in the report awarded $87.1 million in supplemental funding in FY 2014 to 49 states for this purpose. Please see Attachment 2 for more information.

Attachment 1: FECA Program Response

**Office of Worker's Compensation Programs (OWCP) Federal Employee Compensation Agency (FECA) Response to Office of the Inspector General (OIG) Audit Report No. 03-15-001-13-001 – *DOL Could Do More to Reduce Improper Payments and Improve Reporting***

1. In the case of initial payments, the Office of Worker's Compensation Programs (OWCP) consulted OMB and several IP reporting agencies to determine an appropriate methodology. For purposes of the IP audit methodology, OMB agreed that it was appropriate to treat FECA initial payments in a fashion similar to how the Office of Personnel Management (OPM) treats initial payments for the Federal Retirement Program. This practice is encouraged by IPERIA, specifically at A-123, Appendix C, Step 2.1(f):

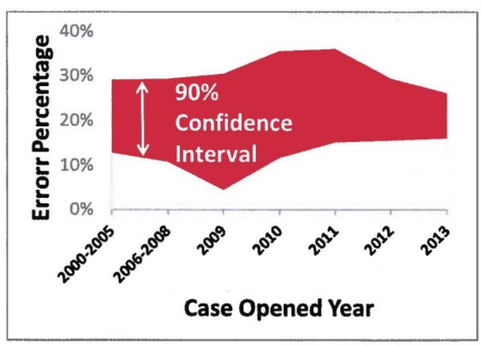
> Example Plans from Other Agencies. OMB will make available to agencies examples of statistical sampling and estimation plans submitted by agencies. Agencies are encouraged to review these examples and consult with other agencies when preparing their sampling plans. While each plan will likely be slightly different given the unique nature of each program, *there are some characteristics that are common across many programs, and agencies should benefit from each other's work.*

a. Both OWCP and OPM have similar burdens or relying on reporting data from all of the federal agencies, which frequently requires going back-and-forth with the agency to get all pay elements correct. In both cases the government recognizes the potential hardship to the individuals they serve if initial payments are not timely and have taken procedural steps to mitigate the potential problems. The government has the opportunity to correct the payment and ensure its accuracy by the 90 day timeframe. This continues to be an approved methodology for OPM and the OPM IG has found no fault with it.

b. In the case of claims initiated prior to November 2000, OWCP's IP review determined that 87% of FECA improper payments were attributed to overpayments. OWCP analyzed overpayments to determine their incidence over time and as the attached chart displays, there is no statistically significant correlation between case age and the likelihood of a case to contain an overpayment. As a result, there would be no impact in including cases before 2000 for building an estimate, and the administrative burden surrounding those paper case files make their inclusion problematic.

The following chart based on an analysis of FECA data supports that idea, showing how the error rates and confidence intervals are relatively unchanged over a 13 year period:

| Year | Case Count | % Containing Overpayment | Upper Bound | Lower Bound |
|---|---|---|---|---|
| 2000-2005 | 67 | 21% | 29% | 13% |
| 2006-2008 | 50 | 20% | 29% | 11% |
| 2009 | 23 | 17% | 30% | 4% |
| 2010 | 34 | 24% | 35% | 12% |
| 2011 | 47 | 26% | 36% | 15% |
| 2012 | 98 | 22% | 29% | 16% |
| 2013 | 176 | 21% | 26% | 16% |



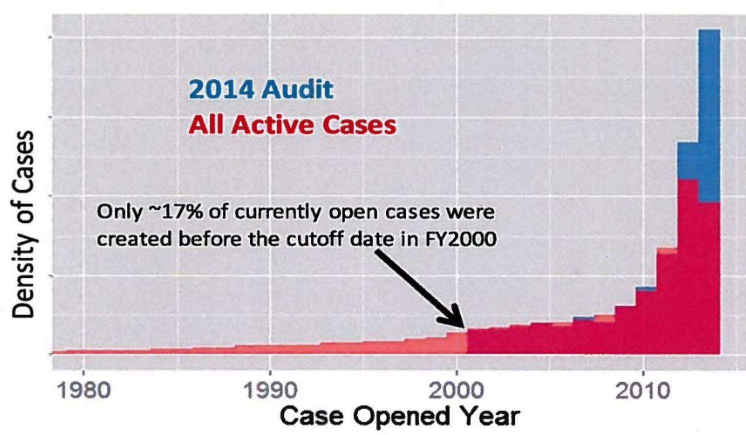
Attachment 1: FECA Program Response

c. Additionally, it would be extremely difficult to get employing agencies to verify or update pay rate information that is over 15 years old. Between facility closures, the movement to shared service providers for payroll, and agency organizational changes (sometimes even moving to new Departments, such as the Homeland Security agencies), the information needed to verify in an audit that a pay rate was in fact improper would be very difficult to obtain. This would lead to significant delays for no measureable adjustment to the stated IP rate.

2. The reference to the FY 2008 FECA estimate of improper payments (page 14) seems unnecessary. OWCP embraced the concept of improper payment reporting and published their report one year ahead of the requirement.

3. In the fourth paragraph of page 15, OIG questions the completeness of OWCP's OMB approved methodology.
   a. OWCP/DOL does not agree with including initial payments and non-imaged cases in the estimated.
      i. The choice not to include initial payments is a policy choice as described above and including them in the estimate would make it a part of a target for reduction when that is not the policy goal for these payments. It is noted that these initial payments represented 1.18% of the compensation dollars spent in CB2014, and only 1.09% of the actual number of payments.

      ii. The choice not to include payments prior to FY 2000 has no measurable impact as discussed above. The non-fully imaged cases ~17% % of the total active cases for OWCP, and that number is shrinking daily as older cases are closed or fully imaged.



Attachment 1: FECA Program Response

iii. OIG noted that OWCP uses actual restitution dollars as the basis of its estimate of improper payments resulting from fraud. They failed to mention that OWCP did so based on discussions with the OIG in FY 2013 that resulted in this approach. OWCP and OIG agreed that each quarter the OIG would provide actual fraud convictions and restitution and that OWCP would add that actual fraud to our estimate of improper payments. No other program to our knowledge includes estimated or actual fraud in their IP estimates. There is no mention of this requirement in the IPERIA guidance, other than to consider all known aspects of the payment process. IPERIA does not require the additional burden of fraud estimation, though it is included in our methodology to represent a known aspect of OWCP's payments processing.

iv. OIG's assertion that "OWCP needs to develop a methodology that incorporates the amount of undetected fraud in the FECA program" is not considered reasonable by other organizations with similar responsibility for assessing the impact of Fraud. The Congressional Budget Office in an October 2014 report entitled "How Initiatives to Reduce Fraud in Federal Health Care Programs Affect the Budget" considered the work of Government Accountability Office, the Department of Veterans Affairs, the Department of Health and Human Services Health Care Fraud and Abuse Control Program (and others). As a result of their research and Analysis they conclude: "…although fraud that has been successfully prosecuted can be quantified, there is no reliable method to estimate the amount of fraud that goes undetected." Given the potential unreliability of such an estimate, OWCP will focus its efforts on using data analytics to understand the types of improper payments and to look for correlations and anomalies in order to understand the causes and potential remedies. Given our shared analytics capabilities, OWCP, OCFO, and the DOL OIG have the opportunity to make great strides together in this effort that would ultimately reduce the occurrence of improper payments.

Attachment 2 – Unemployment Insurance Program Response

**Employment and Training Administration (ETA) Response to Office of the Inspector General (OIG) Audit Report No. 03-15-001-13-001 –** ***DOL Could Do More to Reduce Improper Payments and Improve Reporting***

ETA has been working aggressively with states to address the issue of UI program integrity and for the implementation of the national strategies for the detection, prevention, and recovery of improper payments. ETA's comments in response to this report are provided below.

As noted in your report, the estimated 2014 UI improper payment rate was 11.57 percent. The reduction of UI improper payments is one of ETA's highest priorities. ETA is working aggressively with states to implement the program integrity strategies contained in our UI integrity strategic plan. These strategies are designed to address major root causes of UI improper payments. ETA is also collaboratively working with states to add new innovative strategies to the strategic plan to help bring down the improper payment rate.

Also, as noted in the OIG report, one of the strategies included in the ETA's integrity strategic plan is the establishment of the national UI Integrity Center of Excellence (Center) to promote the development of innovative new integrity strategies. The Center is responsible for the development, implementation, and promotion of innovative program integrity strategies to reduce improper payments. The strategies and tools being developed by the Center will be made available to all states and include: data analytics and predictive modeling methodologies and tools to improve UI fraud prevention and detection; a secure portal for the rapid exchange of fraud information between states as it is identified; staff training on fraud solutions and integrity practices that is locally adaptable; highlighting integrity practices that should be included in state UI modernization efforts; and creation of a "model" plan for Benefit Payment Control operations.

Finally, while the UI program has made progress in implementing its strategic plan to improve program integrity, there are certain essential program characteristics that, by their nature, contribute to the improper payment rate. These structural issues include the following:

- The UI system has competing responsibilities that require states to continuously balance the need for both timeliness and accuracy --- the program is designed to require full payment of unemployment compensation "when due" but the program also requires extensive fact-finding and verification of information to prevent improper payment of benefits. In compliance with the "when due" provisions of the law, states will make the determination of whether or not to pay benefits based on the best available information. A major challenge to addressing improper payments is created when claimants, employers, and third party administrators (working for employers) fail to report information timely and/or accurately.

- There is no cost effective way to prevent the vast majority of work search improper payments, which is now the largest root cause of UI improper payments. All states are required to have laws requiring claimants to actively search for work and states vary in their requirements. Generally, claimants self-certify for each week of UI benefits claimed that they have carried out the required work search activities and are required to document in some fashion the activities they carried out. Most of this information requires additional verification with the employer which is extremely resource intensive. Additionally, due to the delay in getting the employer validation, most work search errors can only be detected after the fact.

- There are lags in the current data sources used by states to identify individuals that continue to claim benefits after returning to work. For example, the National Directory of New Hires (NDNH), a data resource available to all states, contains information on newly hired employees. However, this data can take up to six weeks from the time of report to its entry into the NDNH, resulting in up to six weeks of undetected improper benefit payments. Additionally, states by law cannot stop benefit payments immediately on receiving a new-hire hit, but must independently verify information produced in the matching program and provide the individual an opportunity to contest findings. These requirements create further delays in stopping potentially improper benefit payments from being made to the claimant until the verification process has been completed.

ETA is currently studying the impact of these structural issues on the UI improper payment rate and how to quantify that impact. Once this study is completed, ETA will use the findings to provide a statistically reliable estimate for these structural impacts.