

U.S. Department of Labor

Office of Inspector General—Office of Audit

**REPORT TO THE OFFICE OF THE
CHIEF FINANCIAL OFFICER**



**DOL NEEDS TO DO MORE TO REDUCE
IMPROPER PAYMENTS AND IMPROVE
REPORTING**

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BRIEFLY...



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DOL NEEDS TO DO MORE TO REDUCE IMPROPER PAYMENTS AND IMPROVE REPORTING

WHY OIG CONDUCTED THE REVIEW

In Fiscal Year (FY) 2014, the Department of Labor (DOL) identified its Unemployment Insurance (UI) benefit program and Federal Employees' Compensation Act (FECA) program as susceptible to significant improper payments. In FY 2016, DOL reported \$3.85 billion and \$106.32 million in improper payments for those programs, respectively.

Office of Inspectors General (OIG) are required by law to annually review improper payment reporting in Agency Financial Reports (AFR) to determine if their agencies complied with the requirements of the Improper Payments Elimination and Recovery Act (IPERA), as amended by the Improper Payments Elimination and Recovery Improvement Act (IPERIA). This report provides our assessment of DOL's compliance for FY 2016.

WHAT OIG DID

We performed a review to determine the following:

Did DOL comply with the reporting and reduction requirements of IPERA; IPERIA; and Office of Management and Budget (OMB) Memorandum M-15-02, *Requirements for Effective Estimation and Remediation of Improper Payments*?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <https://www.oig.dol.gov/public/reports/oa/2017/03-17-002-13-001.pdf>.

WHAT OIG FOUND

DOL's reported UI improper payment rate of 11.65 percent did not meet its goal of 10.63 percent, nor did it meet IPERA's 10 percent compliance requirement. The FECA program's reported improper payment rate of 3.54 percent did not meet its goal of 2.50 percent.

DOL met the IPERA, IPERIA, and OMB reporting requirements to: publish its AFR and post it on the DOL website; conduct specific risk assessments for each program activity; publish improper payment estimates for programs identified as susceptible to significant improper payments; publish programmatic corrective action plans in the AFR; and report information on its efforts to recapture improper payments.

We again identified concerns regarding the validity of DOL's published improper payment estimate for the FECA program. DOL continued to exclude certain categories of compensation payments in its improper payment estimate for FECA, but did not determine the full effect of those exclusions on its estimate. Further, OWCP did not determine the effect of issues identified by fraud investigations and estimate the extent to which these issues existed in the payment population. For example, the FECA improper payment estimate may have been understated because OWCP presumed the total \$263 million paid in FY 2016 for compounded drugs was medically necessary. Evidence compiled by OIG indicates otherwise.

In FY 2016, DOL used the Do Not Pay List (DNP) as required, although none of the matches from the DNP Portal resulted in the identification of improper payments.

WHAT OIG RECOMMENDED

We made one new recommendation for DOL to improve the FECA program estimation methodology by including high-risk areas, while three prior-year IPERA recommendations remain open that were related to improving the estimation methodology and transparency of reporting.

The Office of the Chief Financial Officer agreed with the information presented in the report and plans to reevaluate the FECA Improper Payments Estimation Methodology.

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June 13, 2017

INSPECTOR GENERAL'S REPORT

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The Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA),¹ requires federal agencies to identify and reduce improper payments and report annually on their efforts according to guidance from the Office of Management and Budget (OMB) in Circular A-123, Appendix C, *Requirements for Effective Estimation and Remediation of Improper Payments*.

IPERA and OMB guidance both specify that each federal agency's Inspector General should review agency improper payment reporting in the Agency Financial Report (AFR), and accompanying materials, to determine whether the agency complied with IPERA and IPERIA.

The objective of our review was to determine the following:

Did DOL comply with the reporting and reduction requirements of IPERA; IPERIA; and OMB Memorandum M-15-02, *Requirements for Effective Estimation and Remediation of Improper Payments*?

To accomplish our objective in accordance with OMB Memorandum M-15-02, we reviewed the following:

- DOL's compliance with the six requirements listed in OMB Circular A-123, Appendix C;

¹ IPIA, Public Law (P.L.) 107-300; IPERA, P.L. 111-204; IPERIA, P.L. 112-248. All three laws are codified at Title 31, United States Code (31 U.S.C.) 3321. IPERIA requirements intensified the government's efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within federal spending. The President signed IPERIA into law on January 10, 2013.

- The accuracy and completeness of DOL’s reporting of improper payments;
- DOL’s performance in reducing and recapturing improper payments;
- DOL’s assessment of the level of risk associated with the Unemployment Insurance (UI) program (a high-priority program) and the quality of the program’s improper payment estimates and methodology; and
- DOL’s compliance with OMB Memorandum M-12-11, *Reducing Improper Payments through the “Do Not Pay List.”*

We also followed up on recommendations made in prior OIG improper payment audits to verify corrective actions DOL had taken in response to those recommendations. See Appendix A for additional information on the scope, methodology, and criteria.

RESULTS IN BRIEF

DOL complied with four of the six IPERA requirements listed in OMB Circular A-123. For the two failed requirements, DOL did not meet its reduction target in Fiscal Year (FY) 2016 for both the UI and Federal Employees’ Compensation Act (FECA) programs and reported a FY 2016 UI improper payment rate of 11.65 percent, which did not meet the IPERA requirement of “less than 10 percent.”

DOL’s estimation methodology for the FECA program continued to have issues with its accuracy and completeness. While DOL reported an estimated improper payment amount in the FECA program of \$106.32 million and an improper payment rate of 3.54 percent, DOL may have understated the reported improper payment rate. Our review found DOL’s estimation methodology continued to exclude initial payments made in the first 90 days of a compensation claim, as well as payments made on older claims that originated before the FECA program implemented its electronic case management system. While DOL disclosed these exclusions in the FY 2016 AFR, DOL did not determine nor report the full effect of those exclusions on its estimates. In addition to these exclusions, the Office of Workers’ Compensation Programs (OWCP) did not include, in its estimation methodology, issues identified by fraud investigations nor estimate the extent these issues existed in the payment population.

OMB Circular A-123 defines as “high priority” any program with improper payments greater than \$750 million. DOL identified the UI program, with estimated improper payments of \$3.85 billion, as its only high-priority program for improper payments. For each program identified as high priority, IPERA requires the agency to perform an assessment of the level of risk and the quality of the improper payment estimate. DOL’s assessment of the high-priority UI program determined the level of risk and the quality of its improper payment estimate were reasonable.

In FY 2016, DOL used the Do Not Pay (DNP) List as required. According to DOL, its programs already review IPERIA-specified databases outside the DNP Portal and as such, none of the matches from the DNP Portal resulted in the identification of improper payments.

BACKGROUND

IPERA, Section 2(a), requires the head of each federal agency to periodically review all programs and activities and identify those that may be susceptible to significant improper payments. Reviews shall be performed for each program and activity at least once every three fiscal years. DOL performed a department-wide assessment of all programs during FY 2014. As part of DOL's regular cycle, risk assessments will be reevaluated for all programs in FY 2017.

Based on DOL's department-wide risk assessment performed in FY 2014, both the UI and FECA programs were determined to be susceptible to significant improper payments. In FY 2016, DOL performed a risk assessment of the Workforce Innovation and Opportunity Act (WIOA) programs, as WIOA became effective on July 1, 2015. DOL determined the WIOA programs were low risk and not susceptible to significant improper payments. Therefore, DOL did not report improper payment estimates for the WIOA programs.²

IPERA defines significant improper payments as those exceeding \$10 million of all program or activity payments made during the fiscal year reported and 1.5 percent of program outlays, or \$100 million.³ For each program and activity identified as susceptible to significant improper payments, DOL is required to produce a statistically valid estimate of the improper payments or an estimate that is otherwise approved by OMB and include such estimates in the accompanying materials to its annual financial statements.⁴

IPERA required DOL to prepare a report on actions it took to reduce improper payments for programs with significant improper payments.⁵ As part of the report, DOL should have included: (1) a description of the causes of improper payments, actions planned or taken to correct those causes, and the planned or actual completion date of actions taken to address those causes; and (2) program and activity-specific targets for reducing improper payments that have been approved by the Director of OMB.⁶

² The next risk assessment for WIOA is scheduled for FY 2019.

³ P.L. No. 111-204, Section 2(a)(3), 124 Stat. 2224-2225 (2010)

⁴ P.L. No. 111-204, Section 2(b), 124 Stat. 2224, 2225 (2010)

⁵ P.L. No. 111-204, Section 2(c), 124 Stat. 2224, 2225-2226 (2010)

⁶ P.L. No. 111-204, Sections 2 (c) (1) and (4), 124 Stat. 2224, 2225-2226 (2010)

IPERA requires the OIG to review DOL’s improper payment reporting in the AFR to determine if it complied with IPERA, as defined in Section 3(a)(3). OMB M-15-02⁷ provides guidance for the review and requires OIG to determine if DOL had:

- Published an AFR for the most recent fiscal year and posted that report and any accompanying material required by OMB on the agency website;
- Conducted a program specific risk assessment for each program activity that conforms with 31 U.S.C., Section 3321, (if required);
- Published improper payment estimates for all programs or activities susceptible to significant improper payments under its risk assessment, (if required);
- Published programmatic corrective action plans in the AFR, (if required);
- Published, and is meeting, annual reduction targets for each program assessed to be at risk and estimated for improper payments; and
- Reported a gross improper payment rate of less than 10 percent for each program and activity for which an improper payment estimate was obtained and published in the AFR.

Further, in November 2009, the President issued Executive Order 13520, “*Reducing Improper Payments*,” which in part, required agencies to review payments and awards in its programs against specific databases to identify ineligible recipients and prevent improper payments. This was referred to as the DNP initiative. IPERIA codified the DNP initiative into law in January 2013, and added a requirement that all payments were to be reviewed through DNP starting June 1, 2013. IPERIA also improved the quality of oversight for high-dollar and high-risk programs and required OMB to examine the rates and amounts of improper payments that agencies have recovered and determine targets for recovering improper payments.

In FY 2015, the DNP Portal became available for DOL to match DOL automated payments against some of IPERIA specified databases. DOL was using DNP as required by IPERIA during FY 2016. According to DOL, its programs already review IPERIA-specified databases outside the DNP Portal as appropriate.

RESULTS

In accordance with OMB Memorandum M-15-02, this report includes our review of the following areas for DOL’s FY 2016 improper payment reporting and activities:

⁷ OMB Memorandum M-15-02, dated October 20, 2014, Appendix C to OMB Circular A-123 Requirements for Effective Estimation and Remediation of Improper Payments

- Compliance with IPERA,
- Accuracy and Completeness of Reporting,
- Performance in Reducing and Recapturing Improper Payments,
- Assessment of Level of Risk for the UI Program and Quality of the Program's Improper Payment Estimates and Methodology,
- Use of DNP Portal, and
- Unimplemented Recommendations from Prior OIG Report.

COMPLIANCE WITH IPERA

DOL included all the reporting requirements in its FY 2016 AFR. Our specific results for the IPERA, IPERIA, and OMB compliance requirements are as follows:

- 1. Did DOL publish its AFR for the most recent fiscal year and post that report and any accompanying materials required by OMB on the agency website?**

Yes. DOL published its AFR for FY 2016 on December 15, 2016. The report and accompanying materials required by OMB were posted on the agency website at www.dol.gov.

- 2. Did DOL conduct a specific risk assessment for each program or activity that conformed with IPERA (if required)?**

Yes. DOL performed a risk assessment of all DOL programs in FY 2014. IPERA, Section 2(a)(2), requires agency heads to review all programs to identify risk susceptibility for improper payments every three years. The next department-wide risk assessments are planned for FY 2017.

WIOA superseded the Workforce Investment Act of 1998 and amended the Adult Education and Family Literacy Act, the Wagner-Peyser Act, and the Rehabilitation Act of 1973. For those DOL programs affected by the new act, DOL performed a risk assessment in FY 2016.

DOL's risk assessments for the UI and FECA programs found them to be at risk of significant improper payments. DOL's risk assessment for the individual WIOA programs indicated that all WIOA-authorized programs reviewed were not susceptible to significant improper payments and did not support improper payment reporting under A-123, Appendix C guidance for FY 2016.

- 3. Did DOL publish improper payment estimates for all programs and activities identified as susceptible to significant improper payments under its risk assessments (if required)?**

Yes. DOL published improper payment estimates as required for the UI and FECA programs. We continued to have concerns on how the estimates were determined and reported in the FY 2016 AFR for the FECA program.

The UI benefit program's estimated annual improper payments for FY 2016 were \$3.85 billion (11.65 percent), consisting of approximately \$3.7 billion in overpayments plus \$153 million in underpayments. For the FECA program, estimated annual improper payments were \$106.3 million (3.54 percent), consisting of \$41.97 million in overpayments plus \$64.35 million in underpayments.

4. Did DOL publish programmatic corrective action plans in the AFR (if required)?

Yes. DOL published corrective action plans to reduce and collect improper payments for the UI and FECA programs, as both were susceptible to significant improper payments exceeding the statutory threshold listed in OMB Circular A-123, Appendix C.

In its FY 2016 AFR, DOL reported the following corrective action plans for the UI and FECA programs.

UI

DOL developed a strategic plan to address several root causes of improper payments in the UI program.

In April 2016, DOL provided \$112 million to 50 state workforce agencies (SWA) to provide UI claimants with improved reemployment services and reemployment eligibility assessments. Additionally, in October 2016, DOL awarded approximately \$30 million in supplemental funding to 39 states for the detection, prevention, and recovery of improper UI benefit payments. According to DOL, these incentive funds are to improve state performance and address outdated information technology (IT) system infrastructures necessary to improve UI program integrity.

FECA

In the FY 2016 AFR, DOL identified the major categories of errors found in the FECA program as failure to verify, inability to authenticate eligibility, administrative or process errors, medical necessity, and other. DOL provided correctives actions for the improper payments categorized as failure to verify, inability to authenticate eligibility, and administrative or process errors. However, DOL did not provide corrective actions for improper payments categorized as medical necessity or other (identified fraud restitution).

5. Has DOL published, and met, annual reduction targets for each program assessed to be at risk and estimated for improper payments?

No. Although DOL published the annual reduction targets for the DOL programs, it did not meet the target rate established for the UI or FECA programs.

DOL published, but did not meet the annual reduction target for the UI benefit program for FY 2016. The target improper payment rate for FY 2016 was 10.63 percent. DOL reported an estimated improper payment rate of 11.65 percent.

For the FECA benefit program, DOL published, but did not meet, the FY 2016 reduction target of 2.5 percent. DOL reported an actual rate of 3.54 percent.

6. Did DOL report an improper payment rate of less than 10 percent for each program and activity for which an estimate was published under Section 2(b) of IPIA?

No. DOL's reported FY 2016 improper payment rate of 11.65 percent for the UI benefit program did not meet the IPERA requirement of "less than 10 percent." The FECA program met the less than 10 percent requirement with a reported improper payment rate of 3.54 percent.

DOL was not required to submit a report to Congress in FY 2016 on its non-compliance in reporting over 10 percent of improper payments. However, DOL submitted a draft bill to Congress on October 7, 2016, on the *Unemployment Compensation Program Integrity Act of 2016* to address UI integrity issues and implement proposals contained in the Administration's FY 2017 Budget, such as allowing states to use a percentage of recovered UI overpayments to detect and deter benefit overpayments.

ACCURACY AND COMPLETENESS OF REPORTING

We found DOL reported accurate and complete improper payment estimates for the UI program, but additional improvements were needed for the FECA program. DOL may have understated the reported FECA improper payment rate because its estimation methodology excluded: (1) compensation payments for initial payments made in the first 90 days of a compensation claim; and (2) payments made on claims initiated prior to November 2000 that had not been imaged and stored electronically into its Integrated Federal Employees' Compensation System (iFECS). DOL disclosed these exclusions in the FY 2016 AFR, but did not determine or report the full effect of those exclusions on its estimate. Further, DOL did not determine the effect of issues identified by fraud investigations nor estimate the extent these issues existed in the payment population.

UI

We found the Benefit Accuracy Measurement (BAM) program DOL used to estimate UI improper payments in FY 2016 was designed to produce accurate and complete results. The BAM program is administered for DOL by all 50 states, the District of Columbia, and Puerto Rico, to assist with identifying error and abuse in UI programs. Under BAM, states conduct comprehensive audits of samples of claims weekly to verify claimant eligibility and determine the accuracy of decisions to pay or deny UI benefits.

FECA

To estimate improper payments for FY 2016, OWCP sampled compensation and medical benefit payments to identify payment errors. OWCP continued to exclude categories of compensation payments from its improper payment estimates as it did in FYs 2014 and 2015. Specifically, OWCP excluded initial payments made in the first 90 days of a compensation claim and compensation payments on claims initiated prior to November 2000 that had not been imaged and stored electronically in iFECS.⁸ OWCP reiterated its position that it was dedicated to ensuring beneficiaries receive timely benefits, and including these two payment categories in a review would hinder timely payment to injured workers. OWCP concluded that pursuing information on non-imaged cases would not be cost effective and would not provide a statistically significant benefit to a diminishing population. OWCP stated initial compensation payments are often estimates and OWCP adjusts payments once the employing agency submits the correct information.

In its response to OIG's FY 2014 report, OWCP stated initial payments represented 1.18 percent of the compensation dollars for FECA chargeback year 2014. DOL further stated pursuing information on non-imaged cases would be neither cost effective, nor provide a significant benefit because of this steadily diminishing population, which in FY 2016 accounted for approximately 15 percent of active cases.

DOL disclosed in the FY 2016 AFR that these categories of compensation payments were excluded from the sampling estimation methodology, but it did not report the magnitude and dollar amount of these exclusions. As we previously recommended, to improve the FECA program's estimation methodology, OWCP should include the initial 90 days of compensation payments and compensation payments for non-imaged cases or demonstrate they are not material.

OWCP did include a fraud component based on actual restitution amounts in its FECA improper payment estimate. However, we previously recommended OWCP expand its

⁸ In 2005, OWCP fully implemented iFECS, a case management system used to support core business functions and to electronically store FECA claimant case file documents. All FECA cases initiated after October 31, 2000, were imaged and stored electronically into this new system. OWCP officials informed OIG during our FY 2014 review that some cases initiated prior to November 1, 2000, have been imaged for specific reasons including cases that have been filed with the Employee Compensation Appeals Board.

improper payment methodology to include issues identified by investigations and estimate the effect of these issues in the payment population.

In FY 2016, medical expenses accounted for 34 percent of FECA's total expenses of \$3.2 billion. The cost of compounded drug prescriptions in particular have increased dramatically in recent years, reaching \$263 million in FY 2016. With limited exceptions, OWCP has historically maintained that any treatment, including prescriptions, by a licensed physician are medically necessary. However, OIG investigations found various schemes in the FECA program, including payments for false claims involving compounded drug prescriptions, medical services that were never provided, overpayments for transportation costs, and compensation for injuries not severe enough to warrant OWCP payments. A recent investigation in the FECA program resulted in indictments⁹ for a scheme that prescribed unnecessary and excessive compounded medications, totaling \$158 million in billings. In another recent case, a pharmacy owner was convicted of making more than \$813,000 in illegal kickbacks to a treatment center. As we have previously reported, OWCP's improper payment methodology needs to target high-risk areas to provide a more accurate and complete improper payment estimate. As a result of not doing this, OWCP's estimate of improper payments may have been understated.

PERFORMANCE IN REDUCING AND RECAPTURING IMPROPER PAYMENTS

Although DOL worked with states to reduce UI improper payment rates, the improper payment rate increased from an estimated 10.73 percent in 2015, to 11.65 percent in 2016. For the FECA program, the improper payment rate increased from an estimated 2.87 percent in 2015, to 3.54 percent in 2016.

DOL reported it coordinated with states to recapture UI overpayments, totaling approximately \$1 billion in FY 2016, but determined recapture audits were not cost effective for other programs, including the FECA program. As part of DOL's regular cycle of department-wide risk assessments, these determinations will be reevaluated for all programs in FY 2017.

UI

DOL has made UI payment integrity a priority and stated it implemented an aggressive strategic plan to work with states to control UI improper payments. These strategies, documented in the Employment and Training Administration's (ETA) Integrity Strategic Plan, targeted the three primary root causes of UI improper payments: (1) payments to individuals who continue to claim benefits after they have returned to work; (2) failure of employers, or their third-party administrators, to provide timely and adequate information on the reason for an individual's separation from employment; and (3) failure of claimants to comply with work search requirements.

⁹ Federal grand Jury indictment unsealed March 24, 2017.

DOL stated it is taking or has taken the following actions as part of its strategic plan:

- Continuing the development of a UI Integrity Center of Excellence to develop, implement, and promote innovative program integrity strategies to reduce UI improper payments, including the prevention and detection of fraud through such tools as a secure portal to enable rapid exchange of information among states concerning UI fraud schemes, and the UI Integrity Data Hub that is being designed for exchange of UI fraud data elements.
- Engaging in state strategies to recover improper payments and bring the individual state rate in compliance with the 10 percent threshold. These strategies include identifying states with persistently high improper payment rates to provide technical assistance and monitoring, launching a web site for improper payment data transparency, and completing and transmitting a legislative package of UI integrity initiatives to Congress.
- Targeting states to comply with the implementation of new state performance measures or develop corrective action plans as part of the State Quality Service Plan (SQSP).
- Convening a Technical Working Group in 2016 of independent UI experts, statisticians, and economists, to study program and legal requirements. The working group will focus on: 1) balancing the need for accuracy with the requirement for full payment “when due;” 2) difficulties in preventing work search errors; and 3) lags in current data sources used by states to identify that a claimant has returned to work.

Additionally, in October 2016, DOL awarded approximately \$30 million in supplemental funding to 39 states to: support the prevention, detection, and recovery of improper UI benefit payments; improve state performance; and address outdated IT system infrastructures necessary to improve UI program integrity.

As DOL noted in the Improper Payments section of the FY 2016 AFR, states administer the UI program and set operational priorities. Therefore, DOL has limited authority to ensure states pursue improper payment activities. However, DOL’s ongoing coordination with the states to support UI payment recapture audits and activities showed these efforts were cost effective.

In 2016, DOL submitted a draft bill to Congress on the *Unemployment Compensation Program Integrity Act of 2016*, which would enhance program integrity and implement proposals, such as requiring the electronic transmission of claim and wage information between state agencies and employers as contained in the Administration's FY 2017 Budget.

Prior OIG Reports on UI Improper Payments

Prior to FY 2016, we issued a series of audit reports on state efforts to detect, reduce, and recover UI improper payments. During FY 2016, we also issued a report¹⁰ that summarized and identified systemic issues from the states audited. Additionally, in FY 2016, we issued a report on the results of the State Information Data Exchange System (SIDES) to reduce separation-related UI improper payment rates.

Our FY 2016 report summarized the results of the audits performed in seven states¹¹ to determine how effective states had been at detecting, reducing, recovering, and reporting UI improper payments and at implementing ETA National Strategies to reduce improper payments. The data indicated seven states were not effective at detecting, reducing, recovering, and reporting UI improper payments. The report also indicated states could not demonstrate the effectiveness of ETA National Strategies.

The states generally did not meet established targets for detecting and reducing improper payments and the accuracy of their reporting to ETA could not be determined. Accurate reporting of improper payments and rate estimates is critical to determining the effectiveness of state efforts to minimize improper payments and meet targets.

The states implemented the majority of the ETA National Strategies aimed at detecting, reducing, and/or recovering improper payments. However, they did not obtain and analyze the information needed to determine the extent to which each of the strategies was effective. The states generally lacked information on whether state-specific strategies were working as intended. Measuring the impact of the National Strategies and leveraging best practices from state-specific strategies and recovery methods found to be effective could improve the states' ability to detect reduce, and recover improper payments.

In our seven individual state audit reports, we recommended ETA work with the states to determine the effectiveness of strategies, improve states' mainframe systems and data reliability, and enhance strategic planning to reduce improper payments. In the subsequent roll-up report, we recommended ETA assist states in determining which state strategies are most effective and determine if any should be adopted as National Strategies. ETA generally agreed with our recommendations.

We recently issued an audit report¹² on whether the SIDES program has contributed to a reduction in separation-related UI improper payment rates. We determined that for five SWAs¹³ reviewed in the audit, SIDES contributed to a reduction in separation-related improper payment rates; however, better strategies are needed to

¹⁰ *Recovery Act: States Challenged in Detecting and Reducing Unemployment Insurance Improper Payments*, Report 18-16-005-03-315

¹¹ The seven states selected for audit were California, Colorado, Indiana, Iowa, New York, North Carolina, and Pennsylvania.

¹² *Better Strategies Needed to Increase Employer Participation in the State Information Data Exchange System*, Report 04-17-003-03-315.

¹³ The five SWAs were Colorado, South Carolina, Delaware, Arizona and Louisiana.

increase employer participation, which could result in further reductions. Nationwide, separation-related improper payments decreased an estimated \$132 million from FY 2015 to FY 2016. Focusing on enrolling additional employers with the highest volume of UI claims to use SIDES, would likely yield a substantial increase in UI claims being processed using SIDES, and further reductions in improper payments. In this report, we recommended ETA work with SWAs to increase the number of employers using SIDES, and resolve SIDES' technical challenges.

FECA

In the FY 2016 AFR, DOL stated the improper payment rate for the FECA program increased. DOL attributed the improper payments to: (1) Inability to Authenticate Eligibility; (2) Failure to Verify; (3) Administrative or Process Error; (4) Medical Necessity; and (5) Other - OIG fraud restitution. Additionally, DOL provided the actions planned or currently being performed to address the issues and causes.

DOL reported improper payments in the Inability to Authenticate Eligibility due to issues in the prompt and accurate annual authentication of continued eligibility. DOL is working with OPM to improve communication that will address dual entitlement issues that lead to improper payments. Communication and data exchanges between the FECA program and OPM will improve efficiencies in the FECA programs ability to accurately and timely address this problem. In addition, the program is also working on a Computer Matching Agreement with the SSA. The data exchange program will improve the Programs ability to reduce FECA benefits when an individual is concurrently receiving benefits from SSA, thereby minimizing improper payments of FECA disability benefits. DOL informed us that the FECA program plans to post this data matching in the federal register, with planned timelines to be completed during FY 2017.

Improper payments categorized as Failure to Verify resulted from communication issues between the FECA program and the employing agency. DOL will continue to monitor efforts in this area and work to improve communications with its stakeholders.

DOL reported its Administrative or Process Errors improper payments were due to various errors in calculating wage loss pay rates, such as the improper deduction of life insurance premiums. DOL stated the FECA program is working closely with OPM to improve data sharing of life insurance data.

Medical Necessity improper payments occurred for those payments to a claimant or provider when the medical evidence was insufficient to support that the current level of disability related to the work related injury. DOL's corrective actions for Medical Necessity improper payments are to continue periodic claims review practices.

As we have previously noted in this report, OWCP has historically considered any medical treatment prescribed by a licensed physician, with limited exception, as medically necessary. However, as a result of the significant rise in the use and cost of compounded drugs over the past several years, OWCP has recently implemented a letter of medical necessity process that has already resulted in a marked decrease in

compounded drug claims. This decrease, coupled with the results of recent OIG investigations that identified significant provider fraud, demonstrate the deficiency in OWCP's improper payment estimation methodology and the need for additional strategies for controlling improper payments.

Finally, OWCP stated it hired additional staff for FECA program integrity and contracted with a data analytics firm to assist in developing technology and tools to detect and monitor inherent risk in claims, payments, and providers. OWCP further stated the FECA Program Integrity Unit was conducting a comprehensive study in order to analyze trends and abnormalities in various areas of improper payments. This will assist in developing technology and analytic tools to detect and monitor both post- and pre-improper payments. Moreover, in FY 2016, the FECA program provided a training initiative on improper payment prevention.

DOL determined that it would not be cost effective to conduct a recapture audit for the FECA program based on past analysis.

ASSESSMENT OF LEVEL OF RISK FOR THE UI PROGRAM AND QUALITY OF THE PROGRAM'S IMPROPER PAYMENT ESTIMATES AND METHODOLOGY

OMB Circular A-123, Appendix C, defines as "high-priority" any program with improper payments greater than \$750 million. Within DOL, the UI program, with estimated improper payments of \$3.85 billion in 2016, was the only program designated as high-priority. DOL's assessment of the level of risk and the quality of its improper payment estimates for the UI program were reasonable.

In performing the UI program's assessment, DOL utilized the BAM program, its results, and the various strategies for states' implementation.

DOL officials stated they used the BAM program to identify payment errors and develop and track solutions to systemic problems. Improper payment estimates are based on results of the BAM survey, which examines a statistically valid sample of payments from the State UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for ex Service Members programs (the three largest permanently authorized unemployment compensation programs), but does not include Emergency Unemployment Compensation and Extended Benefits payments. According to DOL officials, they are continuously monitoring the BAM program results and analyzing root causes.

DOL used results from its BAM program to identify and target the root causes (risks) of UI improper payments, such as payments made to individuals who continue to claim benefits after they have returned to work, employers' or their third-party administrators' failure to provide timely and adequate information on the reason for an individual's

separation from employment, and claimants' failure to comply with state work search requirements.

As part of its strategy plan to control UI improper payments, DOL worked with the states to implement the following core strategies:

SQSP/Strategic Plan Development — The SQSP is intended to be a dynamic document states use not only to ensure strong program performance, but also to guide key management decisions, such as where to focus resources. The SQSP should focus state efforts to ensure well-balanced performance across the range of UI activities. States can use this to incorporate the elements from the program integrity strategic plans developed by their cross-functional task forces into the SQSP to address improper payments.

SIDES Implementation — SIDES is a web-based system that allows electronic transmission of UI information requests from UI agencies to multi-state employers and/or third-party administrators, as well as transmission of replies containing the requested information back to the UI agencies. The current implementation of SIDES allows for the exchange of separation and earnings verification information.

TOP — Implementation of the U.S. Department of the Treasury's TOP to recover certain unemployment debts from federal income tax refunds.

Claimant-Employer Messaging — Implementation of a statewide claimant-employer messaging campaign designed to: 1) improve claimants' awareness of their responsibility to report any work and earnings if they are claiming benefits; 2) improve claimants' understanding of work search requirements as a condition of eligibility for benefits; and 3) improve employers' awareness of their responsibility to respond to state requests for separation information and/or earnings/wage verifications. A detailed claimant-employer messaging toolkit was published in UIPL No. 11-12 with sample products for states to consider incorporating into their messaging campaigns.

Employment Service (ES) Registration — Implementing technology or other solutions designed to address improper payments due to a claimant's failure to register with the state's ES or job bank in accordance with the state's UI law.

NDNH Recommended Operating Procedures (ROP) — For several years, DOL has encouraged states' use of the NDNH to reduce improper payments in the UI program. The NDNH came about as a result of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and includes state directories of new hires and a national directory of new hires. These new hire directories have allowed for improved access to

wage data and data from other states regarding new hires and wages. Studies conducted about NDNH have concluded that the use of this tool results in earlier detection of improper payments, therefore increasing the likelihood of recovery. Detailed ROPs were published in UIPL No. 19-11 to provide states with information about best practices in conducting this match.

UI Integrity Center of Excellence — DOL has developed the successful state-driven UI Integrity Center of Excellence with the goal of promoting the development and implementation of innovative integrity strategies to support all states, including the prevention and detection of fraud, in the UI program.

These strategies target the three largest root causes of improper payments identified in ETA's Integrity Strategic Plan. DOL's plan is continuously evolving as new strategies are identified and the progress with each strategy is monitored.

A few of DOL's additional integrity activities to identify and prevent improper payments included:

- (1) Continuing technical assistance to and monitoring of states with persistently high improper payment rates;
- (2) Piloting the use of employer payroll information with three states and Equifax using The Work Number; and
- (3) Submitting a draft bill to Congress on the *Unemployment Compensation Program Integrity Act of 2016* on October 7, 2016. This act, if passed, would require improper payment activities, such as the electronic transmission of claim and wage information between state agencies and employers, and allowing states to use a percentage of recovered UI overpayments to detect and deter benefit overpayments.

Finally, DOL developed performance measures for states on reducing improper payment activities.

USE OF DNP PORTAL

During FY 2016, DOL was using the DNP Portal as required by IPERIA, although none of the matches from the DNP Portal resulted in confirmed improper payments. DOL attributed this to DOL programs screening payments with IPERIA-specified databases outside the DNP Portal prior to payment. Additionally, in FY 2016, state UI programs were permitted to use the DNP.

In FY 2015, the DNP Portal became available to DOL for matching DOL automated payments against some of IPERIA specified databases. As reported by DOL in the FY 2016 AFR, none of the matches resulting from the DNP Portal have been found to

be improper payments. DOL stated its programs already review, as appropriate, IPERIA-specified databases outside the DNP Portal. For example, the use of the DNP Portal was redundant, as OWCP has direct access to the SSA Death Master File. DOL programs also review payment files against non-IPERIA specified databases to prevent improper payments.

As of September 2014, DNP prohibited the acceptance of any state data for UI cross matching or data analytics. Due to issues with DNP statutory/legal authority to provide its services to states that administer federally-funded programs, UI access to DNP was suspended in January 2015. While states are now permitted by the Federal Improper Payments Coordination Act of 2015 (effective December 18, 2015) to participate in the DNP initiative, many state programs already review UI beneficiaries against versions of the Death Master File independently.

During our FY 2016 review, DOL stated the DNP Portal did not interface with all of the databases, as required by IPERIA. The Government Accountability Office (GAO) issued an audit report in October 2016 on their review of DNP and reported it did not offer full access to all of the databases and the savings from using it were minimal. Additionally, OMB stated the DNP initiative prevented over \$2 billion in improper payments in FY 2014 that were not resultant from using the DNP working system. Instead, prevention resulted from the use of the agency-specific efforts, one of which was from the DOL's UI Integrity Center of Excellence.¹⁴

UNIMPLEMENTED RECOMMENDATIONS FROM PRIOR OIG REPORT

In Report No. 03-15-001-13-001, *DOL Could Do More to Reduce Improper Payments and Improve Reporting*, issued May 15, 2015, we made three recommendations to improve the sampling methodology and reporting in the FECA program. All remain unimplemented. In the report, we recommended OWCP:

- 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.

In the FY 2016 AFR, DOL stated reviewing initial payments made in the first 90 days of a compensation claim would hinder timely payment to injured workers and would create undue hardship. In 2015, the Office of the Chief Financial Officer (OCFO) reconfirmed its response to our prior recommendation to improve the estimation methodology for the FECA program, by stating DOL 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.

¹⁴ *Improper Payments – Strategy and Additional Actions Needed to Help Ensure Agencies Use the Do Not Pay Working System as Intended*, GAO 17-15, October 2016

We have consistently disagreed with DOL's responses to this recommendation, as we never recommended the FECA program hinder timely payments to injured workers. Rather, we reported the estimation methodology was not complete, as it did not take into account initial payments made in the first 90 days of compensation and recommended the FECA program include those payments in its estimation methodology and reporting.

In the FY 2016 AFR, DOL concluded that pursuing information on non-imaged (pre-November 2000) cases would not be cost effective, nor would sampling this steadily diminishing population provide a significant benefit. Regarding non-imaged cases, OCFO stated, "DOL 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." Agency officials stated it is not practical to spend the time and resources necessary to test a statistically valid sample of the non-imaged cases.

We continue to disagree with DOL's response, as DOL has not reported or provided information regarding the magnitude or possible impact non-image cases has on the FECA program's improper payments or the costs associated with performing this analysis.

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

DOL disclosed in the FY 2016 AFR the limitations of using this methodology to estimate improper payments, but did not determine and report the full effect of those exclusions on its estimates. In response to our FY 2014 review, DOL stated, "DOL is strongly committed to transparency and completeness in financial reporting. OCFO and OWCP will ensure that all material limitations to improper payment sampling methodologies are more clearly explained in the AFR." In the FY 2016 AFR, DOL continued to disclose the exclusion of FECA initial compensation payments and payments from older, non-imaged cases in its estimation methodology.

However, in strongly committing to improve transparency and completeness, OCFO needs to report additional information in its AFR regarding the magnitude and dollar amount of the exclusions.

- Identify the improper payment issues identified by fraud investigations and estimate the extent to which these issues exist in the payment population.

DOL continued to maintain that the current methodology is the best estimate of fraud in the FECA program for improper payment estimation.

We disagree with DOL's response, as the recommendation is for OWCP to identify the improper payment issues found through fraud investigations and use that information as part of the FECA program's estimation methodology. The use of only court-ordered restitution is limited and does not address the issues related to the fraud, just the individual conviction result from a case worthy of prosecution.

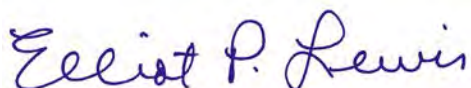
OIG RECOMMENDATION

We recommend the Principal Deputy Chief Financial Officer and Acting Director of OWCP take action to:

- Improve the estimation methodology for the FECA program to ensure its accuracy and completeness by identifying and targeting high-risk areas for improper payments.

In its response, OCFO stated it plans to collaborate with OWCP to reexamine the FECA Improper Payments Estimation Methodology. OCFO's response to the draft report is presented in its entirety in Appendix B. The three recommendations we made in Report No. 03-15-001-13-001, issued May 15, 2015, have not yet been implemented. These recommendations also focused on improving the design and transparency of the FECA programs estimation methodology.

We appreciate the cooperation and courtesies OCFO, ETA, and OWCP personnel extended to OIG during this review. OIG personnel who made major contributions to this report are listed in Appendix C.



Elliot P. Lewis
Assistant Inspector General
for Audit

Appendices

**OBJECTIVE, SCOPE, METHODOLOGY, AND
CRITERIA**

OBJECTIVE

The objective of our review was to determine the following:

Did DOL comply with the reporting and reduction requirements of IPERA; IPERIA; and OMB Memorandum M-15-02, *Requirements for Effective Estimation and Remediation of Improper Payments*?

Specifically, the review:

1. Determined whether DOL complied with all requirements of IPIA, IPERA, and IPERIA in its Improper Payments Information section in the FY 2016 AFR;
2. Evaluated DOL's accuracy and completeness of reporting in the FY 2016 AFR;
3. Evaluated DOL's performance in reducing improper payments;
4. Evaluated DOL's assessment of risk for high priority programs;
5. Determined if DOL is using DNP as required by IPERIA; and
6. Determined the status of DOL's execution of its corrective action plans in order to address prior year findings and recommendations.

SCOPE

DOL, in accordance with IPIA, as amended by IPERA and IPERIA, was required to include a report on improper payments in its FY 2016 AFR. OIG conducted this review in accordance with guidance issued by OMB Memorandum M-15-02, Appendix C, to OMB Circular A-123; and OMB Memorandum M-12-11, "*Reducing Improper Payments through the Do Not Pay List*" to determine if DOL was in compliance with IPERA and IPERIA.

METHODOLOGY

We reviewed the DOL FY 2016 AFR – Improper Payment for compliance with the six items under IPERA and the DNP initiative, as required under IPERIA. In addition, we:

- Evaluated DOL's accuracy and completeness of reporting improper payment information;

- Evaluated DOL’s information on its efforts to reduce and recapture improper payments;
- Evaluated DOL risk assessments of programs that may be susceptible to improper payments;
- Reviewed the status of DOL’s corrective action plans that addressed prior findings and recommendations; and
- Interviewed key personnel in the OCFO, ETA, and OWCP on improper payment estimation methodologies and reduction actions.

Criteria

- Improper Payments Information Act of 2002 (IPIA)
- Improper Payments Elimination and Recovery Act of 2010 (IPERA)
- Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA)
- OMB Memorandum M-15-02 Appendix C to Circular No. A-123, *Requirements for Effective Estimation and Remediation of Improper Payments*, October 20, 2014
- OMB Memorandum M-12-11, Reducing Improper Payments through the “Do Not Pay List”, April 12, 2012
- OMB Memorandum M-13-20 *Protecting Privacy while Reducing Improper Payments with the Do Not Pay initiative*, August 16, 2013
- Executive Order 13520 of November 20, 2009 Reducing Improper Payments
- OMB Circular No. A-136 Revised *Financial Reporting Requirements*, October 7, 2016

OCFO'S RESPONSE

U.S. Department of Labor

Office of the Chief Financial Officer
Washington, D.C. 20210



May 19, 2017

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

FROM: 
GEOFFREY KENYON
Principal Deputy Chief Financial Officer

SUBJECT: Response to the Office of Inspector General's draft report "DOL Needs to Do More to Reduce Improper Payments and Improve Reporting", Report No. 03-17-002-13-002

The Office of the Chief Financial Officer (OCFO) would like to thank the Office of Inspector General (OIG) for its annual review of the Department's compliance with Improper Payments Elimination and Recovery Act (IPERA) requirements and for the opportunity to respond to its draft Fiscal Year (FY) 2016 report entitled "*DOL Needs To Do More to Reduce Improper Payments and Improve Reporting*," (Report No. 03-17-002-13-002).

The Department is strongly committed to being a responsible steward of public funds, and takes very seriously its obligations under IPERA and other statutes to mitigate risk, and to reduce and eliminate improper payments in Unemployment Insurance (UI), Federal Employees' Compensation Act (FECA), and other programs.

The Department has 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. We appreciate the OIG closing the recommendation to review the Workforce Innovation Act sampling methodology from Report No. 22-12-016-13-00 and recognition of the Department's efforts in conducting timely improper payments risk assessments of all new programs.

Despite these efforts, the Department's overall reported improper payment rate rose from 9.47 percent in FY 2015 to 10.97 percent in FY 2016. As noted in the Department's FY 2016 Agency Financial Report, the cause of this increase is primarily due to an 8.13 percentage point increase in Work Search Error in the UI program and a \$37.46 million increase in underpayments due to Administrative or Process Error by other government agencies.

The Department's ability to address the UI program's Work Search Error is constrained by program structural issues. For sound policy reasons, there are structural elements of the UI program that create improper payments which cannot be prevented and can only be detected after the fact. In 2016, the UI program convened a Technical Working Group of independent UI experts, statisticians, and economists to evaluate the impacts of program structural elements on

the improper payment rate, specifically: 1) Balancing the need for accuracy with the requirement for full payment “when due”; 2) Difficulty in preventing work search errors; and 3) Lags in current data sources used by states to identify that a claimant has returned to work.

For work search errors, which remain the top root cause of UI improper payments, the Technical Working Group attested that it is not administratively feasible for states to prevent the vast majority of work search improper payments. If a work search issue is detected, claimants must be given notice and an opportunity to respond before a determination is made and benefits are stopped, if appropriate. Continued claims must be paid the week following the week in which an issue is raised in order to meet the “when due” requirement, and this timeframe occurs before the required due process steps can be completed (Sec 303 of Social Security Act and Unemployment Insurance Program Letter No. 04-01). These activities generally create at least one improper payment which cannot be prevented. Only improper payments that are prevented can reduce the improper payment rate. The UI program has provided Congress a package of suggested legislative proposals to help state agencies mitigate improper payments.

The Office of Workers’ Compensation Programs (OWCP) FECA program’s Administrative or Process Error by other government agencies reflects various errors in calculating wage loss pay rates. Specifically, some improper payments resulted from the improper deduction of life insurance premiums. As noted in the draft report, FECA has initiated a number of corrective actions to address this issue, including working closely with the Office of Personnel Management (OPM) to share and cross-walk life insurance data to resolve these issues. In addition, the FECA Program Integrity Unit is conducting a comprehensive study in order to analyze trends and abnormalities in various areas of improper payments. This will assist in developing technology and analytic tools to detect and monitor both post and pre-improper payments. OWCP also acknowledges concerns regarding emerging high-risk areas, such as the compound drug issue noted in the draft report. Since OWCP discovered the growing issue, they have developed targeted controls to mitigate risk and ensure that doctor’s orders are medically necessary, as required by law. The Department’s growing data analytics capacity allows it to be increasingly agile in recognizing new trends and responding quickly.

The Department will continue its focus on program integrity improvement and take all cost-effective measures to minimize risk. Prior to the recommendation, OCFO and OWCP had preliminary plans to revisit the FECA Improper Payments Estimation Methodology¹. We welcome the OIG’s recommendation and look forward to their feedback as we reexamine the Methodology in the coming year. Additionally, we acknowledge the OIG’s recommendations from previous reviews. For more information on the Department’s responses to these recommendations, please see our response to the OIG’s FY 2014 IPERA compliance review as published in Report No. 03-15-001-13-001². OCFO looks forward to working with OIG, OWCP-FECA, UI, and other responsible program agencies to ensure continued improvement.

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

¹ <https://www.dol.gov/ocfo/media/reports/20141104IPMETHODODOLOGY.pdf>

² “DOL Could Do More to Reduce Improper Payments and Improve Reporting”, <https://www.oig.dol.gov/public/reports/oa/2015/03-15-001-13-001.pdf>

APPENDIX C

ACKNOWLEDGEMENTS

Key contributors to this report were Stephen Fowler (Audit Director), Daniel Pompili, (Audit Manager), Lisa Larosa, and David Halstead.

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