APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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

05/14/2020

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

FROM: **JAMES WILLIAMS**
Chief Financial Officer

SUBJECT: Response to the Office of Inspector General's draft report "REPORTING OVER THE U.S. DEPARTMENT OF LABOR'S FY 2019 COMPLIANCE WITH THE IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT" (Report No. 22-20-008-13-001)

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 Improper Payments Elimination and Recovery Act (IPERA) of 2010, and for the opportunity to respond to its draft Fiscal Year (FY) 2019 report entitled "REPORTING OVER THE U.S. DEPARTMENT OF LABOR'S FY 2019 COMPLIANCE WITH THE IMPROPER PAYMENTS ELIMINATION AND RECOVERY ACT" (Report No. 22-20-008-13-001).

The Department is committed to good stewardship of public funds and takes seriously its responsibility to prevent, detect, and recover improper payments in its programs and to report fully and accurately on those efforts. The Department appreciates the OIG's acknowledgement of the steps management has taken to review its payment integrity policy, procedures, and reporting by closing two outstanding prior year recommendations. In addition, we acknowledge the Federal-State Unemployment Insurance program continues to report an estimated improper payments rate in excess of the 10 percent threshold set in IPERA which resulted in the OIG maintaining the final recommendation, as described below.

Recommendation #1: Maintain management's current focus on increasing its technical assistance and funding to states to improve the improper payment reduction strategies in order to ensure compliance with the improper payments estimate rate threshold.

The OIG is correct to note that the federal-state Unemployment Insurance (UI) program reported an estimated improper payment rate greater than the 10 percent compliance threshold for the FY 2019 reporting period. However, we are pleased to report that, as a result of the Department's efforts over the past 18 months, significant progress has been made to bring down the UI improper payment rate. The estimated UI improper payment rate for the most recent 12-month period ending December 31, 2019, is 9.86 percent, trending well below the 10.61 percent[1] reported in the Department's Agency Financial Report (AFR) in November 2019.

[1] Data reported in the Agency Financial Report is for 12-month period ending June 30, 2019.

This Administration has made "Getting Payments Right" a Cross-Agency Priority Goal in the President's Management Agenda to reduce cash lost to taxpayers through improper payments. Additionally, one of the Department's Agency Priority Goals (APG) is to decrease UI improper payments. Specifically, the APG is that by September 30, 2021, the UI improper payment rate will be 9.0 percent.[2] While the impact of coronavirus disease 2019 (COVID-19) on the UI system may delay achieving this goal by September 30, 2021, the Department is committed to addressing this complex and challenging issue.

The UI program is a federal-state partnership under which the significant majority of UI payments are made by states, under state law, using state funds. As reported in the FY 2019 AFR, none of the reported improper payments were made directly by the Department.[3] However, in FY 2020, 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.

Since the AFR has been issued, the Department has taken additional steps to address improper payments in the UI program. These actions include the following:

- In FY 2019, ETA identified 11 states with high UI improper payment rates that significantly contribute to the national improper payment rate. Each state was provided customized and intensive business process analysis and technical assistance through the UI Integrity Center. ETA conducted quarterly conference calls with each state to monitor progress. Each state was also provided intensive consultative services through the UI Integrity Center to support its strategies to bring its improper payment rates down. With the collaborative efforts by ETA and the UI Integrity Center, 10 of these 11 states experienced a significant reduction in their improper payment rates. ETA continues its monitoring and oversight activities regarding these states.

- In FY 2019, the UI Integrity Center implemented an enhanced UI Integrity Data Hub (IDH) infrastructure to support all 53 states' cross-match efforts with new nationwide datasets. Additionally, significant new functionality was implemented on the IDH including Multi-State Cross-Matching capability to identify UI claims data being used across multiple states and a Fraud Alert capability that allows participating states to share information through the IDH on emergent fraud schemes/activities identified in their states. During FY 2020, the IDH will add access to data supporting identity verification at the front end of UI claims processing, and other data sources available for state use.

- In September 2019, the Department awarded a contract to the UI Integrity Center to provide all states access to an identity verification (IDV) dataset through the IDH. State UI agencies will use this new tool to help prevent identity theft and fraud at the front-end of the claim process. The UI Integrity Center has selected a vendor and is currently implementing the IDV dataset on the IDH.

- On March 3–5, 2020, the National Association of State Workforce Agencies hosted a training seminar to promote best practices for all state UI agencies to increase employer use of the State Information Data Exchange System (SIDES) and encourage state implementation of SIDES exchanges. State UI agencies use SIDES to improve the timeliness and accuracy of information about a UI applicant's separation from employment, which is a leading root cause of UI improper payments.

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[2] https://www.performance.gov/labor/APG_labor_2.html

[3] U.S. Department of Labor. FY 2019 Agency Financial Report. p. 165. https://www.dol.gov/sites/dolgov/files/OPA/reports/2019annualreport.pdf

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- On February 10, 2020, ETA issued a Training and Employment Notice No. 17-19[4] to announce the availability of Model UI State Work Search Legislation and strongly encourage its adoption by states. The model legislation was developed to assist states in proactively referring claimants to suitable work; establishing a comprehensive definition of acceptable work search activities that focuses on rapid reemployment; and providing fair notice and documentation requirements. The TEN also provides a framework for states to consider when crafting their UI work search laws, such as making them easily understood, so as to promote claimant compliance and prevention of UI improper payments. Additionally, letters were sent from the Assistant Secretary for Employment and Training to each State Administrator encouraging them to adopt the approach outlined in the model legislation and the TEN.

- The Department transmitted to Congress a package of proposed draft legislation titled, Unemployment Compensation Program Integrity Act, and included proposals in the President's Budget in each of the last three years. The FY 2021 President's Budget includes a similar Program Integrity Package designed to provide states with tools and resources to combat UI fraud and improper payments including a new proposal that would require states to implement the UI Integrity Center's IDH described above.

- As noted above, the FY 2021 Budget includes a package of legislative proposals designed to provide states with more tools and resources to reduce the UI improper payment rate. It also includes a request for $90 million to help states specifically target the two largest root causes of UI improper payments: claimants continuing to claim benefits after returning to work and claimants failing to comply with work search requirements.

Despite these efforts, certain program features serve as structural barriers that hinder the state's ability to further reduce improper payments. 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.[5] As OIG points out, this creates structural issues which further impacts the top three root causes of improper payments.

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 to the unemployed, 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 improper payment 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.

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.

[4] https://wdr.doleta.gov/directives/attach/TEN/TEN_17-19.pdf
[5] *See California Dep't of Human Res. Dev. v. Java,* 402 U.S. 121, 130-35 (1971).

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