U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

September 30, 2010

MEMORANDUM FOR: JANE OATES
Assistant Secretary for Employment
and Training

From: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

Subject: Review of Report on Improper Payments in the Unemployment Insurance Program
Report No. 22-10-020-03-315

Executive Order (EO) 13520, '*Reducing Improper Payments,*' requires within 180 days of the order dated November 20, 2009, that each agency official designated as the program accountable official under section 3(a) of the EO 13520 shall provide a report on Improper Payments to the agency's Office of Inspector General (OIG). The Improper Payments report should contain the agency's methodology for identifying and measuring improper payments, along with the agency's efforts for meeting the reduction targets for improper payments, while ensuring continued access of eligible individuals to the programs designated as "high priority" by the Office of Management and Budget (OMB). The Department of Labor (DOL) Unemployment Insurance (UI) program meets the OMB threshold of at least $750 million in improper payments as reported in the Department's annual Performance and Accountability Report (PAR) for FY 2009 (DOL reported $12.3 billion in UI improper payments in its FY 2009 PAR).

Section 3(b) of EO 13520 requires the OIG to conduct a review of the report and provide the agency with recommendation(s) if any for modifying the agency's improper payment reduction plan, methodology, or program access and participation. This memorandum fulfills the requirements of section 3(b) of the EO 13520.

The EO 13520 and supporting guidance, OMB Circular A-123, Part III, Appendix C issued March 22, 2010, requires the Department to submit a report to the OIG containing, in-part, the following:

- a plan with supporting analysis for meeting the reduction targets for improper payments.
- methodology for identifying and measuring improper payments.
- a plan with supporting analysis for ensuring the initiatives undertaken pursuant to the EO 13520 do not unduly burden program access and participation by eligible beneficiaries.

Results

The Department's Improper Payments report on UI could be improved to meet the requirements of section 2(b) (iv), 3(b) and 3(f) of EO 13520 and supporting OMB guidance. The UI reduction plan did not include specific targets for reducing improper payments; sufficient details regarding meeting the targets; and supporting analysis related to the implementation initiatives and expected impact. Additionally, the Department's methodology for identification and measurement of improper payments did not evaluate the entire population of UI programs and may not have identified the total extent of individually significant improper payments (i.e., those totaling $5,000 or more).

In addition, and importantly, the Department's planned improper payment reductions and recovery targets for the UI program are dependent on the cooperation and support of State agencies and other parties outside of the Department, and this factual circumstance could have been discussed in the report. The reduction plan could also include how the unique relationship between the Department and the State agencies will affect implementing any proposed initiatives, and the expected impact of those initiatives. Finally, nothing came to our attention regarding the initiatives undertaken pursuant to the EO that would cause any unnecessary burden to program access or participation by eligible participants.

Reduction Plan Needs Modification: The UI Improper Payments report dated May 21, 2010, could be improved by including specific targets and the actual rates achieved for reducing improper payments. For example, the reduction plan did not present the actual Improper Payment Rate of 10.3 percent, which exceeded the targeted rate of 10.0 percent for 2009.

The UI overpayment reduction plan could also be improved by adding sufficient detail to ensure the program meets or exceeds the reduction rate target[1]. In the UI Improper Payments report, seven 'integrity' initiatives were mentioned to detect, recover, and prevent improper UI payments, which should reduce improper payments. However, five of the seven initiatives focused the majority of their efforts on detection rather than prevention of overpayments.

The report alludes to the fact that states are primarily responsible for preventing improper payments, but could contain more information about the significance of the States' roles in meeting the reduction targets. For example, the National Directory of New Hires (NDNH) is of one of the initiatives mentioned in the report. The NDNH initiative matches UI claims with the NDNH and State Directory of New Hires (SDNH) in order to identify claimants who have returned to work and continue to claim UI benefits.[2] However, each state's implementation of the NDNH initiative is contingent on the state's

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[1]The Department of Treasury 'Payment Accuracy' website showed a targeted UI Improper Payment Rate of 9.9% for 2010.
[2]At this time, California and the District of Columbia, do not participate in the NDNH.

administrative policies and procedures, which vary throughout the U.S. with respect to regulations and policies specifying eligibility requirements, a condition which influences the potential for error and possible overpayments. The implementation of this initiative will vary from state to state and may have varying levels of impact and results. Consequently, the impact or projected impact each initiative has on the overall reduction plan will be dependent on state implementation. The expected impact of the NDNH initiative in the reduction of improper payments and the fact that this initiative is contingent on the degree of state implementation was not adequately explained in the report.

Although the report provided limited discussion regarding root causes for improper payments, it lacked sufficient details regarding an actual plan related to the implementation of the initiatives and the expected impact on the reduction of the UI improper payment rate. The reduction plan should describe the various causes of improper payments the initiatives will address, the anticipated return on investment, and how these initiatives will help the UI program meet or exceed the improper payment target rate. Additionally, the initiatives highlighted in the report did not include implementation data, including cost benefit analyses and expected impact analyses on reducing improper payments. Also, the report did not contain sufficient data regarding the correlation between the initiatives and reduction or prevention of improper payments, only the improper payments detected if the states chose to implement. Finally, the plan did not include a strategy to ensure state participation and compliance within the federal-state partnership[3].

Methodology for Identification and Measurement Needs Modification: The Department's methodology for identification and measurement of improper payments did not measure all UI programs and may not have identified the total extent of high-dollar improper payments (i.e., those totaling $5,000 or more).

Improper payment rate estimates were based on the results of the Benefit Accuracy Measure (BAM) statistical survey. BAM predates the EO and only covers the three largest permanently authorized UI programs.[4] In addition to these programs, the Improper Payment Integrity Act (IPIA) defined improper payment outlays to include temporary and episodic programs such as Emergency Unemployment Compensation, Extended Benefits, and Federal Additional Compensation, which are not included in the BAM estimates.

Furthermore, BAM was designed as a quality control program for paid and denied UI claims. BAM uses a statistical sampling methodology to estimate total improper payments for the UI programs included in its survey and may not provide a complete

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[3]The UI program is a federal-state partnership based upon federal law, but administered under state laws. Because of this structure, the program is unique among other Federal programs. Additionally, the UC program is unique in that the benefits paid under the state UI program are almost totally funded by employer taxes.

[4]The three largest permanently authorized UC programs are State UI, Unemployment Compensation Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX).

estimate of the total number and amount of high-dollar improper payments, which are required to be reported by the EO. Using the BAM survey of paid UI claims, the Department identified overpayments of $5,000 or more to 188 individuals for FY 2009. Additionally, the report only summarized by state the number of high-dollar overpayments and did not provide the actual outlay of improper payments paid to those individuals totaling $1,440,925 (a part of the 12.3 billion reported for the period July 2008 through June 2009).

The Department's methodology for identifying and measuring UI improper payments could be improved by considering other improper payment detection systems currently in the states, as well modifications to the BAM to provide a more complete estimate of high-dollar improper payments.

Program Access and Participation: The EO and related OMB guidance require the agency to provide supporting analysis for ensuring the initiatives undertaken pursuant to the EO do not burden program access and participation by eligible beneficiaries. Based on our review of the Department's initiatives, nothing came to our attention, which would impede access or unduly burden eligibility/participation in the UI program.

Recommendations

1. We recommend the UI Program Accountable Official modify the plan to include:

    - Specific details regarding rate reduction by utilizing corrective actions with clear milestones illustrating the impact the rate reduction will have on improper payments.
    - Targeted reduction strategies to include specific guidelines that encourage collaborative efforts between the Department and the states to ensure reductions of improper payments are achieved.
    - Financial impacts and cost benefit analyses that show corrective actions will bring about a rate of return on investment.
    - Specific targeted reduction strategies and ways to ensure state participation and compliance with initiatives to meet or exceed reduction targets.

2. We also recommend the UI Program Accountable Official consider the use of a more accurate presentation of the reduction plan's progress in reducing improper payments. For example, consider using other reports that provide real-time data, as well as a more accurate count of the entire improper payments universe than the current methodology.

Department's Response

The Department's response to our draft memorandum is included in its entirety as an Attachment to this report. We have modified the memorandum as appropriate based on its response. In its response, the Department stated it is committed to working with the state workforce agencies to develop administrative policies and procedures that will reduce improper payments in the UI program. Additionally, the agency considered our recommendations and will look into the feasibility of providing additional information as part of its next annual report. Finally, the Department indicated that it would seek modification from OMB of its data collection systems to obtain a more accurate count of the number of UI claimants in the population who have received overpayments in excess of $5,000.

In accordance with DLMS 8 – Chapter 500, paragraph 533, you are requested to provide a written response within 60 days indicating your agreement or disagreement with each recommendation in the report. If you agree with the recommendations, your response should identify planned corrective actions, officials responsible for such actions, and dates by which the actions should be taken and full implementation achieved. If you disagree with the recommendations, your response should fully explain the reason(s) for disagreement.

If you or your staff has any questions, please call Joseph L. Donovan, Jr., Audit Director, at (202) 693-5248.

Attachment

cc: T. Michael Kerr, Assistant Secretary for Administration and Management

Attachment

U.S. Department of Labor
SEP 30 2010

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

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

FROM: JANE OATES
Assistant Secretary for Employment and Training

SUBJECT: Review of Draft Report on Improper Payments in the Unemployment Insurance Program
Report No. 22-10-020-03-3155

We appreciate the opportunity to respond to your report cited above. Please be assured that Employment and Training Administration (ETA) is committed to working with the state workforce agencies to develop administrative policies and procedures that will reduce improper payments in the Unemployment Insurance (UI) program. We are currently pursuing several initiatives to detect, recover, and prevent improper payments, including:

National Directory of New Hires (NDNH). ETA has worked closely with the state agencies and provided technical assistance to implement matching of claimant social security numbers with the NDNH in order to identify claimants who have returned to work and who continue to claim UI benefits, which is the leading cause of UI overpayments.

State Information Data Exchange System (SIDES). ETA is supporting the phased implementation of SIDES, which provides an automated process to obtain more accurate and timely job separation information from employers, which will reduce overpayments due to separation issues -- the 2nd leading cause. SIDES became operational in February 2010.

UI Integrity Legislation. The President's FY 2011 budget includes proposed legislation to allow states to redirect a small percentage of recovered overpayments to fund integrity activities and will require employers to report the "Date of Hire" as part of their NDNH submission to facilitate faster identification of claimants who have returned to work.

Treasury Offset Program (TOP). Legislation passed in 2008 amended Federal law to permit states to recover certain Unemployment Compensation debts due to fraud from Federal income tax refunds under the Treasury Offset Program. DOL is working with Treasury and the state agencies to develop processes to enable states to actively take advantage of this offset.

Reemployment and Eligibility Assessment (REAs). States have developed REA programs to engage claimants during their period of eligibility for UI to ensure that they are meeting eligibility requirements and to link claimants with services that will facilitate their reemployment. These REA activities reduce improper payments by the early detection and prevention of eligibility violations and speed claimants' return to work. During FY 2010, DOL provided $50 million in funding to support REA activities in 33 states and the District of Columbia.

National UI Integrity Conference. DOL hosts a biennial National UI Integrity Conference to provide a forum for states to share successful practices for preventing, detecting, and recovering UI overpayments. The most recent conference was held in April 2010 in Washington, D.C.

We have reviewed your report and have the following comments.

Page 2. The UI Improper Payments report dated May 21, 2010, did not contain specific targets or actual rates achieved for reducing improper payments. The reduction plan should have included the actual Improper Payment Rate of 10.3%, which exceeded the targeted rate of 10.0% for 2009.

ETA comment: In preparing its report to the Department's Inspector General (IG), ETA followed the guidance provided by the Office of Management and Budget (OMB) in OMB Circular A-123, Part III, Appendix C. Our interpretation of the OMB guidelines was that the report to the IG should be a high level report from the agency's designated responsible official. The section discussing the agency's methodology for identifying and measuring improper payments in the agency's high-priority programs included a link to the Department of Labor Fiscal Year (FY) 2009 Performance and Accountability Report (PAR) (http://www.dol.gov/_sec/media/reports/annual2009/IPIA.htm), which includes a detailed discussion of the improper payment rate targets and results for FY 2009. In addition, Appendix A of the report to the IG includes a detailed distribution of UI overpayments by root causes for the 2009 Improper Payments Information Act (IPIA) reporting period.

We are happy to provide more explicit information on targets and rates in future reports. Should that be a requirement for the report, we recommend that the guidance be modified to more explicitly request the information.

Page 3. The Department's methodology for identification and measurement of improper payments should be changed because the Benefit Accuracy Measurement (BAM) does not provide sufficient details regarding improper payments.

ETA comment: BAM is a statistically sound survey that provides accurate and reliable estimates of improper payments in the UI program and it has frequently been held up as a good example by OMB. BAM meets and exceeds the requirements established by OMB in OMB Circular A-123, Appendix C for measuring and reporting improper payments for IPIA. ETA documents the BAM methodology in its annual IPIA report to OMB, which is published in the Department's annual PAR. We request that the Office of the Inspector General (OIG) review be revised to remove the reference to changing the BAM methodology and instead state that the BAM survey will be supplemented by modifying other existing data collections to identify individual recipients of high dollar overpayments (in excess of $5,000) in the population.

Page 4. In addition, UI overpayments are typically less than the threshold of $5,000. For example, the leading cause of UI overpayments is unreported or misreported benefit year earnings. An individual may receive qualified benefits for 10 weeks and then become

employed. If the individual does not report employment for another two weeks until he/she receives a pay check, then the overpayment for the two weeks will likely not be detected by the agency until the claimant's SSN is matched with the NDNH or state wage records. If the average benefit received for each week is approximately $300, then the overpayment for the two weeks (totaling $600) would not reach the report's threshold.

ETA Comment: We do not see how this is relevant to the methodological issue raised with respect to reporting high dollar overpayments. The example provided in the OIG review would not meet the reporting threshold of $5,000 established by OMB. Therefore, even a complete enumeration of high dollar overpayments in the UI population would not include these individuals.

ETA's responses to your recommendations are described below.

Recommendation 1

Modify the plan to include:

- Specific details regarding rate reduction by utilizing corrective actions with clear milestones illustrating the impact the rate reduction will have on improper payments.

ETA Response

While it is possible to develop general estimates of the impact of corrective actions on improper payment rates, estimates of specific reductions for specific measurement periods are not feasible, given the complexity of the UI program, including differences in state law and policy, differences in the rate and pace of participation by state agencies in initiatives to reduce improper payments promoted by ETA, and macroeconomic changes that can overwhelm the effects of individual corrective actions. ETA can provide general estimates of the impact of corrective actions on improper payment rates as part of the report to the IG that is required within 120 calendar days of the publication of the annual PAR (OMB Circular A-123, Part III, Appendix C, (C)(2)(d)).

- Targeted reduction strategies to include specific guidelines that encourage collaborative efforts between the Department and the states to ensure reductions of improper payments are achieved.

ETA Response

ETA is committed to working with the state workforce agencies and UI stakeholders to develop administrative policies and procedures that will reduce improper payments in the UI program. ETA is engaged the National Association of State Workforce Agencies (NASWA) to form a state-federal workgroup that will address the issue of payment integrity and will develop strategies that target specific root causes at the state level. This group is expected to complete its work and issue recommendations in FY 2011.

- Financial impacts and cost benefit analyses that show corrective actions will bring about a rate of return on investment.

ETA Response

ETA will explore the feasibility of developing a cost benefit analysis of proposed corrective actions. However, as stated in our response to the first item in this recommendation, the many variables that affect the administration of the UI program, most of which are out of the control of the Department, limit the usefulness of such analyses. Given the level of resources required to conduct such studies, cost benefit analyses for the several current initiatives to reduce improper payments could not be completed before the fourth quarter of FY 2011.

- Actual reduction rates and current rates as well as specific details regarding corrective actions the agency is implementing. Additionally, the implementation details should include the expected impact on reductions to improper payments.

ETA Response

ETA can provide additional information on the specific details of corrective actions that we are pursuing. As stated in our response to the first item in this recommendation, while we can develop estimates of general impacts of these corrective actions, the estimation of specific rate reductions is severely limited by uncontrollable factors affecting the UI program. ETA can provide this information as part of the report to the IG that is required within 120 calendar days of the publication of the annual PAR (OMB Circular A-123, Part III, Appendix C, (C)(2)(d)).

• Specific targeted reduction strategies and ways to ensure state participation and compliance with initiatives to meet or exceed reduction targets.

ETA Response

ETA is committed to working with state partners to encourage their participation in and cooperation with initiatives to reduce improper payments. These efforts include working with NASWA to facilitate state engagement, participating in state-federal workgroups and forums, and making available to the states supplemental budget resources to support state integrity initiatives, contingent on appropriations. These efforts are on-going and may included strategies such as new state performance measures to incent compliance.

Recommendation 2

We also recommend the use of a more accurate presentation of the reduction plan's progress in reducing improper payments. For example, consider using other reports that provides real-time data as well as a more accurate count of the entire improper payments universe than the current methodology.

ETA Response

ETA will modify the Overpayment Detection and Recovery Activities report (ETA 227) to obtain a more accurate count of the number of UI claimants in the population who have received overpayments in excess of $5,000. These overpayments are reported quarterly to the IG, as required by Executive Order 13520. Because requests to modify data collection systems must by submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, these data will not be available until the first quarter of CY 2012 at the earliest.

Thank you for your recommendations and your commitment to the integrity of the UI program. Your recommendations will assist ETA in providing guidance and oversight to the states in their efforts to reduce improper payments.

If you have questions, please contact Dale Ziegler at (202) 693-2942 or Subri Raman at (202) 693-3058.