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November 21, 2017

The Honorable Adrian Smith
Chairman
Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

Unemployment Insurance: State Use of Warnings Related to Work Search Requirements Affects DOL's Improper Payment Estimates

The Unemployment Insurance (UI) program provides temporary income support to eligible workers who become unemployed through no fault of their own. Individuals who claim unemployment are generally required to actively search for work as a condition of receiving benefits. However, the specific work search requirements—such as the number of weekly contacts a claimant must have with potential employers—vary by state, according to the Department of Labor (DOL).

Overseen by DOL, and administered by states, the UI program paid \$32 billion to 6.2 million individuals in fiscal year 2016.¹ That same year, the program had the seventh-highest reported improper payment estimate among all federal programs (\$3.9 billion or about 12 percent of benefits paid).² Currently, the leading reported cause of UI improper payments is overpayments to claimants who failed to meet work search requirements.

You asked us to examine improper payments due to UI claimants' failure to actively search for work. This report describes (1) differences in state policies regarding claimants who fail to satisfy the work search requirement and implications for DOL's improper payment estimates, and (2) DOL's plans to address formal warning policies that some states have implemented. Meanwhile, we are continuing our overall review of work search requirements for UI claimants and will include the issues raised in this report and any actions taken by DOL to resolve them in a subsequent report.

To examine DOL's efforts related to state formal warning policies, we interviewed DOL officials and reviewed relevant federal laws, regulations, and guidance as well as selected state formal warning policies.³ We reviewed DOL documentation, including procedures used to determine the accuracy of UI payments and documents detailing how DOL estimates the improper payment rate for the program. We also reviewed UI payment accuracy data reported by DOL,

¹ DOL certifies payments to states to administer the UI program. State UI administration payments are made by the Department of the Treasury. In fiscal year 2016, DOL certified about \$2.6 billion to states to administer their programs. We refer to these funds as "administrative grants."

² The estimate of the improper payment rate is from the estimation of the following: overpayments plus underpayments as a percentage of total benefits paid, according to DOL documentation.

³ According to DOL, state formal warning policies may be derived from state laws, regulations, court decisions, and various types of state policy documents. We refer to these generally as state formal warning policies or state policies, regardless of their source.

including estimates of numbers of formal warning cases by state, state UI overpayment rates excluding and including formal warnings, and amounts paid due to formal warnings by state for fiscal year 2016. We assessed the reliability of the data by (1) performing electronic testing of relevant data elements, (2) reviewing existing information about the data and the system that produced them, including results from prior audits, and (3) collecting information from DOL officials knowledgeable about the data. Based on these reviews, we determined that the data were sufficiently reliable for our purposes.

We conducted this performance audit from January 2017 to November 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Work Search Requirements for UI Claimants

Federal law establishes a work search requirement for UI eligibility, but according to a DOL report, the specific work search activities UI claimants are expected to conduct vary by state.⁴ The Middle Class Tax Relief and Job Creation Act of 2012 amended the Social Security Act to, among other things, require states to have work search requirements for UI claimants specified in their laws as a condition of eligibility for the states' UI administrative grants.⁵ Specifically, states must have laws that require claimants to be "actively seeking work" as a condition of eligibility for unemployment compensation for any week. Because federal law does not specifically define actively seeking work, states have some discretion to establish a reasonable definition, according to DOL's 2013 guidance to states.⁶ For example, a state can specify a minimum number of weekly contacts a claimant must have with potential employers. Acceptable work search activities might also include searching for jobs online, submitting job applications, visiting a job center, attending a networking event, or establishing a LinkedIn account, according to a DOL report.⁷

DOL's Benefit Accuracy Measurement System

DOL and the states operate a quality control system called the Benefit Accuracy Measurement (BAM) system to determine the accuracy of UI benefit payments. Under the BAM system, each state reviews a number of randomly selected cases and reconstructs the UI claims process to assess the accuracy of the payments that were made. The state determines what the benefit payment should have been according to its laws and policies. States report the results of their

⁴ Department of Labor, Employment and Training Administration, *Comparison of State Unemployment Insurance Laws* (2017).

⁵ Pub. L. No. 112-96, § 2101, 126 Stat. 156, 159, codified at 42 U.S.C. § 503(a)(12). The Secretary of Labor must find that a state's laws include various provisions specified by federal law before certifying an administrative grant to that state.

⁶ Department of Labor, Employment and Training Administration, *Unemployment Insurance Program Letter No. 5-13, Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012* (January 10, 2013).

⁷ Department of Labor, Employment and Training Administration and the National Association of State Workforce Agencies, *Re-envisioning Work Search Toolkit* (2016).

BAM case reviews to DOL—including overpayments and underpayments—through an online data system. DOL uses the data to estimate improper payment rates by state, as well as to calculate a nationwide rate.⁸ DOL requires states to have an improper payment rate that is less than 10 percent, which is the threshold set in federal law as a criterion for which Inspectors General report on their respective federal agencies' compliance. States with an estimated improper payment rate of 10 percent or more are required to submit corrective action plans to DOL.

The BAM system permits states to classify certain payments to UI claimants as technically proper according to the states' laws or rules. For example, states can count cases where the state BAM audit finds that a claimant failed to meet the state's work search requirements as technically proper because state laws or rules require formal warnings for unacceptable work search efforts. Another example of technically proper payments are those covered by states' finality rules, in which the state UI agency cannot take action because too much time has passed before the eligibility issue was detected, according to DOL documentation.⁹

According to DOL officials, the definition of "technically proper" in BAM varies slightly from DOL's definition used to report the program's estimated improper payment rate to the Office of Management and Budget (OMB). Technically proper payments for finality reasons are not included as improper payments in DOL's calculation of the improper payment rate reported to the OMB for the UI program. Also, according to DOL officials, payments associated with formal warnings are not considered technically proper by DOL for purposes of reporting to OMB and have never been included in the reported improper payment rate since they have been considered proper payments.

Lack of Consistency Concerning Formal Warning Policies Across States Potentially Impacts UI Benefit Payments and DOL's Reported Improper Payment Rate

DOL data show that some states have formal warning policies that allow UI claimants to receive benefits after the first discovered occurrence of their failing to meet work search requirements while other states do not have such policies. As a result, states are inconsistent in whether they report such benefit payments as overpayments, which could have an impact on DOL's reported improper payment rate. According to DOL officials, 18 states and the District of Columbia have formal warning policies and, therefore, have not counted as overpayments cases in which

⁸ DOL estimates the improper payments for the UI program as required by the Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) (hereinafter referred to as IPIA), by using the data. IPIA, Pub. L. No. 107-300, 116 Stat. 2350, amended by IPERA, Pub. L. No. 111-204, 124 Stat. 2224, and IPERIA, Pub. L. No. 112-248, 126 Stat. 2390, codified as amended at 31 U.S.C. § 3321 note. An improper payment is defined as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. It includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), and any payment that does not account for credit for applicable discounts. See 31 U.S.C. § 3321 note. Office of Management and Budget (OMB) guidance also instructs agencies to report as improper payments any payment for which insufficient or no documentation was found.

⁹ There is also a third category of technically proper payments within the BAM system (in addition to work search formal warnings and finality reasons) which DOL refers to as "other reasons." According to DOL officials, this category includes payments with an eligibility issue for which the state did not take action to recover the overpayment because the claimant is without fault for the error and recovery would be against equity and good conscience. This category of technically proper payments, similar to finality reasons, is not included as improper payments in DOL's calculation of the improper payment rate reported to OMB.

claimants who failed to search for work in one week were provided benefits (we refer to these as formal warning cases).¹⁰

In contrast, DOL officials have noted that 34 states do not have formal warning policies, and therefore, all cases in which those states find that a claimant was provided benefits despite not having met work search requirements are counted as overpayments and are factored into DOL's reported improper payment rate. The variation among states related to formal warning policies makes it difficult for DOL and others to understand the reasons behind states' reported overpayments associated with work search requirements. Federal internal control standards state that management should communicate quality information externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks.¹¹ More consistent reporting could help DOL fully understand the issue and work with states to address it.

According to DOL's estimates, over \$1.6 billion in benefit payments were made to claimants for weeks for which they were issued formal warnings in fiscal year 2016.¹² DOL's analysis further shows that if formal warning cases had been included in DOL's calculation of the overpayment rates for fiscal year 2016, the nationwide overpayment rate would have increased by about 5 percentage points, from an estimated 11.1 percent to an estimated 16.3 percent (see table 1).¹³

Table 1: Selected States' Estimated UI Overpayment Rates and Potential Overpayment Rates Factoring in Formal Warning Cases, Fiscal Year 2016

State	Reported Overpayment Rate	95% Confidence Interval +/-	Potential Over Payment Rate Factoring in Formal Warning Cases	95% Confidence Interval +/-	Estimated Amount of UI Benefits Paid in Cases Attributable to the Use of Formal Warnings
Arkansas	8.81	2.49	17.89	4.18	\$18,608,950
Colorado	11.55	2.86	46.80	4.00	\$184,760,869
Connecticut	11.87	3.11	13.67	4.21	\$11,423,150
D.C.	12.92	3.47	30.70	4.41	\$19,864,532
Delaware	8.86	3.10	14.40	3.07	\$4,192,915
Indiana	9.05	2.60	36.47	4.35	\$87,877,942
Iowa	7.52	2.31	17.60	4.47	\$42,691,119
Louisiana	8.69	2.46	10.12	2.43	\$3,002,777

¹⁰ A total of 53 state workforce agencies operate UI programs—the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. According to DOL officials, 16 states and the District of Columbia reported formal warning cases in 2016 and two additional states (Arizona and New Jersey) began reporting formal warning cases in 2017. The 16 states are Arkansas, Colorado, Connecticut, Delaware, Indiana, Iowa, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New York, Pennsylvania, and Vermont.

¹¹ For more information see GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, DC: September 2014).

¹² DOL's fiscal year 2016 improper payment estimate covers July 1, 2015 through June 30, 2016.

¹³ The estimate of the overpayment rate is from the estimation of the following: total overpayments divided by total benefits paid, according to DOL documentation.

State	Reported Overpayment Rate	95% Confidence Interval +/-	Potential Over Payment Rate Factoring in Formal Warning Cases	95% Confidence Interval +/-	Estimated Amount of UI Benefits Paid in Cases Attributable to the Use of Formal Warnings
Maine	13.84	3.37	22.80	3.10	\$9,731,959
Maryland	21.11	3.92	21.65	4.12	\$2,917,848
Minnesota	9.21	2.77	15.09	4.19	\$48,127,230
Missouri	6.56	2.27	22.48	3.51	\$45,611,679
Nebraska	18.26	4.10	28.53	4.53	\$8,009,908
Nevada	21.19	3.78	54.22	3.91	\$105,808,033
New York	10.99	2.86	13.48	3.66	\$43,871,286
Pennsylvania	9.09	2.55	50.88	4.31	\$965,569,193
Vermont	6.73	2.53	24.68	4.75	\$12,467,794
National	11.07%	0.63%	16.30%	0.84%	\$1,614,537,184

Source: Department of Labor estimates. | GAO-18-133R

Notes: This table includes the 16 states that recorded formal warning cases in DOL's BAM system during fiscal year 2016. DOL's fiscal year 2016 improper payment estimate covers July 1, 2015 through June 30, 2016. In these cases, the state considered the payments to be technically proper due to state policies requiring formal warnings for unacceptable work search efforts by UI claimants.

DOL Has the Opportunity to Address State Policy Inconsistencies through Guidance

DOL officials informed us that, in recognition of these state policy inconsistencies described above, the agency is in the process of preparing guidance to states on the use of formal warning policies. According to DOL officials, the draft guidance is currently undergoing a review process. Specifically, officials stated that the draft guidance will need to be reviewed by the Office of Management and Budget before it is finalized and released to state UI agencies.

Guidance is an important tool that agencies use to clarify federal requirements and communicate information about the implementation of programs to grantees. Currently, as a result of some states' use of formal warning policies, states are not reporting consistent information on the extent of overpayments due to claimants' failure to meet work search requirements. In preparing guidance for states, DOL has an opportunity to determine and communicate how state policies on work search requirements and their related overpayment reporting should align with federal requirements and reporting expectations. Some states may need to take action to be in compliance with federal policy when DOL's guidance is issued. Providing specific information on any actions required and, if actions are required, setting timeframes for completion and monitoring states' responses to the guidance could help ensure that DOL achieves its desired results. In addition, having more consistent information on overpayments related to work search issues could help DOL assess how the program is working nationwide and whether further federal and state actions would be needed to address this leading source of reported improper payments in the UI program.

Agency Comments

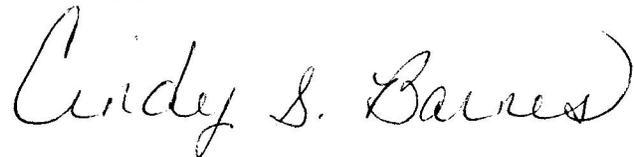
We provided a draft of this report to the Department of Labor (DOL) for review and comment. In its written comments, DOL agreed with our description of the current situation regarding state

formal warning policies and confirmed that its draft guidance remains under review. We have reprinted DOL's comments in their entirety in enclosure I. DOL also provided technical comments, which we incorporated as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees and the Secretary of Labor. In addition, the report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at 202-512-7215 or brownbarnesc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report were Danielle Giese (Assistant Director), Cathy Roark (Analyst in Charge), Beryl Davis, Holly Dye, Alex Galuten, Joel Marus, Phillip McIntyre, Sheila McCoy, Jean McSween, Courtney LaFountain, Stacy Spence, and Matt Valenta.

Sincerely yours,



Cindy Brown Barnes
Director
Education, Workforce,
and Income Security Issues

Enclosure I: Comments from the Department of Labor

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



Ms. Cindy Brown Barnes
Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G. Street, N.W.
Washington, D.C. 20548

Dear Ms. Barnes:

Thank you for the opportunity to review the draft interim Government Accountability Office (GAO) report titled, "Unemployment Insurance: State Use of Warnings Related to Work Search Requirements Affect DOL's Improper Payment Estimates" (GAO-18-133R). The interim report is the result of a GAO audit to examine the work search requirements for unemployment insurance (UI) claimants and how those requirements affect improper payments. The Employment and Training Administration's (ETA) technical comments concerning the draft interim report are enclosed with this letter.

We concur with GAO's description of the current state of play regarding state formal warning policies and, as GAO noted, ETA is in the process of finalizing guidance about Federal UI work search requirements that will address the issue of state formal warning policies.

We would like to take this opportunity to raise an issue that ETA discussed during the entrance conference for this study on March 31, 2017, and in responses to subsequent GAO questions related to this study. While the Federal-State UI program has made significant progress over the past six years implementing its strategic plan to reduce improper payments, certain essential program features continue to contribute to the UI program's improper payment rate. These structural features consist of legal requirements in the design of the UI program, which cause states to make payments that may later be determined to be improper due to receipt of information that was not available at the time the payment was required to be made, or as a result of requirements for notice and the opportunity to be heard prior to stopping payment of benefits.

Failure to meet work search requirements is currently the largest root cause of UI overpayments. UI claimants are required to certify that they have met a state's work search requirements and document their work search in accordance with the state's law. Federal law requires that when an eligibility issue is detected, the claimant must receive notice and an opportunity to provide information before the state may stop paying benefits. If an eligibility issue associated with work search (or any other eligibility issue) is detected, there is a requirement to pay any claimed week no later than the week following the week during which an issue is detected. The time it takes to accommodate the necessary due process requirement often prevents states from completing the determination process before the payment must be made.

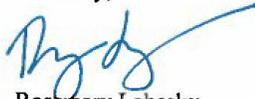
There are strong public policy reasons for these program design features and structural requirements. They promote the effectiveness of the critical UI safety net by providing benefit payments to eligible unemployed individuals while they search for suitable work during periods between jobs. Additionally, by providing temporary partial wage replacement to eligible workers, the program plays a vital role in maintaining their purchasing power and in stabilizing the economy. Also, there are fundamental due process requirements that prevent nonpayment of a benefit, for which a person had previously been determined eligible to receive, without notice and an opportunity to be heard.

Because such work search errors generally cannot be prevented before the payment must be made to the claimant in accordance with Federal law, it is very difficult for states to proactively reduce this largest root cause of UI improper payments. Additionally, the definition of improper payments established by the Improper Payments Elimination and Reduction Act (IPERA) requires that the Department report those overpayments that result from statutory requirements as part of its overall improper payment rate, rather than as a supplemental measure. As a result of these issues, the UI program faces a difficult challenge in achieving a reduction in reported improper payments under the requirements of IPERA.

As the GAO is aware and acknowledged in the interim report, ETA is developing guidance to states on the use of work search formal warning policies when it is determined that a claimant failed to meet the state's work search requirements. This draft guidance is currently undergoing a review process that requires clearance by the Office of Management and Budget (OMB). As GAO noted, the guidance will be finalized and released to the state UI agencies once this OMB review has been completed.

If you have any questions about the enclosed technical comments, or would like additional information, please contact Gay M. Gilbert, Administrator for the Office of Unemployment Insurance, at (202) 693-3029.

Sincerely,



Rosemary Lahasky
Deputy Assistant Secretary

Enclosure

Text of Enclosure I: Comments from the Department of Labor

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Education, Workforce, and Income Security Issues

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As the GAO is aware and acknowledged in the interim report, ETA is developing guidance to states on the use of work search formal warning policies when it is determined that a claimant failed to meet the state's work search requirements. This draft guidance is currently undergoing a review process that requires clearance by the Office of Management and Budget (OMB). As GAO noted, the guidance will be finalized and released to the state UI agencies once this OMB review has been completed.

If you have any questions about the enclosed technical comments, or would like additional information, please contact Gay M. Gilbert, Administrator for the Office of Unemployment Insurance, at (202) 693-3029.

Sincerely

Rosemary Lahasky

Deputy Assistant Secretary

Enclosure

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