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## 1. Improper Payments Information Act Reporting Details

### I. Risk Assessment

The Department's risk assessment for FY 2007 was developed by establishing criteria for determining levels of risk and evaluating all major programs against these criteria. Different methodologies were necessary for assessing the risks of improper payments for benefit and grant programs and other outlays because of the differences in their administration and the availability of data.

#### Benefit Programs

The Department performed the risk assessment for benefit programs according to the criteria defined below:

##### *1. Programs with outlays less than \$200 million*

The Department assumed a low risk of improper payments unless a known weakness existed in program management, based on reports issued by oversight agencies such as the Department's Office of Inspector General and/or the Government Accountability Office. Unless such weaknesses were identified, the Department made an assumption that the improper payment rate for these programs would not exceed the IPIA defined threshold of 2.5 percent. As a result of this review, no programs with outlays less than \$200 million were deemed to be susceptible to high risk of improper payments.

##### *2. Programs with outlays greater than \$200 million*

The Department sampled FY 2007 data in order to determine improper payment rates. The sampling details, including sampling methodology and sampling selection, are provided in the next section. The Department sampled Federal Employees Compensation Act (FECA), Unemployment Insurance (UI), Black Lung Disability Trust Fund, and Energy Employees Occupational Illness Compensation programs. The Department applied the improper payment rate for these programs determined through sampling to the program outlays for FY 2007 in order to determine whether the amount of potential improper payments for these programs exceeded the threshold. UI was the only benefit program deemed to be susceptible to high risk as a result of this approach. Per the Office of Management and Budget's (OMB) guidelines, the Department is also reporting FECA's improper payment rate, even though its improper payment rate is well below the 2.5% threshold.

#### Grant Programs

The Department used a separate methodology to assess the risk of improper payments in grant programs because these are administered differently than benefit programs. Unlike the benefit programs, data are not readily available to allow the Department to directly sample grant payments to develop a statistically valid estimate of improper payments. This is because the grant programs' funding stream makes it very difficult to assess the improper payment rate on payments to final recipients.

The Department provides grants to states, cities, counties, private non-profits, and other organizations to operate programs, and relies significantly on Single Audit Act Reports (as required by the Single Audit Act of 1996<sup>2</sup>) to monitor funding to all grant recipients. Therefore, these Single Audit Act Reports were utilized to determine the improper payment rate for the grant programs – the WIA program, the State Unemployment

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<sup>1</sup>The Single Audit Act of 1996 provides for consolidated financial and single audits of state, local, non-profit entities, and Indian tribes administering programs with Federal funds. Since 1997, all non-Federal entities that expend over \$300,000 (\$500,000 for fiscal years after December 31, 2003) or more of Federal awards in a year are subject to a consolidated financial single audit; any non-Federal entities that do not meet this threshold are not required to have a single audit. All non-Federal entities are required to submit all single audit reports to a Federal Audit Clearinghouse (Clearinghouse) that is administered by the Census Bureau.

Insurance and Employment Service Operations (SUIESO) program, and all other grants as a group. The sampling details, including sampling methodology and sampling selection, are provided in the next section.

The Department reviewed FY 2005 Single Audit Act Reports with Department of Labor-related findings from the Federal Audit Clearinghouse and identified all questioned costs included in such reports. FY 2005 reports were the most recent reports available for review. Based on a review of the definition of questioned costs in OMB Circular A-133 and OMB's IPIA implementation guidance, the Department determined that questioned costs can be used as a proxy for improper payments.

To determine an approximate rate of improper payments for the grant programs, the Department divided the amount of questioned costs by the direct program outlays from the FY 2005 Single Audit Act Reports. The resulting improper payment rates (assumed to be representative of the FY 2007 rates) were applied to the program outlays for FY 2007 to determine the estimated improper payment amounts for FY 2007.

No grant programs were determined to be susceptible to high risk as a result of this approach. However, like FECA, the Department is also reporting on WIA's improper payment rate as required by OMB guidelines, even though its improper payment rate is well below the 2.5 percent threshold.

### Other Outlays

The Department sampled FY 2007 payments in order to determine improper payment rates for DOL payroll costs and for non-payroll costs for the operation and administration of programs and headquarters' activities. The sampling details, including sampling methodology and sampling selection, are provided in the next section.

### Results

Based on the risk assessment methods as described above, only one program, UI, was determined to be high risk. Two other programs, FECA and WIA, were classified as high risk in former Section 57 of OMB's Circular A-11, although their risk assessments do not support such a high risk designation. The Department plans to continue to identify corrective actions to reduce improper payments in these programs and has established improper payment reduction and overpayment recovery targets in accordance with IPIA and associated OMB guidance.

*Table 2: Department of Labor's High Risk Programs*

<b>DOL Program/Activity</b>	<b>Risk</b>	<b>Reason for High Risk Classification</b>	<b>Type of Program</b>
Unemployment Insurance (UI)	High	Exceeds OMB Threshold; Designated High Risk Program by former Section 57	Benefit
Federal Employees Compensation Act (FECA)	High	Designated High Risk Program by former Section 57	Benefit
Workforce Investment Act (WIA)	High	Designated High Risk Program by former Section 57	Grant

The Department also sampled the programs in Table 3 below in FY 2007 despite their low risk status in prior years.

**Table 3: Additional programs that were sampled**

<b>DOL Program/Activity</b>	<b>Type of Program</b>	<b>Risk</b>
Black Lung Disability Trust Fund	Benefit	Low
Energy Employees Occupational Illness Compensation Program (EEOICP)	Benefit	Low
State Unemployment Insurance and Employment Service Operations (SUIESO) program	Grant	Low
Other grants as a group	Grant	Low
DOL Payroll Costs	Other	Low
DOL Non Payroll Costs	Other	Low

**II. Statistical Sampling**

The Department's risk assessment identified only the UI program as being risk susceptible based on the OMB guidance threshold. However, as noted, two additional programs, WIA and FECA, were added to this list as required by OMB guidelines. In addition, the Department sampled several other programs that did not qualify as risk-susceptible programs.

**Unemployment Insurance (UI)**

**Sampling Methodology:** Improper payment rates are obtained from the Benefit Accuracy Measurement (BAM) program. It is designed to determine the accuracy of paid and denied claims in the three largest permanently authorized unemployment compensation (UC) programs: State Unemployment Insurance (State UI), Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX). BAM provides two rates of improper payments. The first, the Annual Report Overpayment Rate, includes estimates of nearly every divergence from what state law and policy dictate the payment should have been. The second rate, the Operational Overpayment Rate, includes only recoverable overpayments states are most likely to detect through ordinary overpayment detection and recovery procedures, known as Benefit Payment Control (BPC) procedures. Operational overpayments are the most likely to be detected and established for eventual recovery and returned to the Trust Fund.

BAM reconstructs the UI claims process for randomly selected weekly samples of payments and denied claims using data verified by trained investigators. For claims that were overpaid, underpaid, or improperly denied, BAM determines the amount of benefits the claimant should have received, the cause of and the party responsible for the error, the point in the UI claims process at which the error was detected, and actions taken by the agency and employer prior to the error.

In reconstructing each sampled payment, the BAM program retroactively investigates the accuracy of the UI claim's monetary and separation determination as well as all information relevant to determining weekly eligibility for the sampled payment, including the claimant's efforts to find suitable work, ability and availability for work, and earnings from casual employment or other income sources, such as pensions. By 2008, all BAM investigations will incorporate a crossmatch with New Hire data to improve the ability to detect overpayments due to beneficiaries who claim benefits after returning to work, the largest single cause of UI overpayments.

Using the same methodology applied to paid claims, the Denied Claim Accuracy module of BAM assesses the accuracy of denial decisions made at the monetary, separation, and continuing eligibility levels of eligibility determination.

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**Sample Selection:** The universe (population) is the payments and denials under the State UI, UCFE, and UCX programs. State UI, UCFE and UCX account for approximately 95% of UC programs activity in an average year. Data on overpayment and underpayment rates for FY 2007 shown in the Improper Payment Reduction Outlook Table are for the period July 1, 2006, to June 30, 2007. Data are shown for this period rather than the Fiscal Year because they are more complete and thus more precise. Based on historical data, those BAM cases requiring the most time to complete are more likely to have payment errors. The BAM program standard is to complete 95% of the cases within 90 days. Over 99.9% of the BAM cases for the period shown are complete. The paid claim accuracy completed sample consisted of 24,565 payments. For Denied Claims Accuracy (DCA), states sampled 150 cases for each of the monetary, separation, and non-separation denials; the allocated sample for each type is 7,800 cases per test per year. A total of 48,600 items were selected and investigated for the BAM samples for the period July 1, 2006, to June 30, 2007.

### Grants Programs

**Sampling Methodology:** The Department selected and reviewed 100 percent of FY 2005 Single Audit Act Reports in which DOL grants programs were classified as having questioned costs (according to the Census Bureau's Clearinghouse database, which is the national repository of Single Audit Act Reports). Because the Department did a 100 percent review of these reports, a statistical projection of the total amount of questioned costs was not necessary.

As additional evidence that no other audit reports included questioned costs for the DOL grants programs, the Department selected and reviewed random samples of audit reports classified in the Clearinghouse database as not having any questioned costs.

**Sample Selection:** The universe consisted of all FY 2005 Single Audit Act Reports covering DOL's grants from the Federal Audit Clearinghouse. The Department stratified this universe of audit reports into four strata or categories based on criteria contained in the database. The four strata were:

- **Stratum #1:** Audit reports in which the grants programs were audited as major programs and the report identified questioned costs for one or more Federal programs (not necessarily the DOL grant program).
- **Stratum #2:** Audit reports in which the grants programs were audited as major program and the report identified a reportable condition but no questioned costs for one or more Federal programs (not necessarily the DOL grant program).
- **Stratum #3:** Audit reports in which the grants programs were audited as major program and the report identified no questioned costs or reportable conditions for any Federal program, including the DOL grant program.
- **Stratum #4:** Audit reports in which the grants programs were audited as a non-major program.

For strata #1 and #2, the Department obtained copies of 100 percent of the audit reports from the Clearinghouse database and reviewed them to determine whether the DOL grants programs were among those reported to have questioned costs. For strata #3 and #4, the Department reviewed *random samples* of the audit reports from the Clearinghouse database.

### Federal Employees' Compensation Act (FECA)

**Sampling Methodology:** A Monetary Unit Sampling approach was applied to estimate improper payments for both medical bill payments and compensation payments. For medical payments, sampling was designed to test payment issues such as duplicate payments, appropriate receipts, consistency with regional allowances, payments made for appropriate procedures, and eligibility at date of service. The compensation payment sampling was designed to test payment issues such as consistency with identified injury, current medical

evidence supporting continued compensation payments, eligibility requirements, and calculations of compensation amounts.

**Sample Selection:** The population of the FECA compensation and medical payments from which the sample was selected included payments made during the period July 1, 2006 through June 30, 2007. The population was stratified for compensation payments and medical payments. Samples of 103 items from compensation payments and of 149 items from medical payments were selected and tested.

**Black Lung Disability Trust Fund**

**Sampling Methodology:** A Monetary Unit Sampling approach was applied to estimate improper payments for both medical bill payments and benefit payments. The medical bill payment sampling was designed to test payment issues such as duplicate payments, eligibility at date of service, procedure covered by program, and appropriate receipts and paperwork. The compensation payment sampling was designed to test issues such as eligibility requirements, calculations of compensation amounts, and calculations of compensation offsets due to dependants.

**Sample Selection:** The population of the medical and benefit payments from which the sample was selected, included payments made during the period July 1, 2006 through June 30, 2007. Samples of 81 benefit payments and 80 medical bill payments were selected and tested.

**Energy Employees Occupational Illness Compensation Program**

**Sampling Methodology:** The sampling approach for Energy's compensation and medical bill payments consisted of Monetary Unit Sampling to estimate improper payments. The payment sampling was designed to determine that the benefits paid were in accordance with specified policies and procedures, that eligibility requirements were followed, and that payments were made in the correct amount.

**Sample Selection:** The population of the compensation payments and medical bill payments from which the sample was selected, included payments made during the period July 1, 2006 through June 30, 2007. Samples of 86 compensation payments and 90 medical bill payments were selected and tested.

**Department of Labor Payroll Costs**

**Sampling Methodology:** To accomplish the sampling for the payroll, a stratified approach was applied. The testing criteria consisted of testing items such as employee's eligibility, earnings and leave tracked correctly, time card consistent with payment, and pay rate calculated correctly.

**Sample Selection:** The population of the Department's payroll costs from which the sample was selected, included payments made during the period July 1, 2006 through June 30, 2007. The sample was stratified by pay period. A sample of 78 items from the Department's payroll transactions was selected and tested.

**Department of Labor Non Payroll Costs**

**Sampling Methodology:** DOL non payroll costs consist of department expenses related to the operation and administration of programs' and headquarters' activities. These transactions were separated into property, plant and equipment transactions and other transactions. The sampling approach for both types of transactions consisted of Monetary Unit Sampling (MUS) to estimate improper payments. The sample for property, plant and equipment transactions also included a stratified random sample in order to select one invoice per transaction from the sample previously selected using MUS. For non payroll costs, sample testing focused on testing criteria such as: (1) appropriate contracts used, (2) payments supported with invoices, (3) invoices correct, and (4) whether or not the purchase was allowable under program costs.

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*Sample Selection:* The population from which the sample was selected included payments made during the period July 1, 2006 through June 30, 2007. A sample of 140 items were selected and tested.

### III. Corrective Actions

#### Unemployment Insurance

The Department's analytical studies indicate that earlier detection of recoverable overpayments is the most cost-effective way to address improper payments. Early detection allows agencies to stop payments for a claimant who has returned to work and to recover these overpayments more readily. The Department estimates that the forty-five states that crossmatch UI beneficiaries with the State Directory of New Hires (SDNH) or the National Directory of New Hires (NDNH) instead of UI wage records prevented approximately \$75 million of overpayments in each of the past two fiscal years. A pilot study showed that a cross-match using the NDNH is more effective than the SDNH in identifying individuals no longer eligible to receive UI benefits, by including benefit year earnings for out-of-state employers, Federal agencies, and multi-state employers that report all of their new hires to a single state. The Department provided states with funds to implement these NDNH cross-matches; as of September 30, 2007, thirty-five states have implemented the NDNH crossmatch, and seven others have signed the computer-matching agreement with HHS that is the prelude to connecting with the NDNH. The remaining states are in the planning process. All States are required to use NDNH crossmatches as part of their BAM programs by January 1, 2008.

In FY 2005, the Department began providing States funds to conduct Reemployment and Eligibility Assessment (REAs) with UI beneficiaries to reduce improper payments both by speeding claimants' return to work and by detecting and preventing eligibility violations. Twenty states received funds to continue REAs during FY 2006, and the Department has sought \$40 million to expand the number to about forty in FY 2008. A solicitation of grant applications has been sent to all States. The REAs in the twenty states are estimated to return about \$66 million to the UI trust fund. An impact evaluation of nine states' REA programs will be released in fall 2007.

To address the second largest cause of overpayments - errors in handling separation issues- the department has two efforts underway. First, funding has been provided to states to support the training of approximately 400 adjudicators to address improper payments that result from nonmonetary determination errors. Secondly, the department is facilitating the design and implementation of an automated system - Unemployment Insurance Separation Information Data Exchange System (UI SIDES). UI SIDES is expected to provide more timely and complete separation information from large multi-state employers or Third Party Agencies (TPAs) to make more accurate benefit eligibility decisions.

#### Federal Employees' Compensation Act

The FECA program continues its progress in improving medical bill processing using an outsourced bill processing service. Significant attributes of the service include the ability to better match treatments to work related injury or illness and more sophisticated bill editing techniques. The bill processing service uses automated front-end editing operations to check for provider and claimant eligibility, accepted condition and treatment type, billing form and content, and duplications. The service uses proprietary software to screen professional medical and outpatient hospital bills to check for certain improper billing practices. Furthermore, on-site process audits resulted in clearer instructions and corrective action plans. This year's implementation of in-house audits of bill samples will provide the program with additional information about bill processing performance and will also identify weaknesses.

Additional causes of improper payments for FECA include: (1) incorrect or incomplete information submitted for the claims record (such as pay rate, night differential rate, retirement plan, etc.); (2) Office of Workers'

Compensation Programs (OWCP)<sup>3</sup> errors including mistakes in judgment or interpretation in making decisions; (3) miscalculations in making payments; and (4) claimant fraud or misrepresentation. OWCP's integrity initiatives to address these issues are as follows:

- Medical bill processing performance is reviewed as a routine function of National Office oversight of the central bill processing contract and is used to score against performance requirements specified in the contract.
- Samples of medical payments are audited monthly by FECA district office staff for both financial and procedural errors.
- Compensation payment performance is reviewed by FECA district office managers, line supervisors, and fiscal operations staff; frequency of review varies according to need (e.g., supervisors and fiscal staff look at performance almost on a per-transaction basis; whereas, summary performance is reviewed daily, weekly, or quarterly by supervisors and managers). Results are monitored in the National Office and used to design procedural revisions or corrective action plans for the District Offices. The National Office also conducts formal biennial accountability reviews to rate each District Office for quality and accuracy. System reports used to analyze payment information include the Report on Receivables Due from the Public (Schedule 9), Accounts Receivable Aging Schedule and Performance reports. Regular matching of death records is done to reduce improper payments.
- Case management techniques are used to monitor ongoing entitlement to benefits and payment accuracy. For example, FECA's Periodic Roll Management (PRM) units monitor cases receiving long-term disability benefits. Changes in medical condition or ability to return to work are identified by regular ongoing PRM review of the cases, and compensation benefits may be reduced or terminated. Benefit reductions also result from new information reported about changes in status, such as the death of a claimant. The key outcome measure for PRM is the annual amount of benefit savings generated from these case actions. Benefits savings can also be compared directly to PRM administrative costs.
- Improvements continue in documentation quality and faster transmission of notice of injury and claims for compensation from the agencies to OWCP. Progress in submitting these forms more quickly yields faster and more accurate adjudication and payment and fewer customer service problems. More than a quarter of new claims are now received via Electronic Data Interchange from the Departments of Labor, Defense, Treasury, Transportation, Veterans Affairs, and Homeland Security. That percentage is expected to grow in the future.

### Workforce Investment Act

Ensuring proper fund stewardship is of primary importance to the WIA program. ETA currently uses a multi-step approach to ensure proper administration and effective program performance of WIA grants. First, ETA starts its review/oversight process by conducting a structured risk assessment of all new grants and grantees. Risk assessments are periodically revised as new information about a grant and grantee becomes available through desk reviews, onsite reviews or other sources of information. Second, ETA Federal Project Officers (FPOs) conduct quarterly desk reviews of the financial and program performance of each grant. The results of these activities are contained in the Grants e-Management Solution (GEMS), an electronic tracking and grant management system. This serves as an early warning system to detect potential financial management and/or programmatic performance issues and allows ETA to target technical assistance more effectively. Finally, ETA staff (FPOs, financial management and others) conduct periodic onsite reviews of grantees. ETA attempts to conduct an onsite review of each grantee at least once every three years, but actual review schedules are based on the results of the risk assessments and desk reviews. Onsite reviews are conducted using ETA's Core Monitoring Guide as well as program specific and technical guide supplements designed to provide a more detailed review of program requirements and financial activities. Results of the onsite monitoring activities are also cataloged in the GEMS system. For grantees with large numbers of sub-recipients (e.g., WIA formula grantees), the onsite review conducted using the formula program supplement to the Core Guide includes an assessment of the grantee's sub-recipient monitoring activities. In addition, ETA

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<sup>2</sup> OWCP oversees the administration of four federal employee compensation programs. These programs are the Energy Employees Occupational Illness Compensation program, the Federal Employees' Compensation program, the Longshore and Harbor Workers' Compensation program, and the Coal Mine Workers' Compensation program.

conducts onsite review of local areas as part of its review of the state grantee. The results of the onsite monitoring are also catalogued in the GEMS system. ETA now has the capability to review trends or issues that arise in a more comprehensive and consistent manner. Whenever deficiencies or problems are identified as a result of a desk review, onsite review, or an independent audit, ETA immediately begins working with the grantee to obtain appropriate corrective actions. Corrective actions undertaken by the grantee are tracked by ETA and follow-up technical assistance and reviews are scheduled as needed.

## IV. Improper Payment Reduction Outlook FY 2006– FY 2010 (\$ in millions)

Program	FY 2006			FY 2007			FY 2008			FY 2009			FY 2010		
	Outlays	%	\$	Outlays	%	\$	Est Outlays	%	\$	Est Outlays	%	\$	Est Outlays	%	\$
<b>Unemployment Insurance</b>	\$30,976			\$31,530			\$32,020			\$34,900			\$36,970		
Operational Rate		5.63%	\$1,744		5.95%	\$1,876		6.8%	\$2,177		6.8%	\$2,373		6.5%	\$2,403
Annual Report Rate Over- payment		10.00%	\$3,168		9.71%	\$3,062		10.9%	\$3,490		10.9%	\$3,804		10.5%	\$3,882
Underpayment		0.67%	\$208		0.59%	\$186		0.64%	\$205		0.64%	\$223		0.64%	\$237
<b>Federal Employees Compensation Act</b>	\$2,555	0.03%	\$0.722	\$2,654	0.1%	\$2.6	\$2,701	0.24%	\$6.5	\$2,863	0.24%	\$6.9	\$2,896	0.24%	\$7.0
<b>Workforce Investment Act</b>	\$3,763	0.17%	\$6.4	\$3,606	0.08%	\$2.9	\$3,292	0.19%	\$6.3	\$2,918	0.19%	\$5.5	\$2,898	0.19%	\$5.5

Note: The rates were determined as described in the preceding pages and applied to the outlays for the fiscal year.

## V. Recovery Auditing

Recovery auditing is a control technique to identify improper contractor payments and initiate recovery actions where appropriate. Recovery auditing involves data analysis and detailed reviews of the documentation supporting contract payments, including purchase orders, invoices, vendor statements/correspondence, procurement records, contracts, contract modifications, payment transaction records, vendor master files, paid history files, etc.

The Department's sampling and testing of non-payroll costs consisting of department expenses, including contract payments, related to the operation and administration of programs' and headquarters' activities for the current and prior fiscal years found no improper payments among the contract payments. Based on these results, the Department decided that a recovery auditing program was not warranted in FY 2007.

In FY 2008, DOL plans to implement a recovery auditing program for contract payments. The Department will report the recovery audit actions, costs, and amounts recovered on an annual basis.

## VI. Management Accountability

Existing control processes and the implementation of the revised OMB Circular A-123 requirements continue to ensure that the Department's internal controls over financial reporting and systems are well documented, sufficiently tested, and properly assessed. In turn, improved internal controls enhance safeguards against improper payments, fraud, waste, and abuse and better ensure that the Department's resources continue to be used effectively and efficiently to meet the intended program objectives. Furthermore, this Department-wide effort will support the Secretary of Labor's annual certification of internal controls in the PAR. The OCFO continues with the quarterly financial management certifications and reviews with each agency in the Department. These controls began in fiscal year 2003. The primary objectives of this oversight are to obtain assurances of DOL compliance with the Federal Managers' Financial Integrity Act of 1982 (FMFIA), the Federal Financial Management Improvement Act of 1996 (FFMIA), and IPIA, to enhance the Department's internal financial controls, and to resolve financial management issues in a more efficient and timely manner. The quarterly certification process allows for an open discussion of each agency's progress in resolving internal control issues, audit findings, and improper payments, as well as establishing a formal, early warning process to identify and address other potential problem areas.

## VII. Information Systems and Infrastructure

### Unemployment Insurance

ETA believes that in most cases the states have the information systems and infrastructure they need for improper payment reduction. States are implementing systems to exchange data with the Social Security Administration (SSA) and interface with their SDNH. Four fifths of the states are now using the SDNH, and thirty-five are using the NDNH. Seven others have signed the computer-matching agreement with HHS that is the prelude to connecting with the NDNH, and the others are in the planning stage for NDNH. By January 1, 2008, all states must use the NDNH as part of the BAM process.

### Federal Employees' Compensation Act

The Office of Worker's Compensation Programs (OWCP) has deployed an integrated FECA management information and compensation benefit system that will enhance both compensation payment accuracy and medical bill processing accuracy. Resources are included in the FY 2008 budget request for this system.

### Workforce Investment Act

ETA currently has multiple technology projects underway in an effort to improve grants management. The WIA program utilizes these tools to execute the risk management process to assess and monitor grantees. They include the web-based EBSS (Enterprise Business Support System), with its GEMS (Grants e-Management Solution). EBSS is the Enterprise Business Support System, a web-based solution used to track and manage grants. A component of the EBSS is the automated grant cost reporting system that captures grant costs and obligations, which improves fiscal integrity. The combination of the two is part of the cradle-

to-grave E-grants solution for the entire Department. The GEMS system, mentioned also in Section III of this appendix is an online grants management tool meant to provide web accessible, customizable, role based context access to grant related information from multiple sources. The utilization of the GEMS system by the Federal Project Officers and program management and financial staff allows ETA a more coordinated and comprehensive repository of grant specific information. A GEMS technology project has recently been undertaken to provide for a report writing module and the cataloging of the Core Monitoring Guide and supplements. This will allow ETA staff to customize and target their oversight efforts.

## **VIII. Statutory or Regulatory Barriers**

### **Unemployment Insurance**

The UI program has several statutory barriers to reducing improper payments. First, States administer the UI program and set operational priorities. The Department has limited authority to ensure they pursue improper payment reduction activities. Second, the "immediate deposit" requirement (Sec. 3304(a)(3), Federal Unemployment Tax Act (FUTA) and Sec 303(a)(4), Social Security Act (SSA)) and the "withdrawal standard" (Sec. 3304(a)(4), FUTA and Sec 303(a)(5), SSA) preclude the use of recovery auditing techniques and affect recovery efforts.

The "immediate deposit" requirement dictates that all employer contributions (unemployment taxes) must be paid immediately into the trust fund and the "withdrawal standard" says that money in the trust fund can only be used for UI benefits. There are certain exceptions to the "immediate deposit" requirement, but they do not apply to recouped benefit overpayments. These requirements preclude State UI agencies from using funds recovered from overpayments to be used for administrative or operational efforts to improve prevention, detection, and recovery efforts. In addition, Title IV-D of the SSA, which established the state and national directories of new hires for the purposes of locating individuals who were delinquent in paying child support, does not require employers to report the date of hire. Having this date greatly increases the efficiency of using crossmatches with the SDNH or NDNH to detect UI beneficiaries who continue to claim benefits despite having returned to work.

Elements of the Unemployment Compensation Integrity Act, transmitted to Congress as part of the President's 2008 budget request, would relax the barriers posed by the "immediate deposit" requirement and the "withdrawal standard" to provide additional funding for recovery and other integrity activities. It would permit states (a) to use up to 5% of all recovered overpayments to augment Benefit Payment Control (BPC) activities (b) to use up to 25% of fraud overpayments recovered or delinquent contributions collected by a collection agency to be retained by that agency, and (c) to use up to 5% of certain tax collections to implement provisions of the law relating to employer fraud or tax evasion, such as the SUTA Dumping Prevention Act of 2004. It would also amend the SSA to require states to impose a penalty of at least 15% on fraudulent overpayments, and use the penalties to fund BPC activities. The Integrity Act would also prohibit states from non-charging employer accounts if the agency determined the employer's "fault" — e.g., a late or missing response — caused an overpayment, and would allow the recovery of benefit overpayments, delinquent taxes, and unpaid penalties and interest by intercept of Federal income tax refunds. Finally, it would mandate that states require all employers to report the date of first earnings or "start work" date to the SDNH, and that the state transmit this information to the NDNH.

### **Federal Employees' Compensation Act**

With regard to the FECA program, legislation does not currently permit FECA to verify employment earnings with the SSA without the claimant's written permission. Compensation benefits may be overpaid if an employee has unreported earnings and does not grant permission for the program to verify earnings with SSA.

### **Workforce Investment Act**

No statutory or regulatory barriers exist that limit WIA's ability to address and reduce improper payments. The WIA program has the legal authority to establish receivables and implement actions to collect those receivables.

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**IX. Additional Comments**

The Department continues to consider the most appropriate ways to define reportable UI overpayments. The Operational Overpayment rate, in use since 2002, was defined to measure recoverable overpayments readily detected by normal agency operations for establishment and recovery. Although the total or "Annual Report" rate used in this report has the virtue of measuring the value of all payments that exceed what State law and policy prescribe, it may be excessively broad. It includes many "technical" overpayments (e.g., that may not involve any conscious act or omission on the part of claimants or employers), or whose causes may have a weak, if any, relationship to achievement of other goals of the UI program such as swift return to suitable work. Overpayments due to failure to register with the Employment Service (approximately 0.8 percent of UI payments and 8 percent of all overpayments in CY 2006) are a good example. About one-fourth of all UI overpayments are also not subject to recovery, a typical criterion in other public programs. Two other integrity rates that the Department regularly monitors are total fraud and nonfraud recoverable overpayments (7.81% of UI benefits paid in CY 2006), and the fraud rate (2.73% of UI benefits paid in CY 2006).