



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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Charlie Janssen  
State Auditor

Charlie.Janssen@nebraska.gov

PO Box 98917  
State Capitol, Suite 2303  
Lincoln, Nebraska 68509  
402-471-2111, FAX 402-471-3301  
auditors.nebraska.gov

December 16, 2020

John Albin, Commissioner  
Nebraska Department of Labor  
550 South 16<sup>th</sup> Street  
Lincoln, Nebraska 68508

Dear Mr. Albin:

This letter is provided pursuant to American Institute of Certified Public Accountants (AICPA) Auditing Standards AU-C Section 265B.A17, which permits the early communication of audit findings due to their significance and the urgent need for corrective action. The audit work addressed herein was performed as part of the fiscal year ended June 30, 2020, Comprehensive Annual Financial Report (CAFR) and Statewide Single (Single) audits. This communication is based on our audit procedures through June 30, 2020. Because we have not completed our audits of the fiscal year 2020 CAFR or Single, additional matters may be identified and communicated in our final reports.

In planning and performing our audits of the State's financial statements as of and for the year ended June 30, 2020, in accordance with auditing standards generally accepted in the United States of America, we considered the State's internal control over financial reporting (internal control) as a basis for designing the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies; therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed subsequently herein, based on the audit procedures performed through June 30, 2020, we identified a certain deficiency in internal control that we consider to be a material weakness.

We noted certain internal control or compliance matters related to the activities of the Nebraska Department of Labor (Department), which are presented below for your consideration. The following comment and recommendation, which has been discussed with the appropriate members of the agency and its management, is intended to improve internal control or result in other operating efficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. We consider this comment to be a material weakness.

This comment will also be reported in the State of Nebraska's Statewide Single Audit Report Schedule of Findings and Questioned Costs.

Draft copies of this letter were furnished to the Department to provide management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time, but it will be verified in the next audit.

Due to the serious nature of this comment, the Auditor of Public Accounts (APA) plans to perform additional testing and follow-up in the spring of 2021.

**Inadequate Controls, Improper Payments, and Possible Fraudulent Claims**

In response to nationwide fraud concerns related to Coronavirus Aid, Relief, and Economic Security (CARES) Act unemployment benefits, the APA performed several extended procedures over Nebraska Unemployment Compensation (UC) claims. The APA sent confirmation requests to claimants and employers, performed a random sample of benefit payments, and matched benefits to State employees. Our procedures revealed the following:

- Failure to perform key control procedures
- Potential fraudulent claims based on confirmation responses
- Ineligible payments to inmates
- Payments to individuals with excessive wages

Because the dollar error rate for the sample was 65.97%, the potential amount at risk for fiscal year 2020 is estimated to be \$535,534,130. From October 1, 2019, through June 30, 2020, however, the Department discontinued Federal cross-match procedures required by 20 CFR § 603.23(b) for identifying fraudulent claims. Consequently, we estimate all payments made during this period to be potential dollars at risk, totaling \$799,940,595.

We identified the following questioned costs:

	Questioned Costs FY 2020	Questioned Costs After FY 2020	Total	Pages for Detailed Information
Potential Fraudulent Claims	\$ 122,876	\$ 62,764	\$ 185,640	5 - 8
Lack of Controls Over the PUA Program	\$ 2,039	\$ -	\$ 2,039	8 - 10
Ineligible Payments to Inmates	\$ 23,204	\$ 10,441	\$ 33,645	10
Excessive Wages Earned	\$ 53,109	\$ -	\$ 53,109	11 - 15
Improper Unemployment Benefits Paid to State Employees	\$ 96,411	\$ 19,611	\$ 116,022	15 - 16
Benefits Received for Multiple Programs	\$ 46,225	\$ -	\$ 46,225	16 - 17
Lack of Adjudication Procedures Over Employer Responses	\$ 107,764	\$ 51,702	\$ 159,466	17 - 18
Short-Time Compensation (STC)	\$ 352	\$ -	\$ 352	19
Other Issues	\$ 23,327	\$ 1,358	\$ 24,685	19 - 20

\*Some costs are duplicated in more than one line in the table above. Total Questioned Costs for the fiscal year ending 2020 were \$462,992. Total Questioned Costs after fiscal year ended 2020 were \$141,365.

The following information contains a discussion of our testing procedures and the results thereof.

***Background of the CARES Act Funding for Unemployment Benefits***

On March 13, 2020, the President of the United States issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.” Additionally, Congress passed the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) and the CARES Act to provide Federal funding for unemployment compensation to all States, as well as to ease restrictions on the unemployment compensation program.

The majority of the Federal funding was for the additional Federal Pandemic Unemployment Compensation (FPUC) of \$600 provided each week for anyone eligible for State benefits starting with the week ending April 4, 2020. An individual eligible for at least \$1 for one week received the additional \$600 weekly, through the week ending July 25, 2020. The Federal government also implemented the Pandemic Unemployment Assistance (PUA) program for individuals not eligible for regular Unemployment Insurance (UI), which included self-employed individuals. PUA was effective retroactively from the week ending January 27, 2020, to December 26, 2020. The Pandemic Emergency Unemployment Compensation (PEUC) program is a temporary Federal program available for individuals whose regular unemployment benefits have expired or will expire soon. PEUC was available beginning the week ending April 4, 2020.

According to a listing obtained from the Geographic Solutions Unemployment System (GUS), its unemployment benefit system, the Department paid \$771 million in unemployment benefits to 119,945 claimants between March 1, 2020, and June 30, 2020.

The following table provides the number of claimants and the total unemployment benefits paid for the 10 Nebraska employers with the most benefits paid, as well as the State of Nebraska, from March through June 2020:

<b>Employer</b>	<b>Number of Claimants Paid</b>	<b>Net Benefits Paid</b>
Employer 1 – Lincoln	1,513	\$ 7,286,069
Employer 2 – Lincoln	888	\$ 5,189,104
Employer 3 – Omaha	410	\$ 3,397,689
Employer 4 – Lincoln	906	\$ 3,344,345
Employer 5 – Several Locations	608	\$ 3,295,458
Employer 6 – Columbus	447	\$ 3,255,168
Employer 7 – Several Locations	534	\$ 3,172,504
Employer 8 – Lincoln	494	\$ 3,034,460
Employer 9 – Several Locations	533	\$ 2,936,386
Employer 10 – Omaha	692	\$ 2,792,911
Employer 11 – Government	337	\$ 1,935,033

These employers did not necessarily lay off or furlough employees due to COVID-19. Instead, they could have qualified for unemployment programs, such as the Short-Time Compensation (STC) program that allowed employers to reduce staff hours in lieu of layoffs. Employees of companies that utilized this program were allowed to receive partial unemployment benefits to offset the loss of income. These employees would have also received the \$600 per week FPUC benefit.

Because of the pandemic, the United States Department of Labor (USDOL) provided guidance to States for the loosening of requirements for individuals to become eligible for unemployment benefits. Through Unemployment Insurance Program Letters (UIPL) #10-20, #13-20, #14-20, #16-20, and #23-20, those guidelines encouraged States to do, among other things, the following:

- Waive the requirement that applicants wait for one week prior to receiving benefits.
- Ease eligibility requirements, including modifying or suspending work search obligations.
- Not to charge employers directly impacted by COVID-19.
- Consider temporarily modifying their “good cause” provisions for unemployment in order to comply with social distancing recommendations – for example, accepting a reasonable risk of exposure or infection as a good cause to leave work.
- Promote the STC program, which allowed employers to reduce the work hours of employees, rather than laying them off, with the employees still being able to receive unemployment compensation benefits.

On March 13, 2020, the Governor of Nebraska declared a state of emergency in response to the President's proclamation of that same date. That gubernatorial declaration was accompanied by several executive orders, which were issued to implement the USDOL's suggested guidelines for loosening benefit eligibility restrictions.

Executive Orders #20-4, #20-14, #20-19, #20-22, #20-26, and #20-31 removed or changed the following eligibility requirements for unemployment benefits:

- Waived the one-week waiting period to receive benefits for claims filed on or after March 15, 2020, to August 1, 2020.
- Waived the work search requirements for claims filed on or after March 15, 2020, to July 12, 2020.
- Removed the requirements for charging employers for individuals affected by COVID-19.
- Allowed all employers to apply for STC, if the termination date of the STC agreement was on or before December 27, 2020.
- Required the Department to adjudicate only the last separation from a claimant's employment for claims filed on or after March 15, 2020, to 30 days after the lifting of the COVID-19 state of emergency.

### ***Inadequate Controls***

In response to the Governor's executive orders, as well as the high number of claims being filed, the Department removed or changed the following system controls:

- Effective April 2, 2020, the Department allowed numerous issues that would normally be adjudicated, or reviewed by staff, to be approved automatically and processed by the system. These included, but were not limited to, the following:
  - The claimant's reason for separation was anything other than Quit or Discharge (such as Still Employed, Still Working Full-time, Other, etc.), and the last employer did not respond to the Department's inquiry regarding the nature of the separation.
  - The employer's reason for separation was any reason other than Quit or Discharge.
  - If the reason for separation reported by both the claimant and the employer did not agree, the claim was allowed if the reason listed by either party included, but was not limited to, one of the following:
    - Still Employed
    - Other
    - Suspended from Work
    - Still Working Full-Time
- Effective for claims filed on or after March 15, 2020, the employer was not charged regardless of the reason for separation. According to the Governor's executive order, however, the reason for separation needed to be due to COVID in order for the employer not to be charged.
- Effective for claims filed on or after March 15, 2020, the Department reviewed only the last separation of employment during the base period (the one-year period upon which the benefit payments are calculated).

The USDOL also allowed States to discontinue their Benefit Accuracy Measurement (BAM) surveying effective March 23, 2020, for denied claims and April 1, 2020, for paid claims. This was a significant control procedure performed by the Department to ensure both the eligibility of applicants and the proper processing of claims. In a March 18, 2020, email message to State Administrators, a USDOL representative explained, "The BAM program is an essential quality function for the UI program . . . The states have the responsibility to draw samples, perform investigations, identify errors, compute error rates, analyze data, and initiate corrective action if appropriate.

Although permitted by the USDOL, therefore, discontinuing the BAM surveys left the last quarter of the fiscal year with little to no effective controls to identify fraudulent payments.

Additionally, starting with claims paid during the fourth quarter of calendar year 2019, the Department discontinued the quarterly wage cross-match procedures required by 20 CFR § 603.23(b). This procedure identified individuals who had wages paid by employers during a quarter in which they also received benefits, which could lead to a decrease in benefits paid to a claimant.

The Department did perform the following procedures:

- Verified claimant data to the National Directory of New Hires Cross-match.
- Verified claimant data to the Systematic Alien Verification for Entitlements (SAVE) for alien status.
- Implemented the batch jobs that identified potential fraudulent claims. These batch jobs were not implemented until May 26, 2020, but included review of IP addresses, bank routing numbers, etc.

However, issues noted as a result of these procedures would still have to be reviewed by staff before a claim would be identified in the system as fraudulent/improper to stop payments on it. As of October 15, 2020, claims filed from January 3, 2020, still needed to be reviewed. Over \$19 million had been paid to these claimants and would continue to be paid until a staff review was performed.

Lastly, Department staff could flag a claim as potentially fraudulent and stop payments on it until someone reviewed the claim to determine if it was fraudulent. As of September 11, 2020, the Department had claims dating back to July 1, 2019, that still needed review. Over \$17 million had been paid to these claimants.

For the period July 1, 2019, through March 31, 2020, the State paid over \$49 million in unemployment benefits, per review of the State accounting system. After the pandemic hit, the quarter ending June 30, 2020, had nearly \$762 million in unemployment benefits. For fiscal year 2020, this is approximately 10 times larger than the unemployment benefits paid during a normal fiscal year. Of that \$762 million, over \$189 million was paid from regular UI, over \$533 million was paid from FPUC, over \$36 million was paid from PUA, and over \$2 million was paid from PEUC. The remaining benefits were from other smaller programs.

Due to the lack of controls, there was an increased risk for fraudulent claims and improper benefits paid during the last quarter of fiscal year 2020.

***Potential Fraudulent Claims***

The APA received a file from the Department for benefits paid, by claimant, for the fiscal year 2020 (July 1, 2019, through June 30, 2020) and performed a risk analysis for the last quarter of that fiscal year (April 1, 2020 through June 30, 2020) to identify possible fraudulent payments. In doing so, the APA sent 496 confirmation requests to individuals assessed as high-risk claimants to inquire as to whether they received the benefit payments recorded in their name.

Of the 496 confirmation requests sent to claimants, 24 responded that they did not receive any UC benefits. These individuals could be the victims of identity theft. There are potentially more fraudulent claims, but due to the lack of responses it is unknown how many. The table below details the responses received to the APA’s confirmation requests:

<b>Response</b>	<b>Total</b>
Did not receive UC benefits	24
Received UC benefits	157
Mail Was Undeliverable	65
No Response Received	250
<b>Total</b>	<b>496</b>

The following table shows the benefits recorded in GUS, the Department's unemployment benefit system, for each of the 24 respondents who claimed to have received no benefit payments:

#	Gross Amount Paid as of 6/30/2020 (Questioned Costs)	Gross Amount Paid 7/1/2020 to 10/26/2020 (Questioned Costs)	Program	1st Week Ending Paid/ 1st Date Paid	Last Week Ending Paid/ Last Date Paid	Overpayments Established (as of 10/30/2020)	Established Date	Date APA Notified Dept.
1	\$ 5,414	\$ 4,511	PUA	4/18/2020/ 4/28/2020	8/15/2020/ 9/17/2020	\$ -	N/A	10/6/2020
2	\$ 9,968	\$ 773	PUA	3/7/2020/ 6/22/2020	6/27/2020/ 7/6/2020	\$ -	N/A	10/5/2020
3	\$ 6,240	\$ 9,480	Regular UI	5/16/2020/ 5/28/2020	9/19/2020/ 9/24/2020	\$ -	N/A	9/25/2020
4	\$ 10,568	\$ -	PUA	3/14/2020/ 6/19/2020	6/27/2020/ 6/30/2020	\$ -	N/A	9/30/2020
5	\$ 5,514	\$ -	PUA	2/29/2020/ 6/1/2020	5/9/2020/ 6/1/2020	\$ 5,514	9/29/2020	9/29/2020
6	\$ 10,487	\$ -	PUA	2/15/2020/ 6/16/2020	6/20/2020/ 6/23/2020	\$ -	N/A	10/16/2020
7	\$ 6,362	\$ 7,141	PUA	3/28/2020/ 5/12/2020	10/24/2020/ 10/26/2020	\$ 5	10/14/2020	10/21/2020
8	\$ 10,741	\$ 6,622	PUA	3/7/2020/ 6/11/2020	10/3/2020/ 10/7/2020	\$ -	N/A	10/5/2020
9	\$ 2,080	\$ -	Regular UI	6/6/2020/ 6/10/2020	6/13/2020/ 6/16/2020	\$ 2,080	10/1/2020	10/1/2020
10	\$ 4,160	\$ -	Regular UI	5/23/2020/ 6/1/2020	6/20/2020/ 6/23/2020	\$ 4,160	7/29/2020	10/5/2020
11	\$ 3,120	\$ -	Regular UI	6/6/2020/ 6/15/2020	6/20/2020/ 6/22/2020	\$ 3,120	N/A	10/1/2020
12	\$ 2,080	\$ -	Regular UI	6/6/2020/ 6/16/2020	6/13/2020/ 6/22/2020	\$ -	N/A	10/1/2020
13	\$ 4,038	\$ -	PUA	3/28/2020/ 6/22/2020	5/2/2020/ 6/22/2020	\$ 4,038	10/7/2020	10/6/2020
14	\$ 4,476	\$ 3,438	PUA	2/8/2020/ 6/12/2020	8/8/2020/ 8/10/2020	\$ 7,914	10/7/2020	10/6/2020
15	\$ 4,164	\$ 2,082	Regular UI	5/23/2020/ 5/28/2020	7/25/2020/ 7/27/2020	\$ 6,350	10/5/2020	10/5/2020
16	\$ 3,092	\$ -	PUA	5/23/2020/ 6/15/2020	6/13/2020/ 6/15/2020	\$ 4,560	9/4/2020	10/1/2020
17	\$ 3,438	\$ 10,995	PUA	3/21/2020/ 6/2/2020	8/8/2020/ 9/17/2020	\$ -	N/A	9/30/2020
18	\$ 1,908	\$ 3,816	Regular UI	6/13/2020/ 6/22/2020	7/18/2020/ 7/24/2020	\$ -	N/A	10/9/2020
19	\$ 1,040	\$ -	Regular UI	6/13/2020/ 6/25/2020	6/13/2020/ 6/25/2020	\$ -	N/A	10/6/2020
20	\$ 1,040	\$ -	Regular UI	6/13/2020/ 6/22/2020	6/13/2020/ 6/22/2020	\$ 1,040	8/14/2020	10/5/2020
21	\$ 3,528	\$ 4,110	Regular UI	6/6/2020/ 6/15/2020	8/22/2020/ 9/24/2020	\$ -	N/A	10/30/2020
22	\$ 4,643	\$ -	PUA	4/18/2020/ 4/29/2020	6/6/2020/ 6/8/2020	\$ 4,643	7/1/2020	10/28/2020
23	\$ 8,871	\$ 4,792	Reg UI/ PEUC/PU A	6/29/2019/ 7/1/2019	8/15/2020/ 10/20/2020	\$ 946	6/12/2020	9/29/2020
24	\$ 5,904	\$ 5,004	Regular UI	5/23/2020/ 6/2/2020	8/15/2020/ 9/17/2020	\$ -	N/A	11/4/2020
<b>Total</b>	<b>\$ 122,876</b>	<b>\$ 62,764</b>				<b>\$ 44,370</b>		

Per the Department, staff spoke to Respondent #22 several times, identified the claim as fraudulent, and requested repayment due to several inconsistencies with the claimant information, including inconsistent mailing and living addresses, suspect IP addresses, phone number changes, etc. According to the Department, the respondent had actually received the payments but should not have; therefore, an overpayment was established.

The Department explained also that Respondent #23 was the subject of an active case involving a woman suspected of having filed a fraudulent claim in the name of her incarcerated son, as well as possibly filing a fraudulent claim on her own behalf. Her son was incarcerated several times throughout the year. According to GUS, he received benefits for the week ending February 22, 2020, through September 5, 2020, nearly the entire time he was incarcerated. Inmates are not eligible to receive UC, as they are unavailable for work.

In addition to the above concerns with the confirmation request responses, the APA noted specific incidents of apparently fraudulent claims being filed. One of those involved a member of the APA’s staff, who learned that a fraudulent claim had been filed in her name. On May 30, 2020, the APA received a “Request to Employer for Separation Information” form from the Department for the employee, whose employment had not been terminated or hours reduced. That form was returned to the Department on June 4, 2020, noting that the claim was fraudulent, and the individual was currently employed, working full-time, and had not filed for unemployment. On June 8, 2020, the APA received a “Qualifying Separation Determination” notification that stated the following:

*We have completed a review and investigation of your claim for unemployment benefits referenced above. We have determined that you are eligible for benefits due to your employment being affected by the declared Pandemic Covid-19. The employer, AUDITOR OF PUBLIC ACCTS . . . is chargeable for benefits based on wages paid for this employment.*

On June 9, 2020, the APA contacted the Department again, reiterating that the claim was fraudulent and should not be paid. Nevertheless, on June 18, 2020, a debit card was mailed to the APA employee with a letter stating that the payment to the bank account and routing number associated with the claim had been returned because the account had insufficient funds. While the APA employee received the debit card, and payments were created in GUS, the payments to the employee never cleared the Department’s bank. However, it appears that tax payments were made, as the APA employee received a “Statement Of The Last 30 Days Of Your Improperly Paid Account” communication on August 24, 2020, which notified her that she owed \$104 for taxes paid by the Department.

Though none were made on that particular claim, any payments would have gone to a routing number to which 27 other claimant payments had already been sent. Replying to the confirmation requests sent by the APA, moreover, 15 of the respondents (#8 through #22 above) stated that they also had received no benefits.

During testing of 36 State employees, as discussed in the section herein titled “Improper Unemployment Benefits Paid to State Employees,” we identified three claimants, similar to the APA employee, for whom benefit payments were created in GUS but never cleared the bank. These three claimants also had questionable details, such as a routing number for a bank with no Nebraska branches or an IP address for either registration or the most recent claim that was not associated with a Nebraska location. Like the APA employee, these individuals appear to be the victims of identity theft, and the details of the claims filed in their names are provided in the following table:

State Agency	Job Title	Net Benefit Payments Processed but Not Paid	Bank Branches in Nebraska	IP Address in Nebraska
Corn Board	Per Diem Employee	\$ 13,920	Yes	No
Department of Motor Vehicles	Administrative Assistant I	\$ 4,152	No	No
APA	Examiner II	\$ 2,080	No	No
DHHS	Health Information Technician	\$ 1,876	No	No
<b>Total</b>		<b>\$ 22,028</b>		

Additionally, the APA received notification from two individuals who, despite having experienced no changes in employment status, had fraudulent claims filed in their names. No payments were made on one of the claims; however, the other individual received a debit card loaded with \$1,846. The recipient of the card stated that she had not filed for unemployment benefits.

Good internal controls require procedures to ensure that UC claimants are eligible, and benefit payments are proper.

Without such procedures, there is an increased risk of both fraudulent UC claims being processed and benefit payments being made improperly.

### ***Lack of Controls Over the PUA Program***

PUA provides benefits to individuals who are not otherwise eligible for regular UI. Individuals must also be unemployed, partially unemployed, or unable or unavailable to work because of certain health or economic consequences of the COVID-19 pandemic. This includes self-employed individuals, those seeking part-time employment, individuals lacking sufficient work history, and those who otherwise do not qualify for regular unemployment compensation under State or Federal law or PEUC. PUA provides benefits for up to 39 weeks. The CARES Act provides the following list of COVID-19 reasons for unemployment that would allow an individual to be eligible for PUA:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency, and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment due to having been advised by a health care provider to self-quarantine because of concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

The amount paid under the PUA program is the same as what would be payable under regular UI, except that the minimum amount paid per week cannot be less than \$173 a week in the State of Nebraska (plus an additional \$600 each week from FPUC).

Per USDOL guidelines, the States must first verify that individuals are ineligible for regular UI before being provided with PUA benefits. Additionally, the States must check quarterly to determine if a PUA claimant is eligible for regular UI.



USDOL guidelines say also that the claimant must self-certify at the time he or she applies for PUA; moreover, for each continued claim, he or she must be unemployed for one of the COVID-19 reasons listed above. Additionally, the claimant must be advised that intentional misrepresentation on the self-certification constitutes fraud. USDOL guidelines do not require the States to verify the information self-certified by the claimant, unless the claimant provides information that would allow him or her to receive more than the weekly amount of \$173. Then the States must obtain additional documentation to support that the claimant can receive more than the minimum amount; however, many of the claimants under PUA might not normally have the additional required documentation, such as records of wages reported by employers.

The U.S. Office of Inspector General (OIG) released an Alert Memorandum on May 26, 2020, disagreeing with some of the USDOL's guidance. According to that document, relying solely upon self-certified information gives rise to significant risk of fraud; thus, States should obtain additional documentation to support that the PUA claimants had earned wages prior to going on unemployment. The USDOL responded on June 5, 2020, disagreeing with the OIG and explaining that Congress had mandated that eligibility is to be established by self-certification, and the USDOL and the States may not require documentation substantiating an individual's employment or self-employment as an eligibility requirement for PUA benefits. The USDOL did clarify that, if a PUA claimant is receiving more than the weekly minimum amount, the States are required to obtain documentation to support the weekly amount; however, if the claimant fails to provide such documentation, his or her future benefits must be reduced to the minimum benefit available.

Potentially, a PUA claimant could receive up to \$13,141 (which includes FPUC) for the weeks ending April 4, 2020, to July 25, 2020, by providing only self-certifications, and not providing additional documentation. During the period April 1, 2020, to June 30, 2020, there were 22,577 PUA claimants receiving net benefits totaling \$135,129,090. We noted the following concerns:

- The Department did not add the COVID-19 reasons for unemployment listed above to the PUA unemployment application until April 22, 2020. We noted that 4 of 10 PUA claims tested had applications filed prior to April 22, and they were approved for PUA despite not including the COVID-19 reason for unemployment required by the USDOL.
- Additionally, the PUA weekly certifications required to be completed by the claimant did not include the COVID-19 reason, as required for unemployment benefits, until the week ending July 4, 2020.
- The Department's system allowed PUA eligibility automatically, without requiring any staff reviews to verify the validity that the claimant had self-certified one of the allowable COVID-19 related reasons. Such staff review was not required in the system until July 17, 2020.
- The Department paid a minimum weekly amount of \$174 rather than \$173 from January 2020 through June 5, 2020. For 5 of 10 PUA claims tested, the weekly benefit amount was overpaid. The Department used FEMA's declaration of a major disaster for COVID-19 in Nebraska, effective April 4, 2020. Using this date, the minimum weekly amount was \$174. The Department was later provided guidance from the USDOL on May 28, 2020, that it should be using the date the President of the United States declared COVID-19 a national emergency, which was March 13, 2020. Using this date, the minimum weekly amount was \$173. Prior to June 5, 2020, 19,859 claimants received PUA.
- The State is required to review PUA claims quarterly to ensure claimants were not eligible for regular UI. For one PUA claim tested, the Department performed its quarterly review and determined on July 24, 2020, that the claimant was eligible for regular UI dating back to April 5, 2020. This resulted in \$2,039 (Questioned Costs) in excessive payments from the PUA program that would not have been allowed from regular UI. As of October 21, 2020, the Department had not established an overpayment for this.

Based upon the above, it is apparent that PUA Federal requirements were not met for all applicants, and the Department lacked controls to ensure that claimants were eligible.

Good internal control requires procedures to ensure that recipients of PUA benefits are eligible for those payments, and weekly benefit amounts are calculated correctly. Those same procedures should ensure also that the Department takes action to recoup any overpayment of PUA benefits.

Without such procedures, there is an increased risk of fraudulent or incorrect PUA payments being made and not recovered.

***Ineligible Payments to Inmates***

During the APA’s confirmation testing, one respondent who claimed not to be receiving UC payments was found to be an inmate incarcerated at the Community Corrections Center – Lincoln (CCC-L). Inmates are not eligible for UC benefits.

Neb. Rev. Stat. § 48-627 (Cum. Supp. 2018) provides, in relevant part, the following:

*An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:*

\* \* \* \*

*(3)(a) He or she is able to work and is available for work.*

\* \* \* \*

*(f) An inmate sentenced to and in custody of a penal or custodial institution shall be considered unavailable for work for purposes of this section[.]*

Despite the above statutory prohibition against providing UC payments to inmates, the respondent received benefits while incarcerated at the CCC-L. The APA identified five other CCC-L inmates who also received UC benefits during their incarceration.

The following table details the UC benefit payments, totaling \$33,645, made to the six CCC-L inmates through October 26, 2020:

#	Gross Amount Paid as of 6/30/20 (Questioned Costs)	Gross Amount Paid 7/1/20 to 10/26/20 (Questioned Costs)	Prog.	Claim Filed Date	1st Week Ending Paid/ 1st Date Paid	Last Week Ending Paid/ Last Date Paid	Sentence Begin Date	Release Date	Overpayment as of 10/26/2020 (Including Penalties)	Overpayment Established Date
1	\$ 6,110	\$ 5,930	PUA	4/25/20	5/9/20/ 5/21/20	9/5/20/ 9/24/20	6/26/19	7/28/20	\$ 12,645.10	10/8/20
2	\$ 3,870	\$ -	PUA	4/25/20	4/4/20/ 4/27/20	5/2/20/ 5/4/20	3/27/14	9/18/20	\$ 3,999.75	10/8/20
3	\$ 3,940	\$ -	Regular UI	3/30/20	4/4/20/ 5/11/20	5/2/20/ 5/11/20	2/13/12	8/28/20	\$ -	N/A
4	\$ 2,322	\$ -	PUA	4/25/20	4/18/20/ 4/27/20	5/2/20/ 5/4/20	6/22/18	N/A	\$ 2,399.85	10/8/20
5	\$ 1,548	\$ -	PUA	4/25/20	4/25/20/ 5/4/20	5/2/20/ 5/4/20	5/2/19	N/A	\$ 1,548.00	6/20/20
6	\$ 5,414	\$ 4,511	PUA	4/25/20	4/18/20/ 4/28/20	8/15/20/ 9/17/20	12/16/19	5/8/20	\$ -	N/A
<b>Total</b>	<b>\$ 23,204</b>	<b>\$ 10,441</b>								

Good internal control requires procedures to ensure that inmates do not receive UC benefits while incarcerated.

Without such procedures, there is an increased risk of the Department disbursing UC payments in a manner incompatible with State law.

### ***Excessive Wages Earned***

Claimants were required to perform weekly certifications, which included reporting all wages earned during that week to ensure benefit reductions were not necessary. These certifications were performed to ensure compliance with Neb. Rev. Stat. § 48-625(1) (Cum. Supp. 2018), which provides the following:

*Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of section 48-628.02, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.*

The Department had a system control to cross-match wages reported on a quarterly basis by employers through the Tax Management System (TMS). If a claimant did not certify wages properly, the cross-match would identify wages that required further adjudication and staff review to follow up with employers. That system ensured compliance with 20 CFR § 603.23(b), which states the following:

*The State UC agency must crossmatch quarterly wage information with UC payment information to the extent that such information is likely, as determined by the Secretary of Labor, to be productive in identifying ineligibility for benefits and preventing or discovering incorrect payments.*

Despite the above directive, the Department stopped its wage cross-match procedures effective March 2020. The cross-match reviewed wages two quarters in arrears, leaving the period October 1, 2019, through June 30, 2020, with no wage review to ensure that benefits paid were proper. The Department did not plan to renew cross-matching until the first quarter of calendar year 2021.

UIPL 23-20 (May 11, 2020) from the USDOL reiterates the program integrity functions required for the regular UI program, providing the following guidance:

*The essential functions performed by Benefit Payment Control (BPC) units or other designated staff must be performed for all UI programs, including PEUC and PUA.*

*Section 7511, Part V, of the Employment Security Manual (ESM) requires state unemployment compensation (UC) laws to include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the state UC agency or through willful misrepresentation or error by the claimant or others, (2) to deter claimants from obtaining benefits through willful misrepresentation, and (3) to recover benefits overpaid under certain circumstances.*

*These required functions are accomplished through state agency BPC units or other designated staff responsible for promoting and maintaining the integrity of the UI program through prevention, detection, investigations, establishment, and recovery of overpayments. BPC units or designated staff also prepare cases for prosecution.*

*The following BPC activities are mandatory for states to implement for the regular UI programs on an ongoing basis. States must implement these functions for the PEUC and PUA programs in the same manner as for the regular UI programs.*

- *National Directory of New Hires Cross-match (UIPL Nos. 13-19 and 19-11). UIPL 13-19 provides detailed, recommended operating procedures for crossmatching with state and national directories of new hire data;*
- *Quarterly Wage Records Cross-match (20 CFR § 603.23); and*
- *Systematic Alien Verification for Entitlement (SAVE) (Section 1137(d) of the Social Security Act (SSA) (42 U.S.C. §1320b-7).*

The APA randomly selected 60 claimant benefit payments (8 from July 1, 2019, through March 31, 2020, and 52 from April 1, 2020, through June 30, 2020). The random sample consisted of 50 regular UI payments and 10 PUA payments. We reviewed the claims to ensure that adequate supporting documentation was on file, and controls were in place, to determine whether eligibility was proper.

The total sample tested was \$59,463, and questioned costs for payments tested were \$39,229. Total payments to those claimants were \$330,553 for fiscal year 2020, and additional payments of \$153,136 from July 1, 2020, to October 22, 2020. Total benefit payments for the fiscal year ended June 30, 2020, were \$811,758,290. Based on the sample tested, the dollar error rate for the sample was 65.97% (\$39,229/\$59,463), which estimates the potential dollars at risk for fiscal year 2020 to be \$535,534,130 (dollar error rate multiplied by population). However, due to the Department discontinuing, from October 1, 2019, through June 30, 2020, the cross-match procedures required by 20 CFR § 603.23(b) to identify fraudulent claims, we estimate all payments made during this period to be potential dollars at risk, totaling \$799,940,595.

We noted that 25 of 60 random claims tested had wages in excess of 25% of the weekly benefit amount established by § 48-625(1), as shown in the table below:

#	Quarter Tested	Claimant Certified Wages	TMS Quarterly Wages	Variance	Gross Amount Paid during the Quarter
1	CY 2019 Qtr 4	\$ -	\$ 7,212	\$ 7,212	\$ 2,982
2	CY 2019 Qtr 4	\$ -	\$ 2,090	\$ 2,090	\$ 882
3	CY 2020 Qtr 1	\$ -	\$ 3,310	\$ 3,310	\$ 2,200
4	CY 2020 Qtr 1	\$ 161	\$ 4,254	\$ 4,093	\$ 440
5	CY 2020 Qtr 2	\$ -	\$ 869	\$ 869	\$ 13,080
6	CY 2020 Qtr 1 & 2	\$ 174	\$ 8,795	\$ 8,621	\$ 2,496
7	CY 2020 Qtr 2	\$ -	\$ 6,042	\$ 6,042	\$ 3,870
8	CY 2020 Qtr 2	\$ 53	\$ 3,590	\$ 3,537	\$ 8,280
9	CY 2020 Qtr 2	\$ 4,811	\$ 8,598	\$ 3,787	\$ 6,240
10	CY 2020 Qtr 2	\$ 380	\$ 1,138	\$ 757	\$ 10,824
11	CY 2020 Qtr 2	\$ -	\$ 600	\$ 600	\$ 10,348
12	CY 2020 Qtr 2	\$ 2,060	\$ 9,445	\$ 7,385	\$ 4,160
13	CY 2020 Qtr 2	\$ 1,403	\$ 2,754	\$ 1,351	\$ 4,815
14	CY 2020 Qtr 2	\$ -	\$ 873	\$ 873	\$ 13,344
15	CY 2020 Qtr 2	\$ 1,586	\$ 4,716	\$ 3,129	\$ 12,054
16	CY 2020 Qtr 2	\$ -	\$ 6,785	\$ 6,785	\$ 13,960
17	CY 2020 Qtr 2	\$ -	\$ 5,550	\$ 5,550	\$ 8,320
18	CY 2020 Qtr 2	\$ 7,462	\$ 8,226	\$ 764	\$ 9,108
19	CY 2020 Qtr 2	\$ 1,372	\$ 5,817	\$ 4,445	\$ 7,130
20	CY 2020 Qtr 2	\$ 899	\$ 1,463	\$ 564	\$ 6,450
21	CY 2020 Qtr 2	\$ -	\$ 10,372	\$ 10,372	\$ 3,072
22	CY 2020 Qtr 2	\$ -	\$ 424	\$ 424	\$ 9,368
23	CY 2020 Qtr 2	\$ 677	\$ 1,117	\$ 440	\$ 5,388
24	CY 2020 Qtr 2	\$ -	\$ 426	\$ 426	\$ 9,330
25	CY 2020 Qtr 2	\$ -	\$ 288	\$ 288	\$ 9,284
<b>Total</b>		<b>\$ 21,038</b>	<b>\$ 104,752</b>	<b>\$ 83,714</b>	<b>\$ 177,425</b>

Despite the excess wages identified above, the GUS benefit payment system contained no documentation that Department staff had reviewed them for determination of benefit reductions. Moreover, because the Department did not perform further inquiry with the employer to determine wages by week, there is no support to determine if the claimants were overpaid.

We also performed testing of nine claimants with wages greater than \$100,000 during the last quarter of fiscal year 2020. For seven of the nine tested, the Department failed to obtain adequate supporting documentation, whether at the time the payments were made or subsequently through the TMS cross-match, to allow for a determination of eligibility, or eligibility was not properly determined, as shown in the table below:

#	Claimant Certified Wages	TMS Quarterly Wages	Variance	Gross Amount Paid during the Quarter	Notes
1	\$ 18,739	\$ 200,460	\$ 181,721	\$ 1,040	The claimant made 10 weekly certifications. For 7 of the 10 weeks, the claimant certified that he earned \$4,685 for each of those 7 weeks and received no payments. Gross benefits through 10/8/20 totaled \$3,120.
2	\$ 408	\$ 111,827	\$ 111,419	\$ 5,621	The claimant made five weekly certifications. For three of those five weeks, the claimant certified that he earned a total of \$408. Only one week was reduced.
3	\$ -	\$ 122,445	\$ 122,445	\$ 1,040  (Questioned Costs)	The employer responded on 4/27/2020 that the claimant was laid off due to lack of work. However, according to the employer, the claimant would be receiving a severance payment of \$115,000 on 5/1/2020. The claimant was denied benefits on 5/11/2020 due to excessive severance pay. However, one payment was made on 5/12/2020 for the week ending 4/25/2020. According to the Department, this was a staff error when inputting the effective date of pay. This caused a week to be skipped when the system prorated the pay. An overpayment had not been established as of 11/4/20.
4	\$ -	\$ 130,585	\$ 130,585	\$ 2,080  (Questioned Costs)	The employer informed the Department on 5/14/2020 that the claimant was still employed and never stopped working. A temporary UI Claims Specialist reviewed the claim, but the benefits were allowed nonetheless. The claim should have been investigated further for potential fraud. The Department agreed and opened an investigation. An overpayment had not been established as of 11/4/20.
5	\$ -	\$ 115,000	\$ 115,000	\$ 4,160	The claimant made four weekly certifications. For all weeks, the claimant reported \$0 in wages. No benefits were reduced.
6	\$ -	\$ 149,477	\$ 149,477	\$ 1,040  (Questioned Costs)	The employer informed the Department on 6/6/2020 that the claimant was still employed and had never stopped working. An issue was created in the system, but a payment was automatically allowed to be issued on 6/11/2020. Another issue created in the system on 6/28/2020 denied benefits. An overpayment was subsequently established on 7/29/2020.
7	\$ -	\$ 225,238	\$ 225,238	\$ 2,080	The claimant made two weekly certifications. For both weeks, the claimant reported \$0 in wages. No benefits were reduced.
<b>Total</b>	<b>\$ 19,148</b>	<b>\$ 1,055,033</b>	<b>\$ 1,035,885</b>	<b>\$ 17,061</b>	

Lastly, during our risk analysis procedures, we identified 79 claimants with benefit payments greater than \$8,500 and wages in excess of \$15,000 during the last quarter of fiscal year 2020. To receive \$8,500 in benefits, a claimant receiving the maximum weekly benefit amount, would have received at least nine weeks of benefits. With only 13 weeks in a quarter, the claimant would then have received wages of at least \$3,750 (\$195,000 annually) in each of the remaining 4 weeks. Therefore, these claimants were deemed higher risk of fraudulent claims as the APA expected claimant wages to decline as benefit payments increased.

Selecting 10 of these 79 claimants for testing, we noted a lack of staff review for determination of benefit reductions. Because the Department did not perform further inquiry with the employer to determine wages by week, there is no support to determine if the claimants were overpaid.

#	Quarter	Claimant Certified Wages	TMS Quarterly Wages	Variance	Gross Amount Paid during the Quarter	Notes
1	CY 2020 Qtr 2	\$ 17,883	\$ 17,883	\$ -	\$ 11,880	The employer did not respond to the Department's request for separation information, and no further attempts were made to contact the employer. The Department used the 1/8/20 date of separation reported by the claimant to prorate the wages for possible reduction of benefits. The claimant's benefits did not start until 3/28/20, so no benefits were reduced based on the termination date provided by the claimant. It is unknown if the date was proper or if reductions of benefits received were necessary.
2	CY 2020 Qtr 2	\$ 1,118	\$ 33,015	\$ 31,897	\$ 12,187	The social security number was not entered into the system properly, causing wages to be reported in error for the claimant. Proper wages for the claimant totaled \$2,084. The employer informed the Department on 4/1/20 that this claimant did not work for the company; however, no staff reviewed the employer response. The Department did not correct the social security number until inquiry by the APA on 10/13/20.
3	CY 2020 Qtr 2	\$ -	\$ 21,985	\$ 21,985	\$ 14,400	No documentation of wages was reviewed in GUS.
4	CY 2020 Qtr 2	\$ -	\$ 15,314	\$ 15,314	\$ 12,480	The claimant's name in GUS did not agree to the name reported for the TMS wages. No further research had been performed by the Department per review of GUS.
5	CY 2020 Qtr 2	\$ -	\$ 16,672	\$ 16,672	\$ 12,480	No documentation of wages was reviewed in GUS.
6	CY 2020 Qtr 2	\$ -	\$ 27,240	\$ 27,240	\$ 14,980	The claimant was paid \$1,020 (Questioned Costs) more than the maximum benefit allowed for the quarter. There was no documentation in GUS of a review of wages or an overpayment established.

#	Quarter	Claimant Certified Wages	TMS Wages	Variance	Gross Amount Paid during the Quarter	Notes
7	CY 2020 Qtr 2	\$ -	\$ 15,729	\$ 15,729	\$ 13,960	A wage audit request was submitted by the employer on 9/14/20 to report wages earned by week. The APA calculated overpayments of approximately \$8,700 (Questioned Costs); however, the Department had not established an overpayment.
8	CY 2020 Qtr 2	\$ -	\$ 20,111	\$ 20,111	\$ 13,960	Per documentation contained in GUS, the claimant would have worked full-time during this quarter based on the wages reported.
9	CY 2020 Qtr 2	\$ -	\$ 17,827	\$ 17,827	\$ 13,960	No documentation of wages was reviewed in GUS.
10	CY 2020 Qtr 2	\$ -	\$ 17,804	\$ 17,804	\$ 14,400	No documentation of wages was reviewed in GUS.
<b>Total</b>		<b>\$ 19,001</b>	<b>\$ 203,579</b>	<b>\$ 184,578</b>	<b>\$ 134,687</b>	

Good internal control requires procedures to ensure that benefit payments are made in compliance with applicable Federal and State requirements.

Without such procedures, there is an increased risk of improper benefit payments being made in violation of Federal and State requirements.

***Improper Unemployment Benefits Paid to State Employees***

For the period March 1, 2020, through July 28, 2020, the APA identified \$116,022 in improper unemployment benefits paid to Nebraska State employees for 20 of 36 claimants tested. In order to select the 36 claimants tested, the APA compared the list of unemployment benefit claimants to the State’s accounting system (E1) to identify whether active State employees, as of July 2020, received unemployment benefits from March to June 2020. In total, the APA identified 256 active State employees who were paid unemployment benefits. Included in the 256 were State employees who had terminated employment from another employer but were still active State employees.

Neb. Rev. Stat. § 48-625 (Cum. Supp. 2018) sets out how to calculate unemployment benefits for a recipient who has wages payable to him or her while receiving an unemployment benefit. The statute requires any wages in excess of one-fourth of the weekly benefit amount to be deducted from the claimant’s benefit.

Active State workers were eligible for unemployment if their State work hours were reduced, they were terminated from other employment, or their hours from another job were reduced. In these instances, the employee was required to report State wages in order to determine the claimant’s unemployment benefit.

The Department had a process for identifying State employees who were also receiving benefit payments; however, in many of these instances, these employees received benefits for several weeks prior to being identified. Additionally, the GUS unemployment benefit system was modified during the pandemic to automate the approval process, so benefits could be paid more timely; thus, some of the benefits were approved and paid without a Department employee reviewing and approving the unemployment claim.

Twenty of 36 claimants tested did not report all State wages to the Department, whose process for identifying those unreported wages was insufficient to detect such errors timely. That unsatisfactory procedure led to overpayments of \$116,022. The table below identifies the 20 claimants and the gross benefit that was overpaid:

State Agency	Job Title	Gross Benefit Overpaid as of 6/30/20 (Questioned Costs)	Gross Benefit Overpaid 7/1/20 to 7/28/20 (Questioned Costs)	Bank Account in GUS agreed to E1 – Note 1
Department of Health & Human Services (DHHS)	Staff Assistant II	\$ 14,400	\$ 4,160	Yes
DHHS	Secretary II	\$ 12,480	\$ 4,077	No
Department of Correctional Services	Facility Maintenance Manager I	\$ 10,400	\$ 1,040	Yes
DHHS	Social Services Lead Worker	\$ 8,880	\$ 1,040	Yes
Secretary of State	Records Technician	\$ 9,220	\$ -	No
Department of Agriculture	Meteorologist	\$ 5,939	\$ 1,932	Yes
Department of Correctional Services	Corrections Unit Case Worker	\$ 7,280	\$ 239	No
DHHS	Resource Developer <b>Note 2</b>	\$ 7,072	\$ -	Yes
DHHS	Teacher	\$ 4,974	\$ 836	Yes
DHHS	Social Services Trainee	\$ 2,666	\$ 1,365	No
DHHS	Social Services Worker	\$ 786	\$ 3,144	Yes
DHHS	Social Services Worker	\$ 2,718	\$ -	No
DHHS	Child/Family Services Specialist	\$ 2,504	\$ -	Yes
Legislative Council	State Senator	\$ 1,944	\$ 324	Yes
DHHS	Social Services Unit Manager	\$ 2,080	\$ -	No
DHHS	Mental Health Security Specialist II	\$ 424	\$ 1,454	Yes
Supreme Court	Specialized Probation Officer	\$ 1,040	\$ -	No
Dept. of Motor Vehicles	Driver Licensing Services District Supervisor	\$ 1,040	\$ -	No
DHHS	Registered Nurse	\$ 348	\$ -	Yes
Game and Parks	Temp Park Worker II	\$ 216	\$ -	Yes
<b>Total</b>		<b>\$ 96,411</b>	<b>\$ 19,611</b>	

**Note 1:** The APA's analysis included a comparison between the employee's banking information in the State's accounting system (E1) and the banking information recorded in GUS. Bank accounts that did not match could indicate a third party had fraudulently filed a claim impersonating the State employee.

**Note 2:** This employee did not originally report State wages when she filed for weekly benefits. However, the employee did contact the Department thereafter, and an overpayment was calculated. As of November 24, 2020, the employee had paid back \$6,020; additionally \$600 had been cancelled, and \$452 was still due.

A good internal control plan requires adequate procedures to identify improper or questionable benefits for further investigation and proper resolution.

Without such procedures, there is an increased risk of improper or fraudulent payments being made.

**Benefits Received for Multiple Programs**

We reviewed 10 of 594 claimants who were paid more than \$13,520 in benefits during the period April 1, 2020, to June 30, 2020. Eight of those 10 claimants received payments from more than one program during the same weeks, as detailed in the following table:



#	Weeks with Payments from Multiple Programs	Program Overpaid	APA Calculated Overpayment (Questioned Costs)	Department Overpayment Established	Established Date
1	4/18/20 to 5/2/20	UI / FPUC	\$ 3,120	\$ -	N/A
2	4/4/20 to 6/20/20	PUA / FPUC	\$ 4,200	\$ -	N/A
3	3/28/20 to 4/18/20	PUA / FPUC	\$ 3,560	\$ -	N/A
4	5/16/20 to 6/13/20	UI / FPUC	\$ 5,200	\$ 5,200*	7/24/20
5	3/28/20 to 6/20/20	UI / FPUC	\$ 9,687	\$ 3,687*	6/29/20
6	4/4/20 to 5/23/20	TRA FUBA / FPUC	\$ 8,208	\$ -	N/A
7	3/28/20 to 5/16/20	UI / FPUC	\$ 7,720	\$ -	N/A
8	4/4/20 to 5/16/20	TRA FUBA / FPUC	\$ 4,530	\$ -	N/A
<b>Total</b>			<b>\$ 46,225</b>	<b>\$ 8,887</b>	

\*Overpayment was recouped by the Department.

Starting in May 2020, Claimant #1 was originally being paid from regular UI. The Department then determined that the claimant was eligible for PUA, dating back to February 2020 through early May 2020. While making the change in its system, the Department backdated the PUA for weeks already paid from regular UI, and no overpayment was established. This caused the error of \$3,120. Similar issues were noted for all of the other seven claimants listed above.

We noted also that Claimant #5 had an overpayment of \$9,687, which was repaid; however, the Department canceled \$6,000 of that amount improperly, and records showed an erroneous refund due.

Section 4(b) of UIPL 14-20 (April 2, 2020), issued by the USDOL, states the following, in part:

*An individual may establish eligibility for multiple benefit programs, including multiple programs authorized under the CARES Act. The information provided below regarding the order of payment is contingent on the individual meeting all eligibility criteria for the respective program(s). It is also contingent on the state having entered into an agreement with the Secretary of Labor to administer such program(s).*

*i. For an individual who is eligible for regular UC (including UCFE and UCX), the following order of payment applies.*

*A. The individual must apply for and receive regular UC. The amount and duration of these benefits are dependent on state law.*

*B. If the individual exhausts regular UC, the individual may then be eligible to receive PEUC under section 2107. The duration of these benefits is limited to 13 weeks.*

Good internal control requires procedures to ensure that claimants do not receive benefit payments from more than one program during the same week.

Without such procedures, there is an increased risk of making overlapping payments to benefit recipients in contravention of applicable Federal guidelines.

#### **Lack of Adjudication Procedures Over Employer Responses**

While testing 60 claims, we noted that the last employer failed to respond to the Department's request for separation information for 13 of the claimants. Those claimants were paid a total of \$115,109 in benefits during fiscal year 2020.

According to the Department, when an employer does not respond to a request for separation information, another attempt is made, via telephone, mail, etc., to obtain the needed information. There was no documentation, however, that such follow-up was performed for the 13 claimants. Consequently, the eligibility for these claimants is unknown, as no other controls were in place to verify their statements for separation of employment.

Furthermore, when reviewing the claimants, we noted that the Nebraska employer for one of the claimants was not included in the Tax Management System (TMS), the State's system for recording wages reported by employers. It is unknown, therefore, if the employer information provided by the claimant is accurate. The claimant was paid \$6,077 during the fiscal year. Likewise, another claimant was receiving PUA. However, per the GUS benefit payment system, the claimant had not been employed since 2013, and no employment information was included on the application for benefits, making the individual ineligible for regular UI. The individual was also ineligible for PUA, having failed to provide one of the COVID-19 reasons for unemployment. Therefore, the claimant should not have received \$10,000 (Questioned Costs) in benefits. The Department agreed that the individual was not eligible.

Additionally, of the claimants identified as high risk (see "Potential Fraudulent Claims" above), the APA sent confirmations to 51 of their last employers. Those employers had not responded to the Department's request for separation information. We received responses from 33 of the employers, and 12 of those responses indicated that the claim should not have been allowed. Benefits paid to these 12 claimants totaled \$97,764 (Questioned Costs) through June 30, 2020, and an additional \$51,702 (Questioned Costs) had been paid after the fiscal year ended through October 22, 2020.

During our test of 60 claims, we noted that the last employer responded for 45 of the claimants. Of those 45, 16 responses from the employer did not agree to the claimant's separation response. Those responses gave rise to the following concerns:

- Eleven of the responses from the employers were either "Still Employed" or "Other." The system is set up to allow claims to process automatically with these responses. For these claims, though, the employer happened to provide additional information to support eligibility. Regardless, there is a risk that an employer could respond "Still Employed" or "Other" and provide additional information that would support denial of the claim; however, because of the automatic allowance, staff would not review this information, and the claim would still be allowed.
- Four employers provided a separation statement; however, those statements were not entered into the GUS benefit payment system, and there is no documentation to support that Department staff considered them when determining claimant eligibility. Failure to review employer separation statements increases the risk of ineligible claimants receiving benefits. For instance, one of these responses did not include information regarding the claimant's termination date or the reason for separation. There is no documentation to show that the Department either considered or followed up on this employer response; therefore, information is lacking to support that this claimant was eligible to receive benefits.
- One employer responded that the claimant "Resigned/Quit." According to the employer, the claimant was supposed to be a substitute paraprofessional; however, whenever summoned, she would not report to work. This information should have disqualified the claimant, but her claim was allowed nonetheless.

Per Neb. Rev. Stat. § 48-626(1) (Cum. Supp. 2018), the Department must adjudicate for each claimant the "wages in the employment of each employer per calendar quarter of his or her base period." Per both Executive Order 20-22 (April 30, 2020) and Executive Order 20-26 (June 2, 2020), however, Governor Pete Ricketts issued this directive: "The NDOL will only adjudicate the last separation from employment which resulted in the claimant's unemployment."

Nevertheless, as shown herein, the Department appears not to have been adjudicating consistently each claimant's last separation from employment, as ordered by the Governor.

Good internal control requires procedures to ensure that the Department adjudicates each claimant's last separation from employment, as directed by the Governor's executive orders.

Without such procedures, there is an increased risk of not only benefit payments being made to ineligible claimants but also noncompliance with the Governor's executive orders.

### ***Short-Time Compensation (STC)***

As provided under Neb. Rev. Stat. §§ 48-672 through 48-683 (Cum. Supp. 2018), the Department utilizes a “short-time compensation” (STC) program. The STC program allows employers to establish, upon Department approval, a plan for reducing hours of work for employees rather than laying-off some employees while others continue to work full-time. Under such a plan, the employees who receive a reduction in hours collect a percentage of their lost wages through UC.

During testing, the APA found one claimant who was authorized, pursuant to an approved STC plan, to receive benefits for a 10% reduction in weekly hours; however, that claimant was paid benefits for a 20% reduction in hours for eight weeks. This resulted in the claimant receiving \$352 (Questioned Costs) more than the amount specified in the approved plan.

Title 219 NAC 19-003(N) sets out how changes may be made to an STC plan:

*A STC employer shall use the Department of Labor’s website or the paper forms available from the Department to report changes to an approved STC plan, request modification of an approved STC plan, or revoke an approved STC plan.*

The APA found no report of changes to the STC plan at issue having been filed with the Department.

Additionally, Title 219 NAC 19-008 provides the following:

*The Department of Labor may audit STC Plans for compliance on a regular basis. If during the audit a variance between employer reported information and claimant reported information exists, the Department of Labor may redetermine the correct benefit amount.*

Good internal control requires procedures, including periodic verifications or audits, to ensure compliance with the provisions of approved STC plans.

Without such procedures, there is an increased risk of improper benefit payments to claimants.

### ***Other Issues***

Additionally, we noted the following issues during testing:

- One claimant reported severance of \$13,975 on the weekly certification for the week ending July 18, 2020. The Department determined that this severance should have reduced benefits previously received from April 4, 2020, through July 11, 2020, for an overpayment of \$13,412 (Questioned Costs). However, the overpayment for \$13,412 was not established until October 28, 2020, after APA inquiry. Payments for the weeks ending July 18, 2020, to August 8, 2020, (paid on September 8, 2020, and September 19, 2020), totaling \$3,026, were still paid because the Department did not establish the overpayment timely.
- One claimant tested had received severance and bonus pay that was determined to be excessive by the Department, so overpayments were established on August 3, 2020, and August 17, 2020, for \$5,912 (Questioned Costs). However, payments continued to be made through the week ending September 26, 2020, for a total of \$944, which could have been used to recuperate some of the overpayments.
- One claimant reported bonus and vacation pay in the weekly certifications. However, payments, totaling \$961 (Questioned Costs), were not reduced, and an overpayment had not been established.
- One claimant tested certified having received vacation, bonus, and earnings pay, but her benefit payments were not reduced. The Department paid a total of \$9,108, but we calculated that only \$5,060 should have been paid, for an overpayment of \$4,048 (Questioned Costs).

- One claimant tested had vacation pay of \$600, but the benefit payment was not reduced for that week. The claimant was paid \$352 (Questioned Costs) in benefits for this week with no reduction.
- For one claim tested, the Department incorrectly reduced the maximum benefit amount (MBA) payable to the claimant by \$407. It was determined that the claimant voluntarily quit employment from an employer not included in the period used to calculate the MBA. Since the employer was not in the base period, the maximum benefit amount should not have been reduced.
- Four claimants tested had an issue created in the GUS unemployment system noting that the claim “requires staff review.” However, the system automatically allowed the issue for these four claims without a staff review. The Department claims to have set the system to begin automatically processing these issues on April 2, 2020; however, for each of these four claimants, the issue was allowed prior to this date.

#	Issue	Date Allowed
1	Requires Staff Review	11/10/2019
2	Requires Staff Review	3/19/2020
3	Requires Staff Review	3/14/2020
4	Requires Staff Review	3/17/2020

Neb. Rev. Stat. § 48-628.02(1) (Cum. Supp. 2018) provides the following:

*An individual shall be disqualified for benefits for any week in which he or she is receiving or has received remuneration in the form of:*

*(a) Wages in lieu of notice or a dismissal or separation allowance;*

*(b) Vacation leave pay, including that received in a lump sum or upon separation from employment;*

*(c) Compensation for temporary disability under the workers’ compensation law of any state or under a similar law of the United States;*

*(d) Retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer; or*

*(e) A gratuity or a bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workers’ compensation law.*

Good internal control requires procedures to ensure that benefit payments are proper, overpayments are established timely, and claims are properly reviewed by staff when required.

Without such procedures, there is an increased risk of improper benefit payments and overpayments not being corrected.

### ***Charging of Employers***

Per Neb. Rev. Stat. § 48-652 (Supp. 2019), employers are typically charged for benefits paid to their former employees. Through Executive Order 20-14 (April 2, 2020), however, Governor Pete Ricketts acted to “grant employers relief from charging for benefits paid to individuals eligible for unemployment benefits solely as a result of COVID-19 exposure or illness from March 22, 2020, through August 1, 2020.” Executive Order 20-22 (April 30, 2020) extended the date of that relief to March 15, 2020, through August 1, 2020.

Both executive orders were aimed at providing relief specifically for employers whose workers separated for COVID-19 reasons; however, the Department expanded that relief to include any claims filed during the designated period, regardless of the reason for separation. During testing, we noted two claims for which the reason for separation was not COVID-19 and one claim that was filed prior to March 15, 2020. Nevertheless, none of the employers were charged.

Good internal control requires procedures to ensure compliance with all applicable directives contained in the Governor's executive orders.

Without such procedures, there is an increased risk of noncompliance with mandatory executive directives.

We recommend the Department implement procedures to prevent fraudulent or improper UC benefit claims from being paid. Those same procedures should also ensure compliance with State and Federal requirements, ensuring the following: 1) recipients of benefits are eligible for those payments; 2) weekly benefit amounts are calculated correctly; 3) individuals do not receive payments from more than one program during the same week; 4) claims are reviewed by staff when necessary; 5) benefit overpayments are recouped; 6) each claimant's last separation from employment is adjudicated; and 7) approved STC plans are followed. Lastly, we recommend the Department reactivate the quarterly cross-match procedures required by Federal regulation, as well as consider reviewing those past quarters when the process had been discontinued for possible overpayment and recoupment of ineligible benefits. Due to concerns regarding possible violations of State statute and alleged fraud, we are forwarding the information herein to the Nebraska Attorney General and the Lancaster County Attorney for further review.

#### **Department and APA Responses:**

##### **Inadequate Controls, Improper Payments, and Possible Fraudulent Claims**

*Department Response: The Nebraska Department of Labor (NDOL) does not agree to the error rate of the sample size. The quarterly wage crossmatch does not function in the way the draft management letter implies. To follow the expectations of the draft management letter, NDOL would perform activities that are not allowed by its authorizing federal agency, the United States Department of Labor (USDOL). NDOL recognizes that the quarterly wage crossmatch is required under 20 CFR § 603.23(b). The crossmatch ran for three of the four quarters under review and is currently running for the remaining quarters. Any quarter crossmatch that was not completed in FY20, will be completed in FY21, and appropriate investigations will occur. NDOL respectfully contests the treatment of PUA and UI as being part of the same program. The PUA program is a federal benefit program that does not overlap state UI benefit programs. PUA is required to be administered in accordance with the requirements dictated by USDOL.*

*As for the alleged lack of controls, USDOL approached all states with opportunity to suspend BAM activities in order to use highly trained staff for the increased workload. Even as to regular state UI claims, as per USDOL rules, BAM only reviews 90 paid claims per quarter and the review occurs in the quarter following actual payment. BAM reviews measure the quality of the agency's performance and are not intended to or designed to prevent improper payment at the time the weekly certification is made. NDOL agrees that the quarterly wage crossmatch is one tool that may be used to detect overpayments; however, it is not the appropriate tool for determining initial unemployment eligibility. NDOL disagrees with the expectation that a crossmatch hit is sufficient to stop payment. The crossmatch does not occur until approximately four to five months after actual payment. NDOL does not have the legal authority to stop payment on a continued claim or establish an overpayment from a crossmatch hit without an investigation. None of the APA cited controls would have impacted payments issued in the last quarter of fiscal year 2020, and all APA cited controls have been reimplemented.*

**APA Response: To start, the extrapolation method is in accordance with auditing standards. The dollar error rate is based, moreover, on the dollar amount of the payments tested with exceptions divided by the total payments tested in the random sample. Of importance also is that fact that many payments had more than one type of error.**

**NDOL claimed to have performed the crossmatch for three of the four quarters audited. Upon reviewing the system for the claimants noted in the finding, though, we were unable to see any crossmatch procedures performed for any of the above as of December 2020.**

The APA understands that the USDOL has established specific parameters within which the NDOL must operate when administering benefits disbursed under the CARES Act. The fact that such restrictions may preclude certain methods of oversight or types of investigatory functions, however, does not excuse the NDOL's lack of internal controls. That paucity of safeguards is, in itself, a violation of Federal requirements.

Section 2101(f) of the CARES Act provides the following:

*The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies.*

(Emphasis added.) Pursuant to that provision, the NDOL entered into an agreement with the USDOL "in order to carry out the provisions of the Relief for Workers Affected by Coronavirus Act (Public Law 116-136)." Section VII of that agreement states the following:

*The "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [sic] at 2 CFR Part 200 apply to funds distributed under this Agreement.*

The Federal regulation cited above, 2 CFR § 200.303 ("Internal Controls"), requires the NDOL to do the following:

*(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award . . . .*

\* \* \* \*

*(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.*

*(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.*

Consequently, it is clear that the NDOL is required by the terms of its agreement with the USDOL, which incorporates by reference the internal control mandates of 2 CFR § 200.303, to implement sufficient safeguards to ensure the proper distribution of Federal funds under the CARES Act.

It should be noted also that UIPL No. 16-20 emphasizes this internal control requirement. Subsection 3 ("Summary and Background") of that document declares, "States play a fundamental role in ensuring the integrity of the UI Program . . . . States must ensure that individuals only receive benefits in accordance with these statutory provisions." Attachment I to UIPL No. 16-20 says, "States are also required to take reasonable and customary precautions to deter and detect fraud, such as, for example, a random audit or a sample of claims to detect fraud." (I-7) Additionally, Attachment II to UIPL No. 16-20 reiterates, "States must perform such duties and functions in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200 . . . ."

Addressing the need to ensure that "individuals' rights are protected," Section 3 ("Background") of UIPL No. 01-16 stresses that "states have broad authority and are strongly encouraged to use a variety of methods to prevent, detect, and recover improper payments[.]" Section 4 ("Discussion"), subsection (b) ("Establishing Overpayments"), of that same document adds, "Potential UC overpayments may be identified through cross-matches, fraud hotlines, or a variety of other methods." Likewise, subsection (g) ("Requirements for Independently Verifying Information from Computer Cross-Matching") notes that "it is the responsibility of the State UC agency to take the initiative to obtain information regarding an individual's claim."

The failure of the NDOL to take such protective measures placed millions of public dollars at risk – a fact demonstrated conclusively by the numerous findings detailed throughout this Early Management Letter.

### **Potential Fraudulent Claims**

*Department Response: In cooperation with the OIG, NDOL has already provided relevant information regarding all pandemic claims paid in FY 20 to the OIG for investigation. This included but was not limited to: bank account, routing number, IP addresses, and personal information regarding the claimant. The OIG is comparing this data to detect potentially fraudulent accounts. All cited cases have been properly worked. Many of the cited cases are due to identity theft. The identity theft victim is not responsible for the overpayment they did not actually receive, so the overpayment is not established on the victim's claim. If the claim is fraud, it has been properly established as fraudulent. NDOL has two years to establish the overpayment and three years to refer a case for prosecution of fraud. The overpayments on all cited cases above have been established if the overpayment was not due to identity theft. NDOL has implement further controls including calls to claimants the day after they file an initial claim for unemployment insurance benefits and requiring more claimants to report directly to NDOL with identity verification. Further, investigations for fraud have been implemented based off various known fraud indicators within the system.*

**APA Response: The APA went to great length to keep the NDOL apprised of any concerns discovered during the audit work. Despite communicating all of the findings herein to NDOL management in October, moreover, the APA did not receive any of the information in this response until the second week in December, at the time when the response to this Early Management Letter's recommendation was due. Had greater efforts been made to work with the APA throughout the audit process, the NDOL might well have avoided – or, at the very least, ameliorated in a more timely fashion – the present issues.**

### **Lack of Controls Over the PUA Program**

*Department Response: The PUA program is operated under the authority of the United States Department of Labor (USDOL) and USDOL is the cognizant federal agency for the PUA program. NDOL's agreement for administration of the PUA program on behalf of USDOL is with USDOL. In UIPL 16-20, Change 1, USDOL specifically instructed state workforce agencies that wage verification cannot be required. Per USDOL self-attestation is all that is required for PUA. The four individuals filing before April 22, 2020 certified that they were unemployed due to COVID-19 on their initial application for regular UI. NDOL added the COVID-19 reasons for unemployment listed above to the PUA unemployment application on April 22, 2020, prior to NDOL launching PUA. NDOL did not make payment under the PUA program until April 27, 2020. The PUA program did not exist until March 27, 2020 but was backdated to February 2, 2020. Nebraska's PUA application form always had the COVID-19 reasons listed. Federal guidance on PUA did not come out until UIPL 16-20 and UIPL 16-20, change 1, were released on April 5, 2020 and April 27, 2020. On August 31, 2020, USDOL issued UIPL 28-20 to provide guidance to states on addressing PUA fraud. USDOL has consistently directed states to accept self-attestation for initial PUA claim eligibility. NDOL is taking active steps to verify identity in PUA claims which does not violate USDOL's guidance. As to the \$2,039 overpayment, the established date of an overpayment does not change the overpayment amount. The regular UI payment was owed to the claimant. NDOL is not required to reimburse USDOL for any PUA overpayments. NDOL disagrees with the assertion that this is a questioned cost. No liability to USDOL was created with the payment.*

**APA Response: As explained at length in the APA's response to the first NDOL comment herein ("Inadequate Controls, Improper Payments, and Possible Fraudulent Claims"), the USDOL restrictions do not alleviate responsibility for implementing measures sufficient to comply with the internal control requirements of 2 CFR § 200.303. When entering into the agreement with the USDOL to administer Federal benefit disbursements, the NDOL made a binding commitment to "[e]stablish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award." The issues identified in the Early Management Letter show that the NDOL failed to live up to that commitment. While addressing the importance of protecting claimant rights, UIPL No. 01-16 declares, as the APA has pointed out already, that "states have broad authority and are strongly encouraged to use a variety of methods to prevent, detect, and recover improper payments[.]" The fact that NDOL is not required to reimburse USDOL for any PUA overpayments, as asserted in the response, is irrelevant. Had proper internal controls existed, it is likely that, even if not eliminated altogether, the overpayments would have been diminished considerably.**

The four claimants who filed before April 22, 2020, answered “Yes” to the question of whether their unemployment was affected by COVID-19; however, the requirements set forth by the USDOL requiring one of the 10 reasons to be explicitly answered was not contained within the application. Therefore, the claimants were ineligible for PUA benefits.

### **Ineligible Payments to Inmates**

*Department Response: The Social Security Administration (SSA) maintains a data base of all inmates incarcerated in state penal systems. During the entire fiscal year, NDOL ran weekly crossmatches of all claimants in all programs against the SSA database to determine if inmates were claiming unemployment benefits. The SSN for 5 of the 6 inmates identified in the Letter did not appear in the SSA crossmatch. Payment to the 6th inmate was due to adjudicator error.*

**APA Response: As five inmates were not identified by the NDOL, additional procedures should be developed to address the issue.**

### **Excessive Wages Earned**

*Department Response: As written, the APA appears to misstate the 25% wage threshold set forth in Neb. Rev. St. § 48-625 and the determination of monetary eligibility. The 25% threshold involves wages **reported by the claimant** during the week claimed. Only wages earned during the certified week are relevant to any applicable benefit reduction. The quarterly wage report is due the last day of the month following the end of a quarter. No weekly breakdown of earnings or hours worked is provided. Almost all claimants have wages in the quarter they file their initial claim for unemployment insurance benefits. Making a quarterly crossmatch to that quarter ineffective at best and would require a wage audit on virtually 100% of all claims filed. The 25% threshold for determining if an overpayment occurred only occurs after a wage audit, triggered by a wage crossmatch, is performed some months after the week is paid. Both USDOL and OIG have recognized the ineffectiveness of the quarterly wage crossmatch. (UIPL 35-99 and 22-06). The APA incorrectly lumps all wages earned in the quarter prior to and subsequent to the actual week claimed as basis for examining an overpayment. The comparison of missed reductions to wages earned in a quarter is not a reliable comparison for the quarter a claim is filed. The sole responsibility for accurately reporting information during a weekly certification is on the claimant. If the claimant fails to report wages earned during the week, an improper payment be established months later when the wage crossmatch occurs and investigation is completed. No crossmatch for the 2<sup>nd</sup> QTR of CY20 be performed prior to November 2020. Monetary eligibility and the determination of weekly benefit amount is done directly from the wages reported within TMS by the employer. There is no requirement for follow-up if an employer does not respond to a request for information. See ETA handbook, 301 5<sup>th</sup> addition. High quarterly earnings prior to filing for UI are not relevant, it is not a means tested program. See UI Directors’ Guide – March 2020, U.S.D.O.L – ETA – Office of Unemployment Insurance. NDOL did review the above referenced claims and many were adjudicated properly.*

**APA Response: Interestingly, the NDOL offers a number of reasons for the errors noted: 1) “The comparison of missed reductions to wages earned in a quarter is not a reliable comparison for the quarter a claim is filed.” 2) “The sole responsibility for accurately reporting information during a weekly certification is on the claimant.” 3) “There is no requirement for follow-up if an employer does not respond to a request for information.”** Despite these reasons, it is the duty of the NDOL to “utilize a variety of methods to prevent, detect, and recover improper payments,” as explained by the USDOL in UIPL No. 01-16. The insufficiency of one internal control method does not eliminate the need for any others. Likewise, even if the claimant is supposed to report information accurately, the responsibility for ensuring proper fund disbursements rests solely upon the NDOL, and the NDOL should have adequate and reasonable procedures in place to detect errors. The lack of a USDOL requirement does not preclude utilization of a best practice by the NDOL. According to the NDOL, the crossmatch was performed for three of the four quarters audited; however, upon reviewing the system for the claimants noted in the finding, we were unable to see any crossmatch procedures performed for any of the above as of December 2020.



### **Improper Unemployment Benefits Paid to State Employees**

*Department Response: NDOL agrees that NDOL staff did not make proper use of information that was available to them and NDOL has discovered a gap in the information reported regarding non-code agencies and that gap is being corrected.*

### **Benefits Received for Multiple Programs**

*Department Response: NDOL agrees that these overpayments occurred due to agency staff error.*

### **Lack of Adjudication Procedures Over Employer Responses**

*Department Response: NDOL is not required to make another attempt to obtain additional information if a party fails to respond to a request for information during the fact-finding process. The department followed the guidelines provided in the ETA Handbook 301. During periods of low volume of unemployment claims, the department does attempt to follow-up even though it is not a federal requirement. The volume of claims during the pandemic made it impossible to follow-up as we might have in a low volume period. In each of the claims cited, the employer failed to respond. As discussed above, PUA eligibility is based on self-attestation of unemployment due to COVID-19. There is no monetary requirement, so the last day worked in covered employment is irrelevant. See UIPL 16-20, Change 1. Governor's Executive Order authorizing adjudication of only the most recent separation was signed on April 30, 2020. The EO applies to claims filed on or after March 15, 2020. NDOL had to retroactively implement the changes on claims filed prior to April 30, 2020. Reviewing separation information is a built-in part of the adjudicatory process, an adjudicator is not required to document that they reviewed the available information. NDOL did review the claims referenced, and many were adjudicated correctly.*

**APA Response: As stated repeatedly in the APA's responses herein, the NDOL is obligated, per 2 CFR § 200.303, to "[e]stablish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award." If strict adherence to USDOL requirements or guidelines is insufficient to permit fulfillment of that obligation, the NDOL should pursue more stringent, yet permissible, measures. This includes creating and retaining adequate documentation to support performance of an important function. Even if not required, documenting NDOL actions taken to safeguard public funds is simply an exercise in ordinary prudence and practicality.**

### **Short-Time Compensation (STC)**

*Department Response: Employers are only required to submit substantial changes to NDOL. A slight increase or decrease for a short period of time during the plan was not considered substantial. The unpredictable nature of the pandemic made it difficult for employers to know the future hours available for employees. Employers reported the reduction in hours worked to NDOL each week as a part of the STC certification process. In approving the weekly certification, NDOL approved the modification to the plan, or determined it was not substantial.*

**APA Response: Title 219 NAC 19-003(N) requires a STC employer to "report changes to an approved STC plan, request modification of an approved STC plan, or revoke an approved STC plan." (Emphasis added.) Per Title 219 NAC 19-002(C), such "changes" mean "any deviation from the plan that affects only one individual or any deviation from the plan that affects an entire unit or units to last for two or fewer consecutive weeks."**

**Title 219 NAC 19-002(E) defines "substantial change" as "any deviation from the plan that affects an entire unit and is expected to last for three or more consecutive weeks or has already occurred for three or more consecutive weeks." However, as shown above, that term is not used in Title 219 NAC 19-003(N). Rather, the regulation says expressly that "changes to an approved STC plan" must be reported.**

**Regarding a "substantial change," Title 219 NAC 19-003(J) says, "A STC employer shall notify all affected employees of any substantial changes to the plan covering their affected unit." Additionally, Title 219 NAC 19-003(K) provides the following:**

*If a STC employer has a change to the plan that impacts an entire unit for more than two consecutive weeks, the STC employer shall provide good cause to the commissioner as to why this is not a substantial change to the plan.*

Neither administrative regulation supersedes or eliminates the requirement to report mere “changes” under Title 219 NAC 19-003(N). If such an interpretive or supplementary rule does indeed exist, the NDOL does not cite it specifically. Furthermore, although the APA requested documentation from the NDOL of the agency’s review of plan changes, those requests went unanswered. Therefore, it was reasonable to assume that the NDOL had not performed a detailed review of the changes.

**Other Issues**

*Department Response: The “Requires Staff Review” issue code was previously used as a “catch-all” type issue for statuses that required staff review, but did not have an individualized issue code, such as Leave Reason Mismatch, ICON Name or SSN Mismatch, Union Membership Indicated During Intake, ACH Deposit Returned by Bank, or NDNH Verification Failures (Name/SSN). We have since created specific issue codes or created separate processes for these items and allowed for the “Requires Staff Review” issue to auto-adjudicate effective October 2019. One claimant above is in bankruptcy which prevents NDOL from taking action to recover on overpayments. The claimant remained eligible for continued payments, so NDOL was legally prevented from offset due to the mandatory bankruptcy stay. The vacation pay was adjudicated correctly. Vacation pay is applied from the date of separation **not** the date the claim is filed.*

**APA Response: The issue remains that items being auto-adjudicated still need staff review.**

**Charging of Employers**

*Department Response: The Department believes that the software system was set up correctly and staff were directed to make noncharging determinations in accordance with the terms of the Executive Order. The Department believes that staff may have made incorrect charging determinations given the volume of claims, and the Department is working with staff to correct those errors. A charging determination does not affect the amount of benefits paid.*

**APA Response: Though having no impact upon the amount of benefits paid, an erroneous charging determination does contravene not only Neb. Rev. Stat. § 48-652 (Supp. 2019) but also the express directives contained in both Executive Order 20-14 (April 2, 2020) and Executive Order 20-22 (April 30, 2020). No less consequential, such an error results ultimately in an unnecessary increase in the expenditure of public funds to compensate for the loss of employer reimbursements paid to the NDOL for benefits received by former employees.**

**Concluding Comment**

*Department Response: In closing NDOL wishes to highlight the conditions surrounding the reviewed timeframe. During the reviewed year, NDOL experienced record-breaking unemployment insurance benefit claims, essentially reviewing multiple years’ worth of claims in a matter of months. From week ending March 7, 2020 to week ending May 2, 2020 alone NDOL received over 110,000 regular unemployment insurance claims. In those nine weeks, NDOL had more claims than the last two calendar years combined. Multiple new federal programs were implemented within a matter of weeks from enactment, and several emergency changes were made to existing state law. The majority of the new programs were retroactive with guidance changing regularly. The unemployment insurance program played a vital role of supporting economic stabilization in responding to the COVID-19 pandemic. It was critical to the stability of the Nebraska economy to ensure payment was made timely.*

**APA Response: The APA appreciates the importance of the unemployment insurance program and the hard work of the NDOL in dealing with the extraordinarily difficult circumstances precipitated by the COVID-19 epidemic. It is hoped that the information contained in this Early Management Letter will assist the NDOL in its ongoing efforts to administer the program effectively and to ensure the propriety of all benefit payments made under it.**

\* \* \* \* \*

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the Department and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Department.

This communication is intended solely for the information and use of the Department, the Governor and State Legislature, others within the Department, Federal awarding agencies, pass-through entities, and management of the State of Nebraska, and it is not intended to be, and should not be, used by anyone other than these specified parties. However, this communication is a matter of public record, and its distribution is not limited.

A handwritten signature in blue ink that reads "Kris Kucera". The signature is written in a cursive, flowing style.

Kris Kucera, CPA, CFE  
Audit Manager