



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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April 28, 2022

John Albin, Commissioner  
Nebraska Department of Labor  
550 South 16<sup>th</sup> St.  
Lincoln, Nebraska 68509

Dear Commissioner Albin:

We were engaged to audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of Nebraska (State), as of and for the year ended June 30, 2021, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and we have issued our report thereon dated April 28, 2022. In connection with our engagement to audit the financial statements, we considered the State's internal control over financial reporting (internal control) as a basis for designing 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.

In connection with our engagement to audit the financial statements as described above, we noted certain internal control or compliance matters related to the activities of the Department of Labor (Department) or other operational matters that are presented below for your consideration. These comments and recommendations, which have been discussed with the appropriate members of the Department's management, are intended to improve internal control or result in other operating efficiencies.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

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 Comment Number 1 ("Accounting Issues") and Comment Number 2 ("Unemployment Insurance Benefit Payments") to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider Comment Number 3 ("Lack of Payroll Segregation of Duties and Other Issues") and Comment Number 4 ("Untimely Responses to Records Requests") to be significant deficiencies.

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

In addition, we noted other matters involving internal control and its operation that we have reported to management of the Department, pursuant to American Institute of Certified Public Accountants (AICPA) Auditing Standards AU-C Section 265B.A17, in a separate early communication letter dated August 3, 2021.

Draft copies of this letter were furnished to the Department to provide management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal responses received have been incorporated into this letter. Such responses were not subjected to the auditing procedures applied in the engagement to audit the financial statements; accordingly, we express no opinion on them. Responses that indicate corrective action has been taken were not verified at this time, but they will be verified in the next audit.

The following are our comments and recommendations for the year ended June 30, 2021.

#### **1. Accounting Issues**

The Department lacked procedures for ensuring that the Unemployment Insurance (UI) Proprietary Fund financial statements were presented accurately for the Annual Comprehensive Financial Report (ACFR). The UI funds were maintained outside of the State Treasurer in separate bank accounts. Journal entries were prepared to record the activity from the Department's separate tax system (TMS) and benefit system (GUS) to the State's accounting system, EnterpriseOne. The Department of Administrative Services (DAS) used EnterpriseOne to generate the financial statements. The financial statements required material adjustments due to incorrect journal entries and a lack of adequate procedures for reconciling TMS and GUS to EnterpriseOne to ensure activity was reflected properly. In addition, the Department did not have adequate procedures to ensure that accounting entries were completed timely. The Department did not complete its posting of entries for the fiscal year ended June 30, 2021, until August 26, 2021.

A similar finding was noted during the previous audit. At that time the Auditor of Public Accounts (APA) recommended the Department work closely with DAS to establish procedures sufficient for calculating and reporting the UI fund for the ACFR. Furthermore, we recommended the Department establish procedures for its staff to review documentation, including the trial balance, and reconcile the separate TMS and GUS systems to the accounting system to identify issues that needed to be rectified. It is apparent from all the adjustments and errors noted that no such procedures were implemented despite the APA's disclaimer of opinion of the prior financial statements.

The table below summarizes over \$1.67 billion in errors for the fiscal year ended June 30, 2021. The APA proposed adjustments, and DAS posted material adjustments. However, due to the significance of errors identified, the lack of support for balances within EnterpriseOne, and the lack of adequate controls to ensure financial data was accurate and complete, there is a significant risk that additional material errors went undetected, requiring a disclaimer of opinion to be issued by the APA.

Description		Dollar Error
1	Transfers in and out were overstated due to interfund transfer activity not being eliminated or transfer accounts being used instead of the proper expenditure or revenue accounts. Transfers in totaled \$717 million, and transfers out totaled \$740 million. After analysis, the APA was unable to determine how to reclassify \$2 million of transfers in and \$4.5 million of transfers out, and the Department was unable to assist with additional support. DAS eliminated all transfers in and recorded all but \$3.6 million of transfers out as either interfund activity or payables. There was a lack of support for the payable reclassification.	\$ 1,457,610,362
2	The Department performed a tax write-off in the accounting system that overstated activity in 11 separate accounts. After the APA informed the Department and DAS of the incorrect entry, they worked together to correct the financial statements.	166,028,611

	Description	Dollar Error
3	Claimants' first weeks of UI benefits were reimbursed by the Federal government. The Department overdrew Federal funds and, when the monies were returned, revenues were not properly decreased; instead, a transfer out was recorded for \$3.9 million. There was an interfund due to and due from fund that needed to be eliminated for \$931,763 and a doubling of revenues and expenditures for \$931,763. Also, \$13 million was for benefits incurred during fiscal year 2020 and should have been recorded as a beginning balance adjustment instead of current year revenues.	18,952,915
4	The Department received funds for Federal Emergency Relief but recorded the receipt as a transfer in. Because the monies had not been obligated or spent, the balance should have been recorded as a liability to the Federal government.	14,786,798
5	The short-time compensation reimbursement from the Federal government was inaccurately recorded to the Federal fund instead of the UI fund, where the benefits were paid. When the monies were received, the Department reduced the UI benefits and recorded an operating expenditure and revenue in the Federal fund, causing the Federal fund to be overstated and the UI fund to be understated by \$4,704,845, respectively. The Department created an entry to correct the error after the APA brought it to the Department's attention.	9,409,690
6	Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) grant revenues, totaling \$4,128,834, were recorded in the UI fund. However, \$704,155 had not been spent as of the fiscal year end and should have been a due to Federal government not a revenue. Furthermore, the revenue should have been recorded in the Federal fund where EUISAA monies were spent, not in the UI fund.	4,128,834
7	Expenditures related to construction in progress were recorded inaccurately as operating expenditures, causing an understatement in capital assets.	3,233,779
8	Retainage due to the contractor working on the Department's building renovation was not recorded as a payable at the fiscal year end.	533,489
9	Cash and revenues were overstated for an erroneous entry made in the accounting system for the UI fund. The bank reconciliation was not performed properly to identify the error.	353,910
10	The Combined Wage Claim (CWC) payable was understated due to unrecorded payables and credits that should have been recorded as receivables, but which the Department recorded as decreases to the payable.	329,135
11	The CWC receivable was understated as noted in #10 above.	267,297
<b>TOTAL</b>		<b>\$ 1,675,634,820</b>

We also noted the following issues during testing:

- The APA questioned whether the calculated benefit overpayment receivable for \$37,293,562, and related allowance for doubtful accounts for \$8,415,119, was accurate based on the outstanding balances per GUS for claims prior to June 30, 2021. The APA requested further documentation to support the amount, but additional information was not provided. Furthermore, the Department did not calculate an overpayment receivable for unrecorded overpayments not yet established in GUS. The Department had not worked all claims that were flagged as potentially fraudulent; therefore, the Department should have calculated an estimate for possible unrecorded receivables. According to the Controller, there was no amount to report.
- The Department provided a tax contribution write-off file for the allowance of the doubtful accounts note disclosure. The Department was unable to confirm whether receivables recorded in EnterpriseOne needed to be adjusted for the allowance. Therefore, it is unknown if receivables were overstated in the financial statements. The file contained \$5.8 million in write-offs and DAS only included \$966,150 in the note disclosure, as interest was not included. It is unknown if interest should have been accounted for.
- During reconciliation procedures it appeared uncollectible fines, penalties, and interest were being recorded against a tax revenue instead of other operating revenues, where the penalty and interest revenues were originally recorded. The activity totaled \$626,813 during the fiscal year. The APA questioned the Department but could not obtain confirmation for the proper accounting of the activity.

- As discussed in #9 above, the bank reconciliation for the benefit's account was not completed accurately. An error occurred in December 2020 and was not identified until September 2021, after the general ledger was closed. The beginning balance in the bank reconciliation was not proper, and after the error for \$353,910 was identified, there was still an unknown variance of \$26,037.
- There were several accounts receivable and accounts payable balances that the Department was unable to support or provide accurate detail to support the balance to determine if adjustments were necessary.
- During the audit, it was brought to our attention that cancelled debit card payments were not recorded as a negative expenditure in EnterpriseOne unless the Department was able to recoup the money. However, the Department indicated it did not recoup the money the majority of the time. The APA asked for the aggregate amount not recorded in EnterpriseOne, but did not receive that support, and it appears the Department was unable to determine the amount not recorded in EnterpriseOne.
- The Department did not have procedures to ensure that \$556,064 of revenue received for the fiscal year ended June 30, 2021, was accurate for the Contractor Registration Fund.

Good internal control and sound business practices require procedures to ensure that accounting transactions are accurate and complete.

Without such procedures, there is an increased risk that material misstatements may occur and remain undetected.

We recommend the Department establish procedures to ensure accounting records are recorded properly in the accounting system, including reconciliation procedures to ensure accounting records reflect accurately the activity and appropriate balances of the separate UI systems (TMS & GUS). Additionally, we recommend the Department implement procedures to ensure accounting entries are completed in a timely manner and revenues are reviewed.

*Department Response: The Department recognizes that processes and procedures for accounting transactions have been inconsistent. The Finance team has new leadership as of January 2022, and this team understands the need to develop procedures to ensure accounting records are recorded properly and timely, including reconciliation procedures. Creation and implementation of these procedures is a primary goal for the entire department and will be an ongoing process.*

## **2. Unemployment Insurance Benefit Payments**

The Department paid \$633 million in unemployment insurance (UI) benefits to 96,090 claimants between July 1, 2020, and June 30, 2021.

Our testing included a random sample of 60 payments, totaling \$32,321, and questioned costs for those payments tested were \$17,412. Total benefit payments for the fiscal year ended June 30, 2021, were \$633,184,621. Based on the sample tested, the dollar error rate for the sample was 53.87% (\$17,412/\$32,321), which estimates the potential dollars at risk for fiscal year 2021 to be \$341,096,555. We also questioned costs, totaling \$270,022, for the same individuals on other payments.

In addition to the \$17,412 questioned costs for the 60 random sample payments, we also noted \$1,007,264 of questioned costs during other testing procedures. Similar findings were noted during the previous audit.

The table below summarizes the questioned costs:

	Questioned Costs		
	FY 2020	FY 2021	FY 2022
Ineligible Payments to Inmates	\$ 34,899	\$ 64,966	\$ -
Benefits Paid to Deceased Claimants	1,034	70,286	-
Improper Unemployment Benefits Paid to State Employees	10,332	87,973	-
Benefits Paid to Claimants Under the Age of Sixteen	-	24,007	-
Random Sample, including:			
-Inadequate Controls			
-Adjudication Issues			
-Weekly Certification Issues			
-Wage Crossmatch Issues			
-Pandemic Unemployment Assistance (PUA) Issues	99,639	187,795	-
Short-Time Compensation (STC) Plan Issues	45,080	66,840	-
Claimants with Excessive Wages	27,172	127,302	-
Untimely Resolution to Bank Account Fraud Investigations	11,087	113,937	1,010
Duplicate Benefit Payments	-	50,959	-
Maximum Benefit Amount (MBA) Not Correctly Calculated	-	-	358
<b>Total</b>	<b>\$ 229,243</b>	<b>\$ 794,065</b>	<b>\$ 1,368</b>
<b>Grand Total All Fiscal Years</b>			<b>\$ 1,024,676</b>

### ***Background of the Pandemic Funding for Unemployment Benefits***

Due to the COVID-19 pandemic, 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), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Continued Assistance to Unemployed Workers Act of 2020 (CAA), and the American Rescue Plan Act (ARPA) to provide Federal funding for unemployment compensation to all states, as well as to ease restrictions on the unemployment compensation program. The State of Nebraska ended its participation in those programs after the week ended June 19, 2021. Below is a summary of each program.

- Federal Pandemic Unemployment Compensation (FPUC): For weeks ended April 4, 2020, through July 25, 2020, the FPUC program added \$600 to each week of benefits paid. For weeks ended January 2, 2021, through June 19, 2021, the FPUC program was reduced to an additional \$300 to each week of benefits paid. An individual eligible for at least \$1 for one week of UI benefits would receive the additional stimulus of \$600 or \$300.
- Pandemic Emergency Unemployment Compensation (PEUC): For weeks ended April 4, 2020, through June 19, 2021, if a claimant had exhausted all of his or her regular UI benefits, and the regular UI claim had a benefit year end date after July 1, 2019, then the claimant was eligible to receive PEUC benefits. The claimant needed to meet other UI eligibility requirements, such as able and available and work search requirements. The claimant’s weekly benefit amount (WBA) was the same as the WBA on the previous regular UI claim.
- Pandemic Unemployment Assistance (PUA): PUA was available for individuals who were not eligible for regular UI benefits, which included self-employed individuals. To be eligible for PUA, the claimant had to certify that he or she was unemployed, partially unemployed, or unable or unavailable to work due to the COVID-19 pandemic. The program was effective from weeks ended January 27, 2020, through June 19, 2021.
- Lost Wages Assistance (LWA): On August 8, 2020, the President instructed the Federal Emergency Management Agency (FEMA) to make available other needs assistance for lost wages. In Nebraska, Lost Wages Assistance (LWA) was payable for claimants for the weeks ended August 1, 2020, through September 5, 2020. Recipients of LWA received a \$300 stimulus in addition to the UI benefit payment if the UI benefit payment for the week was at least \$100.

Our procedures noted the following:

***Ineligible Payments to Inmates***

Inmates are not eligible to receive UI benefits because they are not able and available to work in accordance with Neb. Rev. Stat. § 48-627(3)(f) (Cum. Supp. 2020). During testing, we identified 35 inmates who received benefit payments during the fiscal year ended June 30, 2021. Of the 35 inmates identified, we selected the 10 highest-paid inmates to test in detail and noted the following issues:

- While incarcerated, all 10 inmates tested received payments, totaling \$64,966 and \$34,899 in FY 2021 and FY 2020, respectively.
- Four of the 10 inmates tested did not have an investigation or other judicable issues created in the benefit system for payments received during their incarceration.
- For six of 10 inmates who had an investigation or other judicable issues created, all six issues were adjudicated incorrectly.
- The APA identified an additional 25 individuals who received payments, totaling \$39,533, while incarcerated.
- Claimant #1 below filed for PUA and received more than the minimum weekly benefit amount (WBA) of \$173. He did not provide the Department with documentation substantiating his income within 21 calendar days of filing but continued to receive payments at the higher rate of \$306. The improper rate was paid for 39 weeks before the Department established an overpayment of \$5,187 in December 2020. Furthermore, the claimant should have been denied all of the benefits during his incarceration for \$23,934.

Claimant	FY 2021 Gross Amount Paid While Incarcerated	FY 2020 Gross Amount Paid While Incarcerated	Sentence Begin Date / Release Date	1 <sup>st</sup> / Last Week Benefits Paid While Incarcerated	Observations
Claimant #1	\$ 10,932	\$ 13,002	1/16/2020 - 12/25/2020	3/7/2020 - 11/28/2020	Three separate investigations were created in the system for the incarceration, but payments were incorrectly allowed.
Claimant #2	8,288	-	11/18/2009 - *	6/27/2020 - 10/10/2020	An investigation for the incarceration was created in May 2020, but payments were incorrectly allowed.
Claimant #3	7,465	2,742	12/6/2018 - 10/8/2020	6/13/2020 - 9/12/2020	An investigation for the incarceration was created in March 2021, disqualifying benefits for January 2021-2022, which were not the dates paid during incarceration.
Claimant #4	7,049	9,449	9/25/2003 - *	3/28/2020 - 11/14/2020	No investigations for the incarceration were created.
Claimant #5	5,133	-	8/13/2020 - *	8/15/2020 - 1/2/2021	No investigations for the incarceration were created.
Claimant #6	6,622	-	3/7/2019 - 4/27/2021	7/4/2020 - 10/3/2020	No investigations for the incarceration were created.
Claimant #7	4,944	-	1/27/2021 - *	1/30/2021 - 4/3/2021	An investigation for the incarceration was created in January 2021, but payments were incorrectly allowed.
Claimant #8	4,903	346	7/17/2009 - 5/4/2020	2/8/2020 - 5/2/2020	The Department established an overpayment on 11/12/2020. No investigations for the incarceration were created.



Claimant	FY 2021 Gross Amount Paid While Incarcerated	FY 2020 Gross Amount Paid While Incarcerated	Sentence Begin Date / Release Date	1 <sup>st</sup> / Last Week Benefits Paid While Incarcerated	Observations
Claimant #9	4,900	9,360	1/24/2020 - 8/8/2020	5/2/2020 - 8/1/2020	An investigation for the incarceration was created in January 2021, but payments were incorrectly allowed.
Claimant #10	4,730	-	1/19/2021 - *	2/20/2021 - 4/24/2021	Four investigations for the incarceration were created in January 2021, three were allowed and one denied. However, the denied investigation was not for the weeks paid during incarceration.
<b>Totals</b>	<b>\$ 64,966</b>	<b>\$ 34,899</b>			

\*Still incarcerated as of audit fieldwork.

Neb. Rev. Stat. § 48-627 (Cum. Supp. 2020) 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[.]*

20 CFR § 625.6(e)(1) states the following:

*In the case of a weekly amount determined in accordance with paragraph (e) of this section, based only on the individual's statement of earnings, the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began. In either case, documentation shall be submitted within 21 calendar days of the filing of the initial application for DUA.*

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

Without such procedures, there is an increased risk of the Department disbursing unallowable UI payments.

### ***Benefits Paid to Deceased Claimants***

We tested 13 claimants who were paid UI benefits after their date of death. Nine of the claimants' payments were for benefit weeks after the date of death, totaling \$1,034 and \$70,286 in FY 2020 and FY 2021, respectively. The Department lacked adequate procedures to identify deceased individuals prior to benefits being paid.

Claimant	Date of Death	Benefit Weeks Paid after Date of Death	FY 2020 Payments	FY 2021 Payments	Observations
Claimant #1	2/16/2013	6/27/2020 - 7/18/2020	\$ -	\$ 3,092	The investigation was started but not completed for 106 days.
Claimant #2	8/8/2014	4/4/2020 - 10/3/2020	-	16,671	The APA identified a counterfeit driver's license was submitted to the Department. The Department did not identify the counterfeit license. Furthermore, there was no indication that the Department was aware the individual was deceased as of audit fieldwork.

Claimant	Date of Death	Benefit Weeks Paid after Date of Death	FY 2020 Payments	FY 2021 Payments	Observations
Claimant #3	6/27/2019	6/20/2020 - 6/27/2020	-	2,319	The investigation was started but not completed for 120 days.
Claimant #4	9/27/2020	11/28/2020 - 6/19/2021	-	12,683	The investigation was started but not completed as of audit fieldwork.
Claimant #5	4/15/2020	6/27/2020 - 10/24/2020	1,034	11,578	The investigation was started but not completed as of audit fieldwork.
Claimant #6	5/17/2020	5/23/2020 - 6/20/2020	-	4,210	The investigation was started but not completed for 142 days.
Claimant #7	11/12/2020	11/21/2020 - 1/16/2021; 3/6/2021 - 5/15/2021	-	9,937	There was no indication of the Department being aware that the individual was deceased as of audit fieldwork.
Claimant #8	2/5/2021	2/13/2021 - 4/24/2021; 5/1/2021	-	5,676	The investigation was started but not completed as of audit fieldwork.
Claimant #9	8/7/2020	8/29/2020 - 10/24/2020	-	4,120	An investigation initiated on 12/4/2020 identified the individual as deceased. The claim was denied, and an overpayment was established.
<b>Total</b>			<b>\$ 1,034</b>	<b>\$ 70,286</b>	

Neb. Rev. Stat. § 48-627 (Cum. Supp. 2020) states 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.*

Good internal control requires procedures to ensure that only eligible claimants receive UI benefits.

Without such procedures, there is an increased risk of inappropriate or fraudulent payments.

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

For the fiscal year ended June 30, 2021, the APA identified \$87,973 in improper unemployment benefits paid to Nebraska State employees for 23 of 77 claimants tested. The claimants tested did not report all State wages to the Department. The Department's process for identifying State employees who were also receiving benefit payments appeared to be not only time consuming but also ineffective.

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 APA compared the list of unemployment benefit claimants to the State's employee management system (Workday) to identify State employees who had also received unemployment benefits during the fiscal year ended June 30, 2021. In total, the APA identified 911 State employees who received UI benefits during the fiscal year, and we selected 77 of those employees to test.

We also noted instances of the State employee's bank account in the State's accounting system (E1) not agreeing to the bank account in the Department's benefit system. Bank accounts that did not match could indicate that a third party had fraudulently filed a claim impersonating the State employee. The APA contacted Employee #2, as shown in the table below, who stated that he neither filed the UI claim nor received any benefit payments.



Employee	State Agency	Number of Weeks Overpaid	Gross Benefits Overpaid during FY 2021 (Questioned Costs)	Bank Account in Benefit System Agreed to E1	Observations
#1	DHHS	15	\$ 7,045	No	
#2	Military	19	11,687	No	No wages had been reported by Military for this employee. The employer response questionnaire was sent to an employer other than Military, and that employer reported that the individual was never employed. The Department did not perform further procedures to follow up on the response.
#3	DHHS	21	8,106	No	This employee was tested during the FY 2020 audit, and the APA communicated the issue to the Department on 7/31/2020; however, the claimant continued to receive payments through 12/19/2020.
#4	DHHS	6	5,725	No	This employee was tested during the FY 2020 audit, and the APA communicated the issue to the Department on 8/3/2020; however, the claimant continued to receive payments on 8/3/2020, 8/10/2020, and 9/17/2020.
#5	DHHS	3	3,120	No	DHHS responded to the employer questionnaire and stated that the individual was still working, but the Department did not perform further procedures to follow up on the response.
#6	Supreme Court	4	1,308	No	An Intrastate Quarterly Wage Crossmatch investigation was not created in the benefit system, and the Department had sent out no wage audit request at the time of testing.
#7	Supreme Court	2	880	No	
#8	DHHS	3	2,400	Yes	This employee was tested during the FY 2020 audit, and the APA communicated the issue to the Department on 7/31/2020; however, the claimant continued to receive payments on 8/27/2020 and 9/17/2020.
#9	Veteran's Affairs	11	4,229	Yes	An overpayment was established for \$621 on 12/16/2020 but had not been collected as of our testing.
#10	Corrections / DHHS	24	9,161	Yes	Overpayments were established on 5/7/2021 for \$8,151, with penalties of \$728, but were not collected as of testing.
#11	DHHS / NDOT	10	8,524	Yes	This employee was tested during the FY 2020 audit, and the APA communicated this issue to the Department on 8/3/2020; however, the claimant continued to receive payments on 9/24/2020.
#12	Military	2	900	No	
#13	DHHS	2	806	Yes	
#14	DHHS	1	202	Yes	
#15	DHHS	5	2,045	Yes	An overpayment was established for \$440 on 11/12/2020 but was not collected as of testing.
#16	Agriculture	2	1,932	Yes	
#17	DHHS	1	836	No	This employee was tested during the FY 2020 audit, and the APA communicated the issue to the Department on 8/3/2020; however, the Department had not established any overpayments at the time of testing.
#18	Game & Parks	1	268	Yes	

Employee	State Agency	Number of Weeks Overpaid	Gross Benefits Overpaid during FY 2021 (Questioned Costs)	Bank Account in Benefit System Agreed to E1	Observations
#19	Corrections	1	148	Yes	
#20	DAS	8	6,501	Yes	
#21	DHHS	21	10,570	No	The APA also noted 18 weeks of questionable unemployment payments made during FY 2020 for \$10,332.
#22	DHHS	1	1,040	Yes	This employee was tested during the FY 2020 audit, and the APA communicated the issue to the Department on 8/3/2020; however, the Department had not established any overpayments at the time of testing.
#23	DAS	1	540	Yes	
			<b>\$ 87,973</b>		

Neb. Rev. Stat. § 48-625(1) (Cum. Supp. 2020) states 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.*

Neb. Rev. Stat. § 48-628.02 (Cum. Supp. 2020) provides, in relevant part, the following:

*(1) 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.*

*(2) Payments described in subsection (1) of this section that are made in a lump sum shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributed.*

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 Paid to Claimants Under the Age of Sixteen***

We tested six claimants under the age of 16 years old. For all six claimants tested, the benefit payments were not reasonable or allowable in accordance with State and Federal laws. All six individuals tested received benefits from the PUA program. Below is a table of the individuals' CY2019 and CY2020 wages versus benefits received:

<b>Claimant</b>	<b>Age of Claimant for 1<sup>st</sup> Week Paid</b>	<b>CY 2019 Wages</b>	<b>CY 2020 Wages</b>	<b>FY 2020 Benefits Paid</b>	<b>FY 2021 Benefits Paid</b>	<b>Observations</b>
Claimant #1	14 years	\$ 425	\$ 480	\$ 5,414	\$ 4,038	Work search requirements for the weeks ending 7/18/2020-8/8/2020 were not completed, but benefits were still paid for \$2,492, which are questioned costs.
Claimant #2	14 years	-	-	-	17,017	Work search requirements for the weeks ending 7/18/2020-7/25/2020, 8/8/2020, and 8/22/2020-10/3/2020 were not completed, but benefits were still paid for \$4,130, which are questioned costs.
Claimant #3	15 years	-	-	10,395	6,622	Work search requirements for the weeks ending 7/18/2020-8/8/2020, 8/22/2020-8/29/2020, and 9/12/2020-10/3/2020 were not completed, but benefits were still paid for \$4,130, which are questioned costs.
Claimant #4	14 years	-	6,028	774	9,621	Work search requirements for the weeks ending 7/18/2020-8/22/2020 were not completed, but benefits were still paid for \$3,438, which are questioned costs.
Claimant #5	15 years	2,165	1,814	-	12,883	The claimant was scheduled to start work on 5/22/2020, but the pool was not opened because of COVID-19. However, the claimant was paid benefits for weeks ending 2/8/2020-5/23/2020 prior to his regularly schedule resume date. \$7,568 of benefits were paid for these weeks, which are questioned costs.
Claimant #6	15 years	986	1,578	10,058	20,523	The claimant received \$1,136 in wages during the period 10/1/2020 to 12/31/2020; however, the claimant did not self-certify the wages, and no review was performed by the Department to ensure benefits were properly reduced. \$2,249 of benefits were paid during this time period, which are questioned costs.

**Note:** The period used to determine the Weekly Benefit amount for PUA benefits is based on the calendar year.

Claimants #2 and #3 were sisters, and both reported on their respective applications that they worked for their father. Each also reported on her application that she made \$2,000 a quarter prior to the pandemic. Claimant #3 documented the following job searches: concrete mixer truck driver, journeyman plumber, and truck driver. A concrete mixer truck driver – as well as truck drivers in general – requires a Commercial Driver's License (CDL). The minimum age to obtain a CDL in the State of Nebraska is 18 years (intrastate only). Based on the young ages of the claimants (14 and 15 years old) and certification for the job searches performed, these claims appear to have been fraudulent and should have been identified and denied by the Department. Both sisters were paid a total of \$34,034.

An individual could be eligible for PUA if his or her employment was disrupted due to the pandemic. However, the likelihood of someone under the age of 16 having disrupted employment, especially when his or her wages were minimal, seems remote.

Neb. Rev. Stat. § 48-627 (Cum. Supp. 2020) states the following, as is relevant:

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

*(1) He or she has registered for work at an employment office, is actively searching for work, and thereafter reports at an employment office in accordance with such rules and regulations as the commissioner may adopt and promulgate . . . .*

Title 219 Nebraska Administrative Code (NAC) 4-004.B provides the following:

*A claimant, for whom the work search requirement has not been waived pursuant to 219 NAC 4(007), shall be required to make an active and earnest search for work that is reasonably calculated to result in the earliest possible reemployment of the claimant. An active and earnest search for work shall include five reemployment activities each benefit week. At least two of a claimant's five reemployment activities each benefit week shall be applications for permanent employment. Applications for employment shall be made in a method accepted by the employer.*

Attachment 1(C)(7)(a) of the U.S Department of Labor's Unemployment Insurance Program Letter (UIPL) No. 16-20 (April 5, 2020) says that, in order to be eligible for the PUA program, an individual has to be unemployed, partially unemployed, unable to work, or unavailable for work due to COVID-19.

Good internal control requires procedures to ensure that claimants are eligible, and benefit payments are proper.

When such controls are not in place, there is an increased risk of inappropriate/fraudulent payments being made.

## ***Adjudication Issues***

### ***Inadequate Controls***

In response to the high number of claims filed, the Department removed or changed the following system controls. The issue was noted during the previous audit and had not been corrected for the current period tested:

- 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

In response to the Governor's executive orders, the Department changed the following system controls:

- The work search requirements were waived effective between March 15, 2020, through July 12, 2020. During testing, we noted that the benefit system did not require claimants to complete work search requirements until after the week ended October 3, 2020.

- For claims filed between March 15, 2020, and August 1, 2020, the requirement to charge employers was waived if the separation of employment was due to COVID-19. However, the Department did not charge any employers during this period regardless of the reason for the separation.
- The Department reviewed only the last separation of employment during the base period (the one-year period upon which the benefit payments are calculated) for claims filed on or after March 15, 2020, instead of reviewing all of the separations during the base period.

The benefit system was able to create investigations for various circumstances, including inconsistencies in email addresses, claimant addresses, etc. When an investigation was created, payments stopped only if the investigation was closed, and the benefits were denied. We noted that the majority of investigations were not undertaken timely, which resulted in fraudulent payments that could have been stopped sooner.

One investigation performed by the Department was the quarterly wage crossmatch, which checked a claimant's wages during the quarter that the claimant received benefits. We noted several instances of a claim meeting the criteria for initiating an investigation; however, investigations were not initiated, or the results were not reviewed timely.

During fiscal year 2021, the Department established \$50,748,768 in overpayments. Of that amount, \$11,507,347 had been written off, cancelled, or waived as of November 8, 2021. Additionally, as of November 8, 2021, 593 cases, totaling \$2,126,163 from claims filed prior to June 30, 2021, were flagged as potentially fraudulent in the benefit system and in need of review by the Department for a final determination.

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

Moreover, during testing, the Department stated that Neb. Rev. Stat § 48-636 (Cum. Supp. 2020) precluded the making of redeterminations for errors noted on claims tested. This makes it all the more important that the Department have adequate procedures in place to ensure that claims are processed properly.

During our testing of 60 random payments, we noted adjudication issues with the following:

#### Issues Regarding Adjudication of Employer Responses

When a claimant files for UI benefits, the Department sends a "Request to Employer for Separation Information" to the claimant's previous employers to provide information, such as beginning and ending dates of employment, reason for termination, and whether vacation, severance, or other wages were paid after termination. Employers are required to respond within 10 days after the mailing or electronic transmission of such a request in accordance with Neb. Rev. Stat. § 48-632(1) (Cum. Supp. 2020). Additionally, per the Governor's Executive Order No. 20-26 (June 2, 2020), the Department was required 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.

For seven claimants tested, the most recent separating employer did not provide a response to the Department when requested. 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 that the Department performed follow-up procedures for these seven claimants. Therefore, procedures were not adequate to ensure that the claimant was eligible to receive benefits. All seven of these claims were filed during fiscal year (FY) 2020, but payments were made during FY 2021; therefore, we reviewed the adjudication procedures performed in FY 2020 to verify that eligibility was determined correctly for payments during the fiscal year tested.

The following table details the benefits paid to the seven claimants per the Department's benefit system.

<b>Claimant</b>	<b>Benefit Weeks Ending Paid</b>	<b>FY 2020 Payments</b>	<b>FY 2021 Payments</b>
Claimant #1	4/4/2020 - 9/26/2020	\$ 13,520	\$ 9,920
Claimant #2	4/11/2020 - 9/12/2020	11,064	6,498
Claimant #3	7/4/2020 - 10/10/2020	-	4,754
Claimant #4	5/30/2020 - 9/5/2020	3,970	6,140
Claimant #5	5/9/2020 - 6/19/2021	5,488	10,940
Claimant #6	4/4/2020 - 6/19/2021	13,246	24,776
Claimant #7	6/20/2020 - 6/19/2021	-	23,712

Claimant #3 indicated that he had quit his employment. According to the case notes, the claimant did not provide good cause for quitting and should have been disqualified; however, the claim was still allowed. After discussion with the Department, staff agreed that the claim should have been denied. For Claimant #4, the employer provided a response well after the date the request was sent. That response said that the claimant was “terminated/fired,” but no further follow up was performed. For Claimant #7, the Department did not adjudicate the last employer; instead, the Department adjudicated the previous employer. When the APA pointed this out, the Department sent the request to the last separating employer, who responded promptly that the claimant had “resigned/quit.” Had the Department followed up properly with the employer/claimant responses, the claimants would likely have been denied benefits. The payments to these three claimants, totaling \$3,970 and \$34,606 in FY 2020 and 2021, respectively, are considered questioned costs.

For an additional seven claimants tested, we noted that the most recent separating employer provided a response that should have required adjudication by Department staff; however, these issues were either incorrectly allowed by an adjudicator or automatically allowed by the system. Six of these claims were filed in FY 2020. Because the claimants received payments during FY 2021, however, we reviewed the adjudication procedures performed to determine eligibility.

The following table shows the benefits paid to the seven claimants per the Department’s benefit system.

<b>Claimant</b>	<b>Employer Response</b>	<b>Result</b>	<b>Benefit Paid for Weeks Ending</b>	<b>FY 2020 Payments</b>	<b>FY 2021 Payments</b>
Claimant #8	Terminated due to Theft	Allowed by the System	4/11/2020-10/3/2020	\$ 9,576	\$ 6,972
Claimant #9	Still Employed	Allowed by the System	5/16/2020-6/19/2021	5,227	25,174
Claimant #10	Quit	Not Reviewed	3/28/2020-9/12/2020	10,740	3,829
Claimant #11	Terminated/Fired	Allowed by the System	4/11/2020-11/7/2020	10,944	10,087
Claimant #12	Still Employed	Allowed by Adjudicator	1/2/2021-6/19/2021	-	16,700
Claimant #13	Quit	Not Reviewed	4/18/2020-8/22/2020	11,440	7,120
Claimant #14	Terminated/Fired	Allowed by the System	3/1/2020-3/6/2021	14,400	12,560

For Claimant #12, the employer responded that the claimant was no longer showing up to his scheduled shifts, and hours were available for the claimant to work. The claim was still allowed by the adjudicator. For Claimant #11, both the claimant and the employer stated that the claimant lost her job due to illegal drug use. The separation from the employer was automatically allowed by the system. An adjudicator should have reviewed this claim to determine if the claimant was disqualified from UI benefits. Lastly, for Claimant #10, the employer responded that the claimant quit, but this response was not entered into the benefit system, which resulted in the system automatically allowing the claim.

Neb. Rev. Stat. § 48-628.10 (Cum. Supp. 2020) provides the following:

*(1) An individual shall be disqualified for benefits for the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks immediately thereafter.*

*(2) If the commissioner finds that the individual was discharged for misconduct that was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery while the individual is on the worksite or while the individual is engaged in work for the employer, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer.*



*(3) If the commissioner finds that the individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct.*

Neb. Rev. Stat. § 48-628.12 (Cum. Supp. 2020) states, in relevant part, the following:

*An individual shall be disqualified for benefits:*

*(2) For any benefit year beginning on or after October 1, 2018, for the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for all subsequent weeks until the individual has earned wages in insured work in an amount of at least four times his or her weekly benefit amount and has separated from the most recent subsequent employment under nondisqualifying conditions.*

Good internal control requires procedures to ensure that the Department adjudicates properly 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.

#### Weekly Certification Issues

Six claimants tested did not complete the work search requirements properly, but they still received payment for those weeks.

Claimants are required to perform work searches in order to be eligible to receive unemployment compensation benefits under Neb. Rev. Stat. § 48-627 (Cum. Supp. 2020), which states, 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:*

*(1) He or she has registered for work at an employment office, is actively searching for work, and thereafter reports at an employment office in accordance with such rules and regulations as the commissioner may adopt and promulgate. The commissioner may, by rule and regulation, waive or alter any of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations if the commissioner finds that compliance with such requirements would be oppressive or inconsistent with the purposes of the Employment Security Law[.]*

Further, the Department has also adopted the following rules and regulations related to the work search requirements under 219 NAC 4, which states, in relevant part, the following:

002. *In order to establish his or her availability for work in the job market to which he or she is attached, a claimant shall register for work and engage in an active work search.*

\* \* \* \*

004. A. *In order for a claimant to be "available for work" within the meaning of Neb. Rev. Stat. §48-627(3), a claimant for whom the work search requirement has not been waived pursuant to 219 NAC 4(007) must actively seek work in accordance with the provisions of this Chapter. (See also, 20 C.F.R. §604.5 and 42 U.S.C.A. 503.)*

B. *A claimant, for whom the work search requirement has not been waived pursuant to 219 NAC 4(007), shall be required to make an active and earnest search for work that is reasonably calculated to result in the earliest possible reemployment of the claimant. An active and earnest search for work shall include five reemployment activities each benefit week. At least two of a claimant's five reemployment activities each benefit week shall be applications for permanent employment. Applications for employment shall be made in a method accepted by the employer.*

Executive Orders No. 20-04 (March 17, 2020), No. 20-14 (April 2, 2020), and No. 20-22 (April 30, 2020) waived the work search requirements, otherwise required under § 48-627 and 219 NAC 4, for claims filed on or after March 15, 2020. Executive Order No. 20-31 (July 6, 2020) reinstated the work search requirements, effective July 12, 2020.

However, the Department did not update its benefit system to require claimants to complete work search requirements when the work search waiver ended on July 12, 2020. Based on the APA's testing, it appears the issue was resolved after the week ended October 3, 2020.

The following table shows the weeks during which the six claimants tested did not complete the work search requirements and how much the claimants were overpaid for those weeks.

Claimant	Weeks Work Search Requirements were not Completed	FY 2021 Amount Paid	Observations
Claimant #1	10/17/2020	\$ 173	Though certifying that he searched for work, the claimant did not specify the employers he contacted, which was required.
Claimant #2	7/18/2020 - 8/1/2020	1,999	
Claimant #3	7/18/2020 - 10/3/2020	5,208	
Claimant #4	7/18/2020 - 10/3/2020	5,076	
Claimant #5	4/10/2021 - 4/17/2021	1,040	The claimant reported only two work searches for the week ending 4/10/2021 and three work searches for the week ending 4/17/2021. Five job activities are required each week.
Claimant #6	7/18/2020 - 8/1/2020	2,760	

Additionally, Claimant #3 responded "No" to this question: "Other than for reasons that were the direct result of COVID-19, were you able and available to work each day of the week?" On April 5, 2020, the Employment and Training Administration (ETA) Advisory System of the U.S. Department of Labor (USDOL) issued UIPL No. 16-20 (April 5, 2020), which contains the following:

*PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise able to work and available for work within the meaning of applicable state UC law . . . .*

Section 48-627(3) requires claimants to be able to work and be available for work in order to be eligible for UI benefits.

According to the Department, there was a system issue with the PUA work search in the benefit system, but the issue was resolved beginning in July 2020. However, the claimant selected "No" to being able and available to work for the weeks ending April 25, 2020, through October 3, 2020, which extended well past the date on which the issue was supposedly fixed. Claimant #3 was paid a total of \$7,736 and \$6,880 in FY 2020 and FY 2021, respectively, for the period that "No" was selected as the answer to the question regarding being able and available to work on the weekly certifications.

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.

#### Wage Crossmatch Issues

On May 11, 2020, the ETA Advisory System of the USDOL issued UIPL No. 23-20 (May 11, 2020) to remind states of program integrity functions required for the regular UI program and to provide states with guidance regarding required program integrity functions for the UI programs authorized by Sections 2102 (PUA), 2104 (FPUC), and 2017 (PEUC) of the CARES Act. Included is the requirement to perform a quarterly wage records crossmatch per 20 CFR § 603.23(b) (April 1, 2020), which provides 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.*

According to the Department, a quarterly wage crossmatch was performed. The benefit system checked the claimant against the Department's wage database to see if a claimant met the criteria for further investigation. If the criteria was met, an investigation was created automatically in the benefit system. The investigation included sending a wage audit request to the employer to obtain the amount of wages earned for each week the claimant was receiving benefits.

For 15 claimants tested, we noted that the claimants met the criteria, but an investigation was either not created or not completed timely.

The following table details the 15 claimants' wages for the quarter tested, the amount self-certified by the claimant as required, the amount of benefits paid to the claimant for the quarter tested, and the dates of any investigations created.

<b>Claimant</b>	<b>Quarter Tested</b>	<b>Wages for the Quarter</b>	<b>Wages Certified by Claimant</b>	<b>Benefits Paid for the Quarter Tested</b>	<b>Questioned Costs</b>	<b>Date Investigation Created</b>
Claimant #1	1/1/2021 - 3/31/2021	\$ 4,101	\$ -	\$ 6,620	\$ 600	8/12/2021
Claimant #2	7/1/2020 - 9/30/2020	446	-	4,900	1,040	1/14/2021
Claimant #3	10/1/2020 - 12/31/2020	7,910	476	1,063	372	5/13/2021
Claimant #4	1/1/2021 - 3/31/2021	5,808	-	3,764	756	Not Created
Claimant #5	1/1/2021 - 3/31/2021	1,988	720	6,016	600	Not Created
Claimant #6	7/1/2020 - 9/30/2020	8,947	-	8,600	440	1/14/2021
Claimant #7	10/1/2020 - 12/31/2020	3,150	-	2,521	194	5/13/2021
Claimant #8	7/1/2020 - 9/30/2020	2,753	-	2,580	1,720	2/11/2021
Claimant #9	1/1/2021 - 3/31/2021	1,386	-	8,140	1,410	8/11/2021
Claimant #10	10/1/2020 - 12/31/2020	527	-	3,780	420	Not Created
Claimant #11	7/1/2020 - 9/30/2020	3,056	1,099	4,242	815	Not Created
Claimant #12	7/1/2020 - 9/30/2020	5,343	-	1,461	782*	Not Created
Claimant #13	7/1/2020 - 9/30/2020	666	-	3,565	773	2/11/2021
Claimant #14	1/1/2021 - 3/31/2021	5,108	570	2,790	700	8/12/2021
Claimant #15	4/1/2021 - 6/30/2021	6,007	-	2,156	614	Not Created

\*An investigation was created for the week ending 7/11/2020 due to the claimant being flagged in the National Directory of New Hires, not for the system wage crossmatch. However, based on that investigation, the employer responded that the claimant did have a break in wages from 5/16/2020 to 7/23/2020; therefore, the payment for this claimant was not questioned.

Another claimant tested was overpaid \$5,227 for FY 2020 and \$4,896 for FY 2021. Investigations were created on March 9, 2021, for the weeks ended May 16, 2020, through June 27, 2020, and on May 13, 2021, for the weeks ended October 3, 2020, through December 26, 2020. These investigations had not been worked as of August 2, 2021, however. An investigation should have been created also for the weeks ended July 4, 2020, through September 26, 2020, but none was created as of August 2, 2021. Upon the APA's inquiry, the Department sent a wage audit request to the employer on August 25, 2021, and received a response from the employer the following day. Based on the employer's response, the claimant should have been disqualified for the weeks ended May 16, 2020, through August 8, 2020.

Furthermore, on August 31, 2021, the APA inquired with the Department about whether the wage crossmatch was working properly in the system, based on the issues noted with the claimants above. The APA requested documentation that the wage crossmatch was performed for all 60 claimants tested. But the Department did not provide additional documentation that the system was working properly and provided no further response as to why the wage crossmatch investigations had not been created for those claimants noted above.

Good internal control requires procedures to ensure that wage crossmatches are performed, and benefits are paid in compliance with applicable Federal requirements.

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

#### Other Adjudication Issues

For three claimants tested, the Department had created investigations due to a variety of factors, including the State having flagged the email address as being potentially fraudulent or the claimant's physical address, email address, or listed phone number being used by multiple other claimants. For each of these claimants, we noted that the Department completed the investigations and made determinations that these claims may be fraudulent due to the claimant not providing identity verification. However, the Department did not work these investigations timely, causing payments to be made before the possibly fraudulent claims were identified.

Claimant	Date Investigation Created	Date of Determination	Weeks Ending Paid	FY 2020 Payments	FY 2021 Payments
Claimant #1	7/17/2020	7/12/2021	4/11/2020 - 10/3/2020	\$ 9,576	\$ 6,972
Claimant #2*	6/8/2020	7/19/2021	3/28/2020 - 8/1/2020	11,356	3,970
Claimant #3	9/10/2020	6/14/2021	3/28/2020 - 10/3/2020	13,680	7,080

\*The Department determined that no overpayments were necessary because the identity verification request was sent on 1/4/2021, and no payments were made to the claimant after this date. However, it would appear reasonable to perform further procedures to determine if payments made prior to the request were fraudulent.

For one PUA claimant tested, the application was filed on May 14, 2020, and the claimant self-certified that he received \$28,000 in self-employment income during calendar year 2019. Therefore, the claimant's weekly benefit amount (WBA) was calculated to be \$268, which is more than the minimum WBA of \$173. In accordance with UIPL No. 16-20, Change 1 (April 27, 2020), Attachment I, PUA claimants were required to provide documentation of self-employment income within 21 days to substantiate the wages earned; otherwise, the WBA was to be reduced to \$173. The claimant did not provide documentation to support his wages, but the Department continued to pay the claimant at the greater WBA. The Department did not adjudicate this issue until December 2020, seven months after the application was filed. The total amount overpaid was \$570 and \$2,185 in FY 2020 and FY 2021, respectively.

Another claimant tested was eligible for regular UI at a WBA of \$318; however, the claimant was paid PEUC instead at only \$304. The claimant was underpaid \$168. The Governor issued Executive Order No. 21-03 (January 22, 2021), which ordered the following:

*Suspend that portion of Nebraska Revised Statute § 48-625 which requires the payment of regular unemployment benefits to an individual for any week of unemployment, if the individual is eligible for a greater PEUC weekly benefit amount pursuant to section 206 of the Continued Assistance Act, subject to the following conditions. In order for the suspension of regular unemployment benefits to occur, the following conditions must apply:*

1. *The individual has been determined to be entitled to PEUC with respect to a benefit year;*
2. *The benefit year with respect to which the PEUC eligibility was established (i.e., the parent claim) has expired after the date of the enactment of the Continued Assistance Act;*
3. *The individual has remaining eligibility for PEUC with respect to such benefit year; and*
4. *The individual would qualify for regular unemployment compensation in a subsequent (new) benefit year and the weekly benefit amount for regular unemployment compensation in the new benefit year would be at least \$25 less than the weekly benefit amount payable on the individual's PEUC claim.*

According to UIPL No. 17-20, Change 2 (December 31, 2020), an individual may continue to be eligible to receive PEUC as long as he or she meets the requirements in section 206(c)(1) of the Continued Assistance Act. That same document adds the following:

- ii. *Criteria for determining if an individual may continue to receive PEUC when eligible for regular UC in a subsequent benefit year. Individuals may be eligible to continue to receive PEUC instead of regular UC if all of the following criteria are met:*

*Criterion #1:* *The individual has been determined to be entitled to PEUC with respect to a benefit year;*

*Criterion #2:* *The benefit year with respect to which the PEUC entitlement had been established (i.e., the parent claim) has expired after the date of the enactment of the Continued Assistance Act (December 27, 2020);*

*Criterion #3:* *The individual has remaining entitlement to PEUC with respect to such benefit year; and*

*Criterion #4:* *The individual would qualify for regular UC in a subsequent (new) benefit year and the WBA for regular UC in the new benefit year would be at least \$25 less than the WBA payable on the individual's PEUC claim.*

Lastly, one claimant tested had a vacation payout by his previous employer that was not correctly applied to reduce payments for the week ended March 28, 2020. Per Neb. Rev. Stat. § 48-628.02 (Cum. Supp. 2020), lump sum payments of vacation pay must be prorated in an amount reasonable to such week and reduce benefit payments. The claimant was paid \$420 but should have been paid only \$183 for that week, a difference of \$237.

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

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

### ***PUA Issues***

The Department did not perform identity verification procedures or obtain self-employment or employment verification for the following five claimants:

<b>Claimant</b>	<b>Self-Employment/ Employment Verification Received</b>	<b>Identity Verification Procedures Performed</b>	<b>Amount Paid after 12/27/2020</b>
Claimant #1	No	No	\$ 11,825
Claimant #2	Yes	No	17,400
Claimant #3	No	No	11,783
Claimant #4	No	No	3,784
Claimant #5	No	No	9,375

Generally, PUA claimants were not made aware of the requirement to provide verification of employment or self-employment until May 2021, over four months after the required timeframe per the Continued Assistance Act. Furthermore, the APA requested the Department's written procedures for verifying the legitimacy of documentation provided by claimants. The Department explained that there were no specific, written procedures for verifying each different type of documentation that a claimant could provide. Total PUA payments made for the weeks ended after December 27, 2020, through the fiscal year ended June 30, 2021, were \$30,638,698.

The identity verification requirement applied to all PUA claimants who received payment after December 27, 2020. The Department stated that all continuing PUA claims that had received payments prior to December 27, 2020, and continued to receive payments after December 27, 2020, were run through its identity verification software on July 19, 2021. However, in a meeting on August 24, 2021, the Department was unable to provide documentation that the claimants tested had been run through the identity verification software. As of August 24, 2021, the Department had not performed identity verification procedures for continuing PUA claims. The amount of continuing PUA payments made after December 27, 2020, totaled at least \$28,613,524.

On January 8, 2021, the ETA Advisory System of the USDOL issued UIPL No. 16-20, Change 4 (January 8, 2021), to provide States with updated guidance for the PUA program, as amended by the Continued Assistance Act and updated instructions for reporting PUA program activities. That document includes the following language regarding new requirements for individuals to submit documentation substantiating employment or self-employment:

- b. **New Requirement for Individuals to Submit Documentation of Employment or Self-Employment.** Section 241 of the Continued Assistance Act, creates a new requirement for individuals to submit documentation substantiating employment or self-employment . . .*
  - i. **Filing New Applications for PUA.** Individuals filing a new PUA application on or after January 31, 2021 (regardless of whether the claim is backdated), are required to provide documentation within 21 days of application or the date the individual is directed to submit the documentation by the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause for not submitting documentation under state UC law within 21 days.*
  - ii. **Filing Continued Claims for PUA.** Individuals who applied for PUA before January 31, 2021 and receive a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), are required to provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, within 90 days of application or when directed to submit the documentation by the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause under state UC law.*

In providing guidance regarding acceptable documentation, Attachment 1 of UIPL 16-20, Change 4, rejects reliance solely upon agency records:

*This documentation demonstrates a recent attachment to the labor force and serves as an important tool against fraud by requiring the individual to submit documentation to prove eligibility, rather than have such documentation automatically added to the file based on agency records. As such, states may not rely solely on agency records to satisfy this condition – the individual must submit documentation to the agency to be entitled to benefits.*

- a. **Type of acceptable documentation.** The requirements to submit documentation substantiating employment or self-employment and to submit documentation for a higher WBA are distinct. As described in Section C of Attachment I and in Attachment II to UIPL No. 16-20, Change 1, an individual is already required to submit documentation substantiating wages if the individual is to receive a WBA that is higher than the state minimum WBA. However, the documentation that an individual submits in support of a higher WBA may also be used to satisfy the documentation requirement to substantiate employment or self-employment.*

*An individual who has not submitted documentation in support of a higher WBA must still provide documentation substantiating employment or self-employment. While documentation to support a higher WBA must demonstrate earnings during the entire look-back period, documentation to substantiate employment or self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing.*



*In general, proof of employment includes, but is not limited to, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available. Proof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment. Proof of employment with organizations such as the Peace Corps, AmeriCorps, and educational or religious organizations includes, but is not limited to, documentation provided by these organizations and signed affidavits from persons verifying the individual's attachment to such organizations. Proof of the planned commencement of employment includes, but is not limited to, letters offering employment, statements/affidavits by individuals (with name and contact information) verifying an offer of employment. Proof of the planned commencement of self-employment includes, but is not limited to, business licenses, state or Federal employer identification numbers, written business plans, or a lease agreement.*

*Individuals must present the proof of employment and the state may verify the proof submitted using records the state may have available, such as wage records or state revenue records.*

The Continued Assistance Act also implemented new requirements regarding identity verification of individuals. Attachment 1 of UIPL No. 16-20, Change 4, includes the following language regarding new requirements for States to implement procedures for verifying the identity of individuals receiving PUA program benefit payments:

1. *Verification of Identity (Section 242(a) of the Continued Assistance Act) (new). Section 242(a) of Continued Assistance Act modifies Section 2102(f)(1) of the CARES Act. For states to have an adequate system for administering the PUA program, states must include procedures for "identity verification or validation and for timely payment, to the extent reasonable and practicable" by January 26, 2021, which is 30 days after December 27, 2020 (enactment of the Continued Assistance Act). States that previously verified an individual's identity on a UC, EB, or PEUC claim within the last 12 months are not required to re-verify identity on the PUA claim, though the Department encourages the state to take additional measures if the identity is questioned. Individuals filing new PUA initial claims that have not been through the state's identity verification process must have their identities verified to be eligible.*

Good internal control requires procedures to ensure that verification of identity and employment or self-employment for individuals is performed in compliance with applicable Federal requirements.

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

### ***Short-Time Compensation (STC) Plan Issues and Claimants with Excessive Wages***

The Department provided an unemployment benefits program called Short-Time Compensation (STC), which was a voluntary program in which an employer could enroll in to assist in averting layoffs. The program allowed employers to reduce employees' hours while also permitting employees to receive a prorated unemployment benefit payment. The Department was authorized to administer the STC program under Neb. Rev. Stat. §§ 48-607 and 48-672 through 48-683 (Reissue 2010, Cum. Supp. 2020).

In UIPL No. 21-20 (May 3, 2020), the USDOL provided additional background for the STC program as it relates to the COVID-19 pandemic and Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020:

*In the context of re-opening businesses closed temporarily by a pandemic, STC can also serve as a means of bringing most or all of a temporarily laid-off workforce back to the job, even if social-distancing measures, a decline in business, or other factors prevent operating at full staffing levels full time. Specifically, this benefit may be made available to individuals returning to work with reduced hours who worked for the employer prior to the temporary lay-off due to COVID-19. This program preserves employees' jobs and employers' trained workforces during a disruption to the firm's regular business activity by reducing hours of work for an entire group of affected employees, rather than by laying off some employees while others continue to work full time. The STC benefit payment cushions the adverse effect of the reduction in business activity on workers and, by maintaining their connection to their employers, ensures that these workers will be available to resume prior employment when business demand increases.*

As explained above, the primary purpose of the STC program was to assist employers in avoiding laying off their employees while their businesses were experiencing a disruption in normal operations. Within STC agreements, the employer could stipulate groups of employees to participate in the plan. Thus, in accordance with the objectives of the program, the Department should have allowed agreements for groups affected by a disruption in their working schedules. Instead, the Department entered into STC agreements with two employers that allowed upper-level management to participate in the agreements. We observed that these individuals were high-wage earners and did not appear to meet the agreements' decreased-hour requirements; instead, they sometimes earned wages in excess of those in the quarter prior to the start of the agreement.

#### Employer #1 – STC Agreement

For 16 claimants tested for Employer #1, the STC agreement stipulated a 12%-50% reduction in hours, varying by employee, for the period March 22, 2020, through March 20, 2021. Each of the 16 claimants received a large increase in wages during the fourth quarter (October 1, 2020, through December 31, 2020), and 14 of the claimants continued to receive UI benefit payments during that quarter, which were determined to be questioned costs. Because wages are reported in summary by quarter, we were unable to determine if the benefit weeks paid were allowable and in accordance with the STC agreement. All 16 of these employees were upper-level management at the company, including the President, Vice President, CEO, CFO, etc. It is not reasonable that upper-level management, that received extremely large payments in a benefit quarter, would be included in the agreement with the Department. The likelihood of these employees being laid off would appear to be minimal.

Claimant	CY 2020 Q2 Wages	CY 2020 Q3 Wages	CY 2020 Q4 Wages	FY 2020 UI Benefits Paid	FY 2021 UI Benefits Paid	Questioned Costs for Q4 UI Benefits Paid
Claimant #1	\$ 28,074	\$ 84,580	\$ 4,087,625	\$ 6,560	\$ 6,890	\$ 550
Claimant #2	25,368	75,055	3,230,936	5,740	6,290	660
Claimant #3	20,724	61,339	2,857,978	5,740	6,290	660
Claimant #4	16,304	50,214	1,961,109	-	7,980	-
Claimant #5	15,882	47,726	1,792,762	6,560	6,290	660
Claimant #6	14,179	43,573	1,656,332	6,560	6,290	660
Claimant #7	15,174	45,080	1,436,271	7,380	6,290	660
Claimant #8	14,189	43,693	1,360,506	7,380	4,700	-
Claimant #9	12,735	39,475	771,256	7,380	6,290	660
Claimant #10	9,527	30,251	752,516	7,380	6,290	660
Claimant #11	8,193	25,419	757,105	7,380	5,580	660
Claimant #12	10,472	22,510	528,061	6,560	9,960	1,430
Claimant #13	15,178	23,489	528,719	-	17,558	676
Claimant #14	14,219	21,898	526,793	8,850	7,896	676
Claimant #15	11,095	12,174	514,439	10,660	13,040	2,860
Claimant #16	29,654	34,582	261,166	5,868	4,928	52
<b>Totals</b>	<b>\$ 260,967</b>	<b>\$ 661,058</b>	<b>\$23,023,574</b>	<b>\$ 99,998</b>	<b>\$ 122,562</b>	<b>\$ 11,524</b>

#### Employer #2 – STC Agreement

For nine claimants from Employer #2, the STC agreement stipulated a 10% reduction in hours for employees during the period March 29, 2020, through October 3, 2020. However, the nine claimants' wages either were not reduced or increased from the first quarter of calendar year 2020 to the end of the calendar year. Because wages are reported in summary by quarter, we were unable to determine if the benefit weeks paid were allowable and in accordance with the STC agreement. Again, all nine of these employees were upper-level management at the company, including the General Manager, Operations Manager, Controller, etc., which did not appear reasonable and in accordance with the purpose of the STC program.

Claimant	CY2020 Q1 Wages	CY 2020 Q2 Wages	CY 2020 Q3 Wages	CY 2020 Q4 Wages	FY2020 UI Benefits Paid	FY2021 UI Benefits Paid	QC FY2020 Benefits Paid	QC FY2021 Benefits Paid
Claimant #1 *	\$246,917	\$224,662	\$295,190	\$347,882	\$ 4,508	\$ 8,036	\$ -	\$ 4,816
Claimant #2	68,560	67,129	111,463	89,850	6,440	6,104	6,440	6,104
Claimant #3	54,921	56,917	92,457	76,938	6,440	6,104	6,440	6,104
Claimant #4	41,723	39,823	58,909	58,197	6,440	6,104	6,440	6,104
Claimant #5	51,471	49,834	76,014	76,170	6,440	6,104	6,440	6,104
Claimant #6	52,207	49,941	63,919	78,507	-	12,544	-	12,544
Claimant #7	46,389	44,360	57,986	69,365	6,440	6,104	6,440	6,104
Claimant #8 *	43,353	41,512	37,998	67,732	6,440	6,104	6,440	1,332
Claimant #9	41,341	39,563	51,194	56,460	6,440	6,104	6,440	6,104
<b>Totals</b>	<b>\$646,882</b>	<b>\$613,741</b>	<b>\$845,130</b>	<b>\$921,101</b>	<b>\$49,588</b>	<b>\$ 63,308</b>	<b>\$ 45,080</b>	<b>\$ 55,316</b>

\*Claimants #1 and #8 had a 9% reduction in quarter 2 and a 12% reduction in quarter 3, respectively. The reductions appeared reasonable; therefore, these were not included in questioned costs.

### Other High-Wage Earners

We tested 10 claimants with wages reported over \$55,000 for the fiscal year ended June 30, 2021. The first table below shows wages by quarter, and the second table shows the questioned costs by quarter.

Claimant	CY2020 Q1 Wages	CY2020 Q2 Wages	CY2020 Q3 Wages	CY2020 Q4 Wages	CY2021 Q1 Wages	CY2021 Q2 Wages
Claimant #1	\$ 363,394	\$ 208,314	\$ 208,018	\$ 215,820	\$ 434,643	\$ 232,167
Claimant #2	43,127	1,085	3,356	531,377	4,188	-
Claimant #3	14,422	15,226	17,442	14,730	11,079	18,990
Claimant #4	75,904	97,540	65,123	-	-	-
Claimant #5	75,061	68,871	58,836	-	-	-
Claimant #6	10,937	8,277	11,774	14,525	12,980	17,366
Claimant #7	48,558	52,977	64,312	2,186	-	-
Claimant #8	15,878	6,317	18,654	15,689	9,839	12,285
Claimant #9	33,843	16,022	18,628	19,068	30,584	16,179
Claimant #10	12,541	12,035	15,434	12,962	13,168	16,410
<b>Totals</b>	<b>\$ 693,665</b>	<b>\$ 486,664</b>	<b>\$ 481,577</b>	<b>\$ 826,357</b>	<b>\$ 516,481</b>	<b>\$ 313,397</b>

Claimant	QC CY2020 Q1 for UI Benefits Paid	QC CY2020 Q2 for UI Benefits Paid	QC CY2020 Q3 for UI Benefits Paid	QC CY2020 Q4 for UI Benefits Paid	QC CY2021 Q1 for UI Benefits Paid	QC CY2021 Q2 for UI Benefits Paid
Claimant #1	\$ -	\$ 1,040	\$ -	\$ -	\$ -	\$ -
Claimant #2	-	13,520	4,900	-	-	-
Claimant #3	-	-	8,880	4,400	6,660	5,720
Claimant #4	-	-	1,320	-	-	-
Claimant #5	-	-	1,320	-	-	-
Claimant #6	418	13,234	9,216	5,434	9,174	-
Claimant #7	-	-	-	3,960	-	-
Claimant #8	-	-	7,060	2,640	6,308	6,336
Claimant #9	-	-	-	3,520	9,620	8,140
Claimant #10	-	-	-	3,894	9,620	8,140
<b>Totals</b>	<b>\$ 418</b>	<b>\$ 27,794</b>	<b>\$ 32,696</b>	<b>\$ 23,848</b>	<b>\$ 41,382</b>	<b>\$ 28,336</b>

\*Total Questioned Costs by fiscal year: FY2020 = \$27,172; FY2021 = \$127,302

For Claimants #1, #9, and #10, the separating employer responded to the Department's request for information, explaining that the claimant was still employed, and the claims were likely fraudulent; however, benefit payments continued to be made on the claims.

- For Claimant #1, in addition to the separating employer stating that the claim was likely fraudulent because the employee was still working, the IP address for the claim was located in Rhode Island. The Department created an investigation in the benefit system on June 7, 2020; however, the investigation was closed with no decision. No further review was performed to identify this claim as fraudulent.
- For Claimant #9, the separating employer provided a response on November 11, 2020, but the Department did not identify this as a fraudulent claim until May 18, 2021, six months later, and payments continued to be made through June 21, 2021.
- For Claimant #10, the separating employer provided a response on October 7, 2020, but the Department still allowed the claim, and payments were made through June 21, 2021.

For Claimant #2, two wage crossmatch investigations were created in February and March 2021, but the investigations were inactive and not resolved. Furthermore, an investigation was created on June 8, 2020, because the claimant had high wages during the benefit base period. The Department requested the claimant provide identity verification, but the claimant did not provide it, so the Department denied this claim and flagged it as fraudulent on August 9, 2021. However, no overpayments were established in the system.

For Claimants #3 through #7, an investigation was not created for the quarterly wage crossmatch, as required for four of the five claims. For the fifth claim (Claimant #6), an investigation was created, but staff had not completed the investigation when we conducted our fieldwork. For each of these, the wages certified by the individual were not reasonable when compared to the wages reported by the employer per the Department's records.

For Claimant #8, the claimant was included as part of an employer's STC agreement, which specifies that the claimant is to have a 50% reduction in normal working hours effective from March 22, 2020, through March 19, 2022. However, the claimant received only a 50% reduction for Quarter 2 of Calendar Year 2020. For the remaining quarters, the claimant did not receive a reduction in wages commensurate with the STC agreement while benefits were being paid.

Claimants were required to perform weekly certifications, which included reporting all wages earned during that week, to ensure that benefit reductions were unnecessary. These certifications were performed to ensure compliance with Neb. Rev. Stat. § 48-625(1) (Cum. Supp. 2020), 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 crossmatch wages reported on a quarterly basis by employers through the Tax Management System (TMS). If a claimant did not certify wages properly, the crossmatch would identify wages that required further adjudication and staff review to follow up with the employers. That system ensured compliance with 20 CFR § 603.23(b) (April 1, 2020), 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.*

The crossmatch reviewed wages two quarters in arrears, meaning a crossmatch performed in Quarter 1 of Calendar Year 2021 reviewed wages for Quarters 3 and 4 of Calendar Year 2020. If the wages met the crossmatch criteria, an Intrastate Quarterly Crossmatch investigation should be created. However, as noted above, several claimants who had large wages while receiving benefits either did not have an investigation created or the investigations had not been completed.

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

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

### ***Untimely Resolution to Bank Account Fraud Investigations***

Within the Department's benefit system, investigations or issues were automatically created using various parameters set by the Department. We tested 17 claimants whose bank accounts and routing numbers were used by 10 or more claimants. Such claimants would be at greater risk of fraud, as it would be unusual for 10 or more people to use the same bank account. For 16 of the 17 claimants tested, the investigations created were not adjudicated and resolved in a timely manner.

The following table shows the questioned costs, totaling \$126,034, for the claimants tested. For 15 of 16 investigations performed, the Department determined the claims to be fraudulent. However, while the investigations were being completed, benefit payments were not stopped; therefore, fraudulent claims continued to be paid, leading to questioned costs, even after an employer and/or claimant made it known that they had not filed the claim. The investigations were not completed timely, ranging from 102 to 218 days to complete. Additionally, one of the investigations was still ongoing as of audit fieldwork, and another had yet to be created.

<b>Claimant</b>	<b>QC FY2020 Gross UI Benefits</b>	<b>QC FY2021 Gross UI Benefits</b>	<b>QC FY2022 Gross UI Benefits</b>	<b>QC Benefit Weeks Ending Begin Date/End Date</b>	<b>Investigation Begin Date/End Date</b>	<b>Days Investigation was Open</b>	<b>Observations</b>
Claimant #1	\$ -	\$ 1,300	\$ -	1/2/2021 - 1/9/2021	1/19/2021 - 8/9/2021	202	
Claimant #2	-	1,974	-	2/13/21 - 2/27/2021	2/15/2021 - 7/30/2021	165	
Claimant #3	-	3,048	-	1/2/2021 - 2/6/2021	1/19/2021 - 8/3/2021	196	
Claimant #4	-	4,032	-	2/13/2021 - 4/3/2021	2/11/2021 - Not completed	As of 9/14/2021 (audit fieldwork) 215 days	
Claimant #5	11,087	11,224	-	2/22/2020 - 6/19/2021	2/7/2021 - 8/3/2021	177	The employer responded to the Department's separation information request on 6/24/2020, stating that the claimant was never an employee. An issue was created in the system on 6/25/2020, but it was auto-adjudicated and allowed. Additionally, the driver's license on the application was invalid. No overpayments have been established as of 9/14/2021.
Claimant #6	-	8,328	-	2/20/2021 - 5/22/2021	3/6/2021 - 8/3/2021	150	The claimant notified the Department that he had not filed the claim, but benefits continued to be paid even after the investigation was completed and the claim was determined to be fraudulent.

Claimant	QC FY2020 Gross UI Benefits	QC FY2021 Gross UI Benefits	QC FY2022 Gross UI Benefits	QC Benefit Weeks Ending Begin Date/End Date	Investigation Begin Date/End Date	Days Investigation was Open	Observations
Claimant #7	-	6,636	-	8/15/2020 - 3/20/2021	No Investigation	-	
Claimant #8	-	4,050	-	2/20/2021 - 6/19/2021	2/28/2021 - 7/8/2021	130	
Claimant #9	-	10,002	-	1/2/2021 - 6/5/2021	2/7/2021 - 5/20/2021	102	
Claimant #10	-	11,240	-	12/19/2020 - 5/29/2021	1/7/2021 - 6/10/2021	154	
Claimant #11	-	5,567	-	11/7/2020 - 3/13/2021	12/20/2020 - 12/6/2020	-14	According to the Department's benefit system, this investigation was completed prior to being started.
Claimant #12	-	11,584	-	2/13/2021 - 6/19/2021	3/10/2021 - 7/7/2021	119	The Department requested identity verification from the claimant on 2/3/2021. On 2/5/2021, the claimant responded that she did not file for benefits. However, payments continued to be made through the week ending 6/19/2021. No overpayments have been established as of 9/14/2021.
Claimant #13	-	12,009	-	10/10/2020 - 6/19/2021	2/8/2021 - 7/20/2021	162	
Claimant #14	-	7,840	-	2/13/2021 - 6/19/2021	2/16/2021 - 8/11/2021	176	
Claimant #15	-	9,803	1,010	2/6/2021 - 8/14/2021	2/7/2021 - 7/21/2021	164	The claimant notified the Department that she had not filed the claim, but benefits continued to be paid even after the investigation was completed and the claim was determined to be fraudulent.
Claimant #16	-	5,300	-	11/14/2020 - 2/20/2021	2/7/2021 - 7/22/2021	165	
<b>Totals</b>	<b>\$ 11,087</b>	<b>\$113,937</b>	<b>\$ 1,010</b>				

For 12 of the claimants tested, the claims originally filed appeared to be legitimate. However, after payments stopped being made on these claims, they were later reopened. The claims appear to have been reopened by an individual(s) impersonating the claimant, as the bank accounts on the claims were changed to a new bank account and were frequently changing. For example, Claimant #5 had payments sent to bank accounts in Oklahoma, Massachusetts, Alabama, California, Virginia, and Maine. Similar activity was noted for the other 11 claimants.

Good internal control requires procedures to ensure the timely completion of investigations, the proper adjudication of claims, and the finalization of determinations regarding the eligibility of claimants to receive unemployment benefits.

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



### ***Duplicate Benefit Payments***

We tested 20 claimants who were paid more than \$35,000 in benefits during the period July 1, 2020, through June 30, 2021, to determine if payments were made either in amounts greater than allowed for a single week or from multiple programs in the same week.

Four of the 20 individuals tested received payments from multiple programs for the same week or received multiple benefit payments from the same program during a week, which is not allowed. Furthermore, three of the four claimants either had no overpayment established or an incorrect overpayment balance was established at the time of testing.

<b>Claimant</b>	<b>Program Overpaid</b>	<b># of Weeks with Multiple Payments</b>	<b>APA Calculated Overpayment</b>	<b>Overpayment Established by the Department</b>	<b>Observations</b>
Claimant #1	UI, FPUC	23	\$ 15,176	\$ -	The Department recouped \$4,768 through overpayment offset, leaving a balance of \$10,408. However, the benefit system did not have an overpayment balance remaining for this claimant.
Claimant #2	PUA, FPUC, LWA	38	27,163	27,163	An overpayment for \$27,163 was established by the Department on 3/5/2021. As of 8/17/2021, \$11,224 had been recaptured, leaving a balance of \$15,939.
Claimant #3	LWA	3	2,700	-	The Department failed to establish an overpayment.
Claimant #4	PEUC, FPUC	8	5,920	-	A \$5,920 overpayment was started in the system; however, as of 8/17/21, the Department had taken no action to finalize or recoup that amount.

In accordance with Unemployment Insurance Program Letter (UIPL) No. 14-21 (March 15, 2021), Attachment I, individuals may only receive benefits under one program for any given week.

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

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

### ***Maximum Benefit Amount (MBA) Not Correctly Calculated***

For 1 of 60 claims tested, the MBA was calculated incorrectly. The claim had a reduction due to a separation issue with a previous employer; however, the reduction was not calculated correctly. The separation issue resulted in a disqualification of 14 weeks. The claim's original MBA was \$6,794 and should have been reduced by \$4,172 (\$298 multiplied by 14 weeks) for a maximum benefit of \$2,622. The claimant was paid \$2,980, leading to an overpayment of \$358.

Neb. Rev. Stat. § 48-626 (Cum. Supp. 2020) states, in relevant part, the following:

*(2) For any benefit year beginning on or after October 1, 2018, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her weekly benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter*

*of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under circumstances under which he or she was or could have been determined disqualified under section 48-628.10 or 48-628.12, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount determined pursuant to subsection (3) of this section, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under section 48-628.12.*

*(3) For purposes of determining the reduction of benefits described in subsection (2) of this section:*

*\* \* \* \**

*(b) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.10, his or her total benefit amount shall be reduced by fourteen times his or her weekly benefit amount.*

Neb. Rev. Stat. § 48-628.10(1) (Cum. Supp. 2020) provides the following:

*An individual shall be disqualified for benefits for the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks immediately thereafter.*

Good internal control requires procedures to ensure that maximum benefit amounts are calculated properly.

Without such procedures, there is an increased risk of improper benefit payments to claimants and noncompliance with State statute.

### ***Inaccurate Social Security Numbers***

During testing, we noted that the Social Security numbers (SSN) for five claimants were not correct in the benefit system. For three of the claimants, the individuals were paid through the PUA program. Had the SSNs been accurate, however, the three individuals would have been paid regular UI and PEUC instead. The incorrect SSNs prevented the Department from identifying that the claimants had received wages during the benefit base period.

<b>Claimant</b>	<b>Amount Paid From PUA</b>
Claimant #1	\$ 12,548
Claimant #2	25,369
Claimant #3	15,031

The Department had procedures for verifying with the Social Security Administration that a claimant's name agreed with his or her SSN. Nevertheless, the Department was unable to provide support that these five claimants went through the verification process.

Good internal control requires procedures to ensure that Department records, including claimant SSNs, are accurate.

Without such procedures, there is an increased risk of inappropriate or fraudulent payments.

### ***Improper Employer Charges***

According to Neb. Rev. Stat. § 48-652 (Cum. Supp. 2020), employers are typically charged for benefits paid to former employees. For claims filed on or after March 15, 2020, through August 1, 2020, the Governor's Executive Orders No. 20-4 (March 17, 2020), No. 20-14 (April 2, 2020), and No 20-22 (April 30, 2020) granted employers relief from being charged for benefits paid to individuals eligible for unemployment benefits solely as a result of COVID-19 exposure or illness. Claims filed after August 1, 2020, were chargeable to employers based on normal charging rules.

Claims not charged to employers due to COVID-19 were charged instead to the “Pool Account (COVID-19),” which were paid from the UI trust fund.

During testing of benefit payments, we noted seven of 60 claimants tested, the employer was not properly charged. Three claims were filed after August 1, 2020, but the benefits paid were charged to the “Pool Account (COVID-19).” One claim was filed before August 1, 2020, and neither the employer nor the claimant reported that the separation was due to COVID-19, but the benefits paid were charged to the “Pool Account (COVID-19).” Three claims were filed before August 1, 2020, and, based upon available information, the separations were due to COVID-19; however, the employers were charged.

Claimant	Claim Filed Date	Actual Charges to the Employer	Should Have Charged to the Employer	Observations
Claimant #1	1/7/2021	\$ -	\$ 10,032	Charged improperly to the “Pool Account.”
Claimant #2	3/25/2020	-	3,360	Separation was not reported to be due to COVID-19; therefore, the employer should have been charged.
Claimant #3	4/9/2020	2,131	-	Separation was reported to be due to COVID-19; therefore, the employer should not have been charged.
Claimant #4	3/23/2020	2,705	-	Separation was reported to be due to COVID-19; therefore, the employer should not have been charged.
Claimant #5	6/19/2020	1,522	-	Separation was reported to be due to COVID-19; therefore, the employer should not have been charged.
Claimant #6	3/22/2021	-	2,736	Charged improperly to the “Pool Account.”
Claimant #7	10/29/2020	-	2,675	Charged improperly to the “Pool Account.”

During additional testing of 17 benefit payments, one of the payments was inappropriately charged to the employer. The claim was filed on July 8, 2020, and the employer reported to the Department that the separation was due to COVID-19. However, the employer was still charged \$94.

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 the payment of improper unemployment compensation benefits. Those same procedures should also ensure compliance with State and Federal requirements, ensuring the following: 1) procedures are improved for identifying incarcerated individuals, claimants who are deceased, and identifying and assessing whether State employees are eligible for UI benefits; 2) employer responses to requests for separation information are properly adjudicated and followed up on; 3) investigations are properly created and completed in a timely manner; 4) claimants are eligible and paid from the correct program; 5) benefit overpayments are established and recouped in a timely manner; and 6) verification of claimants’ identity and employment or self-employment is performed properly and in a timely manner. We also recommend reviewing STC agreements to ensure that program objectives are met, and the employer is compliant with the agreement. Lastly, we recommend the Department implement procedures to ensure that system records, including claimant SSNs, are accurate, and employers are charged or not charged properly. We are referring the information herein to the Nebraska Attorney General.

*Department Response:*

***Crossmatching and Establishment of Overpayments:*** The Department recognized issues within the Benefit Payment Control Unit during the pandemic. The employee responsible for performing the crossmatches did not do so, and supervisor follow-up was not done. All supervisors within the unit have been changed and additional employees added. All fraud detection processes have been reviewed and are being revised.

***Ineligible Payments to Inmates:*** New management is going through all crossmatch hits for inmates to ensure they were accurately worked. Referrals for all criminal prosecution will be made as appropriate.

***Benefits Paid to Deceased Claimants:*** New management is going through all crossmatch hits for deceased claimants to ensure they were accurately worked. The SSA death registry has been utilized in the past and NDOL has entered into an agreement with DHHS to run a crossmatch against the state death registry. Referrals for all criminal prosecution will be made as appropriate.

***Improper Unemployment Benefits Paid to State Employees:*** New management is going through all crossmatch hits for state employees to ensure they were accurately worked. Referrals for criminal prosecution will be made as appropriate.

***Benefits Paid to Claimants Under the Age of Sixteen:*** The Department disagrees with this conclusion. The claimant's age was irrelevant. Age of the applicant is not an eligibility criterion for either regular state unemployment or PUA benefits. All the youth were paid under the PUA program at a time when eligibility for benefits under that program was determined based solely on self-attestation. The sisters referenced should have been exempt from work search as they had an anticipated return to work date with their father's business.

**APA Response:** The applications for Claimant #2 and #3 both stated that they do not have an expected return to work date; therefore, work searches were required. Based on the lack of work searches performed and the documented job searches for truck driver, plumber, etc., these claims appear to be fraudulent and should be reviewed further by the Department.

***Inadequate Controls, Timeliness of Investigations, and Establishment of Overpayments:*** NDOL has two years to investigate and establish an overpayment. This is the only timeliness standard that exists, and the APA's assertion that some other timeliness standard applies is misleading. Creation of an investigation is not enough information for the Department to flag a claim as fraud. According to USDOL guidance, the mere creation of an investigation is not sufficient for the Department to suspend payments. The Department must investigate a claim and provide the claimant opportunity to respond before stopping or delaying payment. See – UIPL 04-01, UIPL 1145, UIPL 01-16, and UIPL 01-16, Change 1.

**APA Response:** As noted by the Department, the creation of an investigation is not sufficient to suspend payments; therefore, it is critical that investigations be worked timely so that fraudulent payments can be stopped and recouped.

***Issues Regarding Adjudication of Employer Responses:*** The Department acknowledges human error occurred in the adjudication of some claims. However, the Department denies that it is required to follow-up with an employer when that employer does not respond to a separation information request. When an employer fails to provide a timely response to a request for separation information, the Department adjudicates based on the best available information. The Department does not re-review claims after determination unless it receives new information that could not reasonably have been provided at the time of the original determination. The information provided during the FY 2020 audit about the Department following up with employers when they do not respond to a separation information request was inaccurate. This has been clarified multiple times with the APA; however, the APA disregards this clarification and continues asserting that the Department adjudicated the claims incorrectly. These issues were addressed in the FY 2020 audit. For the claims adjudicated in FY 2020, unless an issue or investigation was created on the claim, the claim would not have been re-reviewed.

**APA Response:** The employer's response is a significant control of the adjudication process. As noted for claimant #7 on page 14, had the Department followed up on the separating employer, the decision to allow or deny the claim may have been different. We recommend the Department follow up with employers if they do not respond to ensure that all available information on the claim is obtained.

***Weekly Certification Issues:** There were system issues when the work-search requirement was first reinstated. For unknown reasons, not all regular UI claims were picked up when the system was reset to require work search activities effective July 13, 2020. The work search issue was corrected for PUA claims on October 3, 2020.*

***Other Adjudication Issues:** NDOL has two years to investigate and establish an overpayment. This is the only timeliness standard that exists, and the APA's assertion that some other timeliness standard applies is misleading. Creation of an investigation is not enough for the Department to flag a claim as fraud. According to USDOL guidance, mere creation of an investigation is not sufficient to suspend payments. The Department must investigate and provide the claimant opportunity to respond before stopping or delaying payment. See – UIPL 04-01, UIPL 1145, UIPL 01-16, and UIPL 01-16, Change 1.*

**APA Response:** As noted by the Department, the creation of an investigation is not sufficient to suspend payments; therefore, it is critical that investigations be worked timely so that fraudulent payments can be stopped and recouped.

***Pandemic Unemployment Assistance (PUA) Issues:** The Department required all PUA claimants to report and provide identity verification beginning in fall of 2020 before identity verification was required by USDOL. UIPL 16-20, Change 4 states for New Applications for PUA that, "individuals filing a new PUA application on or after January 31, 2021, are required to provide documentation within 21 days of application or the date the individual is directed to submit the documentation by the State Agency, whichever is later" [emphasis supplied] and for Continued Claims for PUA that, "individuals who applied for PUA before January 31, 2021 and receive a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid) are required to provide documentation substantiating employment or self-employment, within 90 days of application or when directed to submit the documentation by the State Agency, whichever is later" [emphasis supplied]. The UIPL required that the agency notify claimants of these requirements. The code changes for implementing the new requirements were requested in January 2021 upon receiving USDOL guidance. The technology changes were not complete until May 2021, and claimants were notified of the requirement at that time. A separate manual letter was sent in June 2021 to address any potentially missed claimants. Additionally, the Department had other identity verification processes in place. It implemented two-factor authentication for all claimants in January 2021.*

**APA Response:** The UIPL providing the requirements to obtain documentation substantiating employment or self-employment was issued in January 2021. The Department did not implement procedures to notify claimants to provide documentation until May 2021. A majority of the claimants would not have been required to submit the documentation until 90 days after, or until July 2021 at the earliest. The PUA program ended in the State of Nebraska on June 19, 2021. Therefore, no payments would have been stopped as a result of this requirement.

***Short-Time Compensation (STC) Claimants and Claimants with Excessive Wages:** STC eligibility is not based on weekly earnings but on the reduction in hours. Since STC claimants continue to work while drawing STC benefits, there will always be wages earned in the quarter. Only hours worked with another employer during a benefit week would affect the STC weekly benefit amount pursuant to Neb. Rev. Stat. §48-680(5).*

**APA Response:** The APA is aware that STC claimants will have wages during the quarter in which benefits are earned. However, as noted in the comment, the individuals tested did not have a corresponding reduction of wages in accordance with their agreement and, in some instances, the wages actually increased. This calls into question whether the STC agreements were being adhered to and whether the Department was performing adequate monitoring of these agreements.

**Untimely Resolution to Bank Account Fraud Investigations:** *The date an investigation is finally closed does not equate to the date payment was stopped. In many of the claims referenced, payment was stopped, for other reasons, before the conclusion of the fraud investigation. The Department has implemented the recommended standard from the Integrity Data Hub.*

**Duplicate Benefit Payments:** *The Department acknowledges human error led to some duplicate payments. These are being reviewed.*

**Maximum Benefit Amount Calculation:** *The Department acknowledges human error led to the maximum benefit amount being calculated incorrectly.*

**Inaccurate Social Security Numbers:** *The individuals filing claims provided inaccurate SSNs. The Department crossmatches against the SSN provided. Based upon the SSN information provided by the claimant, wage records are provided to the individual and the individual may protest the wage finding. Based upon the initial finding determined on the claimant provided information, the individuals were placed in the PUA program as per the CARES Act.*

**APA Response:** **The Department should improve procedures to ensure that SSNs are accurate. The crossmatch to which the Department refers should have resulted in an error, as the name of the claimant would not have agreed with the SSN crossmatch. No such error was documented in the system, however.**

**Improper Employer Charges:** *The Department agrees these were errors.*

### **3. Lack of Payroll Segregation of Duties and Other Issues**

The State's accounting system does not have an established segregation of duties for payroll processing. Therefore, employees with access to process payroll are able to perform all procedures without a secondary individual being required to approve transactions. Accordingly, the Department should have compensating procedures in place, such as a documented review of the final payroll register, as well as changes to pay rates and other payroll information, by an individual without payroll access to ensure that no one individual is able to conceal errors or irregularities.

The Department worked with the Department of Administrative Services (DAS) to process payroll through the Shared Services program. The Department prepared the payroll, and DAS was involved in necessary changes and external reviews of the payroll, including certification that the payroll was ready to be posted to the general ledger. However, the Department did not perform a reconciliation of the payroll register to the general ledger to ensure that payroll processed by DAS was accurate and complete. Furthermore, six Department employees had access to perform all procedures within the system, including one-time overrides of pay rates, hours worked, and type of earnings paid (such as vacation, sick leave, etc.), and there were no documented procedures to identify unapproved changes by those individuals.

The Department used EnterpriseOne, the State's accounting system, to track employee time worked and leave used. Employees submitted their time worked for each pay period to a supervisor who approved the timesheet prior to payment. However, EnterpriseOne did not accurately track who approved the timesheets in the system. Supervisors could set up delegates in the system to approve timesheets and leave requests should the supervisor be unavailable. The system did not record who approved the timesheet. If a delegate approved an employee timesheet, the system would record the assigned supervisor as the approver. When delegates were set up for their supervisor, the delegate was then able to alter and approve his or her own timesheet. We noted that one employee tested was a delegate for her supervisor, allowing the employee to approve her own timesheets.

Furthermore, there was no audit trail for delegates in EnterpriseOne. When a supervisor terminated, there was no record of the delegates in the system. Supervisors were also able to delete delegates without any record of the assignment. The Department did not have any compensating controls in place to document who approved an employee's timesheet.



The Department had \$22,945,597 in personal service expenditures during the fiscal year ended June 30, 2021.

A good internal control plan requires an adequate segregation of duties to ensure no one individual is in a position both to perpetrate and to conceal errors or irregularities. This would require someone without payroll access to perform a documented review of payroll – including a review of timesheets and leave usage – to ensure that it is proper. Such a segregation of duties also requires controls to ensure employees are not able to approve their own timesheets.

Without an adequate segregation of duties, there is an increased risk of overpayments, improper payments, and errors or irregularities occurring and not being detected.

A lack of segregation of duties over payroll was also noted in our fiscal year 2021 attestation report.

We recommend the Department implement policies and procedures to have an individual without payroll access, or a DAS staff person through the Shared Services program, perform a documented review of the payroll register, timesheets, leave usage, and changes to pay rates for accuracy and reasonableness. We also recommend the Department implement procedures to document supervisory review of timesheets. Lastly, we recommend the Department ensure delegates are proper, and no employee is able to approve his or her own timesheet.

*Department Response: The Department has a number of reviews in place to ensure that payroll is processed appropriately. However, the Department recognizes that establishing internal controls related to one-time overrides of pay rates, hours worked, and type of earnings paid (such as vacation, sick leave, etc.), along with documenting procedures to identify unapproved changes, would further ensure that no one individual can conceal errors or irregularities. The Finance team will work with Human Resources to implement a tracking process for delegation and to enforce policy that approval authority can be delegated only to a management level above the approving supervisor. The Finance team has recently developed and implemented a process to validate payroll against the General Ledger.*

#### **4. Untimely Responses to Records Requests**

The Department failed to respond timely to several requests for information. There were several instances of failure to comply with Neb. Rev. Stat. § 84-305 (Cum. Supp. 2020), which requires responses to requests by the APA to be made within the three business days and the information sought to be provided within three weeks after the initial request.

The table below provides examples of the Department's belated responses to the APA's information requests:

<b>Request</b>	<b>Initial Request Date</b>	<b>Response Received Date</b>	<b>Total Days</b>
Memo on UI COVID Controls – Update by NDOL	6/21/2021	7/20/2021	29
UI Benefit Payment Questions #5	8/2/2021	8/25/2021	23
UI Benefit Payment Questions #6	8/6/2021	9/3/2021	28
UI Benefit Payment Questions #7	8/18/2021	9/10/2021	23
Self-Employment Documentation	8/13/2021	9/7/2021	25
Payment to Deceased Claimants	8/20/2021	9/21/2021	32
UI Journal Entries – Cancelled Payments	8/24/2021	9/27/2021	34
Intrastate Quarterly Crossmatch Investigation	9/10/2021	<b>Note 1</b>	N/A

**Note 1:** As of October 4, 2021, the APA had not received a response to this request.

Additionally, there were numerous instances of the Department failing to inform us of its inability to respond to our requests within three business days, as required by State statute.

Delays in responses to the APA's requests for information, such as those detailed above, impede the APA's ability to conduct the audit in a timely manner. These delays waste the time of both the APA and the Department. In order to ensure expedient testing, our requests for information must be fulfilled timely, precisely, and in accordance with State statute. Given that we were trying to ensure accurate testing and audit results, moreover, it was in the Department's best interest to respond properly. Nevertheless, many of the responses took three weeks or more after the APA inquired or submitted a request to the Department for additional information.

Further, on several occasions, the Commissioner of Labor claimed that the APA had been granted full and complete access to NEworks, the Department's unemployment system, in compliance with § 84-305. On more than one occasion, however, the APA had to ask the Department to expand our scope of access within the system – indicating that, contrary to the Commissioner's prior assertions, APA access to NEworks was not unrestricted. For example, the Commissioner stated on August 30, 2021, that the APA was given full access to all information in NEworks; however, on September 16, 2021, the APA had to request that access be granted to run UI reports, and on September 29, 2021, the APA had to request that access be granted to view Lost Wage Assistance (LWA) self-certifications.

Section 84-305(1) states the following:

*The Auditor of Public Accounts shall have access to any and all information and records, confidential or otherwise, of any public entity, in whatever form or mode the records may be, unless the auditor is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the public entity shall provide the auditor with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the auditor access to all information and records or portions thereof that can legally be reviewed.*

Subsection (2) of that same statute adds, as is relevant, the following:

*Upon receipt of a written request by the Auditor of Public Accounts for access to any information or records, the public entity shall provide to the auditor as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (1) of this section or (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the auditor to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of any request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any public entity.*

Finally, Neb. Rev. Stat. § 84-305.01 (Supp. 2021) reads as follows:

*Any person who willfully fails to comply with the provisions of section 84-305 or who otherwise willfully obstructs or hinders the conduct of an audit, examination, or related activity by the Auditor of Public Accounts, or who willfully misleads or attempts to mislead any person charged with the duty of conducting such audit, examination, or related activity shall be guilty of a Class II misdemeanor.*

The Department's failure to respond promptly to information requests not only constitutes a violation of § 84-305 but also interferes with the APA's testing and timely completion of the audit.

We recommend the Department implement procedures to ensure compliance with § 84-305 by responding timely to APA requests for information.

*Department Response: The APA misstates Neb. Rev. Stat. §84-305, which requires that agencies provide "access" to records. Black's law dictionary defines a record as "A documentary account of past events, usu. designed to memorialize those events; information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form." The Department complied within the Black letter law of § 84-305. NEworks access is managed at a permission group level. At the beginning of the audit, the existing*

*Auditor account group established for record access in prior CAFR audits was updated to include newer UI privileges and reports during the 2021 ACFR. The APA staff were given unlimited access to the expanded file. When additional access was requested, it was provided within 24 hours in most cases and within 3 business days in all known cases. Requests for additional explanation of records are outside the scope of Neb. Rev. Stat. §84-305.*

**APA Response: Neb. Rev. Stat. § 84-305 grants the APA access to “to any and all information and records, confidential or otherwise, of any public entity, in whatever form or mode the records may be . . . .” The words “any and all information” were added specifically to ensure that the APA would have comprehensive and immediate access to anything, including explanatory information, needed to carry out a thorough audit. Moreover, as set out clearly in the report comment, the APA was denied timely access to requested records and correlative explanatory information alike.**

\* \* \* \* \*

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 management, the Governor and State Legislature, others within the Department, Federal awarding agencies, pass-through entities, and management of the State of Nebraska and is not suitable for any other purposes. However, this communication is a matter of public record, and its distribution is not limited.



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