



STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
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STATE AUDITOR

March 31, 2022

Financial Audit Management Report

Robin Stewart, Interim Executive Director
Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, MS 39215

Dear Ms. Stewart:

Enclosed for your review are the financial audit findings for the Mississippi Department of Employment Security for the Fiscal Year 2021. In these findings, the Auditor's Office recommends the Mississippi Department of Employment Security:

1. Strengthen Controls over Unemployment Insurance Benefits Paid;
2. Strengthen Controls over the Reconciliation of the State's Financial Accounting System (MAGIC) to the Third-Party Unemployment Software (ReEmploy);
3. Strengthen Controls over the Identification of Unemployment Benefit Overpayments; and
4. Strengthen Controls over the Overpayments of Employer Contributions.

Please review the recommendations and submit a plan to implement them by April 15, 2022. The enclosed findings contain more information about our recommendations.

During future engagements, we may review the findings in this management report to ensure procedures have been initiated to address these findings.

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the Mississippi Department of Employment Security's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Mississippi Department of Employment Security's internal control and compliance. Accordingly, this communication is not suitable for any other purpose. However, this report is a matter of public record and its distribution is not limited.

I hope you find our recommendations enable the Mississippi Department of Employment Security to carry out its mission more efficiently. I appreciate the cooperation and courtesy extended by the officials and employees of the Mississippi Department of Employment Security throughout the audit. If you have any questions or need more information, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie C. Palmertree".

Stephanie C. Palmertree, CPA CGMA
Director, Financial Audit and Compliance Division

FINANCIAL AUDIT MANAGEMENT REPORT

The Office of the State Auditor has completed its audit of selected accounts included on the financial statements of the Mississippi Department of Employment Security (MDES) for the year ended June 30, 2021. These financial statements will be consolidated into the State of Mississippi's *Annual Comprehensive Financial Report*. We conducted our audit 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.

Our procedures and tests cannot and do not provide absolute assurance that all state legal requirements have been met. In accordance with *Section 7-7-211, Miss. Code Ann. (1972)*, the Office of the State Auditor, when deemed necessary, may conduct additional procedures and tests of transactions for this or other fiscal years to ensure compliance with legal requirements.

Internal Control over Financial Reporting

In planning and performing our audit of selected accounts included on the financial statements of Mississippi Department of Employment Security as of and for the year ended 2021, in accordance with auditing standards generally accepted in the United States of America, we considered the Mississippi Department of Employment Security's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on these accounts, but not for the purpose of expressing an opinion on the effectiveness of internal control. Accordingly, we do not express an opinion on the effectiveness of the Mississippi Department of Employment Security's internal control.

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. 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.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, we identified certain deficiencies in internal controls, identified in this letter as items **2021-008; 2021-016; 2021-017; 2021-018** that we consider to be material weaknesses.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether selected accounts included on the financial statements of the Mississippi Department of Employment Security are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Findings and Recommendations

MATERIAL WEAKNESSES

2021-008 Strengthen Controls over the Unemployment Insurance Benefits Paid.

Repeat Finding Yes; 2020-007.

Criteria *The Internal Control – Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) specifies that a satisfactory control environment is only effective when control activities, such as authorization, approval, verification, and adherence to policy and procedures are implemented and followed. These activities are essential to minimizing the risk of fictitious claims and misstated financial position.

The *Mississippi State Code Annotated (1972) §71-5-511* states that one is eligible to receive benefits that “has been unemployed for a waiting period of one (1) week”; “participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services”; “is able to work, available for work and actively seeking work”.

The *Mississippi State Code Annotated §71-5-505(1)* states “For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars (\$40.00).”

The *Mississippi State Code Annotated §71-5-513* describes reason for separation that disqualifies the individual as “(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection. (b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case. (c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.”

Condition The Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted by the federal government in response to the COVID-19 pandemic required state unemployment agencies to increase the amount of benefits paid to claimants. Additionally, claimants were able to collect unemployment payments for an

expanded time frame, and claimants who would otherwise not qualify for benefits (such as independent contractors and self-employment persons) were able to qualify for benefits. In order to process the multitude of claims in an expeditious manner, Mississippi Department of Employment Security (MDES) opted to override the existing controls designed in the internal control system. Proven and tested controls over Unemployment Insurance claims were altered or disregarded for the periods of March 2020 through December 2020. Controls altered for the claims submitted in the noted timeframes were:

- Waived; One week waiting period; March 8, 2020 – December 26, 2020;
- Waived; Work Search Requirements; March 8, 2020 – August 8, 2020;
- Waived; Able to work, Available to work, and Actively Seeking Work (A&A); March 8, 2020 – September 26, 2020;
- Altered; Weekly Earning Allowance increased from \$40 to \$200; May 3, 2020 – September 26, 2020; and
- Altered; Reason for separation from *ALL* employers in base period changed to separation from *MOST RECENT* employer; March 8, 2020 - September 26, 2020.

Due to these controls being ignored or overridden, MDES was unable to properly monitor the immense influx of claims and to properly vet those claims for fraud. During fiscal year 2021, total unemployment benefit claims increased from \$2,146,060,996 (fiscal year 2020) to \$2,475,899,125 (fiscal year 2021), a 15% increase. Overpayments of benefits was noted to increase from \$117,948,403 (fiscal year 2020) to \$473,787,010 (fiscal year 2021), a 301% increase. These payments include:

- Payments made to individuals who never lost or had a reduction in wages;
- Fraudulent payments due to stolen identity;
- Payments made to incarcerated individuals; and
- Payments made due to international unemployment fraud.

In particular, MDES inadvertently allowed incarcerated individuals to receive payment when the control that required claimants to verify that they were “actively seeking work” was waived. Incarcerated individuals were then able to apply for benefits and receive approval without any additional verification from MDES.

MDES personnel were initially overwhelmed by the influx of claims and were unable to accurately report the amount of increased loss the State was subject to, and were unable to adequately monitor the fraud that was reported by individuals when they received notification of benefits received.

Cause

MDES did not have proper internal controls in place due to overriding or waiving existing controls. This caused MDES the inability to verify that unemployment

claims were paid to proper claimants.

Effect Failure to properly enable controls and follow policies and procedures increases the risk of fraud and misappropriation, which can result in material misstatements of financial statements. The waiver of strict controls on Unemployment Insurance benefits resulted in an increase of known overpayments of 301% from fiscal year 2020 to fiscal year 2021.

Recommendation We recommend the Mississippi Department of Employment Security strengthen controls over policies and procedures to ensure internal controls are never disabled or circumvented. Additionally, we recommend further analysis of the overpayments of unemployment claims is performed in order to maximize the potential for recovery of fraudulent payments.

2021-016 Strengthen Controls over the Reconciliation of the State's Financial Accounting System (MAGIC) to the Third-Party Unemployment Software (ReEmploy).

Repeat Finding Yes; 2020-006.

Criteria The *Internal Control – Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specifies that a satisfactory control environment is only effective when control activities exist. This includes but is not limited to the review process of transactions, proper support of transactions, proper documentation and support of methodologies used in accounting practices, proper support of information and communication within the agency, and a commitment to competence by management.

The Mississippi Agency Accounting Policies and Procedures (MAAPP) manual Section 27.30.05 states that supporting schedules provide the details, which support the adjusted MAGIC balances on the GAAP Trial Balance.

The Mississippi Agency Accounting Policies and Procedures (MAAPP) manual Section 2.10.20 states that Proprietary Funds apply accrual accounting principles appropriate for business enterprises.

Condition The Mississippi Department of Employment Services (MDES) records statutorily required GAAP entries in the Mississippi Accountability System for Government Information and Collaboration (MAGIC) software during year-end by utilizing summarized reports from the Unemployment Software – ReEmploy. The majority of the summarized reports used are historical reports that are incapable of being reproduced due to ReEmploy reporting values as of close of business day that the queries are ran. MDES currently does not save transactional reports that corroborate with summarized reports used and required significant time to produce adequate support of summarized values used in GAAP entries recorded. MDES required a period of multiple weeks to four months to provide support to audit requests for GAAP entries recorded.

During review of the supporting documentation for GAAP entries recorded by MDES, Auditors noted several material misstatements due to incorrect values

being used, due to portions of entries being unrecorded, and due to improper revenue recognition.

As a result of these incorrect values and improper revenue recognition, the following misstatements were noted:

- Accounts receivable was understated by \$58,935,428;
- Allowance for Doubtful Accounts was understated by \$30,646,422;
- Due to Federal Government was understated by \$127,078,028;
- Unearned Revenue was understated by \$13,259,379; and
- Subsidies was understated by \$98,789,022.

Additionally, MDES does not currently have a transactional accounting system for Enterprise Funds. MDES uses internal trial balances created from daily and monthly banking activity worksheets. These worksheets only show summarized transactions and creates a poor environment for auditors to trace individually selected transactions to amounts recorded by MDES. Due to MDES not utilizing MAGIC as the accounting system for Enterprise Funds, which requires supporting documentation for entries recorded, auditors had to reconcile transactional support provided by MDES and determine the reasoning behind differences noted between transactional support and summarized values. Due to MDES only using banking activity and ReEmploy summarized reports for financial reporting of Enterprise Funds, MDES does not have an adequate control environment over individual transactional review.

Cause

The Agency did not properly reconcile amounts amalgamated in the reports from ReEmploy to the financial information. MDES only performed financial statement reconciliations of unemployment data annually at the end of the fiscal year. The information was also not entered into the statewide accounting system MAGIC but once at year-end. These untimely reconciliations and agreement of financial statements to ReEmploy caused excessive delays in the preparation of financial statements of MDES.

Additionally, MDES operates on cash basis accounting for transactions in Enterprise Funds and relies on year-end GAAP entries to present on a modified-accrual basis. Enterprise Funds are required to be reported on an accrual basis throughout the entire year.

Effect

Failure to properly record accruals and failure to perform timely and accurate reconciliations of data greatly increase the risk of fraud and misappropriation of assets and liabilities, which can result in material misstatements of financial statements. Several accounts were understated for fiscal year 2021 and required material audit adjustments to correctly report the financial status of MDES.

Recommendation

We recommend the Mississippi Department of Employment Security strengthen controls to ensure accrual entries are correct and to record entries in the statewide accounting system more frequently than once annually. Additionally, personnel should complete timely and accurate reconciliations to ensure information is

reported correctly.

2021-017	<u>Strengthen Controls over the Identification of Unemployment Benefit Overpayments.</u>
Repeat Finding	No.
Criteria	<p>Per <i>GASB Statement 62 Codification of Accounting and Financial Reporting Guidance</i>, paragraph 83 states the effect of a change in accounting estimate should be accounted for in (a) the period of change if the change affects that period only or (b) the period of change and future periods if the change affects both.</p> <p>The <i>Mississippi State Code Annotated (1972) §71-5-517</i> states any benefits erroneously paid to claimant may be set up as an overpayment to the claimant; and must be liquidated before any future benefits can be paid to the claimant.</p> <p><i>MAAPP Manual Section 27.30.05</i> states that supporting schedules provide the details, which support the adjusted MAGIC balances on the GAAP Trial Balance.</p>
Condition	<p>The Mississippi Department of Employment Security (MDES) adopted a change in the calculation of the unemployment benefit overpayment allowance for doubtful accounts estimate for overpayments recorded in ReEmploy (the unemployment software utilized by MDES) as of June 30, 2021. Auditor notes that using the previous method to calculate the allowance for doubtful accounts would result in an uncollectable percentage of 68% whereas the new method lowered the uncollectable percentage to 52%. MDES reported the uncollectable percentage as 88.75% in the prior year. During the review of the new accounting estimate calculation, auditor noted MDES did not properly document the purpose nor reason for the change in the method. Despite the decrease in the percentage calculated, auditor noted the balance reported for allowance for doubtful accounts of \$246,798,051 increased 150% from the prior year reported balance of \$98,674,383.</p> <p>Secondly, MDES used incorrect values to record additional overpayments recorded in ReEmploy as of June 30, 2021. MDES incorrectly reconciled amounts pulled using two separate ReEmploy queries by using Pandemic Unemployment Assistance (PUA) program disbursements for documented Pandemic Emergency Unemployment Compensation (PEUC) program disbursements. Auditor noted the use of PUA disbursements improperly increased MDES Accounts Receivable account balances by \$1,080,926.16.</p> <p>Additionally, during review of a sample of 320 unemployment benefit payments recorded by MDES during fiscal year 2021, the auditor noted 12 duplicate payments in the amount of \$3,007 that were not properly recorded by MDES as an overpayment for future collections. During fiscal year 2021, MDES disbursed a total of \$2,475,899,125 in unemployment benefit payments. Due to the duplicate payments not being recorded by MDES, auditor determined a projected material misstatement of \$60,016,354 in potential overpayments was not recorded by MDES.</p>
Cause	MDES did not evaluate the change of methodology used in the accounting estimate concerning the allowance of doubtful accounts. Also, MDES currently does not

perform a review on duplicate payments for payments made with the same close week ending denoted within ReEmploy – unemployment benefit payment system. MDES solely relies on controls built within ReEmploy to prevent duplicate payments. Additionally, MDES did not use appropriate federal program disbursement totals for year-end GAAP entries.

Effect Departure from historical methodology in calculation of accounting estimates without proper documentation and disclosures may result in material effects to account balances not being appropriately disclosed to report end users. Several accounts were understated for fiscal year 2021 and required material audit adjustments to correctly report the financial status of MDES.

Recommendation We recommend the Mississippi Department of Employment Security follow guidance from the Governmental Accounting Standards Board (GASB) when making significant changes to accounting estimates used in final financial reported account balances.

Additionally, we recommend the Mississippi Department of Employment Security strengthen controls over policies and procedures concerning unemployment benefit payments to ensure the approved maximum benefit is paid to the eligible claimants.

We further recommend the Mississippi Department of Employment Security strengthen controls to ensure accrual entries are correct and to record entries in the statewide accounting system more frequently than once annually. Additionally, personnel should complete timely and accurate reconciliations to ensure information is reported correctly.

2021-018 Strengthen Controls over the Overpayments of Employer Contributions.

Repeat Finding No.

Criteria The *Mississippi State Code Annotated (1972)* §71-5-383 states the commission is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which the services of individuals in employment, with respect to which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the commission's own initiative.

Additionally, MDES *Administrative Code 600.03* states overpayment of contributions by an employer for one period may be credited on subsequent contributions due.

Condition During review of employer assessments collected by the Mississippi Department of Employment Security (MDES) during fiscal year 2021, the auditor noted MDES improperly recorded overpayments of employer assessments as revenue. Per discussion with agency personnel, employers were issued assessment letters that improperly denoted the employer as delinquent towards required employer tax

payments. Due to this designation, employers were required to pay the highest assessment rate plus penalties, which created a credit due to the employer once the proper tax rate was applied to the employer's assessment. MDES recorded \$13,259,380 in employer overpayments in fiscal year 2021 compared to \$605,644 in fiscal year 2020 (an increase of 2,089%). MDES did not reach out to employers who submitted payment towards the improperly rated assessments at the time of discovery of the error. Communication was not made to these employers until asked by auditor if MDES had communicated to employers their current credit balance. MDES's current policy requires employers to request in writing a refund from MDES within three years of the established credit balance to receive assessments that were paid erroneously. Once the three year window has passed, MDES removes the remaining employer credit balance from employers' accounts without final notification that the credit will soon expire. As of June 30, 2021, MDES has removed \$5,772,837.80 of expired employer credits.

Additionally, MDES did not effectively communicate between divisions the policies and procedures of accounting for employer overpayments. The Tax Division of MDES communicated that MDES must wait a period of three years to claim any employer overpayment balance as revenue. However, the Business Management Division of MDES improperly recognizes revenue immediately for any and all employer overpayments as they are received. The improper recognition of employer overpayments as revenue during fiscal year 2021 created a material misstatement by understating Unearned Revenue by \$13,259,380.

Cause	MDES did not have proper controls in place to communicate with employers that improper rates were used in calculation of the employer's required assessment. Additionally, MDES does not effectively communicate policies and procedures within divisions concerning the recognition of revenue of employer overpayments.
Effect	Failure to notify employers of improperly excessive assessment rates used in employer assessment calculations can result in employers not requesting a refund within the statutory requirement of three years from the established overpayment. Additionally improperly recording overpayments as revenue before the statutory requirement of three years may result in material misstatements in reported revenue balances.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls over policies and procedures to ensure employer overpayments are properly recorded. Additionally we recommend communicating with employers when overpayments are established due to improper assessment rates being used in the assessment calculation.

End of Report



MISSISSIPPI DEPARTMENT *of* EMPLOYMENT SECURITY

OFFICE OF THE GOVERNOR
ROBIN STEWART
INTERIM EXECUTIVE DIRECTOR

FINANCIAL AUDIT MANAGEMENT REPORT FINDINGS

April 13, 2022

Shad White, State Auditor
Office of the State Auditor
State of Mississippi
P.O. Box 956
Jackson, MS 39205-0956

Dear Mr. White,

The Mississippi Department of Employment Security ("MDES") has reviewed the Office of the State Auditor's Financial Audit Management Report findings for fiscal year 2021 and hereby submits the following responses:

2021-008 Strengthen Controls over the Unemployment Insurance Benefits Paid

MDES response:

MDES understands that the State Auditor has highlighted the following specific actions by MDES as allegedly improper:

- 1) The waiver of the statutory waiting week period;
- 2) The waiver of the statutory work search requirements;
- 3) The alleged waiver of the federal and state "able, and available for work" requirement; and regulation for unemployed claimants;
- 4) The temporary modification of the weekly earnings allowance for part-time unemployed claimants; and,
- 5) The modification of MDES procedures to limit temporarily the evaluation of job separations to the most recent base period employer rather than all base period employers.

Through these statements, the State Auditor implies that MDES failed to follow federal law and guidelines essentially ignoring and overriding certain safeguards in the UI system during the pandemic. It is MDES's position, however, that this implication is misguided because it fails to recognize both the newly enacted federal law as well as the actual operations of MDES during the pandemic.

On March 18, 2020, the President signed the Families First Coronavirus Response Act (Pub. L. 116-127). In this legislation, Congress provided emergency supplemental appropriations in response to the economic challenges of the Coronavirus (COVID-19) by specifically creating the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA). Section 4102(b) of EUISAA states

Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID-19, such modifications shall be disregarded for the purposes of applying section 303 of the [SSA] and section 3304 of [FUTA] to such State law. (Emphasis added).

Further provisions of EUISAA outlined the mandatory changes states were obligated to implement in order to receive any emergency administrative grants and allotments to assist with funding the massive increase in pandemic UI claims caused by government ordered shutdowns of nearly every commercial enterprise in the entire United States, including those in Mississippi. EUISAA expressly authorized states to modify, but only temporarily, certain aspects of their unemployment compensation (UC) laws to address the pandemic emergency. Specifically, in order to obtain the federal assistance offered under EUISAA and to safeguard this state's Unemployment Compensation Trust Fund (UC Trust Fund), Mississippi had to agree to suspend the waiting week under state statute through December 30, 2020. (Miss. Code §71-5-511(d)). Subsequent federal laws addressing pandemic unemployment extended the termination date of this waiver with the final extension being March 14, 2021. American Rescue Plan Act of 2021 (ARPA).

To qualify for the federal pandemic allotments necessary to secure funding for the UC Trust Fund to support Mississippi citizens unemployed by the pandemic, EUISAA also required Mississippi to modify or suspend the work search requirement (*Miss. Code Ann.* §71-5-511(d)).¹ Mississippi elected to suspend the work search requirement because most commercial businesses in this state were subject to closure by a series of Executive Orders from March 8, 2020 (the first week for UI purposes) until

¹ UIPL Number 13-20 at p. 5 section (B)(ii) states the following with respect to qualifying for Allotment II of Emergency Administrative Grants: "The state [must] demonstrate steps it has taken or will take to ease eligibility requirements and access to UC, including modifying or suspending work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers." (Emphasis added).

August 8, 2020.² Executive Orders from the Governor modified state law to authorize MDES to suspend the work search requirement. The initial order modifying state law, Executive Order number 1481 at paragraph 3 set the suspension period for the work search requirement as March 1 – June 27, 2020. Executive Order number 1502 both extended and modified the period to March 8 – July 25, 2020, when the Governor determined the pandemic health crisis required most non-essential businesses to remain closed. (Exec. Order No. 1502 (2020) at paragraph 3). Finally, the suspension of the work search requirement ended a mere five months later with Executive Order number 1510, which announced the final period as March 8 – August 2020. (Exec. Order No. 1510 (2020) at paragraph 3). The Department of Labor (“DOL”) provided a more detailed explanation of the proper suspension procedures for the work search requirements in its Unemployment Insurance Program Letter (“UIPL”) number 13-20 (March 22, 2020) and 13-20, Change 1, Attachment 1 (May 4, 2020).

Moreover, in March 2020, as per the mandates within the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES) (P.L. 116-136), Mississippi executed an agreement with DOL committing it to comply with the guidance promulgated by DOL with respect to the operation of the recently enacted temporary federal pandemic unemployment assistance programs. DOL reserved the right to terminate the agreement with the state of Mississippi along with all federal support for this state’s UC Trust Fund in the event that Mississippi failed to comply with DOL guidance regarding operation of these programs, including, but not limited to, the suspension of the waiting week, the waiver or modification of the work search requirement, and the application of a flexible interpretation of “able and available” for employment in the context of the pandemic.

MDES did not waive the “Able & Available” Requirements.

With respect to the requirements that an eligible claimant be “able to work, available for work and actively seeking work” (able and available requirement) under *Miss. Code Ann.* §71-5-511(c) and Regulation 305.3 the alleged “material weakness” cited by the Office of the State Auditor (“OSA”) misses some key facts. First, DOL clarified for state workforce agencies (SWA) in UIPL 10-20 (March 19, 2020), that SWAs have *considerable flexibility* to determine “what it means for [an] individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19.” UIPL 10-20, at p. 3. Using this DOL guidance, the Governor issued Executive Order number 1481 that again *modified* state law to authorize MDES to “reasonably interpret able to work, available for work, and actively seeking work” in the context of the pandemic from March 8, 2020 through June 27, 2020. (Exec. Order no. 1481 at para. 5. (May 11, 2020)). MDES did “reasonably interpret” the “able and available requirement.” It did not waive it. Subsequent Executive Orders, the last being number 1510, extended the period for the modification of this aspect of state law granting MDES authority to the

² The Governor’s orders closing activity in this state started with Executive Order number 1458 on March 16, 2020, which placed state workers on administrative leave and other orders that gradually opened the businesses in this state ending with number 1522 that opened all businesses and facilities with reasonable precautions effective September 14, 2020. As per the guidance from the Department of Labor, this state designated March 8, 2020, as the starting date for pandemic-related unemployment claims if applicable to the claimant under Mississippi Unemployment Security Law and regulations.

flexibility to interpret the meaning of the “able and available requirement” under the circumstances of the pandemic through September 26, 2020. (Exec. Order no. 1510 at para. 4 (July 24, 2020)). As explained in footnote 2 *supra*, this state did not fully authorize all businesses and facilities to re-open until September 14, 2020. (Exec. Order No. 1522 (September 13, 2020)).

The increase in the Weekly Earnings Allowance encouraged work not fraud.

It is unclear why increasing this allowance from \$40 to \$200 per week constitutes a fraud risk given that the individual claimant must actually earn this amount by participating in gainful employment. First, the period of the increase in the Weekly Earnings Allowance lasted for only four months - from May 3, to September 26, 2020. (Executive Order 1510 at paragraph 5). Second, individual claimants must actually work for an employer earning wages to qualify for this Allowance. This is a critical observation, because, if one recalls, there was a severe shortage of workers actually willing to report to work in the early months of the pandemic. MDES exercised the “flexibility” allowed under the federal law and by DOL to address this worker shortage.

The evaluation of separation from the most recent base period employer was a reasonable, temporary flexibility employed by MDES in light of the challenges presented by the pandemic.

MDES faced the largest number of unemployed claimants in the history of this state. Unlike Hurricane Katrina, the previous catastrophe that seriously tested the resources of this agency, the COVID-19 pandemic touched all 82 counties in Mississippi in March through September of 2020, and even through 2021. This left no offices in the state from which to draw additional personnel or other resources as each office needed to address the historic volume of UI claims locally. Despite being one of the most technologically advanced SWAs in the nation, all systems of MDES faced an overload in the initial weeks of the pandemic from the UI claims system to the phone system. In addition, the nation, including Mississippi, was shutdown with nearly everyone sent home as “non-essential.” In this context, it was impossible for MDES to reach out to all base period employers for each claimant. MDES initially tried adhering to its standard policy. However, it found that many employers were not operating and therefore did not respond to phone calls or mailed documents.

For these reasons, MDES strongly disagrees with this finding. MDES adapted to the circumstances as permitted by the flexibilities afforded to it under federal law and by the DOL. By the terms of Executive Order number 1510, MDES ceased exercising this flexibility on September 26, 2020. The agency resumed its pre-COVID-19 process of verifying the job separation information from all base period employers for individuals filing any type of unemployment claims. Where appropriate, it established overpayments and started collection efforts.

Because of the pandemic, and the suspension of eligibility measures mandated by federal and/or state law, MDES suspended the incarceration Cross-match process for several months. Reactivation of the interfaces occurred within a few months allowing the eligibility verifications to resume. In addition, MDES re-verified all eligibility determinations with the incarceration interface. No backlog exists for

incarceration re-verifications. Again, where appropriate, it established overpayments and started collection efforts.

To be clear, MDES received authorization under federal and state law to waive or modify the laws, regulations, and procedures cited by OSA. MDES followed the federally mandated procedures to administer the federal pandemic unemployment programs and to maintain the fiscal security of this state's UC Trust Fund. While MDES acknowledges that it has learned much about how to improve its performance during a statewide mass unemployment event, it can only administer programs according to the rules. Therefore, it is important to recognize the actual federal laws that MDES, and all other states, were required to administer during the pandemic, as well as the circumstances under which it had to do so.

2021-016 Strengthen Controls over the Reconciliation of the State's Financial Accounting System (MAGIC) to the Third-Party Unemployment Software (ReEmploy).

MDES Response:

MDES has strengthened its controls over the Unemployment Insurance (UI) financial reporting process by implementing a monthly reconciliation between the detailed UI payment records from ReEmployMS to the summary payment data reported in our accounting reports. MDES created a pre-defined query in "COGNOS," its third-party business analytics software. The pre-defined query pulls a detailed list of all UI benefit payments, by entitlement type, made during the month, and allows MDES to analyze the records for any errors that have occurred. This analysis and reconciliation tool enables MDES to promptly respond to correct system errors and, in the event of a payment error, allows for the timely setup of an improper payment in the system. Furthermore, the transactional level payment reports will provide adequate audit support for the expenses recorded in the financial statements and should significantly reduce the time to provide support for audit requests.

Additionally, MDES is in the process of developing a monthly report that will identify unearned revenue received from UI employer contributions. This report will allow for the timely recognition of unearned revenue.

Finding 2021-17 Strengthen Controls over the Identification of Unemployment Benefit Overpayments.

MDES response:

Annually, MDES reevaluates our allowance for doubtful accounts estimate based on updated accounts receivable figures from our ReEmployMS system in order to estimate the collectability of current UI overpayment accounts receivable (A/R) balances. MDES recognizes the difference as uncollectible A/R. This is done by using the current year A/R aging schedule and comparing the amounts collected for each year to project the estimated collectability of the remaining debt. MDES then records this as

A/R on the financial statements. MDES management reviews this calculation and performs additional procedures to determine if the amount calculated needs an adjustment. Over the past few years, MDES has used a specific secondary calculation for comparison purposes, and since the two calculations were very close, deemed it proper to average the two calculations together.

In our opinion, MDES did not deviate from the overall process of performing the original A/R analysis, executing additional procedures to determine if the calculation was proper, and making any additional adjustments. Therefore, we did not deem it necessary to make further disclosures about the allowance calculation. However, MDES understands that while OSA agrees with our overall allowance calculation, OSA deems this as a departure from the previous methodology, which requires a disclosure of the effect of the accounting estimate change. Therefore, MDES will strengthen controls over financial reporting by making a more thorough documentation of our A/R allowance calculation each year and making proper disclosures as required.

With respect to the increase in disbursements under the Pandemic Unemployment Assistance (PUA) program, MDES began administering the program conservatively to balance the competing goals of the program of minimizing fraud and the liberal awarding of benefits. MDES established the initial PUA claim during the first 21 days for individuals without wages or without support for the asserted wages as the minimum Weekly Benefit Amount (WBA) of 50% in accordance with the calculation outlined in 20 C.F.R. § 625. For any individual who later presented support for the asserted wages at the time of claim filing, MDES issued a re-determination and increased the WBA accordingly. For any other individuals who failed to provide the requisite support for the claimed wages, MDES did not establish overpayments because the provisions of the program provided the same minimum weekly benefit amount (WBA) for each eligible claimant who failed to provide the appropriate proof of earnings. MDES elected, using that process, to establish the claim at the minimum WBA to avoid excessive improper payments and limit fraud.

However, in December of 2020, DOL admonished MDES for employing this process because it did not match the program's guidelines. Moving forward in 2021, DOL required MDES to adjust its administration of the PUA program to align its procedures with the DOL guidance allowing self-certification of wages. MDES adhered to these guidelines as well as the requirements of 20 C.F.R. 625.6 for processing any new PUA claims starting in 2021. These procedures obligated MDES to accept the claimant reported self-certified wages at the time of the initial claim for use in the calculation of the WBA for the first 21 days resulting in an increase in benefit overpayments.

2021-018 Strengthen Controls over the Overpayments of Employer Contributions.

MDES response:

MDES regularly has employer overpayments due to a variety of reasons. These include miscalculation of the tax due as well as general overpayment of tax due by employers or their representatives. These employer payments constitute the bulk of all employer contribution overpayments. However, during

2021, the MDES computer program (program) that calculates and processes employer tax contributions had a system error that resulted in overpayments for a specific set of employers. This group of affected employers timely filed wage reports. These employers are also distinguished by the fact that additional wage information was received requiring MDES to adjust each employer's wage reports after September 30, 2020. On the wage adjustment event, the program error used the post-September 30 date generated by the entry of the adjustment for each employer to determine the timely filing date. As such, these reports were set as untimely filed wage reports. The system then assessed the maximum tax rate to this very small group of employers with this specific set of characteristics. MDES discovered this programming error on its own and manually corrected it with the 2021 rates. This absolved this small group of employers from paying either the maximum rates or any penalties. However, in the interim, some employers remitted contributions at the higher rate generating overpayments after the correction. This computer programming error only affected a handful of employers.

With respect to refunds, the plain meaning of the words of the section addressing refunds are clear and unambiguous. This section states:

The Department is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the Department's own initiative.

Miss. Code Ann. §71-5-383. The language of this statute is clear, obviating the need for a written policy. MDES is only authorized by statute to provide refunds of contributions, interest, and penalties that either it determines on its own were paid erroneously or if an employer requests a refund in writing within three (3) calendar years from the date of the contribution. After that time, MDES lacks authority to issue refunds because those amounts change character from credits to the employer to contributions once the deadline passes. That interpretation comprises the plain meaning of the statute. MDES Regulation 600.03 explains that the Department has the authority to apply credits to future balances. *Miss. Code Ann. §71-5-383.* The statute limits this regulatory to the three-year period of the credit. *Miss. Code Ann. §71-5-383*

Note specifically that the statute limits the authority of MDES to issue refunds either to employers that submit a written request or on its own initiative but only within the three (3) calendar year period. *Id.* In addition, in all cases, the statute dictates to the agency the process for transferring the monies from the employer to the Trust Fund after the three (3) year period. *Miss. Code Ann. §71-5-453.*

Please note also that MDES provides three (3) forms of notice to employers of any available credit balances. An employer may review its current account with MDES seven days a week, 24-hours a day, online. In addition, MDES is now mailing a notice to employers with available credit balances in June

and December of each year. MDES is in the process of implementing a notice to employers that will provide them information concerning any credit scheduled to expire annually on December 31. MDES plans to mail this letter to employers each October. The annual notice by mail will create at least seven (7) opportunities for notice of an employer's credit balance before its expiration.

In December of 2021, the MDES Chief of Tax personally corresponded via mail with all employers with credits set to expire at the end that year to provide an additional notice of refund eligibility. MDES also used an email blast, posted a notification of the expiration of credits to its news and information section on all employer accounts and posted instructions to either request a refund or assistance. Due to the late issuance of this letter, MDES allowed refunds to any employer responding to MDES prior to the end of that calendar year.

Internally, as noted in the response to finding 2021-016, MDES accounting staff is developing a monthly report that will identify employer payments resulting in a credit balance and ensure proper revenue recognition on the financial statements.

Our agency appreciates the opportunity to respond to the MDES financial audit findings for the fiscal Year 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "RL STA", is written over a horizontal line.

Robin Stewart
Interim Executive Director



STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
SHAD WHITE
AUDITOR

October 17, 2022

Single Audit Management Report

Robin Stewart, Interim Executive Director
Mississippi Department of Employment Security
1235 Echelon Parkway
Jackson, MS 39215

Dear Ms. Stewart:

Enclosed for your review is the single audit findings for the Mississippi Department of Employment Security for Fiscal Year 2021. In these findings, the Auditor's Office recommends the Mississippi Department of Employment Security:

Single Audit Findings

1. Strengthen Controls to Ensure Compliance with Allowable Costs and Activities Allowed Requirements for the Coronavirus Relief Funds;
2. Strengthen Controls to Ensure Compliance with Eligibility Requirements for Unemployment Insurance;
3. Strengthen Controls to Ensure Compliance with Matching Requirements for Unemployment Insurance;
4. Strengthen Controls to Ensure Compliance with Subrecipient Monitoring Requirements.
5. Strengthen Controls to Ensure Compliance with Period of Performance Requirements for Unemployment Insurance;
6. Strengthen Controls to Ensure Compliance with Special Tests – Benefit Payments Requirements for Unemployment Insurance;
7. Strengthen Controls to Ensure Compliance with Special Tests – Program Integrity-Overpayments Requirements for Unemployment Insurance;
8. Strengthen Controls to Ensure Compliance with Reporting Requirements for Unemployment Insurance;
9. Strengthen Controls to Ensure Compliance with Special Test – Employer Experience Rating Requirements for Unemployment Insurance;
10. Strengthen Controls to Ensure Compliance with Reporting Requirements for Lost Wages Assistance; and,
11. Strengthen Controls to Ensure Proper Review over the Schedule of Expenditures of Federal Awards.

Please review the recommendations and submit a plan to implement them by October 24, 2022. The enclosed findings contain more information about our recommendations.

During future engagements, we may review the findings in this management report to ensure procedures have been initiated to address these findings.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance on each major federal program and the results of that testing based on the requirements of *Office of Management and Budget's Uniform Guidance*. Accordingly, this report is not suitable for any other purpose. However, this report is a matter of public record and its distribution is not limited.

I hope you find our recommendations enable the Mississippi Department of Employment Security to carry out its mission more efficiently. I appreciate the cooperation and courtesy extended by the officials and employees of the Mississippi Department of Employment Security. If you have any questions or need more information, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie C. Palmertree". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Stephanie C. Palmertree, CPA, CGMA
Deputy State Auditor
Enclosures

SINGLE AUDIT FINDINGS

In conjunction with our audit of federal assistance received by the State of Mississippi, the Office of the State Auditor has completed its audit of the State's major federal programs administered by the Mississippi Department of Employment Security for the year ended June 30, 2021.

Our procedures and tests cannot and do not provide absolute assurance that all federal legal requirements have been met. In accordance with *Section 7-7-211, Mississippi Code Annotated (1972)*, the Office of the State Auditor, when deemed necessary, may conduct additional procedures and tests of transactions for this or other fiscal years to ensure compliance with legal requirements.

Report on Compliance for Each Major Federal Program

We have audited the Mississippi Department of Employment Security's compliance with the types of compliance requirements described in the *Office of Management and Budget (OMB) Uniform Guidance Compliance Supplement* that could have a direct and material effect on the federal programs selected for audit that are administered by the Mississippi Department of Employment Security for the year ended June 30, 2021.

Management's Responsibility

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of the State of Mississippi's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)*. Those standards and *Uniform Guidance* require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Mississippi Department of Employment Security's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. However, our audit does not provide a legal determination of the Mississippi Department of Employment Security's compliance.

Results of Compliance Audit Procedures

The results of our auditing procedures disclosed instances of noncompliance with those requirements, which are required to be reported in accordance with *Uniform Guidance* and which are identified in this letter as items **2021-015**, **2021-022**, **2021-023**, **2021-024**, **2021-025**, **2021-026**, **2021-027**, **2021-028**, **2021-029**, **2021-043**, and **2021-045**.

Internal Control over Compliance

Management of the Mississippi Department of Employment Security is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Mississippi Department of Employment Security's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal controls over compliance in accordance with *Uniform Guidance*, but not for the purpose of expressing an opinion on the effectiveness of internal

control over compliance. Accordingly, we do not express an opinion on the effectiveness of Mississippi Department of Employment Security's internal control over compliance.

A deficiency in internal control over compliance 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 noncompliance 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 noncompliance with a type of compliance requirement will not be prevented, or detected and corrected on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section 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 have not been identified. We did identify certain deficiencies in internal controls, described in the accompanying schedule of findings and questioned costs as items 2021-015, 2021-022, 2021-023, 2021-024, 2021-025, 2021-026, 2021-027, 2021-028, 2021-029, 2021-043, and 2021-045 that we consider to be material weaknesses.

Findings and Recommendations

ALLOWABLE COSTS

Material Weakness

Material Noncompliance

2021- 043 Strengthen Controls to Ensure Compliance with Allowable Costs and Activities Allowed Requirements for Coronavirus Relief Funds.

ALN Number 21.019

Federal Award No. N/A

Federal Agency Department of Treasury

Pass-through Entity N/A

Questioned Costs \$2,787,558

Criteria Office of the Inspector General Memorandum OIG-CA-20-021 "Coronavirus Relief Fund Reporting and Record Retention Requirements" states that Recipients of Coronavirus Relief Fund payments shall maintain ... all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)), which provides:

- (d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

1. Are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. Were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2021.

Per the Federal Register / Vol. 86, No. 10, "As with all uses of payments from the Fund, the use of payments to acquire or improve property is limited to that which is necessary due to the COVID-19 public health emergency. In the context of acquisitions of real estate and acquisitions of equipment, this means that the acquisition itself must be necessary. In particular, a government must (i) determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned and (ii) maintain documentation to support this determination."

Condition

During review of Coronavirus Relief Fund payments at the Mississippi Department of Employment Security, the auditor noted the following instances where it could not be determined from the documentation provided that these expenses were necessary due to the public health emergency:

- 11 instances of "student vouchers" to pay for tuition of courses taught at varying Community Colleges. Auditors were unable to determine from the documentation provided that these expenses were considered necessary due to the public health emergency. Vouchers were for a wide-range of programs including welding, construction, general business, heavy equipment student fees, etc. Subgrantees (community colleges) did not provide adequate documentation to address how these classes were related to the public health emergency; nor did they establish any type of program guidelines that would dictate that the fees covered only classes performed during the grant's period of performance. Documentation could not substantiate that these classes were new classes added due to the pandemic, or that the voucher support aided those in need due to the pandemic.

Total actual questioned costs - \$13,263

Total projected questioned costs - \$1,825,345

- 18 instances, totaling \$2,735,144 of equipment purchases for various equipment used for instruction of classes during the period of performance. Two of the 19 instances also fell outside of the period of performance.

Equipment purchases include:

- Professional drones (\$6,299)
- Cutting tables (\$44,518)
- Tractors (\$42,201)
- Welding kits (\$15,309)

- Hydraulic learning systems (\$133,870)
- HVAC trainers (\$104,720)
- PLC modules for trainers (\$130,000)
- Virtual Reality simulator (\$61,800)
- Welding simulators (\$245,500)
- Front End Loader (\$161,231)
- SmartLabs (\$182,414)
- HVAC System for teaching (\$24,950)
- Opthamalic Technology – Edger (\$24,495)
- Twin spindle lathes (\$313,800)
- Heavy equipment simulators (\$172,247)
- Robot intelligent manufacturing system (\$1,071,790)

Auditors were unable to determine from the documentation provided that these expenses were considered necessary due to the public health emergency. Subgrantees (community colleges) did not provide adequate documentation to address how these purchases were directly related to the public health emergency; nor did they establish any type of program guidelines that would dictate that the equipment would be used during the grant's period of performance. Documentation could not substantiate that these equipment purchases were due to new classes added due to the pandemic; nor could the documentation substantiate that these purchases were not accounted for in the most recently approved budget as per the date of enactment of the grant.

While the guidelines of the grant allowed governments to determine what items were necessary for the pandemic, the government is still responsible for demonstrating how items purchased addressed that need, and how the need was directly related to the COVID-19 pandemic. Additionally, governments were responsible for ensuring that any equipment purchased was the most cost effective method of addressing any needs that arose. For example, rather than purchasing new equipment, a government could rent equipment until the COVID-19 necessity passed. Auditors could find no documentation to support how MDES assessed that these equipment purchases were necessary directly due to the pandemic, and if any more cost effective methods of addressing those needs were considered.

State legislation granting MDES these CRF monies did dictate that the purpose of the funds were for "short-term training programs and the equipment and supplies necessary to support such short-term training programs and to increase the capacity of training programs that are already in place so that employees and others who have been displaced due to the Covid-19 public health emergency can be more competitive and trained for the job market that emerges after the Covid-19 public health emergency, for on-the-job training and for certain administrative fees." However, preparing individuals for a "post Covid-19 job market" does not meet the requirements that grant monies be utilized to meet expenditures necessary for the "current Covid-19 emergency". Additionally, MDES is required to ensure that expenditures paid for by grant monies met the federal guidelines before determining if the

expenditures met the requirements of any additional state imposed restrictions on how to spend grant monies.

- One instance, totaling \$37,099, in which equipment purchased was put into service outside of the period of performance (December 31, 2021). Auditors were also unable to determine from the documentation provided that these expenses were considered necessary due to the public health emergency. Subgrantee (community colleges) did not provide adequate documentation to address how this purchase was directly related to the public health emergency; nor did they establish any type of program guidelines that would dictate that the equipment would be used during the grant's period of performance. Documentation could not substantiate that these equipment purchases were due to new classes added due to the pandemic; nor could the documentation substantiate that these purchases were not accounted for in the most recently approved budget as per the date of enactment of the grant.

According to the subgrantee, the equipment was purchased, but no instructor was available to teach the class; therefore, the equipment was not used during the period of performance.

Total actual questioned costs - \$2,774,295

Total projected questioned costs - \$17,999,485

Cause	MDES did not appropriately monitor or review expenditures at the subrecipient level to ensure adherence to allowable costs and activities allowed guidelines.
Effect	Failure to monitor or review expenditures at the subrecipient level could result in MDES purchasing items that are unallowable, and the grantor requesting recoupment of those costs disallowed.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with allowable costs and activities allowed requirements for Coronavirus Relief Funds.
Repeat Finding	No.
Statistically Valid	Yes.

ELIGIBILITY

Material Weakness

Material Noncompliance

2021-015	<u>Strengthen Controls to Ensure Compliance with Eligibility Requirements for Unemployment Insurance.</u>
ALN Number	17.225 – Unemployment Insurance
Federal Award No.	CARES Act, 2020 and 2021

UI-34173-20-55-A-28
UI-34067-20-55-A-28

Federal Agency Department of Labor

Pass-through Entity N/A

Questioned Costs \$62,434,776

Criteria The *Mississippi State Code Annotated (1972) §71-5-511* states that one is eligible to receive benefits that “has been unemployed for a waiting period of one (1) week”; “participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services”; “is able to work, available for work and actively seeking work”.

The *Mississippi State Code Annotated §71-5-505(1)* states “For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars (\$40.00).”

The *Mississippi State Code Annotated §71-5-513* describes reason for separation that disqualifies the individual as “(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection. (b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case. (c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.”

Unemployment Insurance Program Letter (UIPL) Number 13-20, Change 1, Attachment 1, Question 2 states that a state *must demonstrate* steps it has taken or will take to implement three elements, including (i) suspending the waiting week, (ii) modifying or suspending the work search requirements, and (iii) non-charging employers. For each of the three elements, the minimum requirement is to modify, suspend, or waive **for individuals or employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers** (emphasis added by auditor).

Unemployment Insurance Program Letter (UIPL) Number 28-20 states that the Department of Labor (DOL) included program integrity language in all of the major pieces of guidance associated with the state implementation of the CARES Act programs and provisions. *Unemployment Insurance Program Letter 13-20* states that program Integrity requirements for the regular unemployment program and unemployment programs authorized by the CARES Act were to operate in tandem, and CARES Act program requires that states must ensure that only eligible individuals receive benefits. Both UIPL letters *13-20* and *28-20* specify that the states must make efforts to rapidly and proactively prevent, detect, and investigate fraudulent activity; establish and recover fraud overpayments; and pursue criminal and civil prosecution to deter fraud. Specifically, states were strongly encouraged to implement the following measures to minimize fraud in the unemployment system:

- 1) Social Security Administration Cross Match
- 2) Systematic Alien Verification for Entitlement
- 3) Incarceration Cross Matches
- 4) Internet Protocol Address Checks
- 5) Data Analytics to cross reference claims for indicators of fraud.

Unemployment Insurance Program Letter (UIPL) Number 10-20 states that DOL has a longstanding legal interpretation of federal unemployment law that “unemployment” includes a reduction of both work hours and earnings; therefore, an individual who is not working, but has not experienced a reduction in income (including earnings, paid sick leave, and paid family leave), is not eligible to receive unemployment benefits.

Section 4.b. of UIPL No. 14-20, TRA is payable to eligible claimants after exhaustion of Unemployment Insurance (UI) benefits, which include (1) regular UI under state law; (2) Extended Benefits (EB); (3) Pandemic Unemployment Assistance (PUA); (4) Pandemic Emergency Unemployment Compensation (PEUC). Also, Per *Section 3.a.v of UIPL No. 16-20, Change 4*, Continued Assistance Act “adding a requirement for individuals to submit documentation of employment or self-employment”. This requirement applies for all individuals receiving Pandemic Unemployment Assistance payment after December 27, 2020.

States must provide individual notification to claimants about provisions of the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act). This includes changes to program dates and benefit levels for the Pandemic Emergency Unemployment Compensation (PEUC), PUA, and Federal Pandemic Unemployment Compensation (FPUC) programs, as well as the creation of the Mixed Earners Unemployment Compensation (MEUC) program.

Per *Section 4.b.i.D of UIPL No. 16-20, Change 5*, "the state could provide an option for the individual to select 'None of the above.' However, if the individual self-certifies that none of the COVID-19 related reasons apply, the individual will be denied for the week in question because they no longer meet the eligibility requirement for PUA and the state must issue a written, appealable determination.”

Per *Section 4.a of UIPL No. 16-20*, “PUA provides benefits to covered individuals, who are those individuals not eligible for regular unemployment compensation or extended benefits under state or Federal law or PEUC, including those who have exhausted all rights to such benefits.”

Per *Section D.1 of Attachment I to UIPL No. 15-20*, “The state must notify a potentially eligible individual of his or her entitlement to FPUC. Such notification should include both the beginning and ending dates for the FPUC program.”

The Code of Federal Regulations 2 CFR 200.303 requires that the non-Federal entity must: “Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ‘Standards for Internal Control in the Federal Government’ issued by the Comptroller General of the United States or the *a*, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).”

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) specifies that a satisfactory control environment is only effective when control activities, such as authorization, approval, verification, and adherence to policy, procedures, and regulations are implemented and followed. These activities are essential to minimizing the risk of fictitious claims and misstated financial position.

Condition

The Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted by the federal government in response to the COVID-19 pandemic required state unemployment agencies to increase the amount of benefits paid to claimants. Additionally, claimants were able to collect unemployment payments for an expanded time frame, and claimants who would otherwise not qualify for benefits (such as independent contractors and self-employment persons) were able to qualify for benefits. In order to process the multitude of claims in an expeditious manner, the Mississippi Department of Employment Security (MDES) opted to override the existing controls designed in the internal control system. Proven and tested controls over Unemployment Insurance claims were altered or disregarded for the periods of March 2020 through December 2020. MDES did not implement any compensating controls or additional verifications to ensure that the override of controls would not adversely affect claims paid. By overriding and disregarding controls, MDES did not adequately safeguard the federal program against fraud, waste, and abuse. Controls altered for the claims submitted in the noted timeframes were:

- Waived; One week waiting period; March 8, 2020 – December 26, 2020;
- Waived; Work Search Requirements; March 8, 2020 – August 8, 2020;
- Waived; Able to work, Available to work, and Actively Seeking Work (A&A); March 8, 2020 – September 26, 2020;
- Altered; Weekly Earning Allowance increased from \$40 to \$200; May 3, 2020 – September 26, 2020; and
- Altered; Reason for separation from *ALL* employers in base period changed to separation from *MOST RECENT* employer; March 8, 2020 -

September 26, 2020.

Due to these controls being ignored or overridden, MDES was unable to properly monitor the immense influx of claims and to properly vet those claims for fraud. During fiscal year 2021, total unemployment benefit claims increased from \$2,146,060,996 (fiscal year 2020) to \$2,475,899,125 (fiscal year 2021), a 15% increase. Overpayments of benefits was noted to increase from \$117,948,403 (fiscal year 2020) to \$473,787,010 (fiscal year 2021), a 301% increase. These payments include:

- Payments made to individuals who never lost or had a reduction in wages;
- Fraudulent payments due to stolen identity;
- Payments made to incarcerated individuals; and
- Payments made due to international unemployment fraud.

In particular, MDES inadvertently allowed incarcerated individuals to receive payment when the control that required claimants to verify that they were “actively seeking work” was waived. Incarcerated individuals were then able to apply for benefits and receive approval without any additional verification from MDES.

MDES personnel were initially overwhelmed by the influx of claims and were unable to accurately report the amount of increased loss the State was subject too, and were unable to adequately monitor the fraud that was reported by individuals when they received notification of benefits received.

MDES personnel were initially overwhelmed by the influx of claims and were unable to accurately report the amount of increased loss the State was subject too, and were unable to adequately monitor the fraud that was reported by individuals when they received notification of benefits received.

Federal guidance that required the easing of pre-pandemic conditions for receiving unemployment state that the State is required to implement the minimum requirements to modify, suspend, or waive for individuals or employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers; however, MDES chose to waive or suspend requirements for the waiting week, work search requirements, and non-charging employees as additional measures. During testing of UI benefits paid during fiscal year 2021, the auditor tested 60 recipients and noted that individuals applying for unemployment during the pandemic were indeed not subject to work search requirements, or the waiting week for benefits. Additionally, auditor noted the following:

- For DUA Claims the following occurred:
 - Five instances in which work search requirements were waived for Compensable Week Ending (CWE) between March 8, 2020 and August 8, 2020; resulting in questioned costs of \$497.
 - Four instances in which work search result was not submitted along with the weekly certificates for the CWE after August 8, 2020; resulting in questioned costs of \$391.

Total actual questioned costs - \$888

Total projected questioned costs - \$8,427

- For PUA Claims the following occurred:
 - Due to controls being turned off from March 8, 2020 to August 8, 2020, all PUA claims during that period, totaling \$62,432,862, are being questioned.
 - Five instances in which work search results were not submitted along with the weekly certificates for CWE after August 8, 2020; resulting in questioned costs of \$708.

It was also noted that two of these five claims also resulted in duplicate PUA payments for the same week. The costs associated with this are included in the above amount.

- One instance that when the PUA claimant self-certified that “none of the COVID-19 related reasons apply”, the claimant was still paid for the compensable week ending which resulted in questioned costs of \$106 for PUA benefits;
- One instance in which the “Notice for Proof of Employment” was not generated for PUA claimant who received a payment of \$106 after December 27, 2020;
- One instance that a PUA Claimant was not registered with WIN Job Center and benefits were paid resulting in questioned costs of \$106;
- One instance in which a PUA claimant instead should have been receiving PEUC benefits for the CWE; while the claimant should have received the benefits from a different program, it did not increase the costs overall.

Total actual questioned costs - \$62,432,862

Total projected questioned costs - \$86,735,470

- For Trade Readjustment Allowance (TRA) Benefits, there was one claim payment paid before extended benefits were exhausted; this however did not result in questioned costs.
- For PEUC Benefits, there was one instance in which there was no notification to the claimant of program dates/benefit level changes for their PEUC benefits, this did not result in questioned costs.
- Six instances in which FPUC benefit determination notices were not generated by the system and sent to the claimant; while the notification was not sent, the claim payment amounts were not affected, therefore no questioned costs.

Regardless of the federal requirements or Executive Orders issued, MDES is still responsible for ensuring the accuracy of unemployment claims. In order to assure the accuracy of those claims, MDES should have implemented compensating controls to safeguard the unemployment trust fund when other controls were waived or overrode. MDES personnel bore the ultimate responsibility to ensure that unemployment payments were accurately paid out and that overpayments were kept to a minimum.

Cause Agency was overwhelmed by COVID-19 pandemic and policies and procedures for Eligibility determinations were not followed.

MDES did not have proper internal controls in place due to overriding or waiving existing controls. This caused MDES the inability to verify that unemployment claims were paid to proper claimants.

Effect Failure to properly enable controls and follow policies and procedures increases the risk of fraud and misappropriation of liabilities, which can result in material misstatements of financial statements. Failure to maintain supporting documentation for eligibility determination could result in questioned costs and recoupment of costs by the federal granting agency.

Recommendation We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with eligibility requirements for unemployment insurance. Management should continue to review, monitor and enhance eligibility procedures to detect and prevent improper and fraudulent payments.

Repeat Finding Yes, 2020-036.

Statistically Valid Yes.

MATCHING, LEVEL OF EFFORT, EARMARKING

Material Weakness

Material Noncompliance

2021-022 Strengthen Controls to Ensure Compliance with Matching Requirements for Unemployment Insurance.

ALN Number 17.225 – Unemployment Insurance

Federal Award No. UI-34724-20-55-A-28

Federal Agency Department of Labor

Pass-through Entity N/A

Questioned Costs \$935,077

Criteria *The Families First Coronavirus Response Act* (Pub. L. 116-127), in Division D of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), temporarily provides for 100% Federal funding of sharable

extended benefits (EB) payments through December 31, 2020 for states that receive Allotment I and II of the emergency administrative grants, as discussed in *Unemployment Insurance Program Letter (UIPL) No. 13-20*. States are reminded that Section 204(a) (3), Extended Unemployment Compensation Act (EUCA), prohibits Federal sharing for EB attributable to employment with state and local governments or Federally-recognized Indian tribes. This prohibition does not apply to EB attributable to employment with 501(c) (3) nonprofit organizations.

The Internal Control – Integrated Framework, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specify that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate an agency should appropriately update program rules to meet federal program guidelines.

Condition During review of matching contributions and EB in relation to unemployment insurance, it was noted that the Mississippi Department of Employment Security (MDES) treated all EB claims as fully federally funded. Per discussion with MDES personnel, the agency specifically stated that they inadvertently programmed all employer accounts to qualify for federal sharing to extended benefits. This allowed local and state government entities and federally recognized Indian Tribes to qualify for extended benefits, however this was prohibited per federal guidelines.

The auditor reviewed a listing of local and state government entities and federally recognized Indian tribes that received extended benefits and specifically verified that six of these entities did in fact receive extended benefits that should have been prohibited. The auditor verified the total of benefits paid to these excluded entities and it totaled \$935,077.

Cause MDES inadvertently programmed all employer accounts to qualify for federal sharing of Extended Benefits including the local and state government entities and federally recognized Indian Tribes.

Effect Prohibited entities, including state and local governments and federally recognized Indian tribes, were allowed to receive federal funds in relation to extended benefits.

Recommendation We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with matching requirements for unemployment insurance.

Repeat Finding No.

Statistically Valid Yes.

SUBRECIPIENT MONITORING

Material Weakness

Material Noncompliance

2021-045 Strengthen Controls to Ensure Compliance with Subrecipient Monitoring Requirements.

ALN Number 21.029

Federal Award No. N/A

Federal Agency Department of Treasury

Pass-through Entity N/A

Questioned Costs N/A

Criteria *The Code of Federal Regulations 2 CFR 200.332(a)* requires that a pass through entity must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. This required information includes:

- Subrecipient name (which must match the name associated with its unique entity identifier);
- Subrecipient's unique entity identifier;
- Federal Award Identification Number (FAIN);
- Federal Award Date of award to the recipient by the Federal agency;
- Subaward Period of Performance Start and End Date;
- Subaward Budget Period Start and End Date;
- Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
- Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
- Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
- Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
- Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
- Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
- Identification of whether the award is R&D; and
- Indirect cost rate for the Federal award.

Additionally, *The Code of Federal Regulations 2 CFR 200.332(b)* requires that the pass through entity evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring requirements. These "pre-award risk assessments" should be performed prior to grant

performance, and can include considerations such as the grantee's prior experience with federal awards, the results of prior audits, new grantee personnel or systems, and the extent and results of federal awarding agency monitoring.

The Code of Federal Regulations 2 CFR 200.332(d) states that the pass-through entity should monitor the activities of the subrecipient as necessary to ensure that the grantee uses the award for the authorized purposes and in compliance with federal statutes, regulations, and the terms and conditions of the award.

Condition

During review of the subrecipient monitoring requirements at the Mississippi Department of Employment Security, the auditor noted the following:

- MDES did not perform document pre-award risk assessments for the subrecipients of the CRF grant funds. According to MDES personnel, the agency regularly interacts with the subrecipients (Planning and Development Districts (PDDs), the Local Workforce Development Areas (LWDA) and community colleges), and that these same PDD's are utilized for the Workforce Innovation and Opportunity Act (WIOA) grants, and are monitored as part of that grant process. Further, MDES states that state law governs the creation of the LWDA's, and the roles and responsibilities of each. Due to this relationship, MDES states that the entities are low risk, but does not have any documented support of these assessments – including why or how these low-risk assessments were determined.
- MDES did not include all the required grant elements to the PDDs upon the initial grant award notices. The PDDs then awarded the state's community colleges grant awards based on state legislation, but also did not include all the required elements.
 - Of the four PDD subawards, three (or 75%) did not include the federal award identification number, the unique identity identifier, the federal award date, or the assistance listing number.
- MDES did not properly monitor allowable cost spending at the subrecipient level. Due to this failure to properly monitor, auditors noted the following questioned costs:
 - \$13,263 in student voucher payments that are not supported by documentation;
 - \$2,735,144 in equipment purchases that are not supported by documentation;
 - \$37,099 in equipment purchases for equipment that were not put into service during the period of performance.

More detail about these questioned costs, including the projections, are described in finding 2021-043 of this report.

Cause

The Mississippi Department of Employment security did not feel it was necessary to document the pre-award risk assessment due to their familiarity with the subrecipients. Additionally, detailed subrecipient monitoring was not

performed by MDES when reviewing subrecipient purchases for reimbursement to determine if the costs met the allowable costs requirements.

Effect	The failure to properly preform a documented risk assessment and to monitor subrecipient's adherence to allowable cost guidelines could result in misspending of the grant funds.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with subrecipient monitoring requirements.
Repeat Finding	No.
Statistically Valid	N/A

PERIOD OF PERFORMANCE

Material Weakness

Material Noncompliance

2021-023 Strengthen Controls to Ensure Compliance with Period of Performance Requirements for Unemployment Insurance.

ALN Number 17.225 – Unemployment Insurance

Federal Award No. UI-34724-20-55-A-28

Federal Agency Department of Labor

Pass-through Entity N/A

Questioned Costs \$47,701

Criteria The start and end date of extended benefits (EB) are paid based on statutory triggers from trigger notice number 2020-18 and 2020-48 respectively. For Mississippi, EB was triggered on for compensable week ending (CWE) May 24, 2020 and off for CWE December 19, 2020.

Per the Federal Emergency Management Agency (FEMA) *Declaration DR-4536-MS* the funding period for Disaster Unemployment Assistance (DUA) generally covers a 26-week period after the declaration has been declared. The starting CWE was April 25, 2020 and the ending date was October 17, 2020.

The Department of Labor *UIPL Number 14-21* provides references for the period of performance for Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC). Specifically in regards to the conditions listed above, PEUC began week ending April 4, 2020 and ended week ending September 4, 2021. Also, FPUC began week ending April 4, 2020 and ended week ending July 25, 2020.

The Internal Control - Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) specifies that a satisfactory control environment is only effective when control activities ensure payments are only made during appropriate time periods.

Condition	<p>During review of benefit payments at the Mississippi Department of Employment Security, the auditor noted the following instance of noncompliance with period of performance:</p> <ul style="list-style-type: none">• 240 instances totaling \$38,589, in which EB were paid for a CWE after the eligibility period of December 19, 2020,• 27 instances totaling \$2,862, in which Disaster Unemployment Assistance (DUA) benefits were paid for CWE's that were outside of the Disaster Assistance Period which is the 26 weeks that began with the first day of the week following the date the major disaster was declared by the President,• 93 instances totaling \$6,162, in which PEUC was paid for CWE's before the eligibility period which began for week ending April 4, 2020, and• Four instances totaling \$88 in which FPUC benefits were paid for CWEs before the eligibility period which began week ending April 4, 2020.
Cause	<p>The Mississippi Department of Employment security did not properly program the ReEmployment system to reflect the correct dates or periods of performance for unemployment benefits.</p>
Effect	<p>The failure to establish internal controls enabled material noncompliance to go undetected resulting in payments being made for benefits prior to and after the correct period of performance.</p>
Recommendation	<p>We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with period of performance requirements for unemployment insurance.</p>
Repeat Finding	<p>No.</p>
Statistically Valid	<p>Yes.</p>

SPECIAL TESTS – BENEFIT PAYMENTS

Material Weakness

Material Noncompliance

2021-024	<u>Strengthen Controls to Ensure Compliance with Special Tests – Benefit Payments Requirements for Unemployment Insurance.</u>
ALN Number	17.225 – Unemployment Insurance
Federal Award No.	UI-34724-20-55-A-28
Federal Agency	Department of Labor

Pass-through Entity N/A

Questioned Costs N/A

Criteria As stated in the *Employment and Training Handbook No. 395, 5th Edition*: Section 13: Completion of Cases and Timely Data Entry, Prompt completion of investigations is important to ensure the integrity of the information being collected by questioning claimant and employers before the passage of time adversely affects recollections. Prompt entry of associated data is necessary for both the State Workforce Agency and the Department of Labor to maintain current databases.

Therefore, the following time limits are established for completion of all cases for the year. (The "year" includes all batches of weeks ending in the calendar year.):

- a minimum of 70 percent of cases must be completed within 60 days of the week ending date of the batch, and 95 percent of cases must be completed within 90 days of the week ending date of the batch; and
- a minimum of 98 percent of cases for the year must be completed within 120 days of the ending date of the calendar year.

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specify that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate that case investigations should be timely in order to ensure accuracy and reliability.

Condition During review of the Benefits Accuracy Measurement (BAM) Program the auditor determined that the Mississippi Department of Employment Security (MDES) was not meeting the timeliness requirement for the BAM unit's performance in investigating BAM paid cases. It was specifically noted that there were ten instances in which paid case investigations were not completed within the 60 day time requirement. Further investigation of the full population resulted in the agency also not meeting the 70 percent of cases (230 out of 496, or 46%) investigations being completed within 60 days nor the 95 percent of cases (371 out of 496, or 75%) investigated and completed within 90 days.

Cause Due to the increased demand during the COVID-19 Pandemic, BAM investigative staff were reassigned to other departments for additional assistance, which caused MDES personnel to be unable to meet the timeliness requirement for investigated case completion.

Effect Failure to follow federal quality control guidelines may result in a decrease and/or loss of federal funds.

Recommendation We recommended the Mississippi Department of Employment Security strengthen controls to ensure compliance with special tests – benefit payments requirements for unemployment insurance. These internal controls should ensure that Benefits Accuracy Measurement (BAM) Program Case investigations are completed in a timely manner.

Repeat Finding No.
Statistically Valid Yes.

SPECIAL TESTS - OVERPAYMENTS

Material Weakness ***Material Noncompliance***

2021- 025 Strengthen Controls to Ensure Compliance with Special Tests – Program Integrity-Overpayments Requirements for Unemployment Insurance.

ALN Number 17.225 – Unemployment Insurance

Federal Award No. UI-34724-20-55-A-28

Federal Agency Department of Labor

Pass-through Entity N/A

Questioned Costs \$633,222

Criteria As stated in the *Attachment I to Unemployment Insurance Program Letter (UIPL) No. 16-20 Change I*, Pandemic Unemployment Assistance (PUA) payments must be reduced to recover overpayments for other states if the state has signed the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) agreement. However, the state may not offset more than 50 percent from the PUA payment to recover overpayments for other programs.

As stated in the *Attachment I to UIPL No. 17-20, Change I*, The state may not offset more than 50 percent from the Pandemic Emergency Unemployment Compensation (PEUC) payment to recover an overpayment.

The Internal Control – Integrated Framework, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specify that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate agencies should correctly program systems to comply with federal guidelines.

Condition During testing performed on overpayments, the auditor noted that the Mississippi Department of Employment Security had incorrect offset percentages setup in ReEmployMS to recover overpayments. The agency was incorrectly recovering overpayments by offsetting PUA and PEUC with other benefit programs. Specifically the agency used:

- PUA benefit payments to offset 100% of overpayments that occurred from Mixed Earners Unemployment Compensation program (MEUC)

and Federal Pandemic Unemployment Compensation (FPUC) benefits;
and

- PEUC benefit payments to offset 100% of overpayments that occurred from PUA, MEUC, FPUC, Regular Unemployment Insurance, and Extended Benefit overpayments.

This resulted in questioned costs of \$633,222.

Cause	The agency programmed the ReEmployMS system using incorrect offset percentages and did not take into consideration that they could not take more than 50 percent of the benefit payments from claimants when recovering overpayments.
Effect	The claimant may not receive the appropriate amount of PUA and PEUC benefits if the agency uses incorrect offset percentages to recover overpayments from the previously mentioned unemployment programs
Recommendation	We recommended the Mississippi Department of Employment Security strengthen controls to ensure compliance with special tests – program integrity-overpayments requirements for unemployment insurance.
Repeat Finding	No.
Statistically Valid	Yes.

REPORTING

Material Weakness

Immaterial Noncompliance

2021- 026	<u>Strengthen Controls to Ensure Compliance with Reporting Requirements for Unemployment Insurance.</u>
ALN Number	17.225 – Unemployment Insurance
Federal Award No.	UI-34724-20-55-A-28
Federal Agency	Department of Labor
Pass-through Entity	N/A
Questioned Costs	N/A
Criteria	<i>The Code of Federal Regulations 2 CFR 200.302 states each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds</i>

have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Per the *UI Reports Handbook No. 401*, The Agency is required to submit quarterly ETA 191 report. The ETA 191 is due by the 25th of the month following the close of the quarter.

The Agency is required to submit monthly ETA 2112 report. Per the *UI Reports Handbook No. 401* the ETA 2112 is due the 1st day of the second month following the month of reference. The handbook also notes that all funds deposited into, transferred, or paid from the state unemployment fund (the state clearing account, the state account in the UTF, and the state benefit payment account) should be reflected on the ETA 2112 except for payments/benefits paid under the Alternative Trade Adjustment Assistance (ATAA) and Trade Adjustment Assistance (TAA) programs.

The Agency is also required to submit monthly ETA 9050, 9052 and 9055 reports. Per the *UI Reports Handbook No. 401*, the ETA 9050, 9052 and 9055 report are due on the 20th of the month following the month to which the data relates.

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specify that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate that proper review and approval procedures should be in place to ensure accuracy and reliability of reports submitted by the agency.

Condition

The Mississippi Department of Employment Security is required to submit various reports to federal awarding entities. Upon testing, the following issues were noted:

- During review of two ETA-191 reports for the quarters ending September 2020 and June 2021 the following issues were noted:
 - No evidence of written supervisory approval could be provided for the reports; and
 - Supporting documents could not be provided for the adjustment amounts on the penalties and interest.
- During review of eight monthly ETA 2112 reports, auditors noted:
 - Pandemic Unemployment Assistance disbursements were understated by \$12,228,112 in the June 2021 report; and
 - Transfers from the Federal Unemployment Account (FUA) were not reported on line 15 in four reports tested for the months of August 2020, and March, May, and June 2021.
- During review of 12 Performance Reports the following issues were noted:

- There was no written supervisory approval before submission of four ETA-9050 reports, four ETA-9052 reports, and four ETA-9055 reports;
- The data submitted for one ETA-9050 failed to pass the Department of Labor's data validation program for fiscal year 2021; and
- One ETA-9052 report for the month of November was not submitted timely. The report was due December 20, 2020 and it was not submitted until February 9, 2021, which is 51 days late.

Cause	The Mississippi Department of Employment Security lacks adequate review procedures and proper internal controls over reporting requirements.
Effect	Without proper review and approval, reports could be inaccurate and incomplete which could result in improper funding by the federal entity.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with reporting requirements for unemployment insurance and implement effective internal review and approval procedures to ensure reports are submitted accurately and timely to the Department of Labor.
Repeat Finding	No.
Statistically Valid	Yes.

SPECIAL TESTS – EMPLOYER EXPERIENCE RATING

Material Weakness

Immaterial Noncompliance

2021- 027	<u>Strengthen Controls to Ensure Compliance with Special Tests – Employer Experience Rating Requirements for Unemployment Insurance.</u>
ALN Number	17.225 – Unemployment Insurance
Federal Award No.	UI-34724-20-55-A-28
Federal Agency	Department of Labor
Pass-through Entity	N/A
Questioned Costs	N/A
Criteria	The Families First Coronavirus Response Act (enacted March 18, 2020), provides that, in the context of COVID-19, states have the flexibility of determining whether Unemployment Insurance benefits that are not federally funded will be charged to employer accounts for experience rating purposes and should consider how to fairly distribute these costs to employers.

In response to the Families First Coronavirus Response Act, on July 7, 2020, the Mississippi State Legislature enacted SB 3051 which created special provisions

for both the general and individual experience rates for calendar year 2021 to address the effects of the COVID-19 pandemic. This legislation allowed for the following:

- Mississippi to set the general experience rate for 2021 to 0%;
- Excluding the charges attributed to each employer's individual experience rate for the period March 8, 2020, through June 30, 2020, from the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2021 as well as excluding these charges for calendar years 2022 and 2023; and,
- Excluding the charges attributed to each employer's individual experience rate for the period July 1, 2020, through December 31, 2020, from the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2022 as well as excluding these charges for calendar years 2023 and 2024.

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the *U.S. Government Accountability Office Standards for Internal Control in the Federal Government* (Green Book) specify that satisfactory control activities should exist to ensure an effective internal control system exists. Effective internal controls should be in place to ensure accurate calculations occur for employer experience rating.

Condition	While testing the employer experience benefit rating, there were four instances in which benefits charged to employer accounts were inadvertently excluded when calculating the 2021 employer experience rate. Specifically, the agency included these weeks as part of the noncharging weeks that should have begun after March 8, 2020. Noncharging weeks began after March 8, 2020, however the agency inadvertently included certain charges during the second quarter of 2020 as noncharging as well.
Cause	Certain claims with effective dates between the PUA program effective date of February 2, 2020, and Executive Order 1462 waiting period waiver date of March 8, 2020, were waived. These waived weeks were therefore incorrectly non-charged to the employer.
Effect	Including benefits paid for compensable weeks ending before March 8, 2020 in non-charging benefit will cause the employer's individual experience rating for 2021 to be incorrectly lower than it should be and therefore reduce some employers contributions to the unemployment insurance Trust Fund and decreases the unemployment insurance trust fund balances.
Recommendation	We recommended the Mississippi Department of Employment Security strengthen controls to ensure compliance with special tests – employer experience rating requirements for unemployment insurance.
Repeat Finding	No.
Statistically Valid	Yes.

Reporting

Material Weakness

Material Noncompliance

2021- 028 Strengthen Controls to Ensure Compliance with Reporting Requirements for Lost Wages Assistance.

ALN Number 97.050 – Lost Wages Assistance

Federal Award No. 4528DRMSSPLW

Federal Agency Federal Emergency Management Agency

Pass-through Entity N/A

Questioned Costs N/A

Criteria Per the Federal Emergency Management Agency (FEMA) Commonly Asked Questions of the SF-425 report, the Basis of Accounting, Cash or Accrual, should be selected based on the type of accounting that is used. Per this guideline, “Accrual basis of accounting refers to the accounting method in which expenses are recorded when incurred” and “Cash basis of accounting refers to the accounting method in which expenses are recorded when they are paid”.

Per the FEMA Lost Wages Supplemental Payment Assistance Guidelines, the Quarter ending December 31 report is due January 30.

Per the FEMA Commonly Asked Questions of the SF-425 report, “Total Recipient Share Required is based on the amount of lost wages benefits and administrative costs spent, this question asks the recipient to enter the total cost-share required for these purchases. This amount should not include cost sharing and match amounts in excess of the amount required by the Federal agency for the cost share.”

Per the Supplemental Payments for Lost Wages guidance, “Upon receiving approval and an initial grant award, state and territories will be required to submit weekly reports to FEMA”. The weekly requirement additionally states “Lost Wages Weekly Report should have been provided to FEMA and are required until all claims were paid”.

The Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the U.S. Government Accountability Office *Standards for Internal Control in the Federal Government* (Green Book) specifies that a satisfactory control environment is only effective when control activities exist. This includes but is not limited to the review process of transactions, proper support of transactions, proper documentation and support of methodologies used in accounting practices, proper support of information and communication within the agency, and a commitment to competence by management.

Condition	<p>During review of the reporting requirements for the Lost Wages Assistance program, the auditor noted the following:</p> <ul style="list-style-type: none">• Quarterly Reports were not completed accurately. More specifically the following issues were noted:<ul style="list-style-type: none">○ The basis of accounting was incorrectly documented as cash, however the agency actually used accrual basis for recording appropriate amounts. This issue was determined when the January expenditures were included on the December report. January expenditures being included is acceptable if the agency is using accrual basis due to this report not being submitted until February 12, 2021;○ The December quarter ending report was not submitted timely, it was submitted 12 days later than required; and○ The Total Recipient Share Required was inconsistently calculated on the two quarterly reports examined. Specifically the December quarter ending report used 25 percent of the “total federal funds authorized” reported and March quarter ending report used 25 percent of the budgeted “other” amount on the cumulative budget provided by the agency.• There were ten instances out of 44 (23%) in which a required weekly report was not submitted to FEMA.
Cause	The Mississippi Department of Employment Security lacks proper internal controls over reporting requirements.
Effect	Lack of effective internal control over reporting can lead to untimely and inaccurate reports provided to the federal awarding agency.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls to ensure compliance with reporting requirements for lost wages assistance.
Repeat Finding	No.
Statistically Valid	Yes.

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

Material Weakness

Material Noncompliance

2021- 029	<u>Strengthen Controls to Ensure Proper Review over the Schedule of Expenditures of Federal Awards.</u>
ALN Number	17.225 – Unemployment Insurance 97.050 – Lost Wages Assistance

Federal Award No.	UI-34724-20-55-A-28 4528DRMSSPLW
Federal Agency	Department of Labor Federal Emergency Management Agency
Pass-through Entity	N/A
Questioned Costs	N/A
Criteria	<p><i>The Code of Federal Regulations 2 CFR 200.508(b)</i> states, "Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510."</p> <p><i>The Code of Federal Regulations 2 CFR 200.510(b)</i> states, the auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502"</p> <p><i>The Internal Control – Integrated Framework</i>, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and <i>the U.S. Government Accountability Office Standards for Internal Control in the Federal Government</i> (Green Book) specify that a satisfactory control environment is only effective when there are adequate control activities in place. Effective control activities dictate that a review is performed to verify the accuracy and completeness of financial information reported. The Schedule of Expenditures of Federal Awards contains information such as Assistance Listing Numbers (ALN) and grant identification numbers that must be properly and accurately recorded.</p>
Condition	During the review of the schedule of expenditures of federal awards for the Mississippi Department of Employment Security, the auditor noted that the agency incorrectly reported Lost Wages Assistance (ALN 97.050) financial activity as Unemployment Insurance (ALN 17.225). The agency incorrectly classified the revenue and expenditures of nearly \$250,000,000 for the Lost Wages Assistance program on the schedule of expenditures of federal awards in the 8819100000 and 5820167100 fund.
Cause	The agency did not possess or enforce proper internal control structures. Additionally, the agency did not properly review and reconcile the schedule of expenditures of federal awards information and did not perform review over crucial aspects of financial reporting.
Effect	Failure to properly ensure federal grant activity, including revenue and expenditures, are properly recorded on the agencies Schedule of Expenditures of Federal Awards could result in reporting errors in the State's Master Schedule of Expenditures of Federal Awards and/or exclusion of major programs to be audited on the State's Single Audit Report.
Recommendation	We recommend the Mississippi Department of Employment Security strengthen controls to ensure proper review over the schedule of expenditures of federal awards.

Repeat Finding No.

Statistically Valid Yes.

End of Report



**STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
SHAD WHITE
STATE AUDITOR**

Auditor's note to the Corrective Action Plan from Mississippi Department of Employment Security (MDES) Management

Material Weakness

2021-008 Controls Should be Strengthened over Unemployment Insurance Benefits Paid.

The Office of the State Auditor (OSA) acknowledges that the Mississippi Department of Employment Security (MDES) was faced with an unexpected and staggering task to ensure unemployment benefits were paid to individuals during the pandemic. OSA also acknowledges that certain federal guidelines were provided that MDES had to comply with in order to receive additional federal unemployment funds. While MDES' response to the finding focuses on the federal requirements and state guidance to waive or ignore existing controls, MDES fails to identify any way that the agency mitigated any of the fraud risks or potential for overpayments created by waiving or overriding these controls. This failure on the part of MDES resulted in a **301%** increase in known overpayments from fiscal year 2020 to 2021. This failure to safeguard the state's assets is the basis for the material weakness finding. Additionally, MDES fails to acknowledge that the agency was required by the same type federal guidance referenced in their response to the finding (UIPL Letters and Change Notices) to ensure adequate and proper fraud detection and prevention techniques were being utilized by the agency.

Moreover, while MDES did receive federal guidance on making unemployment payments more accessible to those directly impacted by the pandemic, the options provided by the federal government were to either modify or suspend the work search requirements for individuals or employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. States were also given the flexibility to respond to the COVID-19 emergency in a broader way, **if they chose to do so** (emphasis added by auditor). (*Unemployment Insurance Program Letter Number 13-20, Change 1, Attachment 1, Question 2*). MDES chose to suspend the requirement for all unemployment claims, and not only those that arose from an illness in the workplace or from an order to isolate or quarantine workers. The decision to implement broader flexibility and completely waive work search requirements were made by MDES. By MDES' own admission in other auditee responses to OSA, MDES stated that they requested the Governor's Office waive the specific requirements. Additionally, in each Executive Order (1462, 1481, 1502, and 1510), MDES was given flexibility to reassess and modify these measures prior to their expiration date in the orders.

Additionally, The Department of Labor (DOL) included program integrity language in all of the major pieces of guidance associated with the state implementation of the CARES Act programs and provisions (*Unemployment Insurance Program Letter Number 28-20*). Program Integrity requirements for the regular unemployment program and unemployment programs authorized by the CARES Act were to operate in tandem, and CARES Act program requires that states must ensure that only eligible individuals receive benefits (*Unemployment Insurance Program Letter Number 23-20*). Both UIPL letters 23-20 and 28-20 specify that the states must make efforts to rapidly and proactively prevent, detect, and investigate fraudulent activity; establish and recover fraud overpayments; and pursue criminal and civil prosecution to deter fraud. Specifically, states were strongly encouraged to implement the following measures to minimize fraud in the unemployment system:

- 1) Social Security Administration Cross Match
- 2) Systematic Alien Verification for Entitlement
- 3) Incarceration cross matches
- 4) Internet Protocol Address checks
- 5) Data Analytics to cross reference claims for indicators of fraud.

Furthermore, many of the most effective tools to deter and detect fraud were available to MDES in the Integrity Data Hub (IDH), and were available to states for well over a year. These included:

- 1) Interstate Suspicious Actor Repository to match claims across states
- 2) Foreign IP Address verification to receive flags on claims filed from IP addresses outside of the United States
- 3) Data Analytic tools
- 4) Fraud Alert Systems
- 5) Identify Verification for fraud scoring information, including flagging synthetic identities.

MDES has stated that they utilize the IDH; however, auditors cannot determine how effectively these programs were utilized considering the high amount of overpayments that were made during fiscal year 2021. Additionally, one of the specific fraud risks the UIPL, incarceration cross matches, were not performed by MDES, and resulted in overpayments to incarcerated individuals. These incarcerated individuals were able to apply for benefits when MDES overrode or turned off the automated controls and did not implement any compensating controls to ensure payments were proper.

In summary, regardless of the federal requirements or Executive Orders issued, MDES is still responsible for ensuring the accuracy of unemployment claims. In order to assure the accuracy of those claims, MDES should have implemented compensating controls to safeguard the unemployment trust fund when other controls were waived or overrode. The ultimate responsibility to ensure that unemployment payments were accurately paid out and that overpayments were kept to a minimum is the responsibility of MDES personnel.

Material Weakness

2021-018 Strengthen Controls over the Overpayments of Employer Contributions.

According to multiple conversations with MDES personnel during the audit, MDES immediately recognized employer overpayments as “Revenue” and moved the amounts to their Trust Fund from their clearing account, which is a violation of generally accepted accounting principles as the money has not actually been “earned” until the passage of the required three years.

Moreover, the MDES response states that they provide three forms of responses to employers regarding their overpayments; however, this was not the practice in fiscal year 2021 until this matter was brought to Management’s attention by the auditors. Auditors informed Management of this issue prior to December 2021, so any action taken by the MDES Chief of Tax as outlined in the response was in reaction to the lack of controls over employer contributions, and therefore cannot be used as a validation of the existence of controls. MDES states that these overpayments can be refunded to the employer if the employer requests such a refund in writing; or the request could be given at MDES discretion without a corresponding request. MDES needs to ensure employers are aware of overpayments so that they can request these refunds, if so desired.

In conclusion, MDES needs to strengthen controls over employer overpayments so that the State’s employers are not penalized by an error in MDES’ system and can be refunded overpayments timely.



**STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
SHAD WHITE
STATE AUDITOR**

Auditor's note to the Corrective Action Plan from Mississippi Department of Employment Security (MDES) Management

Department of Employment Security – Activities Allowed/Allowable Costs - *Material Weakness/Material Noncompliance*

2021-043 Strengthen Controls to Ensure Compliance with Allowable Costs and Activities Allowed for Coronavirus Relief Funds

Much of MDES' argument that the questioned costs should be removed relies on Mississippi State Law and disregards the requirements of the **federal** CRF grant. MDES asserts in their response that, because the MS Legislature appropriated money to specific types of workforce development, that those expenditure automatically became eligible for CRF funding. While the MS Legislature has the authority to appropriate CRF money to certain types of workforce development, those items still must have met the three allowable cost requirements of the CRF funds. State law authorizing equipment purchases cannot overrule the federal program guidelines. MDES failed to document or perform adequate due diligence to ensure that the fixed asset purchases made by their subrecipients met the grant requirements. These expenditures were not properly justified with any cost comparison to ensure that the purchase was the most cost-effective solution. Additionally, MDES could not provide any compelling evidence that these expenditures were necessary due to the pandemic.

As stated in the finding, MDES could not provide documentation that the "student vouchers" paid for with CRF monies were necessary due to the pandemic. MDES could not provide compelling evidence that these students were new students, that they completed the courses, that the courses were able to benefit the students in the workforce, or that they were even necessary due to the pandemic.

MDES' assertion that extensive documentation has been provided to OSA to validate these purchases is erroneous. MDES provided documentation to OSA, but that documentation did not support that the charges were necessary or justified. The justifications for necessity in some instances was nonsensical, and did not support that the purchases were necessary due to the pandemic. In the example noted by MDES in their response, two lathes costing a total of \$313,800 were purchased to assist with displaced internships. Those two lathes served 22 students, for a per student price of \$14,263. By fall of 2021, the internships had resumed – meaning that the lathes were used for one semester. The college in question provided no evidence that any other method of fulfilling the internships was considered, and no other options for a more cost-effective solution rather than buying over \$300,000 in fixed assets was contemplated. In a second example given by MDES, the college purchased drones to assist in training drone pilots. MDES response notes that drones are an emerging technology and that additional drone pilots will be needed by 2025;

however, MDES does not provide any compelling justification as to why these drones and trained drone pilots were necessary due to the pandemic.

Department of Employment Security – Eligibility - *Material Weakness/Material Noncompliance*

2021-015 Strengthen Controls to Ensure Compliance with Eligibility Requirements for Unemployment Insurance

The Office of the State Auditor (OSA) acknowledges that the Mississippi Department of Employment Security (MDES) was faced with an unexpected and staggering task to ensure unemployment benefits were paid to individuals during the pandemic. OSA also acknowledges that certain federal guidelines were provided that MDES had to comply with in order to receive additional federal unemployment funds. While MDES' response to the finding focuses on the federal requirements and state guidance to waive or ignore existing controls, MDES fails to identify any way that the agency mitigated any of the fraud risks or potential for overpayments created by waiving or overriding these controls. This failure on the part of MDES resulted in a **301%** increase in known overpayments from fiscal year 2020 to 2021. This failure to safeguard the state's assets is the basis for the material weakness finding. Additionally, MDES fails to acknowledge that the agency was required by the same type federal guidance referenced in their response to the finding (UIPL Letters and Change Notices) to ensure adequate and proper fraud detection and prevention techniques were being utilized by the agency.

Moreover, while MDES did receive federal guidance on making unemployment payments more accessible to those directly impacted by the pandemic, the options provided by the federal government were to either modify or suspend the work search requirements for individuals or employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. States were also given the flexibility to respond to the COVID-19 emergency in a broader way, **if they chose to do so** (emphasis added by auditor). (*Unemployment Insurance Program Letter Number 13-20, Change 1, Attachment 1, Question 2*). MDES chose to suspend the requirement for all unemployment claims, and not only those that arose from an illness in the workplace or from an order to isolate or quarantine workers. The decision to implement broader flexibility and completely waive work search requirements were made by MDES. By MDES' own admission in other auditee responses to OSA, MDES stated that they requested the Governor's Office waive the specific requirements. Additionally, in each Executive Order (1462, 1481, 1502, and 1510), MDES was given flexibility to reassess and modify these measures prior to their expiration date in the orders.

Additionally, The Department of Labor (DOL) included program integrity language in all of the major pieces of guidance associated with the state implementation of the CARES Act programs and provisions (*Unemployment Insurance Program Letter Number 28-20*). Program Integrity requirements for the regular unemployment program and unemployment programs authorized by the CARES Act were to operate in tandem, and CARES Act program requires that states must ensure that only eligible individuals receive benefits (*Unemployment Insurance Program Letter Number 23-20*). Both UIPL letters 23-20 and 28-20 specify that the states must make efforts to rapidly and proactively prevent, detect, and investigate fraudulent activity; establish and recover fraud overpayments; and pursue criminal and civil prosecution to deter fraud. Specifically, states were strongly encouraged to implement the following measures to minimize fraud in the unemployment system:

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Furthermore, many of the most effective tools to deter and detect fraud were available to MDES in the Integrity Data Hub (IDH), and were available to states for well over a year. These included:

- 1) Interstate Suspicious Actor Repository to match claims across states
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- 3) Data Analytic tools
- 4) Fraud Alert Systems
- 5) Identify Verification for fraud scoring information, including flagging synthetic identities.

MDES has stated that they utilize the IDH; however, auditors cannot determine how effectively these programs were utilized considering the high amount of overpayments that were made during fiscal year 2021. Additionally, one of the specific fraud risks the UIPL, incarceration cross matches, were not performed by MDES, and resulted in overpayments to incarcerated individuals. These incarcerated individuals were able to apply for benefits when MDES overrode or turned off the automated controls and did not implement any compensating controls to ensure payments were proper.

In summary, regardless of the federal requirements or Executive Orders issued, MDES is still responsible for ensuring the accuracy of unemployment claims. In order to assure the accuracy of those claims, MDES should have implemented compensating controls to safeguard the unemployment trust fund when other controls were waived or overrode. The ultimate responsibility to ensure that unemployment payments were accurately paid out and that overpayments were kept to a minimum is the responsibility of MDES personnel.

Department of Employment Security – Subrecipient Monitoring - *Material Weakness/Material Noncompliance*

2021-045 Strengthen Controls to Ensure Compliance with Subrecipient Monitoring Requirements

When documentation of pre-award risk assessments was requested during the audit process, MDES did not provide any auditable documentation to the auditors. While MDES stated that they relied upon the same pre-award risk assessment for the CRF grants as the Workforce Innovation and Opportunity Act (WIOA) grants, none of the WIOA pre-award risk assessments were provided. Personnel at MDES stated, when this documentation was requested, that “there was no risk assessment of the four local areas performed prior to the awarding of the CRF funds...We work closely with the local areas on a daily basis, perform yearly subrecipient monitoring, and regularly conduct technical assistance all of which are closely monitored by MDES management for any indication that we should reassess the locals as anything but low risk. We understand that this is not documented and therefore does not meet the risk assessment requirement but wanted to give the context of our actions.”

MDES appears to concur that they did not provide documented evidence to auditors that all required grant elements were presented to grantees. It should be noted that this evidence has still not been provided to auditors as of the date of this report.

Lastly, the questioned costs as outlined in finding 2021-043 verify that MDES did not have proper monitoring procedures in place to monitor subrecipients of the CRF grant program. MDES disagrees that these costs should be questioned (as noted in their response to finding 2021-043); therefore, they do not concur that their monitoring procedures and controls failed. OSA has explained, in detail, both in finding

2021-043 and in the rebuttal to MDES' response above why the auditor questioned these expenses. Please refer to finding 2021-043 for further information.



MISSISSIPPI DEPARTMENT *of* EMPLOYMENT SECURITY
OFFICE OF THE GOVERNOR

Tate Reeves
Governor

Robin Stewart
Interim Executive Director

SINGLE AUDIT FINDINGS

October 21, 2022

Shad White, State Auditor
Office of the State Auditor
State of Mississippi
P.O. Box 956
Jackson, MS 39205-0956

Dear Mr. White:

Enclosed for your review are the Mississippi Department of Employment Security's responses to the single audit findings for Fiscal Year 2021.

ALN Number 21.043

2021-043 - Strengthen Controls to Ensure Compliance with Allowable Costs and Activities Allowed Requirements for Coronavirus Relief Funds.

MDES Response:

MDES and its subgrantees respectfully disagree with the findings set forth in finding 2021-043. The Coronavirus Aid, Relief, and Economic Security Act (CARES) (2020), as later amended by the Coronavirus Response and Consolidated Appropriation Act (2021), authorized the allocation of relief funds to states to cover the costs of "the state or...a local unit of the state that were necessary expenditures related to the Covid-19 pandemic, that had not been budgeted prior to March 27, 2020, and were incurred during the pandemic period of March 1, 2020, through December 30, 2021." MDES maintains the position that the relief funds, appropriated by the Mississippi Legislature, were duly expended according to, and in compliance with, the guidelines and restrictions set forth in the CARES Act, as well as all other relevant federal regulations and guidance.

I. Relation to the Public Health Emergency

The expenditure guidance issued by the Department of the Treasury (hereinafter, "Treasury Guidance" or "Treasury") explains permissible "necessary costs" related to the Covid-19 public health emergency. This Treasury Guidance provides an expansive definition of "necessary" meaning "that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending

Helping Mississippians Get Jobs

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the COVID-19 Relief Fund payments.” Treasury specifically references the use of Covid-19 Relief Funds (also referred to as “Funds”) to cover employment and training programs for employees furloughed due to the public health emergency so long as the government officials responsible for spending the Funds have “determined that the costs of such employment and training programs would be necessary due to the public health emergency.” The State of Mississippi, through its Legislature, made just such a determination in 2020 in House Bill 1795 (2020) hereafter, “Covid Relief Bill”). The Covid Relief Bill designates MDES as the ultimate government body responsible for spending these funds. In 2020, MDES concluded that the purposes listed in the Covid Relief Bill defined the “necessary costs” due to the public health emergency as confirmed by the elected representatives of the citizens of this State. This bill outlined the following specific purposes for authorizing the use of the Funds: for short-term training programs; for the equipment and supplies necessary to support such short-term training programs and to increase the capacity of training programs that are already in place, so that employees and others who have been displaced due to the Covid-19 public health emergency can be more competitive and trained for the job market that emerges after the Covid-19 public health emergency; for on-the-job training; and for certain administrative fees.

Moreover, the Covid Relief Bill lists examples of permissible expenditures necessary to respond to the unique impact of the Covid-19 public health emergency on the employer and labor sectors of Mississippi’s economy. These examples serve only as a guide, because they are expressly not exhaustive. House Bill 1795 authorized not only employment and training programs but also any equipment purchases that enabled the Community Colleges to increase the capacity and capabilities for distance learning, as well as to “increase social distancing capabilities” for either students or instructors.

II. Independent Determination by MDES that the Questioned Expenditures were Necessary

A. State Law Expressly Authorized the Purchase of Equipment to Facilitate Social Distancing Capability and Increase Learning Capacity and Capability

As a result of the 2020 Legislative Session, which involved a deliberative process of the representatives of the citizens of the state of Mississippi deciding how to best spend some of the federal Covid Relief Funds, the Mississippi Legislature allocated funds to the Community Colleges of this state through MDES, to provide immediate and near-term job training to persons displaced as a result of the Covid-19 public health emergency. The resulting state law expressly authorizes these expenditures so long as MDES independently determines the necessity of such expenses as resulting from the Covid-19 public health emergency. Also, during 2020, MDES worked on the front lines of the unemployment crisis in this state. Data from 2020 reveals the dramatic rise in unemployment in Mississippi among the four Planning and Development Districts: Twin Districts, Mississippi Partnership (hereinafter, “MS Partnership”), Southcentral, and the Delta. In February of 2020, the unemployment rate among the four Planning and Development Districts in Mississippi was: Twin Districts- 5.4%, MS Partnership- 4.7%, Southcentral- 5.1%, and the Delta- 7.7%. By April of 2020, the unemployment rate had risen in these districts to: Twin Districts- 15.1%, MS Partnership- 15.1%, Southcentral- 13.9%, and the Delta- 15.9%. By mid-2020, these unemployment rates began to slowly recede from the peak but remained high through November of 2020 at the time the expense approvals for the Covid Relief Funds occurred.

In addition, MDES considered the underlying data that became part of the 2020 annual reports for the unemployment and covered employment rates by county. As part of its regular mission, MDES staff consider the economic challenges facing different regions of the state which impact workforce development decisions. All of these factors impacted the determination by MDES that the questioned costs were necessary due to the public health emergency.

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Even after determining that the use of Covid Relief Funds met the initial element of the Treasury Guidance criteria, MDES followed a specific and thorough process to ensure that it evaluated the justification for each individual Community College's proposal. To start the process, MDES sent each Community College in Mississippi, via the respective Planning and Development District, information regarding the requirements of the proposals to be submitted and, the then-current Treasury Guidance noting the specific Covid-19 related reason for the equipment purpose. This agency also created a committee of senior staff with experience in Business Management and Grants to evaluate the financial and other details of each proposal. Each Community College's proposal passed through several revisions from approximately August through November of 2020, as the committee requested additional supporting information and justification prior to finally accepting a requested purchase or expenditure as necessary.

B. Equipment expenditures were necessary to follow state mandated social distancing requirements

Mississippi Community Colleges received general health and safety guidance from the Mississippi Department of Health regarding masks, quarantine, and isolation protocols. They also received monthly or more frequent mandates outlining very specific social distancing and indoor masking requirements. In addition, each Community College adopted its own Covid-19 safety policy or protocols.

Starting on March 24, 2020, social distancing and capacity restrictions were established for all businesses in this state and identified "essential" businesses for this state during the Covid-19 health emergency. On April 3, 2020, at 5:00 p.m., all non-essential businesses were closed, allowing the defined essential businesses to remain open with restrictions, and all residents of this state were ordered to "*Shelter in Place*" (lockdown). On May 8, 2020, the *Shelter in Place* order expanded the list of essential businesses permitted to open and operate under certain conditions ("*Safer at Home*"). A final extension of the *Safer at Home* order moved the restrictions deadline to June 1, 2020. Pursuant to Executive Order 1495, all state subdivisions were called to resume normal business operations on July 1, 2020.

On June 10, 2020, the "*Safe Return*" Executive Order granted permission for all social and community activities to resume as long as those activities complied with the guidance provided by the Mississippi Department of Health. From June 1, 2020, through the last week of July of 2020, the *Safe Return* order remained in place with multiple deadline extensions. Starting July 19, 2020, the health restrictions were narrowly tailored, including social distancing, to a list of specific counties with the highest number of Covid-19 cases and required more stringent social distancing, sanitizing, masking, and other safety requirements. On September 30, 2020, these social distancing requirements were re-affirmed.

Covid-19 cases began to steadily increase in Mississippi from October through December of 2020, with many surges in Covid-19 cases in Mississippi from 2020 through 2021. Many counties in this state were placed under a mask mandate by executive order during this time period. Thus, the steady increase of Covid-19 cases from March 1, 2020, to December 31, 2020, necessitated both social distancing at the Community Colleges as well as distance learning.

C. Equipment Purchases Met Monitoring and Purchase Requirements As Set Forth Under Federal Guidance Procedures

Treasury Guidance required that the equipment purchases be completed and the purchased equipment "be put to use in service of the Covid-19 related use for which it was acquired... by December 31, 2020." MDES approved all equipment purchases that OSA now questions prior to December 31, 2020, which was well within

MDES Response to Single Audit Findings

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the Relief Fund Period. Moreover, MDES hired a third party to verify, in-person, that delivery of the equipment occurred prior to December 30, 2020. MDES also required that the individual Community Colleges tag each piece of equipment on the respective colleges' inventory for each item purchased through the Covid Relief Fund program.

Furthermore, each Community College purchased all equipment prior to December 31, 2020, because a state law required certain federal Covid-19 related funds not expended by December 15, 2020, be transferred to the state's Unemployment Trust Fund. Also, pertinent budget documents substantiate that the purchases were not accounted for in the most recently approved budget (2020 period) of the Community Colleges, thus the purchases were allowable under federal guidelines.

All but one of the Community Colleges placed the newly purchased equipment into service before the end of the Relief Fund Period on December 31, 2021. MDES objects to the OSA's Questioned cost for East Mississippi Community College's (EMCC) purchase of the Thompson Machinery/Thompson Power-Caterpillar Equipment Simulators in the amount of \$172,247.15 for failing to place the equipment in service during the Relief Fund Period. The response by EMCC reports that this equipment entered service on February 1, 2021, therefore, placement in service occurred during the Relief Fund Period.

MDES also challenges the questioned cost for three drones by Copiah-Lincoln Community College ('Co-Lin CC'). As an emerging technology, commercial enterprises continue to find new uses for drones. However, to effectively use this technology, private enterprises need trained and registered drone pilots. The Federal Aviation Administration estimates a potential "phenomenal" growth in professional grade drones through 2025, and thus a corresponding need for registered drone pilots. Moreover, the very nature of this technology permits not only instruction at a safe distance but surveying and inspections as well. These tasks were in high demand as a result of the lockdown during the pandemic. The reasons supported the nexus between this equipment purchase and the Covid-19 public health emergency.

Holmes Community College (HCC) did not place its purchased equipment during the Relief Period because it fell victim to the precise shortage it purchased the equipment to address- a severe lack of skilled HVAC technicians. Despite repeated efforts, HCC proved unable to hire an instructor for the high demand HVAC program because the scarcity of technicians resulted in rising private sector hourly rates with which it could not compete. HCC did arrange for an instructor to timely begin the HVAC course, however, he secured full-time employment before the course began. HCC was reasonable and prudent in its purchase of the HVAC equipment in the fall of 2020, and did not exceed costs which would have been "incurred by a prudent person in the circumstances prevailing at the time the decision was made to incur the cost". The Treasury Guidance permits a "recipient to use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency." The severe labor shortages resulting from the Covid-19 public emergency directly impacted HCC's ability to place this equipment into service and begin training students. However, the penalty of repayment of these funds to purchase this equipment under these circumstances completely undermines the express purpose of the Covid Relief Funds and exacerbates the severe HVAC labor shortage created as a result of the public health emergency. Moreover, as soon as an instructor was hired, HCC began using this equipment to train students.

D. State Law Expressly Authorized the Purchase of Equipment to Expand Training Capacity/or Capability

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MDES relied upon both the list of essential businesses and industries in Executive Order No. 1463 (March 24, 2020) as well as economic data presented by the Community Colleges and local employees at the time of the funding proposals to determine which courses qualified as necessary expenditures incurred as a result of the Covid-19 public health emergency. The industries and/or jobs deemed essential and therefore in high demand during the Covid-19 emergency in Mississippi include, but were not limited to: construction and HVAC services, warehouse, distribution, and fulfillment centers, agriculture, food cultivation, and manufacturing.

Also, MDES prioritized individuals displaced by or underemployed by the effects of Covid-19 for such courses, thereby matching the needed skills with the people in need. Unemployed and underemployed students completed the classes offered by the Community Colleges.

The questioned equipment not related to distance learning include two lathe purchases by Itawamba Community College (ICC). MDES determined the purchase of the two spindle lathes, for a total of \$313,800.00 by ICC, met the requirements of “necessary as a result of the Covid-19 public health emergency”. ICC explained that prior to 2020, students received hands-on training through internships with area employers. However, because of the Covid-19 public health emergency and the resulting health orders, these employers suspended these internships in the fall of 2020. ICC purchased the lathes in the fall of 2020 and conducted the classes that semester as well.

ICC served a total of 22 students in precision machining and industrial maintenance classes using these lathes, of whom 50 percent were unemployed and 81 percent were financial aid eligible. In the fall of 2021, even though the internships resumed, having this equipment allowed ICC to offer practical training to more students, especially the 8 unemployed and 17 underemployed students enrolled in these classes.

III. Conclusion

To contest the OSA’s Questioned Costs, MDES has presented several levels of support and documentation. Under the *Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments*, 86 Fed. Reg. 10 (Jan 15, 2021) and by virtue of House Bill 1795, MDES has explained that it had authority to determine the necessary and qualifying expenditures related to the Covid-19 public health emergency for Covid-19 Relief Funds. MDES has further outlined how it followed the requirements of the CARES Act and the Treasury Guidance to use data from 2020 to evaluate the causal relationship between the Covid-19 public health emergency and the funding requests presented by the subgrantees, the Community Colleges.

The factors impacting the necessity for the approval of the funding requests include: (1) the sudden, mass unemployment that occurred in Mississippi as a result of the Covid-19 health emergency coupled with; (2) the continued social distancing caused by the number of Covid-19 cases and deaths in Mississippi; and (3) the need to provide crucial skillsets to meet the changing market demands created by the Covid-19 pandemic as Mississippi returned to closer-than-normal life.

MDES has also explained that the expenditures occurred during the Relief Period from March 1, 2020, through December 31, 2021. Further, the Planning and Development Districts, through the individual Community Colleges, have presented additional documentation to OSA to support the budgetary requirements for the questioned costs as well. The Community Colleges have also included extensive documentation to OSA outlining the validity of these charges under the Treasury Guidance as described in this response.

MDES and its subgrantees object to the OSA’s Questioned Costs finding as noted and documented in this response and supporting documents. For these reasons, the questions concerning these costs should be cleared.

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ALN Number: 17.225 – Unemployment Insurance**2021-015 - Strengthen Controls to Ensure Compliance with Eligibility Requirements for Unemployment Insurance.****MDES Response:**

Other than to acknowledge that a number of overpayments and improper payments occurred, MDES respectfully disagrees with Finding 2021-015. MDES properly complied with emergency measures enacted by both the federal government and the State of Mississippi in response to the Covid-19 pandemic. In order to explain the actions of MDES during this unprecedented pandemic, it is necessary to place the actions described in the audit finding in context, so that proper perspective, understanding, and appreciation can be ascertained.

On March 13, 2020, President Trump declared the Covid-19 pandemic a national emergency. On March 14, 2020, Governor Tate Reeves issued a Proclamation declaring a State of Emergency in the State of Mississippi. Because the Covid-19 pandemic was declared a national emergency both at the federal and state level, any resulting State or Federal Executive Order, or federal or state legislation, became law, and thus controlled the procedures of MDES. This new “emergency law” supplanted existing current state and federal law in many areas including certain state unemployment insurance statutes. Thus, normal agency measures, controls, practices, and other criteria, as referenced in Finding 2021-015, conflicted with duly enacted Executive Orders and certain legislation, and therefore had to be adjusted. This need to adjust procedures clearly distinguishes FY 2021 from any other non-pandemic year and explains and supports the fact that MDES did not “waive” state law; rather, it followed all emergency law measures, which included the temporary suspension of certain eligibility requirements to expeditiously deliver much-needed relief to hundreds of thousands of Mississippians.

I. Suspension Of Eligibility Measures

To adequately explain MDES’s decision to temporarily suspend certain unemployment insurance eligibility measures, and to modify other unemployment insurance statutes such as the weekly earnings allowance, it is necessary to review pertinent federal pandemic relief legislation enacted during the early stages of the pandemic. On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (FFCRA), specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA). Per the United States Department of Labor's (DOL) guidance, “the EUISAA sets out requirements for emergency administrative grants to states, and authorizes emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation (UC) laws.”

In order to receive the emergency administrative grants under Section 903(h)(3)(B), SSA, (42 U.S.C. § 1103(h)(3)(B)) pursuant to EUISAA, each state must show the “steps it has taken, ... , to ease eligibility requirements and access to UC, including: modifying or suspending work search requirements and the waiting week.” In order to receive emergency administrative grants, states were required to, at a minimum, modify or suspend the waiting week, modify, or suspend the work search requirement, and non-charge employers for individuals or employers directly impacted by COVID-19. However, UIPL 13-20 and its subsequent changes (UIPL 13-20 change 1, UIPL 13-20 change 2, and UIPL 13-20 change 3) encouraged states to more broadly apply these modifications or suspensions, even to the fullest extent allowed under federal law.

In compliance with this statutory requirement, Mississippi then executed a series of Executive Orders which specifically addressed the directive to temporarily suspend the work search requirement and the one-week waiting period, as well as provide flexibility in the interpretation of the able and available requirement.

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Executive Orders also included a provision that temporarily increased the weekly earnings allowance, encouraging employees, gig workers, and the self-employed to continue working even if their hours were reduced or business was diminished. This modification proved highly successful, especially in the food industry. Another provision, although flagged by Finding 2021-015, was also authorized by Executive Order, and allowed MDES to determine UI eligibility based on job separation from the most recent employer, rather than from all previous employers in the employee's base period, as is the normal procedure. This measure expedited UI services to thousands of claimants filing for benefits en masse at a most critical time.

The measures taken by MDES during the most severe part of the pandemic were necessary, proper under the circumstances, narrowly targeted in scope and time, and authorized by federal and state law. After these Executive Orders expired, MDES returned to its normal pre-COVID procedures. However, finding 2021-015 indicates that MDES simply 'opted to override existing controls' without support in state or federal law. Further, the report implies that the actions of MDES were the sole cause of the significant increase in claims and subsequent overpayments.

As explained herein, the requirements of the new federal unemployment provisions coupled with the unprecedented mass unemployment crisis, dictated the actions taken by MDES during the FY 2021 audit period. When the entire state shut down, except for essential services, for several weeks, claims naturally increased. Therefore, statistically speaking, it follows that the number of overpayments increased because of the increase in unemployment claims filed.

II. Verification And Overpayments Discussion

The audit finding states that the waived and altered controls led to an increase in claims and prevented MDES from vetting those claims for fraud. This finding further remarks that the resulting overpayment total was comprised of different categories, specifically: payments to individuals who never lost their job or had a reduction in wages, fraudulent payments, payments to incarcerated individuals, and international unemployment fraud.

The increased overpayments of benefits showing in this finding are a result of new fraud detection tools, the reestablishment of prior controls, and system stabilization allowing MDES to better detect fraud.

See below description:

- By May of 2020 the Social Security verification issue and the Department of Public Safety verifications that had been overwhelmed by unprecedented numbers of hits from multiple states were again functional.
- In June of 2020, MDES had begun aggressively investigating potentially fraudulent claims. At this time, MDES established a dedicated team of individuals for this purpose. This team utilized various reports that identified suspicious characteristics in unemployment claims.
- Also in June of 2020, MDES implemented the RESTART MS system. This program allowed employers to electronically report fraud claims for individuals who never lost their job or had a reduction in wages, individuals who refused work, and individuals who did not respond to call-backs to work.
- In October of 2020, MDES reinstated the Federal and State Incarceration cross-matches.
- In March of 2021, MDES began utilizing ID.me, a leading identity verification vendor, to verify claimant identity prior to the payment of benefits. Over the course of several months, the system was implemented in phases to address suspicious claims, out-of-state claims, and then all new claims.

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Existing suspicious and out-of-state claims were identified, and payments were held until the ID verification process was successfully completed.

Another category mentioned in the finding was payments made to individuals who never lost or had a reduction in wages. It is important to clarify that under the then-current Mississippi Employment Security Law, this type of payment was not defined as an overpayment. State law did not require claimants to report voluntary payments made by their employer when no work was performed. Legislation that went into effect July 1, 2021, directly addresses this issue. The revised statute denies payment of unemployment insurance benefits to claimants who receive voluntary payments, up to the full amount of their wages, from their employers for the same period covered by their unemployment insurance benefits.

III. Conclusion

During the pandemic, difficult issues arose that required prompt and decisive action. In normal times, if MDES had received an audit finding such as 2021-015, it would have acknowledged the finding and made the recommended changes. However, MDES respectfully disagrees because the finding does not acknowledge the extraordinary and unprecedented magnitude of the pandemic, the new and complicated federal programs, and federal and state emergency law changes. MDES went to great lengths to follow the new rules and procedures that were put in place by Federal and State emergency declarations. Moreover, MDES will pursue all measures available to recoup all overpayments and improper payments incurred during the pandemic.

MDES recognizes the recommendation that we strengthen controls to ensure compliance with eligibility requirements. However, should the same circumstances occur in the future, MDES will again follow state and federal law to the best of our ability.

Corrective Action Plan: A corrective action plan is not needed in this case at this time as all procedures and controls have been reinstituted. In addition, we have already implemented new and improved procedures and controls to detect and prevent improper and fraudulent payments.

ALN Number: 17.225 – Unemployment Insurance**2021-022 - Strengthen Controls to Ensure Compliance with Matching Requirements for Unemployment Insurance.****MDES Response:**

During the pandemic, MDES was required to make swift programmatic adjustments to long standing programs such as the extended benefits (EB) program in order to implement new federal legislation. One such adjustment was to the percentage sharing component of the EB program. Typically, this program allows for federal matching of 50% of the cost for EB payments to claimants; however, under the CARES Act, this matching percentage was adjusted to 100% of the cost for EB payments to claimants.

It is also important to understand Mississippi's history with the EB program. Mississippi has historically had a very stable labor market and as such has not triggered on for EB in many years. Because EB is so rarely utilized in Mississippi, it had not yet been programmed into our modernized system. Therefore, in order to implement this program in our system, MDES needed to build this program while continuing to make all of the other programmatic changes that were necessary to implement the CARES Act and get funds to the thousands of Mississippians who needed our assistance. As such, when implementing this program, Mississippi inadvertently programmed all EB claims as 100% federally matched.

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Corrective Action Plan:

MDES will continue reviewing, assessing and taking measures to strengthen controls and procedures to ensure compliance with federal matching requirements for unemployment insurance by making adjustments to the MDES unemployment system that will ensure that reimbursable state and local governmental entities along with reimbursable federally recognized Indian Tribes are not included in the calculation for federal sharing of Extended Benefits.

ALN Number: 21.019**2021-045 - Strengthen Controls to Ensure Compliance with Subrecipient Monitoring Requirements.****MDES Response:**

Risk Assessments: MDES respectfully disagrees with this finding. We contend that the Workforce Innovation and Opportunity Act (WIOA), the Federal law (not state law) that governs the creation and certification of the Local Workforce Development Areas ("LWDAs"), provides the framework by which we continually assess the risk level of the LWDAs. WIOA law also requires that LWDAs be un-certified and lose the ability to be an LWDA and receive funding if they do not meet fiscal integrity or programmatic performance requirements as determined through annual monitoring.

However, to more fully comply with 2 CFR 200.332(b), MDES has already adopted use of the Pre-Award Risk Assessment Tool from the US Department of Labor's (DOL) Core Monitoring Guide. We implemented use of the tool for all subgrants in Program Year 2022. This Risk Assessment Tool will also be required of the LWDAs for pass-through funding.

Required Grant Elements: We respectfully disagree with this part of the finding. It is our standard practice to award funds through one of two primary award documents. For pass-through funding to the LWDAs required by WIOA law, we use a Notice of Funds Availability (NFA) that has been incorporated into our GranTrak online grant tracking system. This document incorporates 2 CFR 200.332(a) required element numbers 1, 3, 4, 5, 7, 8, 9, 11b, and 11c.

Since the LWDAs were the recipients of CARES Act funds as designated by the Mississippi Legislature, we used GranTrak as the allocation and fund tracking mechanism since the LWDAs were familiar with this system and process. We provided the funds to the LWDAs through an NFA and tracked all expenditures and cash drawdowns through GranTrak. At the time of award, we had not yet been provided with either a FAIN or Federal Award Date for these funds, so those fields are not shown on the CARES Act NFA; however, the NFA did incorporate 2 CFR 200.332(a) required element numbers 1, 5, 7, 8, 9, 11b, and 11c.

However, during the audit, MDES did not provide the CARES Act NFA to the auditors through an oversight.

In order to better conform to the requirements of CFR 200.332(a) as noted in the finding, MDES will work with our contractor to update the NFA to incorporate the required elements. Until these programming changes are completed, MDES will upload a document with 2 CFR 200.332(a) compliant data into the Attached Documents section of NFAs in GranTrak. This will provide the data to the LWDAs for review or download.

Monitoring of Allowable Cost Spending: This Condition is discussed at length in the response to Finding Number 1, 2021-043 - Strengthen Controls to Ensure Compliance with Allowable Costs and Activities Allowed Requirements for Coronavirus Relief Funds.

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ALN Number: 17.225 – Unemployment Insurance**2021-023 - Strengthen Controls to Ensure Compliance with Period of Performance Requirements for Unemployment Insurance.****MDES Response:**

During the Pandemic, multiple federal programs and state executive orders were implemented utilizing a number of different requirements for implementation dates. To complicate matters, there was ongoing guidance that clarified and changed wording that provided the dates for the periods of performance for the multitude of programs that MDES was implementing. The continued changes, updates, and clarifications resulted in some issues with periods of performance. MDES has made every effort to correct the issues with these dates.

Additionally, these new federal programs were largely designed to be implemented inside of an existing framework that was then altered to meet the requirements set down under this legislation. In doing so, some items such as labeling changes from a prior federal program to the new federal program. When payments were made under the previous federal program, our system continued to utilize the most recent labeling.

MDES recognizes the need to ensure that periods of performance are properly implemented. As such, we will continue to monitor all changes and clarifications to federal programs for accuracy in the periods of performance.

ALN Number: 17.225 – Unemployment Insurance**2021-024 - Strengthen Controls to Ensure Compliance with Special Tests – Benefit Payments Requirements for Unemployment Insurance.****MDES Response:**

During the pandemic, MDES was inundated with claims and their corresponding workload. As such, it was necessary and prudent for us to utilize well-trained and seasoned staff in various capacities in order to better serve the citizens of Mississippi that were in need of our services. During this time, all states were given the opportunity to suspend Benefit Accuracy Measurement (hereafter BAM) functions so that those staff could assist their agencies where needed. Mississippi availed itself of this opportunity. As the pandemic continued to create high claim volume, these staff were needed to assist for an extended period of time. MDES acknowledges that while staff were utilized for other needed functions, the timeliness of BAM processing may have suffered. It should be noted that while BAM processing may have been delayed, these processes were completed, and by utilizing the trained and seasoned staff as we did, MDES was able to better serve the claimant population.

ALN Number: 17.225 – Unemployment Insurance**2021-025 - Strengthen Controls to Ensure Compliance with Special Tests – Program Integrity - Overpayment for Unemployment Insurance.****MDES Response:**

The federal pandemic programs that were instituted by MDES during this time were broad, complex, and overlapping. In order to institute these programs timely, MDES worked tirelessly to ensure that we followed federal guidelines and UIPLs to the best of our ability while meeting the needs of Mississippians in a timely manner. These guidelines and UIPLs had many iterations and changes. They also reference prior UIPLs and guidelines that create a level of complexity in a time when swift and decisive decisions were necessary to

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provide the needed assistance to claimants. MDES continues to review programs to determine proper and timely payments and offsets for certain programs, and will make adjustments and necessary programmatic changes to ensure proper payments and offsets are made in accordance with federal and state guidelines.

Corrective Action Plan:

MDES will strengthen controls to ensure compliance by testing program integrity, internal reviews, and implementing preventative fraud detection measures. This will be accomplished by monitoring the implementation and changes to federal programs including their respective recovery provisions.

ALN Number:17.225- Unemployment Insurance**2021-026 - Strengthen Controls to Ensure Compliance with Reporting Requirements for Unemployment Insurance****Audit Finding:**

No evidence of written supervisory approval was provided for the reports.

MDES Response:

During the height of the emergency created by the pandemic in 2020 and 2021, MDES relied upon the procedures encoded in ReEmployMS to handle non-emergency tasks. After the relative subsidence of the Covid-19 crisis and review of our activities, MDES better appreciates the value of ensuring that appropriate staff review reports, and of obtaining appropriate documentation of each examination by report. MDES is accustomed to adhering to internal and interdepartmental reviews, validations and approvals. Due to the vast amount of work, some previously established approval protocols were not promptly and consistently followed. MDES will continue to review and evaluate its internal protocols and strengthen internal controls to ensure the review of all reports and documentation of such activities in the future.

Audit Finding:

Supporting documents could not be provided for the adjustment amounts on the penalties and interest (Item 4)

MDES Response:

MDES has requested special reports and queries providing this information. When these reports become available, MDES will share these results with you.

Audit Finding:

During review of eight monthly ETA 2112 reports the following issues were noted:

- **For one report, month ending June 2021, PUA disbursements (Line 42C) was understated by \$12,228,111.86.**
- **Four reports for the months ending August 2020, and March, May and June 2021, FUA transfers were not reported on line 15 as required.**

MDES Response:

An agency administrative error generated the understatement of PUA disbursements for the month ending June 2021. MDES has corrected this error.

With respect to the four instances involving the missed opportunities to reported FUA transfers on line 15, MDES misinterpreted the reporting instructions outlined in the Unemployment Insurance Program Letter (UIPL). MDES has taken corrective action by amending the affected reports. Furthermore, MDES will strengthen its controls over the ETA-2112 reporting process by completing a more thorough supervisory review

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accompanied by more detailed documentation.

Audit Finding:

During review of monthly reports for ETA-9050, ETA-9052, and ETA-9055, there was no written supervisory approval for any of the reports reviewed. Below is a listing of the reports reviewed:

- **ETA-9050 for months ending July and October 2020 and January and April 2021.**
- **ETA-9052 for months ending August and November 2020 and February and May 2021**
- **ETA-9055 for months ending September and December 2020 and March and June 2021.**

MDES Response:

During the height of the emergency created by the pandemic in 2020 and 2021, MDES relied upon the procedures encoded in ReEmployMS to handle non-emergency tasks. After the relative subsidence of the COVID-19 crisis and review of our activities, MDES better appreciates the value of ensuring the appropriate staff review reports and of obtaining appropriate documentation of each examination by report. Moreover, MDES has procedures in place to ensure the review of all reports and documentation of such activities currently, and in the future.

Audit Finding:

For the ETA-9050 report MDES failed to verify the accuracy of the unemployment insurance data notated by the “Fail” provided by the Department of Labor during the data validation performed for the reporting period of July 1, 2020, to September 30, 2020.

MDES Response:

MDES disputes that it failed to verify the accuracy of the data reported on the ETA 9050. The data validation (DV) population contains several reports that verify payment activities. During the process of validating the payment population, staff discovered differences between the validation counts and the reported counts. MDES continues to investigate the source of these differences in the counts.

Audit Response:

During review of four monthly reports for ETA-9052, the report for month ending November 2020 was not submitted timely. The report was due on December 20, 2020, but it was not transmitted until February 9, 2021.

MDES Response:

MDES timely uploaded this report to the DOL reporting portal. However, because of apparent technical issues, the report did not upload properly. MDES did not receive an error message of this issue. Upon notice from a DOL supervisor that the report remained in “pending” status, MDES re-submitted the report successfully.

ALN Number: 17.225 – Unemployment Insurance**2021-027 - Strengthen Controls to Ensure Compliance with Special Tests – Employer Experience Rating Requirements for Unemployment Insurance.****MDES Response:**

During the pandemic, MDES was required to utilize long standing programs such as the DUA program in order to implement new federal legislation. Federal guidelines advised states to utilize the DUA program as the base to for implementation of the PUA program. In implementing the programing in such a way, certain built-in parameters were moved to the PUA program. This created certain instances where weeks were non-charged due to those parameters.

Corrective Action Plan: MDES will continue to strengthen controls to ensure compliance with special tests by reviewing employer experience rating requirements for the unemployment insurance program. This will be

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accomplished by monitoring modifications to employer non-charging.

ALN Number 97.050- Lost Wages Assistance

2021-028 - Strengthen Controls to Ensure Compliance with Reporting Requirements for Lost Wages Assistance

MDES Response:

MDES acknowledges that there were delayed and isolated incidents when the Lost Wages Assistance reports were not submitted timely, however, MDES has corrected this issue, and all Lost Wage Assistance reports will be submitted timely in the future.

ALN Number 17.225- Unemployment Insurance and 97.050- Lost Wages Assistance

2021-029 - Strengthen Controls to Ensure Proper Review over the Schedule of Expenditures

MDES Response:


MDES concurs with this finding.

Corrective Action Plan:

MDES will ensure a more thorough review of the ALN is completed for future grant schedule preparation.

Sincerely,

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

DocuSigned by:

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Robin Stewart
Interim Executive Director