Final Report on the Performance Audit of Fiscal Year 2022 Compliance with Payment Integrity Information Act of 2019 for the Federal Communications Commission

23-AUD-01-03

Report Date: May 24, 2023

KEARNEY & COMPANY

May 24, 2023

Federal Communications Commission
Office of Inspector General
45 L Street NE
Washington, D.C. 20554

Dear Office of Inspector General (OIG):

Kearney & Company, P.C. (Kearney) has conducted an audit of the Federal Communications Commission (FCC) Fiscal Year (FY) 2022 compliance with the Payment Integrity Information Act of 2019 (PIIA). This performance audit, conducted under Contract No. GS00F031DA, was designed to meet the objectives identified in the ***Objectives*** section of this report.

Kearney conducted this performance audit in accordance with *Government Auditing Standards*, 2018 Revision, issued by the Government Accountability Office (GAO). The purpose of this report is to communicate the results of Kearney's performance audit and our related findings and recommendations.

Kearney appreciates the cooperation provided by the FCC's personnel during the audit.

Sincerely,

Kearney & Company, P.C.
Alexandria, VA
May 24, 2023

TABLE OF CONTENTS

Page #

Executive Summary

As requested by the Office of Inspector General (OIG), Kearney & Company, P.C. (defined as "Kearney," "we," and "our" in this report) audited the Federal Communications Commission's (FCC) compliance with the Payment Integrity Information Act of 2019 (PIIA). Kearney conducted this performance audit in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States.

The objective of our performance audit was to evaluate the FCC's compliance with PIIA, in accordance with the Office of Management and Budget (OMB) Memorandum M-21-19, Appendix C to OMB Circular A-123, *Requirements for Payment Integrity Improvement*. OMB M-21-19 outlines the 10 PIIA criteria that agencies must follow. Specifically, we reviewed the FCC's risk assessment methodology, Improper Payment (IP) estimates, Sampling and Estimation Methodology Plans (S&EMP), Corrective Action Plans (CAP), and efforts to prevent and reduce IPs. In addition, Kearney followed the Council of the Inspectors General on Integrity and Efficiency (CIGIE), *Guidance for Payment Integrity Information Act Compliance Reviews*. The guidance was developed to assist OIGs that are required to conduct an annual IP review under PIIA.

The FCC identified three Universal Service Fund (USF) programs that are deemed significant to IPs in Fiscal Year (FY) 2022. Those programs include the USF-Lifeline (LL) program, USF-Schools and Libraries (S&L) program and the USF High-Cost Legacy (HC Legacy) program. The Improper Payment Rate (IPR), Unknown Payment Rate (UPR), tolerable rates, and associated amounts are listed in ***Table 1*** below:

Table 1: IP and UP in FY 2022

Program Name	Outlays *($ in Millions)*	Tolerable Error Rate+	IP Rate	UP	Estimated IP *($ in Millions)*	Estimated UP *($ in Millions)*
USF-LL	$606.74	6.13%	6.13%	-	$37.21	-
USF-S&L	$2,157.34	3.68%	3.73%	-	$80.56	-
USF-HC Legacy*	$1,796.06	Footnote++	Footnote SS	56.13%	Footnote SS	$1,008.13

Source: Data tables from paymentaccuracy.com
* FCC did not report an estimated UPR for the USF-HC Legacy program. The figures listed above were calculated by the Kearney Audit team
\+ FCC provided the tolerable rates for USF-LL and USF-S&L
++ FCC did not establish a tolerable rate for the HC Legacy program
SS The FCC did not publish an IP rate or estimated IP as the program had not finished HC Legacy sample testing by the reporting deadline.

The FCC's USF-LL program made improvements toward the reduction of IPs and Unknown Payments (UP) during FY 2022. Specifically, the LL program reduced its IP rate from 15.87% in FY 2021 to 6.13% in FY 2022. Additionally, FCC achieved the tolerable rate established for the LL program in FY 2022.

FCC's USF-S&L program was noncompliant with PIIA because it did not make improvements to payment integrity during FY 2022. The IP rate for the S&L program increased from 2.97% in 2021 to 3.73% in 2022. In addition, the program fell short of meeting the tolerable rate of 3.68%

established for FY 2022.

The FCC HC Legacy program was non-compliant with PIIA, as the program did not publish an estimated IP or UP rate during FY 2022. This is a result of the program not completing testing on payment integrity samples in time to meet the FY 2022 PIIA reporting deadline. Kearney obtained the S&EMP, sample population, and list of known errors and unknown errors as of August 29, 2022. From our review, we noted that 70 of 130 samples were untested because the FCC did not receive documentation from the beneficiary,[1] and four of 130 sample results had not been validated by the reporting deadline. While Universal Services Administrative Company (USAC) completed the testing on the remaining 56 samples, their results were not reported as either IPs or UPs. Because USAC was still testing 74 samples at the reporting deadline, Kearney deemed it is appropriate to classify the disbursement amount for the 74 samples as UPs based on PIIA guidelines. Kearney estimated that, for 74 untested samples, the UP rate was 56.13% and the UP amount was $1.0 billion in FY 2022.[2]

During FY 2022, the FCC and its components developed a new risk assessment methodology for Phase 1 programs to better identify risks within each program by adding risk scoring and weighting factors. Further, FCC established a three-year rotational risk assessment cycle. The risk assessment cycle will allow FCC to focus on fewer programs and ensure programmatic risks are more efficiently identified, weighed, and scored. These factors helped FCC quantitatively and qualitatively evaluate the risks that FCC programs face. The USF-High Cost Modernized (HC Modernized), USF-Rural Healthcare (RHC), and Telecommunications Relay Service (TRS) programs implemented the updated risk assessment methodology in FY 2022. Additional programs will be implemented beginning in FY 2023.

[1] On May 19, 2023, Kearney received guidance from OMB that samples untested when a Federal entity has selected a statistical sample, requested documentation but not received the documentation fall in the category of UPs for the purposes of compliance with PIIA.

[2] The estimated UP rate was calculated by dividing the simple expansion estimator for UP errors by the simple expansion estimator for total the population. The rate was then applied to the disbursement population to determine the IP amount.

Our audit determined that the FCC was non-compliant with three of the 10 PIIA criteria. ***Table 2*** below shows each of the FCC's 10 programs for which PIIA compliance was required. In addition, the programs' compliance with each of the 10 PIIA criteria is noted.

Table 2: PIIA Compliance Reporting Table[1]

Item No.	Criteria	FCC Coronavirus Disease 2019 (COVID-19) Telehealth	FCC Operating Expenses	FCC Television Broadcaster Relocation Fund (TVBRF)	TRS	USF-HC Modernized[2]	USF-HC Legacy[2]	USF-LL	USF-RHC	USF-S&L	USF Administrative Costs
1	Published Payment Integrity Information with the Annual Financial Statement	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Posted the Annual Financial Statement and Accompanying Materials on the Agency Website	Yes	Yes	Yes	Yes	Yes	Yes	**No**	Yes	Yes	Yes
3	Conducted IP Risk Assessment for Each Program with Annual Outlays Greater Than $10 Million	N/A3	N/A3	N/A3	Yes	Yes	N/A2	N/A2	Yes	N/A2	N/A3
4	Adequately Concluded Whether Each Program is Likely to Make IPs and UPs Above or Below the Statutory Threshold	N/A3	N/A3	N/A3	Yes	Yes	N/A2	N/A2	Yes	N/A2	N/A3

Item No.	Criteria	FCC Coronavirus Disease 2019 (COVID-19) Telehealth	FCC Operating Expenses	FCC Television Broadcaster Relocation Fund (TVBRF)	TRS	USF-HC Modernized[2]	USF-HC Legacy[2]	USF-LL	USF-RHC	USF-S&L	USF Administrative Costs
5	Published IP and UP Estimates for Each Program Susceptible to Significant IPs and UPs	N/A1	N/A1	N/A1	N/A1	N/A1	**No**	Yes	N/A1	Yes	N/A1
6	Published CAP for Each Program for Which an Estimate Above the Statutory Threshold was Published	N/A1	N/A1	N/A1	N/A1	N/A1	N/A4	Yes	N/A1	Yes	N/A1
7	Published an IP and UP Reduction Target for Each Program for Which an Estimate Above the Statutory Threshold was Published	N/A1	N/A1	N/A1	N/A1	N/A1	N/A4	Yes	N/A1	Yes	N/A1
8	Demonstrated Improvements to Payment Integrity or Reached a Tolerable IP and UP Rate	N/A1	N/A1	N/A1	N/A1	N/A1	N/A4	Yes	N/A1	**No**	N/A1
9	Developed a Plan to Meet the IP and UP Reduction Target	N/A1	N/A1	N/A1	N/A1	N/A1	N/A4	Yes	N/A1	Yes	N/A1

Item No.	Criteria	FCC Coronavirus Disease 2019 (COVID-19) Telehealth	FCC Operating Expenses	FCC Television Broadcaster Relocation Fund (TVBRF)	TRS	USF-HC Modernized[2]	USF-HC Legacy[2]	USF-LL	USF-RHC	USF-S&L	USF Administrative Costs
10	Reported an IP and UP Estimate of Less Than 10% for Each Program for Which an Estimate was Published	N/A1	N/A1	N/A1	N/A1	N/A1	N/A4	Yes	N/A1	Yes	N/A1

N/A1 – The agency program is in Phase 1 and, therefore, per OMB guidance was not at risk of significant IPs and UPs.
N/A2 – The agency program is in Phase 2 because it was above the statutory threshold and, therefore, per OMB guidance was not required to conduct a risk assessment.
N/A3 – The agency program did not complete a risk assessment in FY 2022 because the program had a risk assessment conducted within the last three years and, therefore, per OMB guidance, a risk assessment was not required, and this step is not applicable.
N/A4 – The auditors were unable to assess this program's compliance with PIIA as a statistically valid IP rate or UP rate was not published for FY 2022.

1- See the ***FCC Programs***
2- section below for a comprehensive list of all FCC programs, including those that were not assessed during the PIIA Performance Audit, due to not having 12 months of data or not meeting the $10 million gross outlays threshold.
3- USAC reevaluated the USF-High-Cost (HC) program in FY 2021. As part of the reevaluation, USAC analyzed the HC Legacy and HC Modernized funds separately.

Objectives

As requested by the OIG, Kearney audited the FCC's compliance with PIIA. We conducted this performance audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

The objective of our performance audit was to evaluate the FCC's compliance with PIIA, in accordance with the OMB Memorandum M-21-19, Appendix C to OMB Circular A-123, *Requirements for Payment Integrity Improvement*. OMB M-21-19 outlines the 10 PIIA criteria that agencies must follow. Specifically, we reviewed the FCC's risk assessment methodology, IP estimates, S&EMP, CAP, and efforts to prevent and reduce IPs. In addition, Kearney followed the CIGIE, *Guidance for Payment Integrity Information Act Compliance Reviews*. The guidance was developed to assist OIGs that are required to conduct an annual IP review under the PIIA.

Please see ***Appendix A*** of this report for the scope and methodology of the audit.

Background

The FCC is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC also regulates telecommunications and advanced communication services and video programming for people with disabilities. The Communications Act of 1934 (Act) created the FCC, centralized authority granted by law to several agencies and granted additional authority with respect to interstate and foreign commerce in wire and radio communication. The FCC was charged with executing and enforcing the provisions of the Act. The FCC's jurisdiction covers the 50 states, the District of Columbia, and United States possessions. The purpose of the Act was to "[regulate] interstate and foreign commerce in communication by wire and radio so as to make available… to all the people of the United States without discrimination… a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." Additionally, the Act's purpose was to support the effective execution of policies related to national defense and the safety of life and property through the use of wire and radio communication. The responsibilities granted to the FCC by this Act include, but are not limited to, collecting regulatory fees, assessing fines, and conducting auctions.

In 1996, Congress passed the Telecommunications Act of 1996 (Telecommunications Act), a major legislation amending, repealing, or adding new legislation to the Act. The Telecommunications Act was enacted to promote competition and reduce regulation to secure lower prices and higher-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. The USF was created by the Telecommunications Act as the mechanism by which interstate long-distance carriers were assessed fees to subsidize telephone service to low-income households and HC areas (i.e., rural areas where infrastructure is more costly). The rules and regulations governing contributions to USF were established pursuant to Section 254 of the Act, as amended by the Telecommunications Act. The USF includes four programs: HC, S&L (also known as E-Rate), LL, and RHC. These four programs and the Connected Care Pilot Program (CCPP) are funded through mandatory contributions from United States telecommunications service providers, including local and long-distance phone companies, wireless and paging companies, payphone providers, and providers of interconnected Voice over Internet Protocol (VoIP) services. USAC is the administrator of the USF. USAC also administers the FCC Affordable Connectivity Program (ACP), Emergency Connectivity Fund (ECF), COVID-19 Telehealth program, and the CCPP under the Commission's direction.

Title IV of the Americans with Disabilities Act of 1990 established the TRS Fund. This Fund compensates TRS providers for reasonable costs of providing interstate telephone transmission services that enable a person with a hearing or speech disability to communicate with a person without hearing or speech disabilities. The costs of providing interstate TRS are recovered from subscribers of interstate telecommunications services.

Enactment of PIIA

On March 2, 2020, PIIA became law. PIIA (Public Law [PL] 116-117) was enacted to improve efforts to identify and reduce Government-wide IPs. Agencies are required to identify and review all programs and activities they administer that may be susceptible to significant IPs based on guidance provided by OMB. Payment integrity information is published with the agency's annual financial statement in accordance with payment integrity guidance in OMB Circular A-123, Appendix C (M-21-19). The agency must also publish any applicable payment integrity information required in the accompanying materials to the annual financial statement in accordance with applicable guidance. The most common accompanying materials to the annual financial statement are the payment integrity information published on paymentaccuracy.gov (https://paymentaccuracy.gov/).

FCC Programs

Agencies are required under PIIA guidance to assess programs that are over a year old and have reported gross outlays greater than $10 million. The following 10 FCC programs met the outlay and age thresholds requiring a PIIA compliance assessment to be performed in FY 2022:

- COVID-19 Telehealth Program: FCC program that was established to fulfill its responsibilities under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) to provide support efforts of health care providers to address COVID-19 by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during the pendency of the COVID-19 pandemic[3]
- FCC Operating Expenses: FCC funds for conducting payroll and nonpayroll operating activities, including auction refunds
- TVBRF: The TVBRF was formed as a result of the Spectrum Act of 2012 (Spectrum Act). The Spectrum Act authorized the FCC to conduct incentive auctions aimed at

[3] https://www.usac.org/about/covid-19-telehealth-program/

repacking the spectrum. TV Broadcasters and Multichannel Video Programming Distributors (MVPD) who were relocated to different spectrum bands were eligible to receive reimbursement of their relocation costs. With the passage of the Spectrum Act and later passage of the 2018 Reimbursement Expansion Act, television broadcasters, Low Power Television Stations, television translators, Frequency Modulation (FM) stations, and MVPDs could access $2.5 billion to relocate to different spectrum bands[4]

- <u>TRS:</u> FCC component administered by Rolka Loube, LLC (RL). The TRS Fund compensates TRS providers for the reasonable costs of providing interstate telephone transmission services that enable a person with a hearing or speech disability to communicate with a person without hearing or speech disabilities. The costs of providing interstate TRS are recovered from subscribers of interstate telecommunications services[5]
- <u>USF-HC:</u> The HC program is the largest of the four USF programs. Beginning in FY 2021, this program is reviewed in its two components: HC Legacy and HC Modernized. The HC Modernized program provides funding to telecom carriers to provide service in rural areas where the market alone cannot support the substantial cost of deploying network infrastructure and providing connectivity. The program was modernized into the Connect America Fund to support broadband to ensure that all people in America have access to affordable connectivity[6]
  - The HC Modernized component consists of the Alaska Plan, Alternative Connect America Cost Model, Revised Alternative Connect America Cost Model, Alternative Connect America Cost Model II, Connect America Fund Phase II Model, Connect America Fund Phase II Auction, Connect America Fund Broadband Loop Support, Mobility Fund, Rural Broadband Experiments, Rural Digital Opportunity Fund, Bringing Puerto Rico Together, and the Connect United States Virgin Islands funds. These funds help subsidize the delivery of voice and broadband service across rural America
  - USF-HC Legacy: The HC Legacy component of the general HC program is smaller than the HC Modernized component. It also provides funding to telecom carriers to provide service in rural areas where the market alone cannot support the substantial cost of deploying network infrastructure and providing connectivity[4]. HC Legacy contains the Frozen HC Support, HC Loop and Safety Value Support, Intercarrier Compensation Recovery, and Interstate Common Line Support funds. These funds help to subsidize the delivery of voice and broadband service across rural America
- <u>USF-LL:</u> The LL program is responsible for data collection and maintenance, support calculation, and disbursement for the USF low-income program. Since 1985, the LL program has provided a discount on phone service for qualifying low-income consumers to ensure all Americans have the opportunities and security that phone service brings, including being able to connect to jobs, family, and emergency services. The LL program is available to eligible low-income consumers in every state, territory, commonwealth, and on Tribal lands[7]

---

[4] https://www fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/reimbursement

[5] https://www fcc.gov/telecommunications-relay-service-trs-general-management-and-oversight

[6] https://www.usac.org/high-cost/program-overview/

[7] https://www fcc.gov/general/lifeline-program-low-income-consumers

- USF-RHC: The RHC Program provides funding to eligible health care providers for telecommunications and broadband services necessary for the provision of health care. The goal of the program is to improve the quality of health care available to patients in rural communities by ensuring that eligible health care providers have access to telecommunications and broadband services[8]
- USF-S&L: The S&L program, commonly known as the E-rate program, helps schools and libraries to obtain affordable broadband. The E-rate program is administered by USAC under the direction of the FCC. Specifically, USAC is responsible for processing the applications for support, confirming eligibility, and reimbursing service providers and eligible schools and libraries for the discounted services[9]
- USF-Administrative Costs: USAC, established in 1997, is an independent, not-for-profit corporation that administers the four (i.e., HC, LL, RHC, S&L) USF universal service support mechanisms. Under the direction of the Commission, USAC is responsible for the billing and collection of USF monies and for disbursing funds for the USF programs. The administrative costs program oversees the compensation, benefits, and other operating expenses required to carry out USAC's responsibilities for administering the USF programs.

Programs that are less than a year old and/or have gross outlays of less than $10 million for the FY under review are not required to comply with PIIA guidance. The following nine programs did not meet the outlay and/or age thresholds and as a result, were not assessed during FY 2022 to determine compliance with PIIA criteria:

- Secure and Trusted Communications Reimbursement Program: A $1.9 billion FCC program that was created to reimburse communication providers with advanced communication services. Specifically, the program assists providers who have fewer than 10 million customers for services, including the removal, replacement, and disposal of communications equipment[10]
- ECF: A $7.17 billion FCC program intended to help schools and libraries with providing both tools and services that are needed for remote learning during the COVID-19 emergency period. Specifically, this program assists in providing internet access and devices to students to connect them with online classrooms[11]
- Emergency Broadband Benefit Program (EBBP): An FCC program intended to provide support for broadband services and certain devices to help low-income families stay connected during the COVID-19 pandemic, specifically, by helping cover the costs of home internet services.[12] This program ended in December 2021 with the transition to the longer-term ACP
- ACP: A $14.2 billion FCC benefit program that supports households to ensure broadband internet access. The program provides a discount up to $30 per month for internet service

[8] https://www fcc.gov/general/rural-health-care-program

[9] https://www fcc.gov/general/e-rate-schools-libraries-usf-program

[10] https://www fcc.gov/supplychain/reimbursement

[11] https://www fcc.gov/emergency-connectivity-fund

[12] https://www fcc.gov/emergency-broadband-benefit-program

and up to $75 per month for homes on qualifying Tribal lands. Additionally, the program provides one-time discounts for the purchase of computers and tablets[13]

- Broadband Federal Mapping: An FCC program that will map broadband access in the United States[14]
- CCPP: An FCC program that will provide up to $100 million from the USF over a three-year period to support the provision of connected care services. This pilot program will provide funding to cover 85% of costs towards broadband connectivity and network equipment, in addition to information services[15]
- ACP Outreach Grants: An FCC program that provides funding support up to $100 million for eligible partners in their outreach efforts to increase the awareness and reach of the ACP program. One of the primary objectives of the grant program is to broaden the ACP program to diverse communities and individuals with disabilities[16]
- North American Numbering Plan: An FCC program administered by Welch & Company, LLP. This program is the basic numbering scheme that permits interoperable telecommunications services within the United States, Canada, Bermuda, and the Caribbean[17]
- Broadband Deployment Locations Map: An FCC program that will develop a centralized, authoritative source of information on funding that is made available by the Federal Government for broadband infrastructure development within the United States.[18]

Audit Results

We conducted this performance audit in accordance with *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Kearney's audit found that three of 10 FCC programs which were subject to PIIA, the S&L program, LL program, and the HC Legacy program, were non-compliant with at least one PIIA criteria. We issued five Notifications of Findings and Recommendations (NFR) that included 10 recommendations.

Specifically, we found the following:

- The USF-S&L program did not demonstrate improvements toward payment integrity for FY 2022. Per PIIA criteria, programs categorized as Phase 2 must demonstrate

[13] https://www fcc.gov/acp

[14] https://www fcc.gov/document/national-broadband-map-fact-sheet

[15] https://www fcc.gov/wireline-competition

[16] https://www fcc.gov/acp-grants

[17] https://www.fcc.gov/north-american-numbering-plan-general-management-and-oversight

[18] 47 U.S. Code § 1704-Broadband Deployment Locations Map

improvements toward reducing their IP and UP rate each year to be compliant with the requirements of PIIA. While the S&L program established a reduction target of 2.90%, the program achieved an actual IP and UP rate of 3.73%. Additionally, the program did not meet its tolerable IP rate for FY 2022 and reported $80.56 million in overpayments, an increase from the FY 2021 overpayment amount of $62.19. The S&L program was noncompliant with PIIA requirements, as the program failed to demonstrate improvements towards payment integrity in FY 2022

- The USF-LL program reported inaccurate overpayment amounts. Namely, for $30 million of the $205 million overpayment amount identified in the 2019 Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA) Compliance report, the FCC reported a lesser amount of $70,000. FCC has not accurately reported the amount first identified in the 2019 IPERIA audit report as of FY 2022. As a result, the USF-LL program continues to be non-compliant with the requirements of PIIA
- The HC Legacy program did not complete its improper payment estimation sample testing by the reporting deadline and as a result, did not determine the estimation result it needed to publish an IP or UP rate for FY 2022. Specifically, for 70 of 130 samples, USAC had not received supporting documentation from the beneficiaries and for four of 130 samples; USAC had not completed testing in time to meet the FY 2022 PIIA reporting deadline. The FCC elected to defer reporting an IP or UP amount for the 74 unvalidated samples and 56 completed samples until the testing was completed in FY 2023. Since these amounts were not reported, the program was non-compliant with the requirements of PIIA. After fieldwork ended, FCC management notified the audit team that FY 2022 testing had been completed. The results of testing indicated that the IPR for the HC Legacy program is 2.88% or $51.7 million. The audit team was unable to perform procedures to validate the finalized testing results because the results were finalized during the FY 2023 reporting period.

We identified the following conditions regarding FCC's risk assessments and internal controls related to the TRS program. In our opinion, these matters were not significant to the payment integrity information reported in FCC's Agency Financial Report (AFR) or accompanying materials. Therefore, these conditions did not constitute non-compliance with PIIA, but are reported as recommendations for improvement:

- The FCC did not fully implement the Prior-Year (PY) recommendation related to risk assessments for FCC operating fund programs. The FCC drafted a three-year rotational schedule and updated the risk assessment methodology to include weighing and scoring factors for payment integrity risk. However, no FCC operating fund programs were scheduled for a risk assessment in FY 2022; thus, the effectiveness of the risk assessments, as related to determining if a program was at higher risk of IPs, could not be determined.
- The FCC did not implement the PY recommendation to define, through documented policies and procedures, the interdependent relationships between the FCC, the TRS Administrator, and the TRS Providers regarding payment integrity risks.

Finding 1: USF-LL Overpayment Amounts Reported Were Inaccurate

Conditions: The FCC was non-compliant with PIIA, 31 United States Code (U.S.C.) §3351(2)(A)(i). For $30 million of the $205 million overpayment identified in the FY 2019 IPERIA report, the FCC reported an overpayment of $70,000 based on anticipated recovery from a proposed settlement. The FCC should have reported the entire $30 million as the overpayment amount as $30 million was improperly disbursed as a result of a rule violation that was discovered in FY 2019. Additionally, even if the settlement is approved, the $30 million overpayment is still the appropriate amount to report because the reporting of recovery amounts is a separate process from IP reporting. The $70,000 reduced overpayment amount reported was based on a proposed settlement between the FCC and an Eligible Telecommunications Carrier (ETC). This amount represents an overpayment for an eight-month period which the ETC was operating outside of its approved jurisdiction and before it submitted a petition to expand the jurisdiction in February 2013.

Causes: The FCC did not follow PIIA guidance that required the full amount of $30 million be reported as an overpayment in the year the overpayment was discovered, as FCC management believed the proposed settlement amount of $70,000 from the proposed settlement was more reflective of the actual overpayment than $30 million.

Criteria: OMB M-21-19 Appendix C Section VI A 1a, *Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, dated March 5, 2021, states:

> "To achieve compliance the agency must publish any applicable payment integrity information in its annual financial statement in accordance with payment integrity guidance provided in OMB Circular A136. In addition, the agency must publish any applicable payment integrity information required in the accompanying materials to the annual financial statement in accordance with applicable guidance."

Effects: Understating IPs identified through recovery activities by reporting proposed settlements instead of identified overpayment amounts puts the USF-LL program at risk of inaccurately reporting IPs. In addition, the Chairwoman's office may modify or reject the proposed settlement requiring the FCC to update the IP information in subsequent years to increase the amount. Upwardly adjusting IP information may lead to taxpayer mistrust of FCC management. Further, Congress may not be accurately informed regarding the full extent of IPs for the USF-LL program.

Recommendations: Kearney recommends that the FCC take the following actions:

1. Correct the 2019 IP estimate amount reported in PY in the current year reporting by reporting the full estimated amount of $30 million as an overpayment. [*New*]
2. If a settlement is reached by issuing a Forfeiture Order or Consent Decree, then report the amount recovered from the provider as an overpayment recaptured outside payment recapture audits. [*New*]
3. Through the OMB annual data call, include measurable milestones to accurately report IP

information on paymentaccuracy.gov and achieve compliance. [*Repeat*]

Finding 2: The FCC Risk Assessments Needs Improvement

Conditions: The FCC did not have an approved IP risk assessment methodology in place at the end of FY 2022. In FY 2021, the FCC was issued a finding because the risk assessment methodology used to assess the COVID-19 Telehealth program, TVBRF program, and FCC Operating Expenses did not incorporate certain elements of the ERM framework, as required by OMB Circular A-123, Appendix C. Specifically, the FCC risk assessments did not include weighing and scoring factors that would enable FCC to understand the organizational impact of payment integrity risks. Although the FCC developed a draft risk assessment methodology on October 31, 2022 that incorporated weighing and scoring of risks related to payment integrity, the methodology was not completed and approved in time to be used to assess the FCC programs during FY 2022. As a result, the methodology that the FCC used to perform the FY 2021 risk assessments did not use the ERM framework to identify, evaluate, and analyze the likelihood and impact of the potential payment integrity risk faced by the agency.

Causes: During FY 2022, the FCC did not make updating of the risk assessment methodology a priority, per the PY recommendation. Instead, FCC developed a three-year risk assessment schedule to include performing risk assessments of the COVID-19 Telehealth and TVBRF programs in FY 2023 and the FCC Operational Expenses in FY 2024, believing that the risk assessments performed on those programs in FY 2021 were sufficient. As noted previously, the risk assessment methodology used by FCC in FY 2021 was not in accordance with OMB guidance because it lacked certain elements of the ERM framework.

Criteria: OMB M-21-19, Appendix C, Section VI.A.2b, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, dated March 5, 2021, states: "To achieve compliance the agency must ensure that the IP risk assessment methodology used adequately concludes whether the program is likely to make IPs plus UPs above or below the statutory threshold."

OMB M-21-19, Appendix C, Section II.A.1a, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, dated March 5, 2021, states: "The risk factors above are provided as examples only, it is the agency's responsibility to determine the risk factors and the associated scoring or risk factor weighting methodology that should be considered for each individual program and risk."

OMB M-21-19, Appendix C, Section IV.A.3, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, dated March 5, 2021, states:

> "The Agency's Risk Profile, as required by OMB Circular No. A-123, should include an evaluation of payment integrity risks. To effectively manage payment integrity risk, agency senior management must perform an assessment in which they identify and evaluate the potential payment integrity risks the agency faces, analyze the potential likelihood and impact of those risks, and finally, prioritize the risks. The payment

integrity risks should be prioritized based on the results of the assessment and the program's tolerable IP rate."

Effects: Failure to implement a risk assessment methodology to identify and manage payment integrity risks can result in an inaccurate assessment of the likeliness of IPs and UPs occurring. In addition, the FCC may not consider all controls necessary to mitigate program risks and may miss opportunities to identify and mitigate payment integrity risks.

Recommendation: Kearney recommends that FCC take the following actions related to its IP risk assessment:

4. Develop and implement a written IP and UP risk assessment methodology that incorporates the ERM framework from OMB Circular A-123 to assist in the identification and management of payment integrity risk and support whether the program is susceptible to making IPs and/or UPs. The methodology should include a risk scoring or weighting factor for each program and associated risk. [*Repeat*]

Finding 3: USF-S&L Program Did Not Show Improvements to Payment Integrity

Conditions: In FY 2022, the FCC was non-compliant with PIIA, 31 U.S.C. §3351(2)(E) because it did not show improvements in reducing its IP rate estimates to a level at or below its tolerable IP rate or annual reduction targets. FCC's progression toward payment integrity improvement was not met when its IP estimate increased from $62.19 million or a 2.97% error rate in FY 2021 to $80.56 million or a 3.73% error rate in FY 2022. This increase also resulted in FCC falling short of achieving its IP tolerable rate of 3.68% and reduction target of 2.90%.

IP estimates stemmed from a combination of competitive bidding and invoicing errors. Competitive bidding errors accounted for $59.92 million or a 2.78% error rate. In the FY 2021 PIIA audit report, a recommendation for USAC to continue to enhance applicant outreach program to educate applicants on the S&L program rules, especially rules relating to the competitive bidding processes, was noted. During FY 2022, USAC implemented additional webinars and office hours to train applicants on competitive bidding; however, errors associated with competitive bidding remained high.

In addition, during the most recent Payment Quality Assurance (PQA) assessment, invoicing errors accounted for $11.73 million or a 0.54% error rate. In the FY 2021 PIIA audit report, Kearney recommended that USAC enhance the use of automation tools in the E-Rate Productivity Center (EPC) to check invoices for common errors and invoices that are flagged as high-risk of non-compliance with program invoicing requirements.

USAC has made progress toward implementing this recommendation, but full remediation has not been achieved. USAC incorporated a review of audit findings into applicant competitive bidding training conducted in August 2022, which will impact FY 2023 applications. In addition, FCC initiated rulemaking proceedings in December 2021 to establish a competitive bidding portal. The establishment of a competitive bidding portal would give USAC oversight of the competitive bidding process, thereby reducing the risk of errors that are caused by applicants. However, the corrective action to implement a competitive bidding portal is not expected to be completed until FY 2025. Thus, competitive bidding errors remained a large contributor to the overall IP error rate and amount in FY 2022.

Causes: FCC and USAC have not effectively designed and implemented controls that can reduce IPs and UPs to a level that is below the statutory threshold or meets the tolerable error rate. Specifically, USAC does not have a process to review documentation obtained by the applicant to determine if open and fair bidding was followed. Currently, the competitive bidding process allows applicants to issue a Request for Proposal (RFP), review submitted bids, and select a vendor. USAC and FCC do not require all applicants to submit documentation to prove that the bidding practice was open and fair or that the service provider offered the applicant a price that is not greater than a similar nonresidential customer would be charged. Instead, program rules allow an applicant to certify via FCC Form 470, *Description of Services Requested and Certification Form*, that competitive bidding procedures have been followed. Further, applicants must also follow state and/or local procurement rules. This adds to the complexity to determine the competitive bidding steps that should be followed to comply with the program rules.

In addition, FCC and USAC do not have processes in place to effectively identify invoicing errors prior to disbursing payments. Specifically, USAC does not verify that service provider invoices support the undiscounted amount of the disbursement. This results in IPs that exceed the amount of support the applicant is eligible to receive.

USAC management explained that while not complete, they are still working on converting Legacy systems to enable invoicing on the Appian platform. USAC has already developed FCC Forms 472 and 474, both of which are preliminary intake forms. USAC expects this recommendation to be fully implemented and complete by the end of Quarter (Q)2 2023 (June 30, 2023).

Criteria: The OMB M-21-19 Appendix C, Section VI.A Criteria 5b, *Transmittal of Appendix C to OMB Circular A-123*, *Requirements for Payment Integrity Improvement*, dated March 5, 2021, states: "If the program reported an IP and UP estimate above the statutory threshold in the prior year and the CY, and the program has not yet achieved its tolerable IP and UP rate, the program is responsible for demonstrating improvements. The program should ensure that it undertakes new actions during the year to improve their payment integrity."

OMB M-21-19 Appendix C, Section II C1, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, dated March 5, 2021, states: "Programs are considered to be above the statutory threshold if they are reporting an annual IP and UP estimate that is either above $10,000,000 and 1.5% of the program's total annual outlays or above $100,000,000 regardless of the associated percentage of the program's total annual outlays that the estimated IP and UP amount represents."

OMB M-21-19 Appendix C, Section VI C, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, dated March 5, 2021, states:

> "... for each agency program reporting an estimate above the statutory threshold, the OIG must include recommendation(s) for action(s) to further improve prevention and reduction of IPs and UPs within the program. The OIG will engage with the program and/or other part of the agency regarding the specific corrective action recommendations to ensure appropriate and effective corrective action recommendations are made"

Effect: If FCC management cannot reduce the IP and UP rate to below statutory thresholds, then FCC may receive negative public feedback due to concerns regarding the potential misuse of taxpayer money, resulting in the mistrust of FCC management and S&L program.

Recommendations: Kearney recommends that FCC take the following actions to address IP risk:

5. Direct USAC to continue enhancing applicant outreach programs to educate applicants on the S&L program rules, especially rules relating to the competitive bidding processes. Specifically, this may include implementing measures, such as gauging applicant participation to ensure applicants are cognizant of the material being presented or requiring mandatory, comprehensive training for new applicants. [*Repeat*]
6. Direct USAC to enhance the use of automation tools in EPC to check invoices for common errors and invoices that are flagged as having a high risk of non-compliance with program invoicing requirements. [*Repeat*]
7. Through the OMB annual data call, include measurable milestones to accurately report IP information on paymentaccuracy.gov and achieve compliance. [*New*]

Finding 4: FCC Payment Integrity Oversight Needs Improvement

Conditions: FCC's Consumer and Governmental Affairs Bureau (CGB) did not effectively document how payment integrity risks were managed between FCC, the TRS Administrator, and TRS Providers. To remediate the PY finding, the TRS administrator implemented a CAP. The CAP specified that the TRS Administrator would work with FCC to document policies and procedures addressing the responsibilities of each party to manage IP risks. However, neither the TRS Administrator nor CGB could provide a written policy that documented methodologies used to obtain assurance that risks of IPs are managed for each party. Instead, a contract Performance Work Statement (PWS) was provided by the TRS Administrator and CGB to demonstrate how the TRS Administrator performs payment integrity-related actions. However, the PWS did not outline the independent responsibilities for managing the payment integrity risks of each party.

Cause: CGB and the TRS Administrator were aware of the recommendation to document policies and procedures that define the interdependent relationship and how each party is responsible for and manages IP risks. However, CGB opted to forego written documentation and instead relied on periodic meetings with the TRS Administrator to discuss payment integrity-related issues.

Criteria: The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (Green Book), Paragraph 12.02, dated September 2014, states, "Management documents in policies the internal control responsibilities of the organization."

GAO's Green Book, Paragraph 12.03, dated September 2014, states: "Management documents in policies for each unit its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness…"

GAO's Green Book, Paragraph 12.04, dated September 2014, states:

> "Those in key roles for the unit may further define policies through day-to-day procedures, depending on the rate of change in the operating environment and complexity of the operational process. Procedures may include the timing of when a control activity occurs and any follow-up corrective actions to be performed by competent personnel if deficiencies are identified. Each unit, with guidance from management, determines the policies necessary to operate the process based on the objectives and related risks for the operational process. Each unit also documents policies in the appropriate level of detail to allow management to effectively monitor the control activity. Management communicates to personnel the policies and procedures so that personnel can implement the control activities for their assigned responsibilities."

GAO's Green Book, Paragraph 3.10, dated September 2014, states:

> "Effective documentation assists in management's design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors."

GAO's Green Book, Paragraph 3.11, dated September 2014, states: "Management documents internal control to meet operational needs. Documentation of controls, including changes to controls, is evidence that controls are identified, capable of being communicated to those responsible for their performance, and capable of being monitored and evaluated by the entity."

OMB M-21-19, Appendix C, Section VIII.A.1, *Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, dated March 5, 2021, states:

> "The actions management establishes through policies and procedures to achieve objectives and responds to risks in the internal control system, which includes the entity's information system. In the context of payment integrity, the agency has developed control activities to help management achieve the objective of reducing IPs and UPs by, establishing internal control activities that are responsive to management's objectives to mitigate risks of IPs and UPs (e.g., policies and procedures related to transaction authorization and approvals of program activities)…"

Effect: Failure to identify and manage payment integrity risks can result in inaccurate assessments of the likeliness of IPs and UPs occurring.

Recommendation: Kearney recommends that FCC take the following actions:

8. Develop policies and procedures that a) acknowledge the interdependent relationships between FCC, the TRS Fund Administrator, and TRS Providers; b) address the responsibilities of each party to manage the risks of IPs; and c) describe methodologies used to obtain assurance that each party manages its risks of IPs appropriately and as intended. [*Repeat*]

Finding 5: USF HC Legacy Program Did Not Report IP or UP Estimates

Conditions: The FCC was non-compliant with PIIA 31 U.S.C. §3352(c)(2)(A) and 31 U.S.C. §3352(c)(1) because it did not report its UP or IP rate or amount for its HC Legacy program in FY 2022. Although USAC began testing for HC Legacy samples, it did not complete the testing by the deadline of August 29, 2022. In accordance with Appendix C of OMB Circular A-123, an UP rate should be reported when a program has not been able to classify a payment as either proper or improper. Further, Appendix C requires all Phase 2 programs, such as HC Legacy, to report a statistically valid IP estimate for each program year.

Causes: The delay in reporting of HC Legacy samples testing results was due to FCC and USAC expanding the PQA assessment procedures to include test steps covering risks identified in the Beneficiary and Contributor Audit Program (BCAP). USAC did not fully anticipate the additional work necessary to perform the expanded testing. Specifically, the expanded procedures were applied to 74 of 130 HC Legacy PQA samples for FY 2022. For each of the 74 affected samples, the time it took to review samples increased from approximately 18 hours per sample to 170 hours per sample. Several beneficiaries had questions about the PQA assessments or provided incorrect documentation as the result of the expanded procedures. This resulted in beneficiaries asking for and receiving extensions to provide documentation, which contributed to testing delays. Because of the delays, 56 out of 130 samples were tested, while testing on 70 samples was not completed because USAC had not received documentation from the beneficiary as of August 29, 2022. Further, testing on four samples was not completed because USAC had not performed a quality review of the test work to determine the IP or UP status. On May 19, 2023, OMB provided additional guidance that payments that cannot be tested because a Federal entity did not receive documentation can be classified as UPs for reporting purposes. Thus, the 70 samples for which documentation had not been received by the beneficiaries were deemed UPs.

In addition, FCC and USAC outsourced testing work to an Independent Certified Public Accountant (IPA). USAC explained that they found that the IPA did not understand the complexity of HC Legacy, resulting in poor performance and termination of the IPA's contract. The USAC PQA team then reassessed and reworked most of the samples.

However, on May 11, 2023, FCC management officials informed the audit team that IP estimates based on statistical testing of FY 2022 HC Legacy samples had been completed subsequent to our audit fieldwork. The resulting improper payment rate (IPR) of this testing was 2.88% or $51.7 million. The audit team was unable to verify the accuracy of this IPR because FCC's testing was completed after audit fieldwork concluded for our FY 2022 PIIA compliance audit. This information will be subject to audit procedures during the audit of FCC's PIIA compliance for 2023.

Criteria: OMB M-21-19, Appendix C, Section I.B, *Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, dated March 5, 2021, states:

> "If a program cannot discern whether a payment is proper or improper, the payment is considered an UP. If a program is still conducting research or going through the review of a payment at the time that the program must finish their sampling and report its results, the payment will be considered an UP for reporting purposes that year. This is done so that the program would not unintentionally over or under report the payment type results. An UP will eventually be determined to be proper or improper but because the program does not know whether it is proper or improper at the time of their review, they must call it an UP for purposes of this guidance. Programs may be required to report the review results of their UPs in future reporting years as the results become available. Agencies should not cushion their reporting timeframe specifically for the purpose of allowing the agency additional time to verify whether an UP is proper or improper."

31 U.S.C, §3352 (c)(2)(A), *Estimates of Improper Payments and Reports on Actions to Reduce Improper Payments* states: "In general – For the purpose of producing an estimate under paragraph (1), when the executive agency cannot determine, due to lacking or insufficient documentation, whether a payment is proper or not, the payment shall be treated as an improper payment."

31 U.S.C, §3352 (c)(1) *Estimates of Improper Payments* states:

''With respect to each program and activity identified under subsection (a)(1), the head of the relevant executive agency shall—

(A) produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of the Office of Management and Budget, of the improper payments made under the program or activity; and
(B) include the estimates described in subparagraph (A) in the accompanying materials to the annual financial statement of the executive agency and as required in applicable guidance of the Office of Management and Budget."

OMB M-21-19, Appendix C, Section VI.A.3, *Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement*, dated March 5, 2021, states: "To achieve compliance the program should submit a S&EMP to OMB in the FY after the FY that the program was deemed likely to be susceptible to IPs and UPs and subsequently publish an IP and UP estimate."

Effect: We estimated the UPR was 56.13%[19] or $1.0 billion. Failure to report the UPR or IPR results in a lack of transparency on the true state of the HC Legacy program. In addition, delays in reporting of IP and UP estimates for the HC Legacy program will continue if the level of effort required for completion of additional procedures is not reflective in the planning of USAC's and FCC's PQA audits. Further, the OIG will be unable to complete testing for compliance with PIIA in the proper year.

Recommendations: Kearney recommends that FCC direct USAC to perform the following:

9. Adequately plan the PQA assessments for HC Legacy to account for additional review time needed to complete the expanded procedures. Specifically, create and gain approval for the assessment procedures and select samples in an approved timeframe that allows for the expanded procedures to be completed by the reporting deadline. [*New*]
10. Perform outreach to all beneficiaries of HC Legacy prior to PQA assessments to ensure beneficiaries are aware and understand the expanded procedures for PQA, the additional documentation request and requirements, and feasibility of the requested due date in providing the documentation. [*New*]

Management's Response to Audit: See ***Appendix B***.

Conclusion (Generally Accepted Government Auditing Standards [GAGAS] 9.18-.21, 9.27)

Based on our audit of the FCC FY 2022 AFR, accompanying materials, and supporting documentation, we concluded that FCC did not comply with three of the 10 PIIA criteria outlined in OMB Circular A-123, Appendix C. We also noted areas for improvement surrounding FCC's management of payment integrity risks. Kearney issued five NFRs with 10 recommendations that, when implemented, will aid in FCCs compliance with PIIA and strengthen controls for payment integrity.

[19] For sampled disbursements that had not been validated in 2022, the full sampled amount was considered to be an UP. The UP rate was then calculated by dividing the simple expansion estimator for UPs by the simple expansion estimator for total the population. The rate was then applied to the disbursement population to determine the UP amount.

Appendix A – Scope and Methodology of the Audit

Scope and Limitations

The Payment Integrity Information Act of 2019 (PIIA) requires the Office of Inspector General (OIG) to provide an annual report of the Federal Communications Commission's (FCC) compliance with Improper Payment (IP) requirements. In accordance with the PIIA requirement, an external audit firm, Kearney & Company, P.C. (referred to as "Kearney," "we," and "our" in this report), acting on behalf of OIG, conducted an audit to determine whether the FCC complied with PIIA for Fiscal Year (FY) 2022. As part of this objective, Kearney also evaluated the FCC's efforts to prevent and reduce IPs.

Kearney conducted this audit from November 2022 to March 2023. The scope of this audit covered the FCC's FY 2022 IP reporting process. Our audit was impacted by the Coronavirus Disease 2019 (COVID-19) pandemic and resulting operational challenges. These challenges included the inability to conduct in-person meetings. Kearney's performance audit engagement was conducted in accordance with the performance audit standards established by *Government Auditing Standards*. Those standards require that we obtain reasonable assurance that evidence is sufficient and appropriate to support our findings and conclusions in relation to the audit objectives. Kearney believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Methodology and Work Performed

To obtain background information, Kearney researched and reviewed legislative requirements related to IPs, Office of Management and Budget (OMB) guidance, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) *Guidance for Payment Integrity Information Act Compliance Reviews* and prior OIG and Government Accountability Office (GAO) audit reports, as applicable. We designed the audit to obtain insight into the FCC's current processes, procedures, and organizational structure regarding compliance with IP requirements. To expedite the audit process, Kearney leveraged the results of our FY 2022 audit of the FCC's financial statements to confirm our understanding of the nature and profile of the FCC operations, regulatory requirements, and supporting information systems and controls.

To determine compliance with PIIA, we reviewed the FCC's FY 2022 Agency Financial Report (AFR) and conducted the following:

- Performed virtual walkthroughs and interviews with the applicable FCC, Universal Service Administrative Company (USAC); Rolka Loube, LLC (RL); and Welch LLP personnel to gain an understanding of the controls for payment integrity, PIIA risk assessments, and processes for reporting results in the FY 2022 AFR (Appendix 3, *Payment Integrity Information Act Reporting*) and accompanying materials
- Reviewed the risk assessments implemented by the FCC and components, along with applicable supporting documentation to corroborate the results reported in the accompanying materials to the FY 2022 AFR

- Reviewed and validated documentation related to the Sample and Estimation Methodology Plan, IP estimates, and Unknown Payment (UP) estimates
- Reviewed and validated FCC's payment recapture audit program and amounts identified outside of recapture audits
- Reviewed Corrective Action Plans (CAP) and supporting documentation to corroborate information reported in the FY 2022 AFR (Appendix 3, *Payment Integrity Information Act Reporting*) and accompanying materials
- Reviewed documentation related to CAPs implemented as a result of findings noted in the FY 2019 Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA) Compliance Report and the FYs 2020 and 2021 PIIA Compliance Reports
- Reviewed quarterly reporting pertaining to each major, high-risk program activity

Work Related to Internal Controls

The FCC management is responsible for the design, implementation, and operating effectiveness of internal controls to identify and prevent IPs in its programs and activities. While planning and performing our audit, we considered several factors, including the subject matter of the project, to determine whether internal control was significant to the audit objectives. Kearney determined that internal control principles related to designing, implementing, and monitoring activities were significant for this audit.

Kearney assessed whether internal controls are properly designed and implemented as they relate to payment integrity. We determined the operating effectiveness by gathering information through walkthroughs, inspecting documents and re-performing certain procedures. As noted in Finding 4 above, Kearney identified deficiencies with FCC's documentation of the interdependent relationships and responsibility for the management of payment integrity risks. We also identified deficiencies in the implementation of the FCC risk assessment methodology in Finding 2. Our consideration of internal control was for the limited purpose described in the paragraph above and was not designed to identify all deficiencies in internal control. Therefore, all internal control deficiencies may not be disclosed. In addition, this report is meant to define our internal control procedures and the results of testing and not to provide an opinion on the effectiveness of the FCC's internal control.

Kearney assessed the reliability of data by conducting walkthroughs with FCC and component entities and reconciling data received to supporting documentation. We determined that data was sufficiently reliable for the purposes of determining compliance with the objectives of the audit.

Appendix B – Management's Views on Conclusions and Findings

Federal Communications Commission
Office of the Managing Director
Washington, D.C. 20554

To:	Sharon Diskin, Acting Inspector General, FCC
From:	Mark Stephens, Managing Director, FCC
Date:	May 22, 2023
Subject:	Management's Response to Independent Auditor's Report on the Federal Communications Commission's Compliance with the Payment Integrity Information Act of 2019 (PIIA) Reporting for Fiscal Year (FY) 2022

Thank you for the opportunity to respond to the draft report from the Office of the Inspector General (OIG) to the Managing Director, regarding the Federal Communications Commission's (FCC or Commission) compliance with the requirements described in the Office of Management and Budget (OMB) Memorandum M-21-19, Appendix C to OMB Circular A-123, *Requirements for Payment and Integrity Improvement*. We appreciate the efforts of your team to work with the Commission on this audit and share your interest in reducing waste, fraud, and abuse across all programs overseen by the Commission. In response to the FY 2022 Draft PIIA Audit Report, the Commission provides the responses below.

Finding 1: USF Lifeline Overpayment Amounts Reported Were Inaccurate

First, the Commission notes that when this item was reported as part of prior year PIIA reports, the Commission was engaged in an inquiry to assess the scale of this potential improper payment. The numbers reported were estimates based on the state of the inquiry at the time. As was the case previously, ongoing settlement conversations with the impacted service provider may impact any potential improper payment amount.

Second, the Commission followed the advice of the OIG's previous auditor in reporting on improper payments outside of audit recapture even though we informed them that there had been no formal written documentation provided. The previous auditor insisted we report the improper payment in our Agency Financial Report (AFR). Although there were no formal consent decrees or notices of apparent liabilities formalized at the time we were required to report on improper payments, we did so on the recommendation of the OIG's auditors. We will continue to work to determine the appropriate next steps and follow the guidance in OMB M-21-19.

The Commission continues to work with the affected service provider and should have a resolution to this issue prior to reporting improper payments in FY 2023.

Finding 2: The FCC Risk Assessments Needs Improvement

The Commission agrees with this finding and is in the process of performing improper payment risk assessments on its individual programs that are not reporting improper payment estimates. The individual improper payment risk assessments will determine whether a program is susceptible to significant risks and whether the program should move to phase 2 and report improper payments estimates per OMB's guidance in M-21-19.

Finding 3: USF Schools and Libraries Program Did Not Show Improvements to Payment Integrity

The FCC does not dispute that the Schools and Libraries (S&L) program reported an estimated improper payment (IP) and unknown payment (UP) rate above the statutory threshold of either $10 million and 1.5% of the program's total outlays or above $100 million based on the FY 2022 payment quality assurance (PQA) assessments or that the IP rate was higher than last year's IP rate. Specifically, the S&L program reported an IP rate estimate of 3.73% and an IP amount of $80.56 million. We note that competitive bidding errors and/or lack of competitive bidding related documentation accounted for approximately 75% of the overall IP rate of 3.73% and represented $59.92 million of the overall $80.56 million improper payment amount. We also note that invoicing errors accounted for approximately 15% of the overall IP rate of 3.73% and $11.73 million of the overall $80.56 improper payment amount.

The leading contributor to the S&L Program's current IP rate is applicants' and service providers' failure to comply with the competitive bidding rules and/or retain competitive bidding related documentation. On December 14, 2021, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on establishing a competitive bidding portal and/or document repository for the S&L Program. The Commission sought public comment on various issues related to implementing such a portal, for example, requiring service providers to use the portal to submit their bids to applicants; for the bids to be held for at least 28 days prior to allowing applicants access to the bids; and for the portal to be used as a document repository and store applicants' competitive bidding-related documentation. The NPRM was published in the Federal Register on January 27, 2022, thereby requiring comments to be submitted on or before March 28, 2022, and reply comments on or before April 27, 2022. On March 16, 2022, the FCC, in response to E-Rate stakeholders' request, extended the comment and reply comment due dates by thirty days and required comments to be submitted on or before April 27, 2022, and reply comments on or before May 27, 2022.

The FCC is currently evaluating the public record and continues to believe this open rulemaking proceeding will provide valuable public feedback regarding the design and implementation of the competitive bidding portal, as well as additional steps the Commission can take to ensure S&L program participants comply with the competitive bidding rules, conduct fair and open bidding processes, and retain their competitive bidding related documentation. The FCC further believes the establishment of this competitive bidding portal will eliminate or greatly reduce future improper payments caused by S&L participants' failure to comply with the Commission's competitive bidding and document retention rules.

The FCC offers the following comments regarding the specific three S&L Program recommendations:

- **Recommendation 5.** The Universal Service Administrative Company (USAC) added new data analytics tools to the Funding Year 2023 PIA Procedures that will be used to review all FY 2023 FCC Form 471 application data. These tools will flag any applications with potential applicant, consultant, and/or service provider improper relationships, and USAC will conduct heightened scrutiny reviews to ensure the parties are compliant with the fair and open competitive bidding rules before issuing any funding decisions. In addition, we note that USAC offers training regarding the competitive bidding rules and process, which is highlighted through its annual fall training program, webinars, and its outreach to schools and libraries (e.g., https://www.usac.org/e-rate/learn/). We are also continuing to work with USAC to enhance both its training and outreach opportunities to reinforce the competitive bidding requirements for new and experienced applicants and service providers participating in the program. For example, USAC is developing improved training tools, known as e-Learning Modules that are interactive and can assess the user's knowledge of the materials. These e-Learning Modules are self-paced and provide imbedded links to the menu, as well as other resources, to help the user navigate through the training.
- **Recommendation 6**. USAC is currently transitioning the S&L program invoicing functionality to the E-Rate Productivity Center (EPC), and the new invoicing system will be operationalized in the near future. For now, the S&L Legacy systems are presently being used to review and process invoices submitted for reimbursement in the S&L program. USAC has already started providing demonstrations of the new invoicing system as well as training for using the new invoicing system. As an example, of USAC's progress in enhancing its training materials, the first set of e-Learning Modules, discussed above, will be used to train applicants and service providers on how to use the new invoicing system and to complete the FCC Forms 472 and 474. These e-Learning Modules will continue to be developed and are expected to be used for the competitive bidding training for this year.
- **Recommendation 7.** We acknowledge that the Commission is required to take the following actions per OMB's guidance in M-21-19 to address the S&L program's error rate as it exceeds the statutory threshold. First, we must include measurable milestones to be accomplished to achieve compliance for the program. Second, we must designate a senior agency official who shall be accountable for bringing the program into compliance. Third, we must establish an accountability mechanism, such as a performance agreement, with appropriate incentives and consequences tied to the success of the senior agency official in leading the efforts of the Commission for bringing the program into compliance. These requirements will be addressed by the Commission in the next OMB Annual Data Call for PIIA information in the fall of 2023, as described in OMB's guidance in M-21-19, at page 52.

FINDING 4: FCC Payment Integrity Oversight Needs Improvement

The Commission will: a) work with its internal partners to develop policies and procedures that acknowledge the interdependent relationships between the Commission, the Telecommunications Relay Service (TRS) Fund Administrator, and TRS providers; b) address the responsibilities of each party to manage the risks of improper payments; and c) describe methodologies used to obtain assurance that each party manages its risks of improper payments appropriately and as intended.

FINDING 5: USF High Cost (HC) Legacy Program Was Non-Compliant with the Requirements of PIIA

The OIG and the previous auditor for PIIA required the Commission to significantly expand its testing of the HC Legacy program. The testing related to the expanded procedures (assets, expenses, and depreciation) substantially increased the number of hours spent on performing HC Legacy improper payment testing from a budget of 18 hours per assessment to a budget of 168 hours per assessment. Performing this level of improper payment testing took 25,022 hours at a cost of $2,248,744. The additional hours required to perform the work can be attributed to the complexity of the HC Legacy program, specifically related to the expanded procedures requested by the OIG and its auditors. The carriers that were selected for improper payment testing had not experienced an assessment process that was as intensive as what was required to be tested in FY 2022, with many carriers commenting that the assessments closely resembled a full blown audit. In addition, the nature of the expanded procedures required substantial communication with the carriers to obtain the correct documentation needed for the period under review, to ask clarifying questions about the documentation, and to relay the status and results of the testing.

Due to the increased workload, at the time of the FY 2022 OMB Annual Data Call, the Commission did not have completed test results for a significant number of the items being tested and also there were a significant number of selected items for which no results were available yet. After discussing this issue with OMB, the Commission did not report any test results for the HC Legacy program for FY 2022. The Commission continued discussions with OMB up until just a couple of days ago. OMB agreed with the Commission that this reporting issue was a gray area in their guidance. In addition, the Commission conducted several meetings with the OIG's auditors on this reporting issue to further explain the circumstances, and the OIG's auditors decided to report both the unfinished test results and the finished test results in their final report.

Even though the test results for HC Legacy program were not available in time to report to OMB for FY 2022, the Commission continued to work diligently to ensure it came up with an accurate statistically valid improper payment rate for the HC Legacy program. The final statistically valid results which are included in the auditors' PIIA audit report for transparency purposes identify that the HC Legacy program had an improper payment rate of 2.879% and $51.7M in improper payments with a margin of error of 1.713% with a 95% confidence level. The Commission will continue to work with USAC to remediate the issues identified in the testing process.

Sincerely,

Mark Stephens
Managing Director

Appendix C – Kearney & Company, P.C.'s (Kearney) Response to Management's Comments

The Federal Communications Commission (FCC) provided a response to Kearney's findings, as seen in ***Appendix B*** – Management's Views on Conclusions and Findings. We have evaluated its response in this appendix and have included our responses to FCC's comments in the instances where it did not concur with the findings or recommendations.

Finding 1: Universal Service Fund (USF) Lifeline Overpayment Amounts Reported Were Inaccurate

The FCC stated in its response that, following the advice of the predecessor auditor, improper payments were reported before a formal consent decree or notice of apparent liability was formalized. Our findings and recommendations were updated for the Fiscal Year (FY) 2022 Payment Integrity Information Act of 2019 (PIIA) compliance period and based on our follow-up to the FY 2019 Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA) audit report. It is permissible for the FCC to report an estimated improper payment identified through audit work, self-identification or other means. However, the estimate should be reflective of the amount of the improper payment identified and not a potential settlement amount. Once a recovery has been made, the FCC should report the amount of the recovery in the Office of Management and Budget (OMB) data call in the year the recovery occurs. As such, our finding remains.

Finding 5: USF High-Cost (HC) Legacy Program Was Non-Compliant with the Requirements of PIIA

As the FCC stated in its response, the expanded test plan for the HC Legacy Program was initiated in FY 2022 but was not complete until FY 2023. Kearney participated in meetings with the FCC, the FCC OIG and officials from OMB to discuss this status and potential interpretations of the PIIA guidance. OMB noted that if an agency's testing progresses to the point where it is known that additional documentation is needed to determine whether a payment is proper or improper, but the agency does not have the documentation, the payment should be considered an unknown payment. Ultimately, OMB stated that auditor judgement determined whether the incomplete testing should be reported as unknown payments for FY 2022. Accordingly, we reported instances of non-compliance because the FCC did not report an estimated improper payment or unknown payment for FY 2022. In addition, Kearney reported the results of the FY 2022 completed testing achieved by the FCC in FY 2023. We determined that this approach would objectively provide the complete results of the FCC's HC Legacy Program testing timeline and results. As such, our findings remain.

Appendix D – Status of Prior-Year (PY) Audit Recommendations

Kearney & Company, P.C. (referred to as "Kearney," "we," and "our" in this report) followed up on the status of the recommendations reported in Fiscal Year (FY) 2021. Through the testing procedures completed, we determined the current status of the prior recommendations. Recommendation numbers (Rec. #) shown are from the respective FY 2021 and FY 2022 Payment Integrity Information Act of 2019 (PIIA) reports.

FY 2021 NFR #	Report Rec #	FY 2021 Description	Status	FY 2022 NFR #	Report Rec #
NFR-21-01	1	Using the risk assessment performed for the Universal Service Fund (USF)-Lifeline (LL) program, establish a risk management approach that either results in 1) development of additional controls and procedures for high-risk areas that reduce USF-LL Program gross Improper Payment (IP) and Unknown Payment Rate (UPR) below the PIIA statutory thresholds or 2) documentation of an accepted methodology to establish the tolerable IP and UPR.	Closed	N/A	N/A
NFR-21-01	2	Develop a written plan to meet the published IP and Unknown Payment (UP) reduction targets that includes efforts to reach the tolerable IP and UP rate.	Closed	N/A	N/A
NFR-21-01	3	Submit a plan to the Office of Management and Budget (OMB) describing actions that the Federal Communications Commission (FCC) will take to come into compliance with PIIA, as required by PIIA, Public Law (PL) 116-117 §3353(b)(1).	Closed	N/A	N/A
NFR-21-02	4	Modify the Payment Quality Assurance (PQA) assessment procedures to identify and target USF-High-Cost (HC) rules and significant risks of IPs.	Closed	N/A	N/A
NFR-21-02	5	Direct USAC management to develop guidance, consistent with OMB M 21-19, for incorporating the results of PQA procedures in programmatic risk assessments.	Closed	N/A	N/A
NFR-21-02	6	Direct USAC management to incorporate the results of the Beneficiary and Contributor Audit Program (BCAP) to identify additional risks and implement risk-based procedures for the PQA assessment procedures in the USF-HC Program.	Closed	N/A	N/A
NFR-21-02	7	Direct Management to incorporate the Enterprise Risk Management (ERM) framework from OMB Circular A-123 to assist in the identification of and management of payment integrity risk.	Closed	N/A	N/A
NFR-21-02	8	Develop and implement a written IP and UP risk assessment methodology that reasonably supports whether the program is susceptible to making IPs and/or UPs. The methodology should include a risk scoring or weighting factor for each associated risk and documentation of Senior Management's processes for determining a tolerable IP and UP rate.	Closed	N/A	N/A
NFR-21-03	9	Develop and implement a written IP and UP risk assessment methodology that incorporates the ERM framework from OMB Circular A-123 to assist in the identification and management of payment integrity risk and support whether the	Repeat	NFR-22-02	4

FY 2021 NFR #	Report Rec #	FY 2021 Description	Status	FY 2022 NFR #	Report Rec #
		program is susceptible to making IPs and/or UPs. The methodology should include a risk scoring or weighting factor for each program and associated risk.			
NFR-21-03	10	Perform a separate risk assessment for the Coronavirus Disease 2019 (COVID-19) Telehealth program, independent of the risk assessment performed over the FCC Operating Expenses program.	Closed	N/A	N/A
NFR-21-04	11	Using the ERM framework from OMB Circular A-123, perform a new risk assessment to properly modify the risk assessment to focus on the FCC rules for the Telecommunications Relay Service (TRS) Fund that are susceptible to a significant risk of IPs, such as certification of eligible users, certification of TRS providers, and National Deaf Blind Equipment Distribution Program (NDBEDP) reimbursements for eligible individuals and authorized services.	Closed	N/A	N/A
NFR-21-04	12	Develop policies and procedures that a) acknowledge the interdependent relationships between the FCC, TRS Fund Administrator, and TRS Providers; b) address the responsibilities of each party to manage the risks of IPs; and c) describe methodologies used to obtain assurance that each party manages its risks of IPs appropriately and as intended.	Repeat	NFR-22-04	8
NFR-21-04	13	Incorporate the results of the cost audit reports performed on TRS providers into the TRS risk assessment.	Closed	N/A	N/A
NFR-21-05	14	Continue to enhance USACs applicant outreach program to educate applicants on the Schools and Libraries (S&L) program rules, especially rules relating to the competitive bidding processes.	Repeat	NFR-22-03	5
NFR-21-05	15	Enhance the use of automation tools in EPC to check invoices for common errors and invoices that are flagged as high risk of non-compliance with program invoicing requirements.	Repeat	NFR-22-03	6
NFR-21-06	16	Work with the Chairwoman's Office to formalize the IP by issuing a Forfeiture Order or Consent Decree. Report the amount from the binding agreement as an IP identified through recovery actions or report the full amount of $30 million as an overpayment identified through recovery activities.	Closed	N/A	N/A
NFR-21-07	17	Once the settlement has been finalized, through the OMB annual data call, include measurable milestones to accurately report IP information on paymentaccuracy.gov if found non-compliant with OMB M-21-19.	Repeat	NFR-22-01	3

Explanation of Status:

Closed – The FCC has successfully implemented its corrective actions related to the FY 2021 recommendation.
Repeat – The FY 2022 recommendation is a repeat from a prior recommendation, which remains open because the FCC has not successfully implemented its corrective actions.

Appendix E – Abbreviations and Acronyms

Acronym	Definition
ACP	Affordable Connectivity Program
Act	Communications Act of 1934
AFR	Agency Financial Report
BCAP	Beneficiary and Contributor Audit Program
CAP	Corrective Action Plan
CARES ACT	The Coronavirus Aid, Relief, and Economic Security Act of 2020
CCPP	Connected Care Pilot Program
CGB	Consumer and Governmental Affairs Bureau
CIGIE	Council of the Inspectors General on Integrity and Efficiency
COVID-19	Coronavirus Disease 2019
EBBP	Emergency Broadband Benefit Program
ECF	Emergency Connectivity Fund
EPC	E-Rate Productivity Center
ERM	Enterprise Risk Management
ETC	Eligible Telecommunications Carrier
FCC	Federal Communications Commission
FM	Frequency Modulation
FY	Fiscal Year
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accountability Office
Green Book	Standards for Internal Control in the Federal Government
HC	High-Cost
HC Legacy	High-Cost Legacy Program
HC Modernized	High Cost Modernized Program
IP	Improper Payment
IPA	Independent Public Accountant
IPERIA	Improper Payment Elimination and Recovery Improvement Act of 2012
Kearney	Kearney & Company, P.C.
LL	Lifeline Program
MVPD	Multichannel Video Programming Distributors
NDBEDP	National Deaf Blind Equipment Distribution Program
NFR	Notification of Findings and Recommendations
NPRM	Notice of Proposed Rulemaking
OIG	Office of Inspector General
OMB	Office of Management and Budget
PIIA	Payment Integrity Information Act of 2019
PL	Public Law
PQA	Payment Quality Assurance
PWS	Performance Work Statement
PY	Prior Year or Prior-Year
Q	Quarter
RFP	Request for Proposal
RHC	Rural Health Care Program
RL	Rolka Loube, LLC
S&EMP	Sampling and Estimation Methodology Plan
S&L	Schools and Libraries Program
Spectrum Act	Spectrum Act of 2012
Telecommunications Act	Telecommunications Act of 1996

Acronym	Definition
TRS	Telecommunications Relay Service
TVBRF	Television Broadcaster Relocation Fund
U.S.C.	United States Code
UP	Unknown Payment
UPR	Unknown Payment Rate
USAC	Universal Service Administrative Company
USF	Universal Service Fund
USVI	United States Virgin Islands
VoIP	Voice over Internet Protocol

Office of Inspector General

Federal Communications Commission

45 L Street NE

Washington, D.C. 20554

Report fraud, waste, and abuse

Call: 1-888-863-2244 or 202-418-0473

Email: hotline@fcc.gov

Fax: 202-501-8134