



Top Management and Performance Challenges Facing the U.S. Department of Labor

*Office of Inspector General
November 2017*

As required by the Reports Consolidation Act of 2000, the Office of Inspector General has identified the most serious management and performance challenges facing the U. S. Department of Labor (DOL). These challenges are included in DOL's "Agency Financial Report" for FY 2017.

The Department plays a vital role in the nation's economy and in the lives of workers and retirees, and therefore, must remain vigilant in its important stewardship of taxpayer funds, particularly in the era of shrinking resources.

In this report, we summarize the challenges, significant DOL progress to date, and what remains to be done to address them. The challenges we identified are:

- Providing a Safe Learning Environment at Job Corps Centers..... 2
- Protecting the Safety and Health of Workers.....3
- Helping Adults and Youth Obtain the Education, Training, and Support Services Needed to Succeed in the Labor Market.....5
- Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families..... 6
- Reducing Improper Payments.....8
- Maintaining the Integrity of Foreign Labor Certification Programs.....10
- Monitoring and Managing Pharmaceuticals in the FECA Program..... 12
- Securing and Managing Information Systems.....14

CHALLENGE: Providing a Safe Learning Environment at Job Corps Centers

BACKGROUND

The Job Corps program provides residential and nonresidential education, training, and support services to approximately 50,000 disadvantaged, at-risk youth, ages 16-24, at 125 Job Corps centers nationwide. The goal of this \$1.7 billion program is to offer an intensive intervention to this targeted population as a means to help them learn a career, earn a high school diploma or pass the high school equivalency test, and find and keep a good job.

CHALLENGE FOR THE DEPARTMENT

The Job Corps program remains challenged in its efforts to control violence and provide a safe learning environment at its centers. Without providing a safe learning environment for students and staff, Job Corps will struggle to meet its core mission of attracting young people who face economic disadvantages or come from debilitating environments, teaching them the skills they need to become employable and independent, and placing them in meaningful jobs or further education.

OIG audits from 2015 and 2017 disclosed that some Job Corps centers failed to report and investigate serious misconduct, including drug abuse and assaults, or downgraded incidents of violence to lesser infractions to keep students enrolled, creating an unsafe environment for students and staff. We also found the Department had not determined what law enforcement organization had jurisdiction to enforce criminal laws on 99 center campuses operated by contractors. Where law enforcement agreements were in place, they lacked the specificity needed to ensure timely and effective law enforcement involvement. Furthermore, Job Corps had not conducted system-wide assessments of center campuses to determine the security challenges it faced. We found a variety of problems at the centers we visited, such as inadequate security camera monitoring and security staff shortages. We also found that Job Corps did not require background checks for all center employees.

DEPARTMENT'S PROGRESS

Job Corps established a Division of Regional Operations and Program Integrity, in part, to improve oversight of center safety. However, the Division has not been fully staffed. Job Corps also stated it is using data from its recently developed Risk Management Dashboard to perform targeted interventions and request issue-specific corrective actions on emerging safety-related issues. Additionally, Job Corps reported it has conducted approximately 50 unannounced center assessments to review center safety, security, and culture through direct observation and interviews with center staff and students. Job Corps revised its zero tolerance student conduct policy to increase student accountability and clarify center staff authority to address misconduct.

Job Corps reported that it is implementing tools to improve assessment of applicants' readiness to benefit from the program. Job Corps stated it completed the rollout of a new criminal background check process for student applicants in May 2017. According to Job Corps, the new process obtains available criminal background information about an individual through a national search, as well as a state search, where available, in addition to the previously used local searches. Job Corps is also working to develop a new background check policy for staff. In addition, Job Corps is implementing a toll-free student safety hotline to handle calls of an urgent nature

that relate to the safety and security of Job Corps students and staff. Job Corps stated the hotline is now operating in its Atlanta, Boston, Chicago and San Francisco regions. Rollout to its remaining two regions is scheduled to be completed in 2017. Job Corps reports it has completed a series of Center Safety and Security Vulnerabilities Assessments. These assessments evaluated building access controls, campus lighting, and security operations. Finally, Job Corps reported it is improving physical security as funding permits, and has completed Phase 1 of a \$12 million physical security pilot for 12 centers. The goal of this pilot is to equip the centers with technology that will enable center staff to increase oversight and more quickly respond to incidents on center. Job Corps plans to begin and complete Phase 2 of the pilot at 18 more centers in FY 2018.

WHAT REMAINS TO BE DONE

While Job Corps has taken numerous actions to make centers safer, OIG has received an increasing number of significant incident reports (SIR). This increase may be an indication centers are doing a better job of submitting SIRs as required, or it could be an indication of continuing safety and security problems. Job Corps needs to expeditiously complete the various safety initiatives it has recently begun. Moreover, Job Corps must be more vigilant in its monitoring to ensure center operators and regional office personnel fully enforce Job Corps' zero tolerance policy, assess campus security system-wide, and complete and implement the new background check policy for staff.

CHALLENGE: Protecting the Safety and Health of Workers

BACKGROUND

The Department of Labor (DOL) administers the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006. DOL's effective enforcement of these laws is critical to protecting workers from death, injury, and illness.

The two DOL agencies primarily responsible for enforcing these laws are the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). OSHA and its state partners are responsible for the safety and health of 121 million workers employed at more than 9 million establishments. MSHA is responsible for the safety and health of almost 320,000 miners who work at more than 13,000 mines.

CHALLENGE FOR THE DEPARTMENT

The Department faces challenges in determining how to best use its limited resources to help ensure the safety and health of workers, particularly in high-risk industries such as construction, forestry, fishing, agriculture, and mining. Past OIG audits have found OSHA lacks outcome-based data needed to determine the effectiveness of its enforcement programs. In its efforts to protect workers from retaliation and discrimination when they "blow the whistle" on unsafe or unhealthy workplace practices, OSHA must ensure complainants receive complete investigations within statutory timeframes. Abatement of construction hazards remained a challenge as many citations are closed, not because the employers had corrected the hazards, but because the construction projects had ended. As a result, OSHA had no assurance the employers will use improved safety and health practices on subsequent construction sites.

Given the significant decline in coal production and closings of coal mines in the past decade, MSHA is challenged to appropriately redeploy resources where needed. While coal production is expected to increase through 2018, the increase will vary across regions, with the largest increases in the West while forecasts for the Appalachian region are relatively flat. In addition, MSHA recently reported that 15 to 20 percent of its inspection and technical personnel who are required to meet medical standards do not meet medical standards mandated by the Office of Personnel Management for these positions. MSHA is also challenged by the underreporting of occupational injuries and illnesses by mine operators. This underreporting hinders MSHA's ability to focus its resources on the most dangerous mines.

DEPARTMENT'S PROGRESS

To address the need for reasonable balance between quality and timeliness in the management of whistleblower cases, OSHA stated it has identified a number of process improvements such as streamlining investigative procedures, and developed new guidance to clearly define reasonable balance. These improvements will be outlined in the recently updated whistleblower policy and procedure manual which is currently in the Agency clearance process.

In February 2017, OSHA established the OSHA Program for Internal Control (PIC) as a comprehensive framework to develop, implement, and assess the effectiveness of agency internal controls. As part of OSHA's PIC, the agency established the Evaluation and Analysis Program (EAP) to assess the efficiency and effectiveness of OSHA programs, policies, procedures, and standards, as well as their impact.

MSHA has taken steps to reallocate resources based on need; for example, the agency has closed or consolidated some field offices, transferred personnel among offices, and offered relocation incentives. MSHA stated it stepped up its targeted enforcement at metal/nonmetal mines and continued to engage in compliance initiatives. These initiatives include implementing the third phase of the Respirable Dust Rule to end black lung disease among coal miners and promoting the Rules to Live By campaign to prevent common types of mining deaths. The agency also issued a final rule on proximity detection systems for continuous mining machines in underground coal mines and extended its mine rescue reach by establishing regional mine emergency stations. MSHA has developed an action plan to ensure personnel meet medical standards by conducting individualized assessments of personnel to determine if they meet required standards and taking actions to resolve issues as appropriate. MSHA has conducted one evaluation of the underreporting of injuries and illnesses and another evaluation is in process.

WHAT REMAINS TO BE DONE

OSHA needs to continue its efforts to develop performance measures that reflect the impact of its enforcement efforts on improving workplace safety and health. OSHA also needs to finalize and issue its updated whistleblower policy and procedure manual. To ensure employers take adequate and timely abatement actions in correcting hazards, OSHA needs to enhance its training to staff on abatement verification especially at smaller and transient construction employers, and to continue to look for opportunities to streamline citation issuance.

MSHA needs to critically examine its resource allocations to ensure its enforcement staff is deployed where most needed and continue to take actions responsive to changes in coal production. Moreover, closures of MSHA offices may result in enforcement personnel having to cover larger geographic areas, raising new challenges related to response times and the ability of inspectors and their supervisors to adequately cover expanded territories. MSHA needs to complete its current evaluation of illness and injury reporting and use this knowledge to address mine operator programs and practices that discourage reporting. MSHA also needs to continue: working on the next steps in mine safety, including training the mine rescue community on state-of-the-art communications, monitoring and tracking systems; developing new mine rescue and command and control guidance; investing in video tools for advancing rescue teams; and upgrading seismic and robotics technology.

CHALLENGE: Helping Adults and Youth Obtain the Education, Training, and Support Services Needed to Succeed in the Labor Market

BACKGROUND

In FY 2016, the Department's Employment and Training Administration (ETA) was appropriated \$3.3 billion to operate a system of education, skills training, and employment services directed toward increasing the post-program employment and earnings of current and future workers, particularly low-income persons, dislocated workers, and at-risk and out-of-school youth. The majority of the activities are authorized by the Workforce Innovation and Opportunity Act (WIOA). WIOA contains provisions to strategically align workforce development programs to develop participants' skills to meet the needs of employers and to improve accountability and transparency in reporting. ETA also operates the Job Corps program, spending \$1.7 billion dollars annually to provide residential and nonresidential education, training, and support services to approximately 50,000 disadvantaged, at-risk youths (ages 16-24), at 125 Job Corps centers nationwide.

CHALLENGE FOR THE DEPARTMENT

The Department remains challenged to ensure participants in its job training programs are securing the education, training, and support services they need to succeed in the labor market. To address this challenge, the Department needs the right performance information to make evidence-based and data-driven decisions. The Department also faces challenges in assuring credentials that participants obtain from DOL-funded training programs are industry-recognized and actually help participants obtain jobs in those industries. Our work in Job Corps has found its graduates have been often placed in jobs unrelated to the occupational certifications and skills training they received or in jobs that required little or no training.

DEPARTMENT'S PROGRESS

The Department has continued to support WIOA implementation, both through technical assistance and guidance. In December 2016, the Department (with the U.S. Department of Education) issued guidance clarifying requirements for the performance accountability system, and helped states understand methodologies to calculate levels of performance for six primary performance indicators¹. In June 2017, ETA issued guidance

¹ "Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs."

to assist states in using supplemental wage information to implement WIOA's performance accountability requirements.

During the spring of 2017, ETA, in collaboration with the U.S. Departments of Education and Health and Human Services, hosted three WIOA National Convenings for workforce development stakeholders. ETA reported that nearly 1,170 people participated in the convenings, held in Washington, D.C.; Dallas, TX; and San Diego, CA. Presentations and workshops covered such topics as business engagement, financial and grants management, and performance accountability. ETA posted resource materials from the convenings on its Innovation and Opportunity Network (ION) web site to promote ongoing information sharing for WIOA stakeholders.

Job Corps indicated it is continuing its efforts to ensure access to a standards-based teaching and learning system. In response to requirements outlined within WIOA, Job Corps is assessing all credential attainments relative to in-demand occupations and wages. The effort is intended to align credential offerings with those most valued by potential employers. Job Corps also started a technology-based platform called MyPACE (Pathway to Achieving Career Excellence), that will be used to help students identify education and training goals and allow Career Management Teams made up of teachers and counselors to track and support student progress from entry through transition to college or career. Job Corps also has begun implementation of a new admissions system to improve screening of applicants and expand career training availability for more eligible youth.

WHAT REMAINS TO BE DONE

The Department needs to continue providing technical assistance to states regarding accessing and reporting performance information under WIOA. The Department should also continue pursuing statutory access to the National Directory of New Hires. Such access would streamline the process of obtaining earnings data needed to assess program impact. Additionally, the Department should use results from GAO's review of WIOA implementation to identify promising practices states can use to promote regional collaboration and resource sharing — one of WIOA's strategies for building job-driven labor markets. In Job Corps, the Department needs to refine its performance management system to focus on being proactive in identifying and addressing low performing centers and training programs to ensure its students are comprehensively prepared to enter and compete in the workforce. Job Corps also needs to complete the implementation of its new admissions system.

CHALLENGE: Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families

BACKGROUND

The Employee Benefits Security Administration (EBSA) protects the integrity of pensions, health, and other employee benefits for about 149 million people. EBSA's enforcement authority extends to approximately 685,000 private retirement plans, 2.2 million health plans, and similar numbers of other welfare benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) that together hold \$9.6 trillion in assets. EBSA's responsibilities also include providing oversight of the federal Thrift Savings Plan (TSP), the largest defined-

contribution plan in the United States, with nearly \$510 billion in assets and 5.1 million participants. The TSP is the primary retirement system component for federal government employees.

CHALLENGE FOR THE DEPARTMENT

EBSA's limited authority and resources present challenges in achieving its mission of administering and enforcing ERISA requirements protecting the pensions, health, and other employee benefits for approximately 149 million participants and beneficiaries. An important part of EBSA's mission is to deter and correct violations of ERISA through a strong enforcement program to ensure workers receive promised benefits. Given the number of plans the agency oversees relative to the number of investigators, EBSA has to devise ways to focus its available resources on investigations, audits, and other reviews that it believes will most likely result in the deterrence, detection, and correction of ERISA violations and act proactively to deter violations. EBSA employs about 400 investigators, yielding almost 13,000 plans per investigator. In order to adequately protect the participants in these plans, EBSA must determine which of its enforcement initiatives are the most effective.

For many years, EBSA's oversight efforts have been challenged by the fact that billions of dollars in pension assets held in otherwise regulated entities, such as banks, escaped audit scrutiny. ERISA provides an option for a limited-scope audit under which plan auditors generally do not need to audit investment information certified by certain banks or insurance carriers, presumably because they are being audited by other entities for other purposes. As a result, the independent public accountants that conduct limited-scope audits express "no opinion" on the financial statements of plans that receive certifications from the banks or insurance carriers holding assets on behalf of the plans. These limited-scope audits weaken assurances to stakeholders and may put retirement plan assets at risk because such audits provide little or no confirmation regarding the existence or value of plan assets. These concerns were renewed by recent audit findings that as much as \$3.3 trillion in pension assets, including an estimated \$800 billion in hard-to-value alternative investments, received limited-scope audits that provided few assurances to participants as to the financial health of their plans.

EBSA is further challenged by the large increase in the types and complexity of investment products available to pension plans. EBSA's final conflict of interest rule is intended to ensure workers enrolled in retirement plans can be assured the investment advice they receive is delivered in their best interest.

EBSA also faces challenges in protecting participants because of limited information it receives from its main information gathering tool, the Form 5500 series. The agency does not have comprehensive data about the health plans it oversees because it has exempted small employer plans that are fully insured or unfunded (an estimated 98 percent of ERISA group health plans) from the requirement to file Form 5500 informational reports. EBSA should reexamine the filing exemption for small plans and begin capturing health plan claims data on Form 5500.

DEPARTMENT'S PROGRESS

EBSA created the Sample Investigation Program (SIP) to measure overall compliance with the civil provisions of ERISA and the impact of EBSA investigations on compliance rates of investigated employee benefit plans. EBSA has continued to analyze the compliance data available to the agency and use lessons learned to improve its overall enforcement program. EBSA is now focusing on specific compliance issues of special importance to the

integrity of plans and plan benefits. For instance, EBSA initiated a bonding compliance project in FY 2015 that will continue into FY 2018. EBSA is also implementing the Major Case Initiative to concentrate enforcement resources on investigations that include professional fiduciaries and service providers responsible for managing multiple plans that hold a large number of plan assets and participants.

As part of a Form 5500 “Modernization” project, EBSA published for public comment proposed changes to the Form 5500 reporting requirements and the implementation of annual reporting regulations to strengthen the requirements for limited scope audit certifications from banks and insurance companies that hold plan investment assets and improve reporting of plan financial information, including alternative investments and hard-to-value assets. The agency issued a proposed regulation in July 2016.

WHAT REMAINS TO BE DONE

EBSA should continue to analyze violation trends as an additional methodology to help guide its resource allocation strategies. The agency should concentrate on obtaining legislative changes to repeal the limited-scope audit exemption. In the interim, EBSA should further expand its existing authority to clarify and strengthen limited scope audit regulations and evaluate the ERISA Council’s recommendations on the issue.

Regarding health plans, EBSA needs to finalize its proposed rule, increase its enforcement activities, and improve its analysis of the denial of claims data at the plan and insurer levels. EBSA should also collaborate with states on data and enforcement activities, and work with health plans to identify other ways it could improve the external review process for participants and beneficiaries.

CHALLENGE: Reducing Improper Payments

BACKGROUND

In FY 2017, the Department continued to identify the Unemployment Insurance (UI) and Federal Employee Compensation Act (FECA) benefit programs as susceptible to improper payments. According to OMB, in 2016 the UI program had the seventh highest amount of reported improper payments (\$3.9 billion) among all federal programs. In 2017, the reported amount of UI improper payments increased to \$4.1 billion. OIG investigations continue to uncover fraud committed by individual UI recipients who do not report or underreported earnings, as well as fraud related to fictitious employer schemes. In FY 2017, the Department estimated improper payments in the FECA benefit program totaled roughly \$57.2 million.

CHALLENGE FOR THE DEPARTMENT

The Department remains challenged in its efforts to measure, report, and reduce improper payments in its UI and FECA benefit programs.

OMB has recognized the UI program as being at high risk for improper payments. UI improper payments increased from \$3.9 billion in 2016 to \$4.1 billion in 2017, and the improper payment rate increased from 11.7 percent to 12.5 percent, remaining above OMB’s threshold of 10 percent. One of the leading causes of UI improper

payments is overpayments due to claimant separation issues, which totaled \$about \$678 million in FY 2017. Specifically, State Workforce Agencies (SWAs) overpaid UI claimants when employers did not provide timely and accurate information on the reasons individuals separated from employment. Fraud continues to be a significant threat to the integrity of the UI program, as identity thieves and organized criminal groups have found ways to exploit program weaknesses.

The Department also remains challenged in identifying the full extent of improper payments in the FECA program. The Department excluded certain categories of compensation payments in its improper payment estimate for FECA, but did not determine the full effect of those exclusions on its estimate. Further, the Department did not determine the effect of issues identified by fraud investigations and estimate the extent to which these issues existed in the payment population.

DEPARTMENT'S PROGRESS

The Department has continued working with the states to implement strategies for addressing the root causes of improper payments. Our audit of five SWAs' use of the State Information Data Exchange System (SIDES) to facilitate their timely receipt of UI claimants' job separation information found that SIDES contributed to a reduction in related UI improper payment rates; however, better strategies are needed to increase employer participation.

The Department has established the UI Integrity Center of Excellence to be a state-driven source of innovative program integrity strategies to prevent and detect improper payments and reduce fraud. According to the Department, among other activities, the Center has completed the development of a secure portal to enable rapid exchange of information among states about UI fraud schemes and is offering program integrity training for states through the UI Community of Practice website.

In the FECA program, DOL is working with the Office of Personnel Management (OPM) to improve communication that will address dual entitlement issues that lead to improper payments. In addition, the program is also working on a Computer Matching Agreement with the Social Security Administration (SSA) to improve the Department's ability to reduce FECA benefits when an individual is concurrently receiving benefits from SSA. DOL has recently implemented a letter of medical necessity process that has already resulted in a marked decrease in compounded drug claims. Finally, the Department stated it hired additional staff for FECA program integrity and contracted with a data analytics firm to assist in developing technology and tools to detect and monitor inherent risk in claims, payments, and providers.

WHAT REMAINS TO BE DONE

Through our audits in seven states, we found ETA needs to work with states to identify and collect data needed to determine which state-specific strategies for improper payments reduction and recovery are most effective and use the data it obtains to promote the most effective state-specific strategies as National Strategies. The Department can further improve oversight of the states' detection and prevention of UI overpayments by increasing the frequency of on-site reviews at SWAs. In addition, the Department needs to continue pursuing legislation to allow states to use a percentage of recovered UI overpayments to detect and deter benefit overpayments.

OIG's July 2015 investigative advisory report included several recommendations on actions the Department should take to address systemic weaknesses that make the UI program more susceptible to fraudulent activity. For example, SWAs should pay all UI claims by physical check, direct deposit, or a debit card issued by state-approved vendors. Such cards provide for account holder verification and make it easier to identify individuals who are submitting fraudulent claims. The Department also needs to work with SWAs to implement strategies to discontinue auto-populating any data in their systems, and require UI claimants to fill out all employer contact information correctly and completely. Additionally, the Department needs to work with states to strengthen existing systematic audit controls to track access to personally identifiable information, and to identify and implement best practices and strategies for communication between tax operations and benefit operations.

The Department also needs to continue developing the technology and analytic tools to enhance its FECA improper payment estimation methodology.

CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs

BACKGROUND

The Department's foreign labor certification programs are intended to provide U.S. employers access to foreign labor in order to meet worker shortages – as long as U.S. workers are unavailable for the work and their wages and working conditions are not adversely affected. The Department's Office of Foreign Labor Certification (OFLC) reviews applications from employers seeking to hire and bring foreign workers as immigrants to the U.S. in permanent positions; non-immigrant workers for temporary professional positions; and agricultural and non-agricultural temporary or seasonal positions. In addition, OFLC processes employer requests for determination of prevailing wages they need to proceed with the employment-based immigrant and certain nonimmigrant processes. Statutes and regulations establish mandatory timeframes within which the OFLC must issue a final determination on an application for labor certification or take certain other actions.

CHALLENGE FOR THE DEPARTMENT

The Department faces challenges in ensuring U.S. employer compliance with statutory requirements protecting U.S. workers against adverse impact on their wages or working conditions when employers hire foreign workers. OIG investigations have shown the foreign labor certification programs, in particular the H-1B program, to be susceptible to significant fraud and abuse, often by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. DOL is statutorily required to certify H-1B applications unless it determines them to be "incomplete or obviously inaccurate." Given this fact, it is not surprising that OIG investigations have revealed schemes where fraudulent applications were filed with DOL on behalf of individuals, fictitious companies, and dishonest businesses seeking to acquire foreign workers. As part of OIG investigations, we have also uncovered instances of unscrupulous employers misusing foreign labor certification programs to engage in human trafficking, with victims often exploited for economic gain.

Another challenge for the foreign labor certification programs has been balancing the quality review of applications against employer needs for timely processing. OFLC has experienced an increase in application volumes in

recent years, receiving 94 percent more applications in Fiscal Year (FY) 2016 when compared to FY 2010. These rising application levels and seasonal spikes in employer filing patterns have resulted in periodic application processing delays.

DEPARTMENT'S PROGRESS

In FY 2017, the Department planned to reorient the focus of its H-2B timeliness measure to better reflect employer requirements by measuring the percent of H-2B employer applications processed within 30 days before the employer needs to hire the foreign workers. From FY 2016 to FY 2018, the Department's budget has requested authorization to establish and retain fees to cover the operating costs for foreign labor certification programs. Once fully implemented, the Department believes these fees would eliminate the need for appropriations to administer its foreign labor certification programs.

In June 2017, the Secretary of Labor issued a memorandum to the Employment and Training Administration, Wage and Hour Division, and the Solicitor of Labor regarding enforcement and coordination within the Department's non-immigrant and immigrant labor certification programs. Pursuant to that memorandum, the OIG worked with the Department on protocols that ensure that allegations of criminal fraud involving both the non-immigrant and immigrant labor certification programs administered by the Department are referred to the OIG expeditiously. The protocols went into effect in August 2017.

In August 2017, the Department published a 60-day Notice in the Federal Register proposing substantial improvements to the Labor Condition Application for Nonimmigrant Workers (LCA/Form ETA 9035/9035E electronic). The Department's proposed enhancements to the form are intended to provide greater transparency for U.S. workers and the general public.

In September 2017, the Department executed a comprehensive agreement with the OIG, authorizing the OFLC to share immigrant and non-immigrant visa program information for the purposes of enhancing worksite investigations and improving information sharing about program debarments and other sanctions imposed on program violators.

WHAT REMAINS TO BE DONE

To combat fraud and abuse of the foreign labor certification programs, the Department needs to propose expanding its statutory and regulatory authority to enhance its ability to debar any employer and any individual acting directly or indirectly in the interest of an employer in relation to both non-immigrant and immigrant workers, and any successor in interest to the employer found to have violated foreign labor certification regulations. The Department also needs to further enhance the reporting and application of suspensions and debarments government-wide. In the H-2B program, the Department needs to continue its efforts to ensure applications are processed in time for employers to hire needed foreign workers while at the same time ensuring the review process protects the interests of American workers. Additionally, the Department needs to seek H-1B statutory authority to verify the accuracy of information provided on labor condition applications. After the Paperwork Reduction Act process has been completed, OFLC needs to move forward with implementing the new H-1B labor condition application.

As the only agency within DOL statutorily authorized to investigate criminal fraud against the foreign labor certification programs, the OIG is concerned with its ability to respond to increases in criminal referrals resulting from greater coordination among DOL agencies. To mitigate this concern, the OIG has requested authorization to access fee-based funding to conduct necessary criminal investigations and audits to combat threats against the foreign labor certification programs.

CHALLENGE: Monitoring and Managing Pharmaceuticals in the FECA Program

BACKGROUND

The Federal Employees' Compensation Act (FECA) program provides workers' compensation coverage to approximately three million federal and postal workers around the world for employment-related injuries and occupational diseases. FECA is administered by the Office of Workers' Compensation Programs (OWCP), Division of Federal Employees' Compensation (DFEC). DFEC made payments totaling about \$3.2 billion in Chargeback Year 2016 (July 1, 2016 to June 30, 2017) for compensation and medical benefits. Compensation payments are those made to replace lost wages for a work related injury, benefits for a permanent physical impairment due to those injuries, as well as benefits to beneficiaries of federal employees that die as a result of a work-related injury. Medical payments are made to cover the expenses of medical services, prescription drugs, equipment and supplies incurred from treatment for illness and/or injury sustained while an employee was engaged in job-related activities. In Chargeback Year 2016, compensation payments totaled about \$2.1 billion (66%); medical payments totaled about \$1.1 billion (34%).

CHALLENGE FOR THE DEPARTMENT

The Department is challenged to effectively manage the usage and costs of pharmaceuticals in the FECA program, especially the cost of compounded drug medications, an area in which costs and fraud have rapidly escalated. The cost of prescription drugs in the FECA program rose from a reported \$183 million in FY 2011 to \$477 million in FY 2016, an increase of 161 percent. This dramatic increase was almost exclusively due to the rise in reported costs for compounded drugs which jumped from approximately \$2 million in FY 2011 to \$263 million in FY 2016, more than a hundredfold increase. Other federal programs have experienced similar increases. Billings for compounded medications are highly susceptible to fraud. Our current investigations are focusing on collusion between prescribing physicians and dispensing pharmacies. In one case alone, the OIG has identified potential fraud involving nearly \$158 million. Based on our improper payment work, the Department's lack of comprehensive analysis of medical benefit payments in the FECA program allowed these increases to go undetected, and could overlook other problems, such as the overuse of opioids. It is critical that the Department's oversight ensures prescription drugs reimbursed by the program are medically necessary, safe, effective, and obtained at a fair price.

DEPARTMENT'S PROGRESS

The Department has published a Request for Information regarding the use of a Pharmacy Benefit Manager to control costs, improve the management of treatments, and improve claimant safety. Other actions the Department is planning to take to improve its oversight of pharmaceuticals include performing reviews of questionable

providers acting in a fraudulent or abusive manner, implementing new procedures to ensure all prescription drugs were prescribed by the claimant's physician, working with its medical bill processing contractor to obtain the necessary information to verify generic drug usage, and implementing quantity limits on initial fills and refills.

Regarding compounded drugs, the Department has developed a pre-authorization process that requires physicians certify they recently physically examined the claimant, fully explain the need for a compounded drug, and certify that each ingredient in the compound is medically necessary and cost effective. This certification must be provided prior to a pharmacy providing the medication to the claimant and the Department approving payment. The Department also started requiring a certification of medical necessity by the prescribing physician prior to approving payments for compounded drugs.

In May 2017, the Department published a FECA Bulletin that prescribes how matters involving suspected fraud committed by medical providers are to be referred to the OIG by OWCP for further investigation. Since that time, the Department has used its Program Integrity Unit to identify medical providers who may have committed fraud involving the prescribing or dispensing of compounded drugs. The Department has referred numerous matters involving suspected compounded drug fraud to the OIG for further investigation.

WHAT REMAINS TO BE DONE

The Department needs to follow through on its planned actions and measure the impact of those actions on the use and cost of prescription drugs, as well as consider additional options for monitoring and managing the use and cost of pharmaceuticals. These options include ensuring timely removal of questionable providers from the FECA program, implementing drug exclusion lists for drugs and drug ingredients, implementing drug formulary lists, implementing better methods for calculating pharmaceutical payments, requiring the use of preferred pharmacy providers, pursuing inclusion under the "ceiling price" statute, and improving edit checks to identify high drug prices requiring additional review and authorization. The Department also needs to ensure it has the most appropriate pricing structure for compounded drugs. The Department should continue its efforts to identify what insurance providers and other federal, state, and local agencies are doing to manage pharmaceutical use and costs and determine what best or promising practices may be transferable. Finally, the Department must continue its efforts to identify and refer allegations involving potential fraud in the FECA program to the OIG for further investigation.

CHALLENGE: Securing and Managing Information Systems

BACKGROUND

The Department's major information systems contain sensitive information that is central to its mission and to the effective administration of its programs. Departmental systems are used to analyze and house the nation's leading economic indicators, such as the unemployment rate and the Consumer Price Index. These systems also maintain critical and sensitive data related to the Department's financial activities, enforcement actions, worker safety, health, pension, and welfare benefits, job training services, and other worker benefits. Under the Federal

Information Technology Acquisition Reform Act, in FY 2018 the Department's CIO will have oversight responsibility for information technology investments totaling an estimated \$750 million.

CHALLENGE FOR THE DEPARTMENT

Safeguarding data and information systems is a continuing challenge for all federal agencies, including DOL. Consistent with findings reported over the past ten years, in FY 2016 we identified continuing deficiencies in the areas of access controls, configuration management, and contingency planning. For the past five years, we have also reported deficiencies in third-party oversight, incident response and reporting, risk management, and continuous monitoring. Despite many previous reports that identified similar control weaknesses and improvements the Department has made in response, these deficiencies continue to exist or reoccur, and represent ongoing, unnecessary risks to the confidentiality, integrity, and availability of DOL's information. The Department has not placed sufficient emphasis or prioritized available resources necessary to address these deficiencies.

Ensuring proper management of multimillion-dollar information technology systems is also a challenge for the Department. The Department has encountered difficulties in managing its financial system due to the 2014 bankruptcy of the private-sector firm that was providing these services. The Department procured the financial system assets and entered into another interagency agreement for a federal shared services provider to assume operations and maintenance of the system at a cost of more than \$2 million per month. From July 2014 to July 2016, the Department operated under time and materials contracts to run and maintain the financial system. In July 2016, the Department entered into a \$74 million delivery order contract with some fixed price items, but 53% of the contract remains time and materials.

DEPARTMENT'S PROGRESS

The Department reported it has taken significant steps in improving its security posture. These steps included the hiring of six additional federal employees to support the security program and obtaining approval for two more positions; acquiring and beginning to implement a suite of security tools to support protect and detect capabilities; and updating the DOL Third Party Monitoring Guide. The Department also reports it is implementing Personal Identity Verification (PIV)-enforced identification and authentication, enhancing security of its wireless network, installing an unauthorized asset detection tool at DOL's headquarters to support point-in-time view of devices connected to DOL's network, and creating weekly patch and vulnerability scan reports to support patch and vulnerability management.

The Department has taken steps to mitigate costs associated with its financial system, including entering into a new contract in July 2016, but contended financial system operations continue to lack the certainty needed to make a firm-fixed priced agreement a reasonable and prudent choice as we recommended. The Department stated it closely monitors costs under its current agreement and will consider a firm-fixed priced agreement if and when it becomes the more cost efficient model.

WHAT REMAINS TO BE DONE

OCIO must ensure that departmental agencies prioritize available resources to implement planned actions to correct remaining deficiencies in identity and access management, configuration management, contingency planning, incident response, reporting, and monitoring of contractor systems.

Consistent with the intent of the Clinger Cohen Act and the Federal Information Technology Acquisition Reform Act, we have recommended the Department realign the position of the Chief Information Officer (CIO) to provide the CIO greater independence and authority for implementing and maintaining an effective information security program, compared to the existing structure of reporting to the Assistant Secretary for Administration and Management, the Office of the Chief Information Officer's (OCIO) largest customer. This organizational realignment would bring the CIO's placement in line with other cabinet level agencies such as the U.S. Departments of Commerce, Interior, Justice, Agriculture, and Energy.

The Department must closely monitor the operation and maintenance services of its financial system to mitigate financial and operational risks. The Department should establish a firm-fixed priced agreement with the service provider for routine operation and maintenance to assist the Department in managing its costs within budgeted amounts and reduce the need for agencies to shift funds from program-related requirements.

Office of Inspector General, U.S. Department of Labor
200 Constitution Avenue, NW
Room S-5506
Washington, DC 20210

To learn more about the Office of Inspector General's
current and planned work, please visit www.oig.dol.gov.