SEP 25 2000

MEMORANDUM FOR: RAYMOND L. BRAMUCCI
Assistant Secretary
for Employment and Training

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FROM: JOHN J. GETEK
Assistant Inspector General
for Audit

SUBJECT: Allegation of Misuse of Unemployment Insurance Funds
Final Letter Report No. 03-00-010-03-315

This final letter report addresses a hotline complaint dated October 26, 1999, alleging misuse of Federal funds at the State of Maryland, Department of Labor, Licensing and Regulation (DLLR), Division of Employment and Training (DET), Office of Unemployment Insurance (UI). The complainant alleged that (1) administrative costs were handled inappropriately, including nonpayment of rent, and (2) two employees who had been fired were subsequently rehired.

OBJECTIVES AND SCOPE

Our objectives were to conduct a limited scope audit to determine if administrative costs were handled appropriately at the office building at 1100 North Eutaw Street, Baltimore, Maryland (Eutaw Property), and the dismissal of the two employees released and rehired was handled properly.

We conducted our fieldwork from April 25, 2000 through July 28, 2000. We held an exit conference with officials from DLLR on August 1, 2000. At that meeting, we discussed our findings and recommendations. We have incorporated DLLR's response into this letter report.

We performed our work in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Our limited scope audit included such tests of policies and procedures and other auditing procedures we considered necessary in the circumstances.

AUDIT RESULTS

In summary, our audit determined that the Eutaw Property was purchased with Federal funds and that the State of Maryland, DLLR (1) did not use this property as originally authorized by moving non-DET personnel into the building, and (2) did not reimburse approximately $967,426 to the U.S. Department of Labor (DOL) for their proportionate share of the maintenance and building operating expenses for space occupied by non-DET personnel for the period April 1997 through June 30, 2000.

We also determined that two UI employees were discharged for various reasons and subsequently rehired by DLLR or UI. OIG has no reason to question DLLR's handling of employee A. However, employee B was discharged, rehired by DLLR, and improperly billed to UI in the amount of $50,525.

Our findings and recommendations resulting from the audit along with DLLR's two responses dated September 13 and September 21, 2000, are discussed below. We have included the full text of DLLR's responses as Appendix A and Appendix B, respectively.

DLLR agreed with recommendation I.1. and recommendation II.1. Therefore, these recommendations are resolved but remain open pending completion of actions which will close the recommendations.

OIG disagrees with DLLR's response to recommendation I.2. concerning reimbursement for maintenance and building operating expenses as detailed in the auditor's conclusions of this letter report. Therefore, this recommendation is unresolved and will be addressed in ETA's formal resolution process.

We recommend that the Assistant Secretary for Employment and Training ensure that Maryland DLLR officials (1) obtain the required approval and/or instructions from the Employment and Training Administration (ETA) as detailed in Title 29 Code of Federal Regulations (CFR) § 97.31, for the use of the Eutaw Property; (2) reimburse DOL $967,426 for maintenance and building operating expenses relating to the non-DET personnel occupying space at the Eutaw Property from April 1997 through June 30, 2000; and (3) reimburse DOL $50,525 for wages incorrectly billed on behalf of employee B for the period January 4, 1999, through June 30, 2000.

FINDINGS AND RECOMMENDATIONS

I. DLLR Owes DOL $967,426 for Maintenance and Building Operating Expenses

Our audit determined that the Eutaw Property was built in the late 1950s and financed by various State funding sources. In 1961, the full cost of approximately $6.4 million was reimbursed to the State of Maryland by the DOL through Federal grant funds. The Department of Employment Security (now DET) was authorized to occupy this building space without the payment of rent, and the only requirement for continued occupancy was payment for the costs of operating and maintaining the building and premises.

Our audit disclosed that in April 1997, non-DET personnel began occupying about 9 percent of the Eutaw Property on the 3rd and 6th floors or 19,517 of the 219,951 total building square footage.

Moreover, during 5 months of SFY 2000, an additional 1,075 square feet of space was occupied by non-DET personnel for a grand total of 20,592.

To determine the actual cost of space, we divided the total maintenance, security, and building operating expenses for operating the Eutaw Property by the total building space less the common areas. Our computation resulted in square footage rates of $14.39, $13.52, $15.47, and $16.60 per square foot for SFYs 1997, 1998, 1999, and 2000, respectively, or a total of $967,426 for the period April 1997 through June 30, 2000.

29 CFR § 97.31 states in part:

> (b) Use. Except as otherwise provided by Federal statute, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.
>
> (c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:
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> (1) Retention. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property.

In an April 26, 1996, memorandum, the Maryland Attorney General advised the Deputy Secretary of DLLR on the issue of rent, maintenance, and building operating expenses of non-DET personnel at the Eutaw Property. In part, the Attorney General concluded: "In essence, Federal money is considered misspent if compensation or reimbursement is not made for the non-employment and training use, and the State will be required to pay the Federal government for the misspent money and may risk loss of future Federal funds."

RECOMMENDATIONS:

We recommend the Assistant Secretary for Employment and Training ensure that Maryland DLLR officials:

1. Obtain the required approval and/or instructions from ETA as detailed in 29 CFR § 97.31 as to the use and disposition of real property, specifically the Eutaw Property.

2. Reimburse DOL $967,426 for costs relating to the non-DET personnel occupying space at the Eutaw Property from April 1997 through June 30, 2000, and any future costs allocable to non-DET occupants.

DLLR'S RESPONSE:

Recommendation 1. DLLR intends to begin discussions with the DOL to work out an agreement governing use of the space.

Recommendation 2. DLLR disagrees with the OIG's conclusions and believes that the maintenance and building operating expenses, which DLLR referred to as "rent," owed by non-DET units, if any, is substantially less than the amount set forth in the Draft Report. DLLR believes that the amount used to calculate the maintenance and building operating expenses owed by non-DET units for use of the space includes costs that are not properly chargeable to the non-DET units. For example, DLLR contends that the non-DET units that occupy the building do not use or need building security.

In addition, DLLR believes it is improper to deduct the square footage of the common areas from the total square footage of the building when calculating the square footage cost for maintenance and building operating expenses. Thus, DLLR believes that the total amount for maintenance and building operating expenses for non-DET units for all of the fiscal years in question should be $504,505 instead of $967,426.

AUDITOR'S CONCLUSIONS:

Recommendation 1. This recommendation is resolved but will remain open pending completion of an agreement between DLLR and DOL.

Recommendation 2. OIG disagrees with DLLR. DLLR should be charged its proportionate share of the maintenance and building operating expenses as prescribed in the Office of Management and Budget (OMB) Circular A-87, which establishes principles and standards for determining cost for Federal grants and other agreements with State and local governments. Specifically, OMB Circular A-87, Attachment B, Selected Items of Cost, No. 28, states in part "Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs, and alterations" are included in maintaining and operating a building.

In addition, we disagree with DLLR's belief that it was improper to deduct the square footage of the common areas from the total square footage of the building when calculating the square footage cost for maintenance and building operating expenses.

The costs of a business include both direct and indirect costs. Indirect costs are those
(a) incurred for the common or joint purpose benefitting more than one cost objective, and
(b) not readily assigned to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Because maintenance and building operating expenses cannot be easily traced to a specific department, they must be allocated among all departments. Thus, according to OMB

Circular A-87, A-122, and other technical manuals, the proper practice is to allocate the maintenance and building operating expenses based on the square footage of the floor space occupied, excluding the common areas. In effect, this distribution produces an equitable result in consideration of relative benefits derived by each department.

We stand by our finding that DLLR inappropriately charged DOL-funded UI programs and our recommendation that DLLR refund $967,426 to DOL and any future costs associated with non-DET occupancy of the Eutaw property.

This recommendation is unresolved and will be addressed in ETA's formal resolution process.

II. DLLR Owes UI $50,525 of Wages Incorrectly Billed

A. Employee A

In July 1998, DLLR terminated employee A and subsequently rehired the employee in August 1998. OIG has no reason to question DLLR's handling of employee A.

B. Employee B

In May 1998, DLLR terminated employee B and subsequently rehired the employee in January 1999 in the DLLR's Office of the Secretary. However, the employee's wages of $50,525, for the period January 4, 1999, through June 30, 2000, were billed improperly to the UI program, and should be reimbursed by DLLR.

Recommendation:

We recommend the Assistant Secretary for Employment and Training ensure that Maryland DLLR officials:

1. Reimburse DOL $50,525 for wages incorrectly billed on behalf of employee B for the period January 4, 1999, through June 30, 2000, and any subsequent charges to DOL grant programs.

DLLR's RESPONSE:

Recommendation 1. DLLR concurs with this recommendation.

AUDITOR'S CONCLUSION:

Recommendation 1. This recommendation is resolved but will remain open pending reimbursement of $50,525 by DLLR to DOL.

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We would appreciate your written response to the final letter report within 60 days. DLLR's written comments to our draft report have been incorporated into the appropriate sections of the final report with our evaluation of the comments. In addition, DLLR's comments have been included in their entirety as Appendix A and Appendix B to the final report. You should be aware that the report, including your written comments, is subject to disclosure both under the Freedom of Information Act and as part of discovery proceedings in the event of litigation.

It is your office's responsibility to transmit this letter report to DLLR. However, we have forwarded a courtesy copy to the Secretary of that organization.

If you have any questions regarding this report, please contact Roger B. Langsdale, Regional Inspector General for Audit, in Philadelphia at (215) 656-2300.

Attachments

Appendix A

Appendix B