

**BLS Response to Draft Report**

U.S. Department of Labor

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SUBJECT : BLS Response to the Recommendations in Office of Inspector General  
BLS Needs to Strengthen Security of Pre-Release Economic Data in  
the BLS/State Labor Market Information Cooperative Programs 17-  
12-005-11-001

Thank you for providing the Bureau of Labor Statistics (BLS) with the Office of Inspector General (OIG) Draft Report, "BLS Needs to Strengthen Security of Pre-Release Economic Data in the BLS/State Labor Market Information Cooperative Programs." We appreciate the opportunity to provide comments.

As the principal fact-finding agency for the Federal Government in the broad field of labor economics and statistics, the BLS is committed to the integrity and objectivity of our data. The BLS produces impartial, timely, and accurate data relevant to the needs of our users on the social and economic conditions of our Nation, its workers, and their families. The BLS strives to operate effectively and to comply with all Federal regulations and standards.

As noted in the OIG draft report, BLS has engaged in cooperative agreements with States and territories since 1917. These agreements have enabled BLS to produce a vast array of statistical data covering the labor market information sector. The statistical programs included in these agreements consist of: Current Employment Statistics (CES), Local Area Unemployment Statistics (LAUS), Occupational Employment Statistics (OES), Quarterly Census of Employment and Wages (QCEW), and Mass Layoff Statistics (MLS). The continued success of the partnership between BLS and labor market information offices in the States and territories who participate in these programs relies on the structured nature of the cooperative agreement, which stipulates deliverables, quality measures, and security requirements among its many provisions. The focus of the audit is on the handling of State pre-release information not national economic statistics, which is not clear from the title of this report.

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Currently, 50 States, 3 territories, and the District of Columbia participate in cooperative agreements with BLS to provide labor market information. Every month in excess of 100 releases are produced across the Nation detailing CES and LAUS estimates within the States. The estimates released by the States are deemed final and ready for publication prior to being provided by BLS. The cooperative agreement directs states to establish and follow a release schedule for their State CES and LAUS estimates in order to ensure that the public, media, and other users have access to these estimates at the same time. In the event that a State releases these data in advance to some group smaller than the general public, it is considered to be in violation of the cooperative agreement and must report the incident upon its discovery. That reporting process seamlessly occurred in the incident that transpired in North Carolina which precipitated this OIG audit.

BLS agrees with elements of this report and appreciates that the audit uncovered pieces of the cooperative agreement process that could be improved by BLS taking additional measures. BLS would like to emphasize, however, the isolated nature of this incident given that well over a thousand releases occur annually, the fact that these are State data that have already been deemed final by BLS, and that the cooperative agreement process for handling situations of early release was successfully engaged when this incident occurred in North Carolina. The controls and processes in place between BLS and the States performed exactly as expected. The following are BLS comments on the OIG's findings and recommendations:

Finding 1:

BLS recognizes that some security controls established by the cooperative agreement were violated by States involved in the audit, but disagrees with a basic underpinning of the OIG in conducting this audit—that under the cooperative agreement only individuals designated as BLS agents could have access to pre-release data. The OIG audit determined that no Federal statutes exist in protecting State pre-release labor market information from unauthorized use or disclosure. Therefore, BLS is the organization responsible for establishing procedures utilized by States for handling these data. Early in the audit, it became clear that the cooperative agreement had some structural inconsistencies and definitional issues that created confusion regarding those people requiring BLS agent designations in order to see microdata versus those able to see pre-release information. BLS repeatedly clarified the intent of its language and provisions, yet the OIG continued to follow what they believed the policies to be based on their reading of the agreement. Instead of making a recommendation to BLS to clear up these inconsistencies within the cooperative agreement, the OIG ignored the BLS practices as explained to them and continued to evaluate BLS based on their reading of the document. The BLS agent agreement was implemented following the passage of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). CIPSEA established regulations regarding the protection of statistical information, specifically respondent data or microdata, and in 2002 BLS developed the agent agreement to inform States of their responsibilities in this area. The BLS agent agreement was intended for State employees who require access to microdata protected under CIPSEA provisions and was never intended to cover all employees with access to pre-release State estimates. The table and narrative within this finding cited BLS for State employees who can access pre-release information who are not agents. Prior to FY 2013, BLS had no provisions in place within the cooperative agreement

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covering employees with access to pre-release State estimates that were not also designated as agents, since they had no need to utilize protected microdata. It was in no way a violation of the cooperative agreement for States to have employees within this category.

The OIG report contends that the changes made to the FY 2013 cooperative agreement introduce additional control weaknesses. The BLS believes that the changes strengthen protections by now covering employees with access to pre-release information who are not already designated as agents, which was not done prior to FY 2013. As a result of the North Carolina incident, and in advance of the OIG audit, BLS moved to address this gap in coverage of policies for State staff to improve overall controls after consulting with State partners. The FY 2013 cooperative agreement now requires a certification by the State that all employees approved for access to pre-release information have been informed of their responsibilities and obligations and accepted those conditions. BLS disagrees with the OIG contention that these procedures introduce additional weaknesses.

Furthermore, the OIG report seems to suggest that this certification does not comply with Commissioner's Order 3-11, the BLS policy on pre-release information, as this Order requires non-BLS employees to sign non-disclosure agreements for access to pre-release information. The Commissioner's Order provides for an exemption to signing the non-disclosure agreement. In this instance, the BLS is exercising this exemption as the certification form complies with the requirements of Office of Management and Budget (OMB) Statistical Policy Directive (SPD) No. 4 that individuals being provided access to pre-release information be fully informed of and acknowledge acceptance of conditions to access such information.

Finding 1 goes on further to discuss definitional issues that create misunderstanding of BLS policies and procedures. These structural problems within BLS operating documents and the cooperative agreement are clearly leading to confusion and should be reconciled in future BLS documents. The BLS has begun to clarify the definitions through delineating the different types of confidential information in the FY 2013 Cooperative Agreement. The combination of clearer language and increased training to States and BLS regional offices will successfully eliminate any further misunderstanding.

BLS also disagrees with the contention that the use of non-BLS email accounts to transmit pre-release information constitutes a violation of the cooperative agreement. Employees within each States' labor market information office are issued BLS email accounts and are directed to use those accounts for transmission of information unless prevented by technical constraints. It is not possible for all employees within a State with a need to see pre-release data to be issued BLS email accounts. The Statement of IT Assurance within the cooperative agreement is intended to ensure that State systems comply with requisite security procedures to guarantee the secure transmission of data internally when technical constraints impede States' abilities to use BLS email accounts. Therefore, the use of non-BLS email accounts should in no way lessen the security of data transmitted nor be considered a violation of the cooperative agreement. BLS agrees with the final two elements within Finding 1. The audit uncovered that some individuals were remotely accessing pre-release information. Prior to FY 2013, remote access required permission by BLS and no such permissions were given. The FY 2013 cooperative agreement includes provisions that would allow a State to have remote access. These new requirements extend similar security parameters for remote access as those utilized by BLS in an effort to enable States to embrace telework in the same manner as the Federal Government. The

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last element of Finding 1 states that North Carolina violated the cooperative agreement while Wisconsin did not. We agree that this was the case. Cooperative agreement procedures were immediately implemented by BLS and the State when the North Carolina situation was discovered demonstrating the commitment by all parties for the security of pre-release information and the controls established within the cooperative agreement.

Finding 2:

BLS agrees with the finding that the cooperative agreement lacked clear definitions. As stated earlier, it became apparent to BLS through the OIG process of auditing State and BLS regional offices that inconsistencies and definitional problems exist within the document. BLS appreciates that the audit uncovered such a range of understanding of policies and terms. BLS can take additional measures to clarify definitions in order to match the intent of policies and provide training to State and BLS regional office employees to ensure that everyone has a complete and accurate understanding of elements within the cooperative agreement.

Finding 3:

BLS disagrees that the cooperative agreement lacks appropriate controls to protect pre-release information. Thousands of releases issued by the States throughout the past decade without early release of data would indicate that BLS does have effective and appropriate protections in place. Further, the estimates released by the States have already been deemed final and ready for publication prior to being provided to States by BLS. The protections in place are designed to ensure that a State releases its data on a set schedule so that no unauthorized party or individual has early access to State data.

The report recommends that BLS extend all provisions of OMB SPD No. 4 to the cooperative agreement. This statistical directive provides guidance to Federal statistical agencies on the release and dissemination of statistical products. While this directive does not apply to State agencies, BLS has incorporated some aspects of the provisions within the cooperative agreement. The provisions employed are intended to provide additional instruction regarding pre-release security procedures and mitigate the politicization of State data. BLS believes that the current cooperative agreement is successful in achieving this and does not require further amending to address additional aspects of OMB SPD No. 4.

Specifically, OIG recommends employing all provisions while extending the controls of one beyond the OMB guidelines. Provision No. 2 directs agencies to ensure that individuals with access to pre-release information be informed of and acknowledge acceptance of conditions for access to these data. The report recommendations add to this provision by requiring that these individuals acknowledge acceptance of those responsibilities in writing. BLS believes it lacks the statutory authority to direct State Governors to sign such a statement which would be one result of implementing this recommendation. The policy established by BLS within the FY 2013 cooperative agreement requiring a certification by the State that employees with access to pre-release information have been informed of their responsibilities and obligations and accepted those conditions is sufficient and consistent with Provision No. 2. Implementing other elements

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of OMB SPD No. 4 would also cause BLS to create policy necessary for compliance by Governors' offices.

The cooperative agreement is fully reviewed and evaluated on a three-year schedule by OMB. This past spring, BLS cleared the FY 2013 cooperative agreement through this three-year review. OMB was fully aware of the changes made to the cooperative agreement and understood the context for those changes. At no point did OMB suggest that BLS should push down to States all elements of their Federal directive. BLS agrees that this is unnecessary and the implementation of additional provisions could impede States' rights. BLS believes that the current cooperative agreement effectively addresses these issues to the level enforceable by BLS through the cooperative agreement.

BLS Response to OIG Recommendations:

BLS acknowledges and supports the recommendations in this report which are listed below:

1. Ensure that OFO provides clear guidance to the States and BLS regional offices for granting agent agreements and granting access to pre-release information.
4. Ensure that OFO increases its monitoring of States to include adherence to the confidentiality requirements established by the cooperative agreement.
5. Ensure that OFO clarifies which estimates and statistical products are BLS-owned in each of the LMI cooperative programs, and provides clear definitions of pre-release information and related terms to the States and BLS regional offices.

BLS disagrees with the recommendations in the report listed below:

2. Ensure that OFO amends the cooperative agreement to require that individuals with access to confidential pre-release information be informed annually of their responsibilities to protect that information and acknowledge their acceptance of those responsibilities in writing.
3. Ensure that OFO amends the cooperative agreement to fully incorporate the requirements of OMB SPD No. 4.

For the reasons delineated within this response, BLS believes that it has demonstrated an ability to effectively protect pre-release State information. BLS believes that these two additional requirements would extend BLS, and therefore, the Federal Government beyond the scope of its authority. Further, BLS believes that implementation and enforcement of these additional requirements would be impossible across all States and would negatively impact the Federal-State partnership in producing labor market information.

Conclusion:

While BLS supports some recommendations of this report, we disagree with other recommendations and dispute some of the individual findings. Regarding Finding 1, the report

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focuses on the OIG interpretation of language within the cooperative agreement rather than the BLS practice, even after BLS acknowledged the definitional issues and explained to the auditors the intent, which causes BLS to dispute the specifics of the reported violations of the cooperative agreement. Regarding Finding 3, BLS questions the need for and authority to implement additional elements of OMB SPD No. 4 beyond those already being implemented in the FY 2013 cooperative agreement.

We would like to thank you and the audit team for its work and commitment to helping to further us in our mission.