

HIGHLIGHTS



Volume 52 April 1, 2004–September 30, 2004

In this issue...

The OIG identifies significant concerns for DOL 2

EBSA has not been successful in correcting substandard benefit plan audits intended to protect plan participants' interests because it has insufficient legislative authority to hold plan auditors accountable 4

A union attorney and his associate pled guilty to charges that included accepting and making bribes to influence the operation of a benefit plan 4

Twelve states were not using an effective method for detecting Unemployment Insurance overpayments ... 5

An investigation led to the conviction of individuals who used stolen identities to apply for and obtain millions in Unemployment Insurance benefits 5

Significant problems identified with an influx of Permanent Foreign Labor Certification applications prompted concerns that applications that should be denied are being certified 6

An OIG audit questioned \$8.4 million in costs charged to a Florida Welfare-to-Work formula grant 6

Vulnerabilities were found in DOL's management of the migration of its payroll processing to the National Finance Center 7

DOL had not established adequate management controls over its equity interest in State Workforce Agencies' real property 7

The former president of ILA Local 1588 was sentenced for conspiring to embezzle union funds 8

A Message from the Inspector General

This issue of *Highlights* summarizes significant audit and investigative activities performed by the Office of Inspector General (OIG) from April 1 through September 30, 2004. Our complete *Semiannual Report to the Congress*, along with most OIG audit reports, is available on our website (www.oig.dol.gov). During this period, the OIG issued 67 audits. We identified \$10.5 million in questioned costs and \$15 million in other audit monetary recommendations. In addition, we closed 228 investigations and achieved 297 indictments, 186 convictions, and \$103 million in investigative monetary accomplishments.

The OIG remains committed to promoting the economy, integrity, effectiveness, and efficiency of DOL programs and detecting waste, fraud, and abuse against those programs. We will continue to work constructively with the Secretary of Labor and DOL managers to ensure that the rights and benefits of American workers and retirees are safeguarded.

Gordon S. Heddell
 Inspector General

The *Semiannual Report to the Congress*
 can be viewed at www.oig.dol.gov

As part of our effort to focus attention on mission-critical management problems and their resolution, the OIG has identified the following areas that we consider vulnerable to mismanagement, error, fraud, waste, or abuse.

BENEFIT PLAN SAFEGUARDS

Among existing safeguards on employee benefit plans are the annual plan audits required under the Employee Retirement Income Security Act (ERISA). These audits help protect plan participants and beneficiaries by ensuring the proper value of assets and the proper computation of benefits. The OIG has long-standing concerns about the quality and scope of these audits, an unacceptably high number of which do not meet professional standards. A recent OIG audit found that when DOL's Employee Benefits Security Administration (EBSA) has detected deficiencies in plan audits, it has not been effective in correcting them, largely because it lacks sufficient authority to do so. We therefore recommended that DOL seek changes to ERISA that would allow EBSA to correct audits and ensure that auditors with poor records do not perform additional plan audits. We also continue to support the repeal of ERISA's limited-scope provision, which exempts pension assets invested in banks, savings and loans, and insurance companies from plan audits.

In addition, OIG investigations continue to show that assets in Taft-Hartley plans, jointly administered by labor union and management representatives, are vulnerable to multimillion-dollar abuses by plan service providers.

PERMANENT FOREIGN LABOR CERTIFICATION PROGRAM CERTIFICATIONS

The OIG is concerned about the abuse of DOL foreign labor certification programs, which may result in the unlawful admission of foreign nationals and economic hardship for domestic workers. Our audit work on the Permanent Foreign Labor Certification program has focused on an influx of employer applications created by a December 2000 amendment to the Immigration and Nationality Act. For a four-month period ending April 30, 2001, the amendment permitted foreign labor certification applications to be filed for alien workers already in the United States, resulting in a 450% increase in applications filed over the prior year.

Based on our audit work, we are concerned that these and other backlogged applications are being approved despite the fact that many of the alien applicants did not have legal status to work in the United States or were already working for the employer when the application was submitted. More broadly, the OIG is concerned that the Department's role in the labor certification process as a whole adds little value to the process of protecting American jobs and workers, and our investigations continue to identify fraud against these programs by immigration attorneys and labor brokers.

Significant Concerns

SYSTEMS PLANNING AND DEVELOPMENT

Recent OIG audit work has raised concerns that insufficient planning and program management have hampered the development of efficient, effective systems to perform the day-to-day business of the Department. For example, under the e-Payroll initiative, designed to consolidate Federal civilian payroll services, DOL's payroll processing will migrate to the National Finance Center. An ongoing OIG audit identified vulnerabilities in DOL's management of the payroll migration, including insufficient project planning, data validation, user involvement, and parallel testing.

In addition, an audit of the redesign of a mission-critical Occupational Safety and Health Administration data system identified weaknesses, including a project-management plan that did not cover the entire redesign, uncertain funding that increased the project's risk, and lack of critical knowledge on the part of the project manager. Such projects, which cost the government millions of dollars each year and impact the delivery of services and the operation of DOL's business units, require long-term planning and comprehensive project management to realize the benefits of the substantial investments.

PROCUREMENT PRACTICES

DOL procurement activities must comply with Federal requirements—which emphasize full and open competition—and must achieve the best value for the dollar. To this end, effective management controls, well-trained personnel, and clear accountability are essential. Ongoing OIG audit work has raised concerns about whether all DOL agencies have adhered to the principle of full and open competition. Such competition involves using sole-source procurements as a last, rather than a first, resort.

Moreover, we are finding that a lack of knowledge about procurement requirements is a major cause of inappropriate procurement actions. As a result, the OIG is planning an overall review of procurement in DOL. This *Semiannual Report* includes examples of OIG investigations that identify procurement fraud, such as the case of former Bureau of Labor Statistics employees who accepted bribes and kickbacks from vendors in exchange for making purchases.

FRAUD INVOLVING IDENTITY THEFT

To apply for benefits such as Unemployment Insurance (UI), the name and other identifying information of a beneficiary are required. Participants in other DOL programs must likewise submit personal identifying or employer information. The OIG is concerned that criminals are using stolen identities to apply for benefits on a large scale and defraud DOL programs. In one case we investigated, 10,000 stolen identities were used by a nontraditional organized crime group to unlawfully apply for and obtain millions of dollars in benefits. Stolen identities have also been used to create false Social Security cards, obtain H-1B temporary specialty worker status, and defraud Workforce Investment Act programs.

REDUCING IMPROPER PAYMENTS

Improper payments in DOL-administered programs, such as Unemployment Insurance and the Federal Employees' Compensation Act (FECA) program, include payments made in the wrong amount or to an ineligible recipient, or improperly used by the recipient. DOL projects that UI overpayments by the states amount to about \$4 billion annually, and estimates FECA overpayments at \$10 million annually.

The UI system could attain significant savings by detecting overpayments through cross-matching UI claims against state and national new hire data, thereby identifying claimants who have returned to work but are still collecting UI benefits. A recent OIG audit determined that 12 states had not used their own state new hire data to reduce overpayments. We recommended that DOL continue to provide technical assistance and resources to help those 12 states implement state new hire detection, and that the Department encourage all states to use the National Directory of New Hires to help identify overpayments. The OIG is also concerned about inadequate controls over medical evidence used to determine continuing eligibility for FECA compensation payments, because inadequate DOL procedures for obtaining and reviewing current medical evidence increase the risk of improper payments.

With increased enforcement authority over plan auditors, EBSA, in our opinion, could better protect the interests of plan participants.

EBSA NEEDS ADDITIONAL AUTHORITY TO IMPROVE THE QUALITY OF EMPLOYEE BENEFIT PLAN AUDITS

The Employee Retirement Income Security Act (ERISA) requires that most large employee benefit plans obtain an annual audit of their financial statements. These audits help protect plan participants and beneficiaries by ensuring the proper value of assets and the proper computation of benefits. In fiscal year 2001, plan administrators filed about 65,000 financial statements on private pension plans holding assets of more than \$4 trillion and covering more than 88 million participants.

The OIG audited the process used by the Employee Benefits Security Administration (EBSA) to identify and correct substandard audits of employee benefit plans. The quality and scope of these audits and the resulting protections for workers have been long-standing concerns of the OIG. Although EBSA has made efforts to correct substandard audits, including rejecting annual report filings and referring auditors to oversight and/or licensing organizations for possible investigation and disciplinary action, the process for identifying and correcting substandard employee benefit plan audits has not been effective. The OIG found that EBSA does not have the authority to take direct action against auditors who perform substandard audits. With increased enforcement authority over plan auditors, EBSA, in our opinion, could better protect the interests of plan participants.

We recommended that EBSA propose changes to ERISA to grant it greater enforcement authority over such matters as registration, suspension, debarment, and civil penalties against employee benefit plan auditors. Among our other recommendations were that EBSA obtain sufficient documentation to ensure that audit deficiencies are corrected and improve the accuracy of its case-tracking system. EBSA generally agreed with our recommendations. With respect to EBSA's enforcement authority, EBSA said it recognizes deficiencies in the current law and is considering options for correcting those deficiencies.

GUILTY PLEA IN KICKBACK SCHEME

During this period, an attorney for the Indiana Regional Council of Carpenters and a real estate broker pled guilty to charges of accepting and making bribe payments to influence the operations of an ERISA employee benefit plan. The attorney admitted to accepting \$200,000 in illegal kickbacks from the broker. The two then facilitated the payment of \$65,000 in illegal kickbacks to an individual who was the secretary-treasurer of the Regional Council and a former trustee of the Northwest District Council of Carpenters' pension fund. The payments were made in conjunction with the pension fund's \$10 million purchase of 55 acres of land in 1999. As one of the plan trustees, the secretary-treasurer cast the deciding vote authorizing the purchase.

To receive a printed copy of the full report, write or e-mail:

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

LaborOIGinfo@oig.dol.gov

Unemployment Insurance

USE OF NEW HIRE DATA COULD GENERATE SIGNIFICANT SAVINGS IN UI PROGRAM

In September 2004, an OIG audit found that 12 states were still not using state new hire data to detect Unemployment Insurance (UI) overpayments. This followed a 2003 OIG audit that recommended reducing UI overpayments by expanding states' use of new hire data, which we estimated would save the Unemployment Trust Fund \$428 million annually.

The recent audit found that states can reduce overpayments by investigating leads developed from new hire information before a claimant's eligibility has been exhausted. It recommended that state UI programs increase their use of new hire data to detect UI claimants who have returned to work but are still collecting UI benefits, a measure we continue to believe would generate significant savings. Among our other recommendations were that DOL encourage states to use the National Directory of New Hires, which a provision in the SUTA Dumping Prevention Act of 2004 (P.L. 108-295) made available to State Workforce Agencies, to expand overpayments detection. ETA agreed with our recommendations.

\$59 MILLION IN RESTITUTION ORDERED IN IDENTITY THEFT SCHEME

During this reporting period, two individuals were each sentenced to five years' incarceration and three years' probation and were ordered to jointly pay nearly \$59 million in restitution for their roles in a UI identity theft conspiracy group. The investigation revealed that the group controlled more than 4,000 check-mailing addresses, from California to Mexico. These mailing addresses were used to collect fraudulent UI checks issued by four states using 10,000 stolen identities.

GUILTY PLEA IN FICTITIOUS EMPLOYER SCHEME

In September 2004, an individual pled guilty in connection with a fictitious employer scheme that allowed him to draw approximately \$330,000 in UI, state workers' compensation, and Social Security disability benefits. From 1995 to 2003, he created four fictitious employers and reported wages for himself and others on quarterly tax reports.

Selected Statistics

Investigative monetary accomplishments	\$103 million
Questioned costs	\$10.5 million
Other audit monetary impact	\$15 million
Audit and evaluation reports issued	67
Indictments	297
Convictions	186
Investigative cases opened	191
Investigative cases closed	228
Investigative cases referred for prosecution	296
Investigative cases referred for administrative/civil action	76

Foreign Labor Certification

PERMANENT FOREIGN LABOR CERTIFICATION PROGRAM WORKLOAD COULD LEAD TO CERTIFICATION OF APPLICATIONS THAT SHOULD BE DENIED

The OIG audited DOL's Permanent Foreign Labor Certification program to determine how the program workload was affected by a December 2000 amendment to the Immigration and Nationality Act that allowed the submission of foreign labor certification applications for alien workers already in the United States. This provision was in effect for a four-month period ending April 30, 2001, and resulted in more than 250,000 applications, a 450% increase in applications over the prior year. This influx created a large processing backlog.

The OIG is concerned that in eliminating the backlog, many applications that should be denied are being certified. We found significant problems in both pending and certified applications, including that 69% of applications were misrepresented and/or incomplete. We recommended that ETA require that the backlog be processed in accordance with applicable laws and regulations, which were not being consistently followed. We also recommended that ETA verify employers' current in-business status prior to granting certifications. The OIG believes that ETA's plan to use software in its backlog processing centers to determine *bona fide* employers prior to certification should resolve this matter. As a result of this audit, the OIG is reviewing numerous applications for possible investigation.

IMMIGRATION ATTORNEY PLEADS GUILTY IN VISA FRAUD SCHEME

In April 2004, an immigration attorney pled guilty to charges of conspiracy, visa fraud, and money laundering. He conspired with local businesses to file hundreds of fraudulent labor certification applications with DOL and alien petitions with the Bureau of U.S. Citizenship and Immigration Services. He used schemes including filing for nonexistent aliens, paying businesses to file for aliens they did not intend to hire, and filing applications on behalf of businesses without their knowledge. Nine business owners involved have pled guilty to visa fraud.

Employment and Training

MORE THAN \$8 MILLION QUESTIONED IN AUDIT OF FLORIDA GRANT

The OIG conducted a performance audit of a \$19.8 million Welfare-to-Work formula grant provided to the South Florida Workforce Board to determine compliance with applicable laws and regulations on grant costs and participant eligibility. We found that the Board could not account for \$4.2 million in unauthorized cash drawdowns and had awarded contracts that did not comply with Federal competition requirements. The Board also failed to meet Federal matching requirements and could not verify more than \$1.9 million of in-kind contributions. It also submitted participant data that were inaccurate and unreliable. The OIG questioned a total of \$8.4 million for these and other findings. Board officials generally agreed with our findings.

INADEQUATE MONITORING OF JOB CORPUS OUTCOME STUDENT DATA COULD LEAD TO OVERPAYMENTS

During an OIG audit of Job Corps' process for ensuring that student performance outcome data reported by contractors are reliable, we identified a significant management control weakness that required immediate action. As a result, we issued an interim report. Specifically, we found that Job Corps staff in at least three offices did not test the accuracy and completeness of performance data during on-site assessments they conducted, contrary to ETA program guidance. Failure to validate the reported data could result in overpayments to center operators, because DOL relies on these data to reimburse Job Corps center contractors for operating expenses and to pay them bonuses and incentive fees for meeting or exceeding specified performance goals.

We recommended that ETA ensure that data are tested during on-site reviews using statistical sampling, retain all records related to the testing, and recover any overpayments made to the center operator due to misreported student performance data. ETA agreed with our findings.

Departmental Management

E-PAYROLL CONVERSION CONCERNS PERSIST

Under the e-Payroll initiative, designed to consolidate Federal civilian payroll services, DOL's payroll processing will migrate to the National Finance Center. The OIG is conducting an ongoing audit to determine whether the e-Payroll project is being effectively managed by DOL. Three interim reports issued by OIG identified vulnerabilities in the management of the payroll migration that may impede the success of this project. The original date of implementation of e-Payroll was September 30, 2004. Soon after the close of the reporting period, the Department postponed implementation.

The third of OIG's interim reports, issued in August 2004, recommended that DOL delay its decision on the implementation of e-Payroll to address outstanding issues it identified, such as the following:

- Thousands of errors remained to be corrected in employee records and incorrect data was being used to test the system.
- There was no adequate, finalized, and approved process in place to support DOL's decision to move forward with implementation.
- There were still unanswered questions as to the effectiveness of user training and whether it provides adequate information on the system's features and functions.

The CFO provided no additional information in response to our draft report that would warrant a change in our findings and/or recommendations.

OSHA NEEDS TO ADOPT BEST PRACTICES TO MINIMIZE RISKS IN IT DEVELOPMENT EFFORTS

An OIG audit identified project management weaknesses in the Occupational Safety and Health Administration's (OSHA's) redesign of its Integrated Management Information System (IMIS), a mission-critical data system that collects information required to manage OSHA. Since its initiation in 1995, the redesign project has experienced procurement and contract performance problems and has changed contractors. Its planned cost, initially estimated at \$2 million, was revised to \$8.5 million in 2000 and to \$12.6 million in 2002.

We found that the system's project management plan did not cover the entire redesign, that uncertain funding increased project risk, and that the project manager lacked critical knowledge and experience. During our audit fieldwork, OMB withdrew \$4 million in funding for the redesign, and OSHA has since suspended the redesign effort. We made several recommendations that should enable OSHA to minimize future risks in its systems development. OSHA agreed with our recommendations in the draft audit report. OSHA has commissioned a contractor to perform an evaluation of the IMIS redesign.

ETA'S REAL PROPERTY INVENTORY IN FOUR STATES UNDERSTATED EQUITY BY \$30 MILLION

The OIG conducted an audit in 2004 to assess ETA's management controls over Federal equity in State Workforce Agencies' (SWA's) real property. Two prior OIG reports highlighted weaknesses in management controls over real property that resulted in significant understatements of DOL's equity. In response, DOL stated that ETA had taken actions to ensure that accounting for the equity was no longer a critical weakness.

Our recent audit found that ETA still had not established adequate management controls over accounting for the Department's equity interest in SWA's real properties. Specifically, ETA's inventory of SWA property was neither accurate nor complete, and ETA did not ensure that the states properly handled the proceeds from disposing of SWA properties with DOL equity.

Based on our audit of four states, as of September 30, 2001, we identified 61 properties for which ETA's real property inventory understated DOL's equity by a net \$30.2 million. We recommended that ETA implement controls over data validity and reliability and monitor states' compliance with requirements on their use of the proceeds from SWA real property dispositions. ETA generally agreed with the audit report but did not address our specific recommendations.

**Most audit reports are available on the
OIG website: www.oig.dol.gov**

Labor Racketeering

GUILTY PLEA IN HEALTH CARE FRAUD CASE

In September 2004 the president of Interstate Services Incorporated (ISI) pled guilty to charges of health care fraud, mail fraud, money laundering, and orchestrating a health insurance scheme. The president defrauded thousands of people who purchased health insurance plans from ISI by promising that 30% of the premiums collected would go into trust accounts at a bank and the rest would be used to purchase a group health insurance policy from an established, highly rated insurance company. However, ISI's president used the money to pay his personal expenses and to pay commissions to the promoters of the scheme.

FORMER UNION PRESIDENT SENTENCED

In May 2004, a former president of the International Longshoremen's Association Local 1588 was sentenced to six months' home confinement and three years' probation and is jointly responsible for paying approximately \$900,000 in restitution. He and his co-defendants, who were previously sentenced, conspired to embezzle thousands of dollars of Local 1588 funds. They were charged with generating improper disbursements from Local 1588 through an elaborate salary diversion scheme that involved kickbacks from service providers.

UNION PRESIDENT CONVICTED OF RACKETEERING CHARGES

In June 2004, the president of the National Federation of Public and Private Employees and his sister, a former administrative assistant to the union, were convicted on charges including RICO violations and embezzlement of union assets. The investigation found that from 1994 to 2003, the president received almost \$500,000 from various employers while simultaneously representing the interests of the Federation and a maritime labor union. Additionally, the former administrative assistant embezzled more than \$116,000 from the Federation by issuing unauthorized payroll checks. The two also falsified travel and entertainment expense reports, thereby causing the Federation to pay thousands of dollars in personal expenses on their behalf.

SENTENCING OF EMPLOYEE ESTABLISHES PRECEDENT UNDER TAFT-HARTLEY ACT

In June 2004, an employee of Toyota Motor Manufacturing of Kentucky was sentenced to two years' incarceration and two years' probation for violating the Taft-Hartley Act. This sentence and its indictment are significant in that they reflect a prosecution under the Taft-Hartley Act whereby prohibited employer payments are not limited to those received by employee representatives, a labor organization, or the officers or employees of labor organizations. Prohibited payments also extend to payments to any of the employer's employees in excess of normal compensation for the purpose of causing the employee to influence other employees in the exercise of their rights to organize and bargain collectively with the employer.

The employee actively led and participated in organizing attempts at the Toyota plant, despite never being officially elected or identified by his fellow employees as their representative and never being officially connected to or recognized by the United Auto Workers as a union representative. He attempted to force Toyota to pay him \$650,000 in exchange for his promise to cease and combat union organizing attempts at Toyota, and to dissuade other employees from actively attempting to organize the plant.

UNION MEMBER PLEADS GUILTY TO RACKETEERING CONSPIRACY CHARGES

In June 2004, a member of Laborers International Union of North America Local 91 pled guilty to RICO conspiracy charges for his participation with other union members in a violent scheme to extort businesses of their right to hire and retain workers of their choice at construction projects in Niagara County, New York. The investigation found that since 1996, high-ranking officers of Local 91, including the business manager, president, and retired past president, directed union members whose principal objective was to force employers to hire workers selected by the defendants.