

HIGHLIGHTS



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A Message from the Inspector General

This issue of *Highlights* summarizes the significant activities of the Office of Inspector General (OIG) for the six-month period ending March 31, 2005. I am pleased to submit this record of our accomplishments.

Chief among our audit recommendations during this period is the need for the Department of Labor (DOL) to separate its procurement functions from program functions by creating an independent acquisition office led by an acquisitions officer who reports directly to the Deputy Secretary.

Our audits also identified areas in which the Department has achieved success, most significantly in the financial management area, as evidenced by DOL receiving an unqualified opinion on its consolidated financial statements for the eighth year in row.

OIG investigations continue to combat abuses of DOL programs that serve American workers and to combat labor racketeering in the workplace. The OIG will continue its efforts to promote the integrity and efficiency of DOL programs by detecting and identifying ways to prevent waste, fraud, and abuse.

Gordon S. Heddell
Inspector General

DOL spent \$1.5 billion on procurement activities and initiated more than 12,000 procurement actions in FY 2003.

We conducted two comprehensive audits related to departmental procurement issues during this period and provided substantive comments on a revised internal DOL policy directive related to grant and procurement authority. Of greatest concern to the OIG in this area is the need to separate the procurement function from operational or program functions. The OIG believes that unless such recommendations are implemented, DOL will continue to be at greater risk for wasteful and abusive practices, as evident in the following audits.

\$3.8 MILLION CONTRACT IMPROPERLY AWARDED FOR ENCRYPTION PRODUCTS

Following receipt of a hotline complaint and a subsequent memorandum from the Assistant Secretary for Administration and Management, the OIG initiated an audit of DOL's contract with Meganet Corporation to purchase file-encryption software and related services.

We concluded that the Meganet contract was not properly awarded, modified, or managed because of a lack of organizational separation of duties, inadequate oversight, and insufficient internal controls. Furthermore, individuals knowingly made decisions and took actions that violated government regulations and DOL policies and that may not have been in DOL's best operating or financial interests. As a result, the contract may have been improperly awarded on a sole-source basis, \$3.8 million in Meganet products have gone unused without adequate justification, and DOL spent an additional \$1.6 million (as of December 2004) on another product to satisfy some of the same technical requirements that Meganet's products solved.

DOL responded that it has already made some policy and staffing changes, plans to implement additional controls, and will "give careful consideration" to the reasons behind our recommendation that procurement and programmatic responsibilities be separated.

MSHA PROCUREMENTS DISREGARDED ACQUISITION RULES

To determine the merits of a series of allegations received by the OIG hotline, the OIG audited the Mine Safety and Health Administration's (MSHA's) procurement and contracting procedures, as well as related personnel matters, for June 1, 2000, through December 31, 2002. Among our findings related to that period were that:

- MSHA did not always ensure that the government received best value or that vendors were treated fairly in the award of contracts;
- MSHA circumvented requirements to procure office furniture and travel management services from specific sources; and

- a potential conflict of interest existed in the award of contracts to a company owned by a contracting officer's spouse.

The overall cause of the problems we identified was a long-term history of MSHA management that accepted and fostered a lack of commitment to procurement principles, which was facilitated by a lack of separation of the procurement and program functions. This lack of separation of duties allowed program staff to exert undue influence over procurement personnel.

Prior to the issuance of our report, the OIG reviewed contract files for procurements made by MSHA in FYs 2003 and 2004. We observed a degree of file documentation that, had MSHA documented its procurement actions and rationale for its choices of procurement instruments to the same extent during the period included in our audit, would have addressed some of the findings in this report.

We recommended that DOL rescind MSHA's procurement authority, reassign such authority, and ensure that said authority is completely independent of MSHA. The Department responded that it would be important to assess the full breadth and effectiveness of recent procurement reforms in order to make a more informed judgment on our recommendation. In addition, DOL indicated that MSHA has instituted procurement reforms.

CHANGES NEEDED IN DOL PROCUREMENT REGULATIONS

The Department is currently revising its internal policy and procedures regarding procurement. Because of recent audit work in this area, we provided input and made suggestions on how to address our audit findings through changes to DOL policies and procedures.

Within DOL, the Office of the Assistant Secretary for Administration and Management has overall responsibility for DOL's procurement functions, as well as overall responsibility for all major administrative functions. This creates an organizational conflict of interest whenever a procurement action involves products or services. The OIG believes the lack of separation of duties does not allow for sufficient oversight of or accountability for procurements and increases the risk that operational needs and desires will override sound procurement practices. The OIG's overarching concern is the need for separation of duties. To address these concerns, the OIG's comments on the proposed DOL policy revision on procurement include a recommendation that procurement executives be higher than, and organizationally separate from, program and operations officials.

DOL needs to separate the procurement and program functions in order to ensure sufficient oversight and accountability for procurements.

Labor Racketeering Investigations

LCN ASSOCIATE PLEADS GUILTY TO EMBEZZLING \$7 MILLION FROM BENEFIT PLAN

In November 2004, a Gambino Crime Family associate pled guilty to conspiracy charges for a scheme that involved embezzling employee benefit plan funds and laundering money. He defrauded the Carpenter's Union and the Laborer's Union benefit funds of more than \$7 million by circumventing a collective bargaining agreement by operating one of the companies as a nonunion shop while using the same employees and equipment as the unionized one. By doing so, he avoided paying benefits to union benefit funds.

UNION OFFICIAL PLEADS GUILTY TO EMBEZZLING MORE THAN \$1 MILLION

In January 2005, a union official pled guilty to conspiracy charges related to an embezzlement of just over \$1 million from the Hudson County District Council of Laborers and its benefit funds and to falsifying reports of a benefit plan covered by ERISA. The official and others, who have previously pled guilty, took more than \$1 million from eight bank accounts that were maintained for union members and plan participants.

FORMER UNION PRESIDENTS CONVICTED

The founder and retired president of Local 148 of the Novelty and Production Workers Union and his son were both convicted at trial for their embezzlement scheme against Local 148. From 1996 through 2001, they created unnecessary construction projects at the union's Jersey City office building. As a result of this investigation, numerous other Local 148 officers and business agents have also been convicted. Local 148 is presently under a Federal court-ordered trusteeship because of corruption and abuse of fiduciary powers.

DEFENDANT CAUGHT IN KICKBACK SCHEME

The owner of Plumbing Solutions pled guilty in December 2004 to conspiring with the president of Plumbers' Union Local 1 to sell property at an inflated rate and kick back the \$1.3 million difference to the president. The money used

to pay for the inflated property came from the Plumbers' Union Trade Education Fund. The owner also pled guilty to bribing New York City plumbing inspectors and to committing perjury.

LCN CRIME FAMILY LEADERSHIP CHARGED WITH RACKETEERING AND EXTORTION

In March 2005, 32 members and associates of the Gambino Crime Family were charged in a 53-count indictment. A president of the United Food and Commercial Workers Local 305 and a trustee of the local's benefit funds were also charged with union benefit embezzlement and related fraud charges. The investigation found that this group allegedly infiltrated, controlled, extorted, and defrauded businesses and labor organizations.

MOB LEADERS AND UNION OFFICIALS CHARGED

In February 2005, a Genovese LCN Family capo and three officers of the International Longshoremen's Association (ILA) were charged with conspiracy, mail fraud, and theft of honest services. The investigation found that Genovese members allegedly directed the placement of Genovese associates into powerful positions with the ILA. Once in these positions, these individuals were instrumental in awarding benefit fund-related contracts to companies with ties to the Genovese LCN Family.

RETIRED UNION OFFICIAL CHARGED WITH \$1.5 MILLION EXTORTION

A retired international representative of the United Food and Commercial Workers Union was charged on November 18, 2004, with Hobbs Act extortion, mail fraud, wire fraud, and interstate travel in aid of racketeering. The investigation also found that the former union official allegedly extorted approximately \$1.5 million from a supermarket chain from 1989 until the time of his arrest in September 2003 to keep the union from organizing the company.

Foreign Labor Certification Programs

FLC APPLICATIONS MAY HAVE BEEN APPROVED DESPITE NOTIFICATIONS OF POTENTIAL FRAUD

We conducted an audit based on a complaint alleging that the Employment and Training Administration's ETA's San Francisco regional office (SFRO) did not consider warnings, notification of potential fraud, or other application deficiencies identified by the State of California's Employment Development Department. At the time of the audit, the State reviewed foreign labor certification (FLC) applications before they were forwarded to SFRO for approval. If the State identified problems with the application, a form was attached stating the investigative results and the finding. We reviewed a judgmental sample of 35 applications for which California had prepared the form. According to the State, the applications and forms were forwarded to SFRO. Among our findings were the following:

- Although SFRO received the forms, we did not find any of these forms in the application files. The OIG was unable to make a definitive determination, but we believe that because this form was missing from the files and there was no other evidence of a Notice of Findings or other action taken on the application, SFRO may not have heeded warnings of potential abuse and/or fraud identified by California.
- In some cases, SFRO certified applications within a day or two of receipt, even though the State had found problems with the application.
- SFRO appeared to be working under a regionally mandated quota system, driving employees to ignore questionable applications in order to achieve numerical results, with little or no management oversight. SFRO's emphasis was on reducing the FLC application backlog, as opposed to certifying only bona fide applications.

We recommended that DOL:

- implement oversight at SFRO to ensure that FLC applications are processed in accordance with established rules and regulations;
- revise guidance regarding documentation to support final determinations; and
- direct the immediate discontinuance of any quota or production goal system that may result in questionable applications being approved.

In response, ETA stated that the FLC programs had been reengineered with a new reporting structure and improved connection between field staff and national office policy guidance. The OIG believes that the changes should ensure improved oversight and should address our concerns about a quota system.

MORE THAN 900 LABOR CERTIFICATIONS FILED IN FRAUD SCHEME

Seven defendants were charged in March 2005 with conspiracy, visa fraud, and money laundering. The owner of an immigration recruitment company allegedly conspired with others to illegally bring aliens into the United States through the submission of hundreds of fraudulent permanent labor certifications.

One of the defendants pled guilty to charges of conspiracy and making false statements. She created fraudulent verifications of employment letters to show that the aliens had certain job experience. Two of the defendants allegedly filed more than 900 labor certifications on behalf of Chinese nationals seeking entry into the United States, charging them up to \$90,000 per labor certification application.

DEFENDANTS CHARGED IN VISA FRAUD SCHEME

In November 2004, an immigration consultant, an attorney, and associates were charged with visa fraud and conspiracy. The consultant, who targeted the Iranian community, and the attorney allegedly filed hundreds of fraudulent H-1B labor certification applications from 1993 to 2003. The investigation also revealed that two of the defendants instructed their clients to pay their own payroll taxes for three to six months to make it appear that they were on the company's rolls. The consultant and his associates relied upon more than 200 Southern California businesses, ranging from medical clinics to pizza parlors to auto parts stores, to serve as applicants for their clients.

Job Corps

KITTRELL JOB CORPS CENTER MANIPULATED STUDENT RECORDS

The OIG conducted an audit of the Kittrell Job Corps Center in Kittrell, North Carolina, to determine the merits of an OIG hotline complaint alleging that center managers manipulated student attendance and training records to improperly inflate reported performance. Our audit substantiated this allegation. Performance data manipulation has financial implications for Job Corps because DOL reimburses operating expenses and awards bonuses and incentives to Job Corps contractors based on the performance data submitted.

We found that Management Training Corporation (MTC), the firm that manages Kittrell, overstated student attendance and, therefore, could potentially have been overpaid a maximum of \$664,000 for the period of January 2000 through December 2003. We also questioned the validity of \$112,000 in incentive fees paid to the center operator during the first year of its performance-based contract. In addition, Job Corps' oversight of center operations was compromised because reported performance affects management decision making and the level of center supervision.

In response to our findings, ETA stated that the OIG presented strong evidence that center staff manipulated student attendance records to improve reported performance. ETA also indicated that it did not believe that training records were intentionally manipulated for center gain and cited poor management, imprecise record keeping, and human error as likely factors that contributed to the performance data irregularities pertaining to training records. Although ETA disagreed with our conclusions regarding certain data, it has begun implementing all the recommendations. Moreover, in response to another OIG audit on a related subject, ETA is now requiring its regional staff to validate Job Corps data as part of their routine monitoring procedures.

Workforce Investment Act

MORE THAN \$850,000 IN QUESTIONED COSTS IDENTIFIED IN GRANT FUNDS AWARDED TO ARKANSAS

The OIG conducted an audit of Workforce Investment Act (WIA) funds in Arkansas that had allegedly been improperly promised to the Nestle Corporation as an incentive for the company to locate in the state. We concluded that the \$859,904 was used to supplant some of Nestle's plant start-up training costs for a new workforce. The funds were promised to Nestle long before the plant was constructed or employees were hired. We recommended that the Department disallow and recover from Arkansas the WIA funds paid to Nestle. The State asserted that the board acted in good faith in making the decisions questioned in the OIG audit report. The OIG's findings and recommendations remain unchanged.

Major Management Challenges

The Reports Consolidation Act of 2000 (P.L. 106-531) requires the OIG to identify the most serious management challenges faced by the Labor Department. These challenges and the Department's response to them are published in the Department's annual report. The challenges identified by the OIG in DOL's fiscal year 2004 annual report are:

- reduction of improper payments,
- Unemployment Insurance safeguards,
- integrity of foreign labor certification programs,
- financial and performance accountability,
- systems planning and development,
- information systems security,
- security of employee benefit plan assets,
- accounting for real property, and
- Workforce Investment Act reauthorization.

The challenges in their entirety are presented on the OIG's Web site (www.oig.dol.gov).

Unemployment Insurance

FORMER TEXAS STATE EMPLOYEE CHARGED IN MULTIFACETED UI FRAUD SCHEME

In December 2004, a former Texas Workforce Commission employee and five associates were indicted for allegedly conspiring in a mail fraud scheme to defraud the State of Texas Unemployment Insurance (UI) program. The investigation revealed that the defendants allegedly defrauded the program of approximately \$500,000 in UI checks over a five-year period. One of the defendants allegedly assisted individuals in obtaining UI benefits that they were not entitled to receive. In addition, this defendant created several fictitious employers and solicited bribes to file and process fraudulent claims for UI benefits.

DEFENDANTS CHARGED IN IDENTITY THEFT RING

On December 16, 2004, a California farm laborer and three of his associates were indicted on charges of mail fraud, aiding and abetting, conspiracy, identity theft, and conspiracy to launder money. The investigation revealed that the defendants allegedly used payroll records and lists with 700 stolen identities to file fraudulent claims for UI benefits with the California Employment Development Department.

NEARLY \$350,000 IN COSTS QUESTIONED IN AUDIT OF ARKANSAS UI PROGRAM

In the same audit discussed in the Workforce Investment Act section of this report, the OIG reviewed an allegation that Arkansas's Employment Security Department used UI grants to pay for a substantial amount of vacant office space in Little Rock, Arkansas. We determined that 67% of the leased building in question had been vacant since April 2003, resulting in \$347,586 of questionable space costs charged to UI grants from April 2003 through October 2004. If this situation continues, additional costs of \$18,294 per month will continue to be charged improperly to DOL grants.

We recommended that the Department disallow and recover from Arkansas the \$347,586 in UI funds paid for the cost of vacant space through October 2004, plus any additional unallowable space costs incurred since November 2004. The State asserted that the Employment Security Department acted in good faith in making the decisions questioned in the OIG audit report. The OIG's findings and recommendations remain unchanged.

Selected Statistics

October 1, 2004–March 31, 2005

Investigative monetary accomplishments	\$49.6 million
Questioned costs	\$5.6 million
Audit and evaluation reports issued	60
Indictments	302
Convictions	217
Investigative cases opened	212
Investigative cases closed	164
Investigative cases referred for prosecution	314
Investigative cases referred for administrative/civil action	165
Debarments	88

Audit Resolution

FLORIDA ORDERED TO REPAY \$11.4 MILLION IN MISSPENT FUNDS

In February 2005, the Department's Administrative Review Board ordered the State of Florida to reimburse the Department \$11.4 million in job training funds questioned in a 1998 OIG audit report. The Board asserted that the State failed to show that Job Training Partnership Act funds were spent for lawful purposes. Although ETA disallowed the \$11.4 million, a DOL administrative law judge ruled that the expenditures were proper and reversed the disallowance. This ruling was appealed to the Board.

Financial Management

UNQUALIFIED OPINION ON FINANCIAL STATEMENTS

The OIG issued an unqualified opinion on DOL's consolidated financial statement for the eighth consecutive year. We found that DOL substantially complied with the standards of the Federal Financial Management Improvement Act.

We noted four new areas involving internal controls that we consider to be reportable conditions, although we do not consider them to be material weaknesses. We also noted seven outstanding reportable conditions from prior years that continue to require management's attention. The new reportable conditions are:

- inaccurate FECA medical bill payments,
- FECA medical bill receivables,
- stronger IT controls needed over financial systems, and
- weaknesses in OASAM procurement.

The IT reportable condition is discussed in the next section. The remaining conditions are outlined in the complete *Semiannual Report to the Congress*. The Department has indicated that it has taken or is undertaking corrective action. In order to close out these reportable conditions, the OIG will evaluate the corrective actions during our audit of the FY 2005 DOL financial statements.

Information Technology

STRONGER IT CONTROLS NEEDED OVER FINANCIAL SYSTEMS

The OIG assessed IT application controls over DOLARS, the Department's core financial and accounting system. The OIG also assessed the general and application controls of PeoplePower, the DOL-wide human resource/payroll system. Moreover, the OIG issued a report to summarize all audit work performed in support of the FY 2004 DOL financial statement audit.

DOLARS application controls: We noted that the Office of the Chief Financial Officer has made progress in addressing IT control weaknesses identified in prior years. However, we also noted recurring recommendations, originating in FY 2002, that have not been fully implemented.

PeoplePower: Among our findings, we noted that PeoplePower had an incomplete security plan, lacked a segregation of duties policy, and was weak in monitoring procedures and password controls. We did not identify any significant issues with the integrity of data in PeoplePower.

Summary Report: This summary report described weaknesses in the design and operation of internal controls, which could adversely affect the reliability of financial and performance reporting, and in the system's compliance with laws and regulations. Based on our recommendations, DOL has developed new policies and procedures to address the weaknesses noted above. We determined that the recommendations are resolved based on the actions and time frames described in DOL's response. To ensure complete implementation of corrective actions, which is necessary to close out these recommendations and reportable conditions, the OIG will continue to monitor the progress and conduct follow-up testing during its audit of the FY 2005 DOL financial statements.

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

**Office of Inspector General, US DOL
200 Constitution Ave., NW, Room S-5506
Washington, DC 20210
LaborOIGinfo@oig.dol.gov**