



July 8, 2003

The Honorable Jim Nussle
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to submit information for the hearing record on waste, fraud, and abuse in the Department of Labor's (DOL) mandatory programs. Enclosed is information that we believe will be useful to the Committee as it reviews mandatory programs in the Federal government. We formatted the information to respond to the questions contained in your invitation letter. We focus on three mandatory programs under the DOL's jurisdiction: 1) the Unemployment Insurance (UI) program; 2) the Black Lung Disability Trust Fund; and 3) H-1B Technical Skills Training Grants. Our work in all three programs over the years has found instances of fraud, waste, or abuse.

Of particular concern are the overpayments that are projected in the UI program due partly to claimants who failed to report earnings or other fraud-related schemes. In FY 2002 alone, the Department of Labor projected that \$3.4 billion in UI benefits were overpaid. In addition, we have noted for the past 15 years that the Internal Revenue Service has overcharged the Unemployment Trust Fund, which funds the benefits paid to the unemployed, to administer the fund. An OIG audit estimated that the IRS overcharged the fund \$174 million between FYs 1999 through 2002.

I appreciate your interest in the work of the OIG. If you or your staff have any questions on this or any other matter, please do not hesitate to contact me or Catherine Gromek at (202) 693-5238.

Sincerely,

George J. Opper
for

Gordon S. Heddell

Enclosure

cc: Honorable John Spratt
Ranking Minority Member

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Unemployment Insurance Program

The Unemployment Insurance (UI) program is the Department of Labor's largest income maintenance program. This multibillion-dollar program provides income maintenance to individuals who have lost their jobs through no fault of their own. While the framework of the program is determined by Federal law, the benefits for individuals are dependent on state law and are administered by State Workforce Agencies in 53 jurisdictions covering the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, under the oversight of the Department of Labor.

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:

- In fiscal year (FY) 2001, the states identified and reported \$699 million in actual UI overpayments. Of this amount, the largest single cause (\$227 million or about 32%) of detected overpayments was unreported claimant earnings. Other causes for overpayments include a variety of eligibility reasons such as, failing to do a work search, being terminated by an employer for a reason that does not qualify for UI, and not qualifying for the benefit amount received because of insufficient base period wages. For FY 2002, the states identified \$908 million in overpayments.
- The Employment and Training Administration's (ETA's) Benefit Accuracy Measurement (BAM) system projected claimant overpayments at \$2.45 billion in FY 2001 and \$3.4 billion in FY 2002. Of the FY 2001 projected amount, ETA estimated fraud related overpayments to be \$580 million while non-fraud overpayments were estimated at \$1.865 billion.
- For the one year period ending June 3, 2003, OIG investigations involving the UI program have resulted in 68 indictments, 58, convictions, and \$5.3 million in monetary results

2. The general nature of these problems and how long they have persisted:

- According to ETA's projections, for FY 2001, fraud made up about 25% of the projected overpayments. Fraud was perpetrated through fictitious employer schemes, internal embezzlement, and false claims established through identity theft.
- The balance of overpayments, about 75%, is considered non-fraud overpayments. Such overpayments can occur when a state establishes and pays a claim, only to later discover that the claimant was not eligible for other reasons. Non-fraud overpayments can also occur when a claimant's earnings for a claimed week of unemployment exceed state law minimum earnings.
- ETA has projected unemployment benefit overpayments since 1987. Despite ETA's quality control program, including BAM, the UI overpayment rate has remained steady at between 8-9% for the past 12 years.
- From an investigative perspective, based on recent casework, the OIG is concerned about organized crime fraud activity in the UI program. We have conducted several investigations that illustrate exploitation by organized crime groups of the UI program through the use of identity theft.

Office of Inspector General U.S. Department of Labor

3. Illustrative examples of these problems:

- In addition to instances of millions of dollars of overpayments resulting from unreported claimant earnings and a variety of eligibility issues, the OIG continues to investigate fraud within the UI program. Some recent examples include:
 - o A Washington state man was sentenced and ordered to pay nearly \$700,000 in restitution in connection with UI fictitious employer, private insurance, and credit card schemes he orchestrated for more than 10 years. The investigation revealed that he orchestrated these schemes using multiple identities and fraudulently obtained Social Security numbers. He set up multiple fictitious businesses in Washington state and submitted false quarterly wage reports, enabling him to draw more than \$100,000 in UI benefits.
 - o A New Jersey man who used fictitious companies to file false UI applications was sentenced and ordered to pay back more than \$320,000 he fraudulently obtained from the New Jersey UI program.
 - o A California man filed more than 30 fraudulent UI claims totaling \$130,000 using identities of Los Angeles City and County employees stolen from a credit union.
 - o Thirteen members of a Mexican non-traditional organized crime group were indicted on charges of conspiracy, mail fraud, identity theft, and money laundering in connection with more than \$10 million in fraudulent UI claims. The investigation revealed that they defrauded the California, Washington, Nevada, and Arizona Unemployment Insurance programs through the use of at least 3,000 stolen identities obtained from payroll-servicing companies.
 - o Six members of a Mexican family living in California were indicted on charges of conspiracy, mail fraud, identity theft, and money laundering for defrauding the State of California UI program. The investigation revealed that the family, which constituted a criminal group, opened approximately 100 mailboxes and established several business bank accounts to allegedly launder over \$3 million dollars obtained from fraudulent UI checks.

4. What actions are being taken to eliminate or reduce these problems:

- In 1987, ETA implemented a Quality Control program to address federal regulations (20 CFR 602.1) that directs the UI system to implement a Quality Control program. A key component of this program was the BAM system.
- ETA increased the priority of preventing and detecting UI overpayments by establishing a Government Performance and Results Act overpayment measure.
- As stated in question two, ETA has projected unemployment benefit overpayments since 1987. Despite ETA's quality control program, including BAM, the UI overpayment rate has remained steady at between 8-9% for the past 12 years.

**Office of Inspector General
U.S. Department of Labor**

- ETA issued an UI Program Letter offering states grants to enhance their state's connectivity to the State Directory of New Hires. The New Hire database with current employment information can detect "unreported earnings" overpayments by matching the paid claims list to the database. Such a cross match can detect unreported earnings far quicker than traditional cross match methods which rely on employer quarterly wage reports.
- Most recently, the Department announced on July 2, 2003, that it awarded \$4.8 million in grants to help 41 state workforce agencies implement or enhance systems to prevent and detect fraudulent payments of unemployment insurance benefits. One of the systems will allow state agencies to cross-match UI benefit claims against the state new hire reports; the other system allows electronic data exchange between state UI agencies and the Social Security Administration to help prevent identity theft by individuals filing UI claims.
- The OIG currently is auditing BAM to determine how well it projects overpayments and whether it can be used to point the way to program improvements.
- The OIG periodically sponsors fraud awareness seminars for state UTF program directors and staff to make them aware of fraud problems within the UTF.

5. What additional actions, either administrative or legislative in nature, are required:

- Past GAO and OIG audit reports have acknowledged the potential benefits of New Hire data in UI overpayment detection. Most – but not all – states are using their respective state new hire directories. However, the state directories alone do not afford the states access to nationwide data. Moreover, legislative restrictions currently bar states' access to the National Directory of New Hires maintained by the Department of Health and Human Services. Through connectivity to the National Directory, the states could establish cross match procedures that detect overpayments early, thus preventing future overpayments on the same claim and increasing the likelihood of recovery.

**Office of Inspector General
U.S. Department of Labor**

Unemployment Trust Fund Administrative Costs

- 1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:**
 - Another cause of continuing waste affecting the Unemployment Trust Fund (UTF) is the overcharging of the Trust Fund for costs incurred by the Internal Revenue Service (IRS) in collecting and processing employers' unemployment taxes.
 - The OIG's March 2003 report estimated that overcharges to the UTF amounted to \$174 million for Fiscal Years 1999 through 2002. This occurred because IRS did not have a cost accounting system to equitably recover its costs.

- 2. The general nature of these problems and how long they have persisted:**
 - The OIG first reported this problem 15 years ago. In addition, in 1999, the OIG reported that the IRS did not have a cost accounting system to capture actual UTF-related costs and had overcharged the UTF in FYs 1996–1998. While the IRS returned these overcharges to the UTF, ETA was unable to get the IRS to resolve the issues regarding its UTF charging process.
 - The OIG recently completed a followup audit of the IRS's process for identifying administrative costs charged to the UTF. We found that for FYs 1999–2002, the IRS did not have adequate support for these costs. In addition the Treasury Inspector General for Tax Administration (TIGTA) recently issued an audit report, which found that Treasury could not support the expenses charged to the UTF. The Treasury agreed with TIGTA's recommendations.

- 3. Illustrative examples of these problems:**
 - Using FYs 1999 through 2002 as an example of IRS overcharges to the UTF, our March 2003 audit report disclosed that the IRS had charged the Trust Fund almost \$300 million without adequate support. Using an alternative methodology based on percent-of-revenue-received, we estimated the amount charged should have been \$126 million.

- 4. What actions are being taken to eliminate or reduce these problems:**
 - The IRS recently proposed an alternative cost recovery methodology. We raised questions with one aspect of this methodology, and we recommended that ETA work with the IRS to address this issue and adopt an acceptable methodology. Using the IRS's proposed methodology, the IRS would have charged only \$126 million rather than the nearly \$300 million it actually charged.

- 5. What additional actions, either administrative or legislative in nature, are required:**
 - We continue to recommend ETA negotiate with the IRS to adopt an acceptable alternative methodology for charging the UTF for the allocable administrative costs, and enter into a Memorandum of Agreement to ensure consistent application of the agreed-upon methodology. IRS should also reimburse the UTF \$118 million (\$174 million minus \$56 million already recovered) in overcharges. ETA and IRS are holding discussions to develop a mutually acceptable methodology.

**Office of Inspector General
U.S. Department of Labor**

Black Lung Disability Trust Fund

The Black Lung Disability Trust Fund (BLDTF) provides benefit payments to eligible coal miners disabled by pneumoconiosis when no responsible mine operator can be assigned liability. These benefits, along with administrative and other costs, are chiefly financed by excise taxes from the sale of coal by mine operators.

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:

- Outstanding advances to the BLDTF totaled \$7.7 billion at the close of FY 2002, up from \$5 billion at the end of FY 1996. Of the \$7.7 billion in cumulative advances as of the end of FY 2002, only \$2 billion had been spent for benefit payments, with the remaining \$5.7 billion used to pay interest on past advances. The BLDTF continues to be unable to repay any principal on these advances, and it must borrow to pay the interest.
- For the one-year period ending June 3, 2003, OIG investigations involving the Black Lung program have resulted in 4 indictments, 3 convictions, and \$7.1 million in monetary results.

2. The general nature of these problems and how long they have persisted:

- The OIG first reported on the chronic insufficiency of Trust Fund revenues in our March 1997 Semiannual Report.
- The Black Lung Benefits Revenue Act provides for repayable advances to the BLDTF from the U.S. Treasury when Trust Fund resources are inadequate to meet obligations, as continues to be the case. Currently, coal excise taxes are sufficient to pay benefits and administrative costs; however, the fund must continue to borrow from the Treasury to pay the interest due on past advances. The Omnibus Budget Reconciliation Act of 1987 significantly reduces coal excise taxes after the year 2013, exacerbating the deficit. The Department's projections through September 30, 2040, indicate that, when the payment of interest on advances is taken into account, the Trust Fund will experience a negative cash flow—necessitating more borrowing—in each of the next 38 years, culminating in a projected \$49.3 billion deficit by the end of FY 2040.
- From an investigative perspective, our investigations have shown that a problem exists with the fraudulent conversion of deceased claimants' black lung payments by family members and friends. Our investigations have also demonstrated that the Black Lung program is susceptible to fraud by doctors and other medical providers.

**Office of Inspector General
U.S. Department of Labor**

3. Illustrative examples of these problems:

- In addition to the outstanding advances and mounting debt to the BLDTF, the following are examples of fraud against the program:
 - o A Virginia doctor, who was a provider to the Federal Black Lung Program, was sentenced to nearly six years in jail and fined \$42,700 after being found guilty of 427 counts of dispensing narcotics, including Oxycontin, without a legitimate medical purpose. A joint investigation revealed that the doctor was unnecessarily dispensing prescription narcotics to Black Lung claimants. This investigation is part of a larger probe into medical provider fraud in rural Virginia.
 - o In another case, two physicians were sentenced for defrauding the Black Lung program of over \$1.5 million and were ordered to jointly pay \$2 million in restitution. The investigation found that the doctors billed and received payment from the Black Lung program for excessive office visits and unnecessary medical treatments and supplies.

4. What actions are being taken to eliminate or reduce these problems:

- The OIG continues to investigate fraud within the Black Lung Program. Our work has led to the Black Lung program saving at least \$4 million through our investigations of medical suppliers' inflated billing of an oxygen supplying device. Medicare paid only a fraction of the cost for the same device. When the OIG brought this to the Black Lung program's attention, the program immediately instituted a new purchasing policy, which resulted in the savings.

5. What additional actions, of either an administrative or legislative nature, are required:

- Restructuring the BLDTF debt could address the mounting debt caused by the large interest-bearing repayable advances received from the U.S. Treasury. The Department's 2004 budget justification states that the Administration will propose legislation to (1) authorize a restructuring of the BLDTF debt, (2) extend, at the current rate, BLDTF excise taxes set to expire in January 2014, and (3) provide a one-time \$2.3 billion appropriation to compensate the General Fund of the Treasury for forgone interest payments.

**Office of Inspector General
U.S. Department of Labor**

H1-B Technical Skills Training Grants

The American Competitiveness and Workforce Improvement Act of 1998 was passed to help employed and unemployed U.S. workers acquire technical skills for occupations that are in demand and being filled by H-1B visa holders. DOL awards competitive H-1B Skills Training grants for this purpose.

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory program:

- In FY 2002, DOL awarded 38 H-1B grants totaling approximately \$101 million. In FY 2003, DOL's budget authority for Technical Skills Training grants is \$97.6 million. In 2002, the OIG reported on audits of six of H-1B skills training grants totaling \$15.4 million. We found that the value of the grants we audited in achieving the legislative purpose—training in H-1B demand occupations—was questionable. None of the participants in two of the grants obtained employment or upgrades in occupations for which they were trained. Two other grantees did not track placements, and therefore employment outcomes were unknown. Further, just three of the six grantees demonstrated that their projects could continue to operate after the current grants ended, a requirement of the grants.

2. The general nature of these problems and how long they have persisted:

- Our last audit covered grants through calendar year 2000. In this audit, we found that training provided by the grants was not related to H-1B occupations and training either did not result in target employment or the employment outcomes were not measurable.

3. Illustrative examples of these problems:

- Training at one of the six grantees consisted of non-technical courses such as diversity and anti-harassment.
- Three of the six audited grantees were not achieving employment outcome goals. Participants were not placed directly into H-1B occupations and most did not have any type of placement or upgrade outcome.
- Employment outcomes for three of the six audited grantees were indeterminable because the grantees did not measure, achieve, and report the outcomes as specified in their grants.

4. What actions are being taken to eliminate or reduce these problems:

- In October 2002, DOL revised its guidelines on the availability of skills training grants to ensure grants are awarded to high-skilled training programs. Recent DOL Solicitations for H-1B Grant Applications have focused on addressing high skill technology shortages of American businesses.

5. What additional actions, either administrative or legislative in nature, are required:

- In our opinion, DOL should consider that grants be awarded only to entities that agree to provide the appropriate technical skills, and should consider monitoring grant performance to ensure the legislative intent and grant deliverables are met.