



# Top Management and Performance Challenges Facing the U.S. Department of Labor

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As required by the Reports Consolidation Act of 2000, the Office of Inspector General has identified the most serious management and performance challenges facing the U. S. Department of Labor (DOL). These challenges are included in DOL's "Agency Financial Report" for FY 2019.

The Department plays a vital role in the nation's economy and in the lives of workers and retirees, and therefore, must remain vigilant in its important stewardship of taxpayer funds, particularly in the era of shrinking resources.

In this report, we summarize the challenges, significant DOL progress to date, and what remains to be done to address them. The challenges we identified are:

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## CHALLENGE: Helping Adults and Youth Succeed in the Labor Market

### BACKGROUND

In Fiscal Year (FY) 2019, DOL's Employment and Training Administration (ETA) received \$3.5 billion under the Workforce Innovation and Opportunity Act (WIOA) to operate a system of education, skill-based training, and employment services primarily for low income and dislocated adults, as well as at-risk and out of school youth.

### CHALLENGE FOR THE DEPARTMENT

The Department is challenged to ensure its job training programs provide participants the education, skill-based training, and employment services they need to succeed in the labor market. Past Office of Inspector General (OIG) audits have found that participants were often placed into jobs unrelated to their training or jobs that required little to no training. This challenge includes: (1) helping job seekers, businesses, and career counselors better understand the availability and value of skill-based training and credentials; (2) helping employers to recognize the benefit of hiring and training apprentices for their middle- and high skilled job vacancies; and (3) ensuring outcome data received from all training programs are reliable and accurate.

An emerging challenge for the Department is developing an effective strategy for helping people who have previously abused opioids to become and remain employable. Recent studies have reported that opioid abusers commonly drop out of the labor market and are less productive and dependable, making it difficult for them to obtain and retain employment and for employers to find workers in opioid-affected areas.

### DEPARTMENT'S PROGRESS

With regard to credentials, ETA officials informed us that over the last year, they have continued to provide resources through [CareerOneStop.org](https://www.careeronestop.org) to help job seekers, businesses, and career counselors better understand which credentials were available; the quality and labor market value of those credentials; and the licenses, education, and training required for specific credentials and occupations. ETA also stated it has continued to emphasize the importance of credential attainment in its grant competitions.

As for state outcome data, in December 2018, ETA issued Training and Employment Guidance [Letter 07-18](#),<sup>1</sup> in collaboration with the Department of Education, to provide joint guidance to states and grantees on the performance accountability system set forth in section 116 of WIOA, which requires states to develop procedures for ensuring the WIOA data they submit are valid and reliable. ETA is developing guidance for validating required performance data submitted by grantees of workforce development programs administered by the Department.

The Department has also been assessing grantee performance under its American Apprenticeship Initiative program through a set of measures that include participant employment, industry sector and occupation for which training was received, completion of education/job training activities, credential attainment, job placement, and wage progression from entry until exit from the program. These measures should improve the Department's ability to analyze the relationship between services provided through grants and the outcomes achieved. The Department stated it has provided, and will continue to provide, technical assistance on sector strategies and performance reporting based on its analysis of the performance measures.

<sup>1</sup>This guidance provides information about the guidelines States must use in developing procedures for ensuring the data submitted are valid and reliable.

Concerning opioids, in FY 2019, ETA awarded 11 states up to \$42 million in opioid disaster recovery grants to create temporary employment opportunities aimed at alleviating humanitarian and other needs created by the opioid crisis. These funds may also be used to provide reintegration services to workers affected by the crisis and to train individuals to work in mental health treatment, addiction treatment, and pain management.

### **WHAT REMAINS TO BE DONE**

The Department needs to continue developing programs that support investments in training and education, leading to improved job skills. In addition, it must continue developing complete and accurate performance information that allows it to make evidence-based and data-driven decisions about job training programs. Furthermore, Congress needs insightful performance reports to ensure the WIOA program is working and to make any necessary adjustments. As such, the Department needs to continue its data validation efforts as well as provide technical assistance to states on accessing and reporting performance information in the WIOA performance management system. Moreover, the Department needs to continue its monitoring efforts to ensure state data used to calculate performance measures are complete and accurate.

Finally, the Department needs to monitor the performance of discretionary grants it has awarded for delivering services to employers and workers impacted by the opioid crisis. ETA supports discretionary grant programs in Workforce Integrated Performance System (WIPS) and provides policy/reporting support through technical assistance and standardized reporting procedures. This includes providing WIPS technical assistance for the opioid demonstration grants.

## **CHALLENGE: Providing a Safe Learning Environment at Job Corps Centers**

### **BACKGROUND**

The Job Corps program annually provides education, training, and support services to nearly 50,000 disadvantaged, at-risk youth, ages 16–24, at 121 Job Corps centers nationwide, both residential and nonresidential. OIG audits over the past several years found a wide range of security and safety issues at Job Corps centers, from failure to report and investigate serious misconduct to security staff shortages.

### **CHALLENGE FOR THE DEPARTMENT**

Job Corps faces the challenge of continually providing safe learning environments for its students and staff. To accomplish this, Job Corps must ensure center operators and regional office personnel fully enforce Job Corps safety and security policies and improve campus security to control violence. Funding plays a significant role in this challenge, particularly as it relates to the procurement, installation, ongoing maintenance, and upgrade of physical security equipment needed to adhere to safety and security policies.

### **DEPARTMENT'S PROGRESS**

According to Department officials, in 2019, Job Corps finalized standard operating procedures for its center oversight activities, including monitoring and identifying trends and using a risk-based oversight approach to contractor compliance. In addition, Job Corps stated it continues to enhance security at centers by implementing its multi-year, comprehensive center safety and security strategic plan, which it finalized in March 2019. At the close of FY 2019, Job Corps had invested approximately \$56 million and equipped centers with more than 10,000 cameras, more than 5,000 physical access control systems, walk-through and hand-held metal detectors, centralized security radio networks, "Informacast" emergency notification systems, and 229 intercom systems.

## **WHAT REMAINS TO BE DONE**

Going forward, Job Corps needs to continue to execute its safety and security plan, train employees and contractors on new policies and procedures, and ensure that existing policies and procedures are periodically reviewed with Job Corps employees and center staff. Job Corps must monitor compliance with applicable safety and security policies and procedures to identify and remediate noncompliance issues in a timely manner. In addition, expanded data collection, analysis, and dissemination of information to stakeholders is necessary to inform agency decision making and to assess the impact of proposed, planned, and implemented security reforms.

## **CHALLENGE: Protecting the Safety and Health of Workers**

### **BACKGROUND**

The Department's Occupational Safety and Health Administration (OSHA) is responsible for the safety and health of 136 million workers employed at more than nine million establishments, while the Department's Mine Safety and Health Administration (MSHA) is responsible for the safety and health of approximately 320,000 miners who work at more than 13,000 mines.

### **CHALLENGE FOR THE DEPARTMENT**

OSHA and MSHA face challenges in determining how to best use their resources to help protect the safety and health of workers, particularly in high-risk industries such as agriculture, construction, fishing, forestry, manufacturing, and mining. Employers who underreport injuries exacerbate these challenges. Without reliable data regarding workplace injuries, OSHA and MSHA lack the information they need to focus inspection and compliance efforts effectively on the most hazardous workplaces.

Verifying the abatement of construction hazards remains a challenge for OSHA. The agency closed many citations for safety violations because the construction project ended and not because employers corrected the cited hazards. As a result, OSHA received no assurances employers would use improved safety and health practices at subsequent construction sites. Furthermore, the updated reporting requirements for work-related severe injuries encourage employers to investigate incidents and abate the hazards to prevent future accidents. However, OSHA had only limited assurance employers abated hazards properly because OSHA did not monitor investigations conducted by employers.

MSHA is specifically challenged by a 25-year high in the number of cases of Black Lung disease, as reported by the American Journal of Public Health, and needs to develop strategies for addressing it. MSHA is currently soliciting comments, data, and information for a study to assess the impact of the August 2014 Coal Dust Rule on the health of miners, which reduced allowable exposure levels for harmful coal dust. However, because of the latency period between exposure to coal dust and development of black lung disease, it will likely take a decade or more to complete the study.

MSHA and OSHA both regulate the amount of exposure workers can have to quartz/silica dust, but the standards for permissible exposure differ between the two agencies. MSHA is challenged to develop better protections for miners against other airborne contaminants, such as diesel particulate emissions and respirable quartz dust. Quartz dust can cause silicosis, a deadly and incurable disease, along with chronic obstructive pulmonary disease and a number of other chronic conditions. Similarly, OSHA is challenged with targeting the highest risk workplaces

specifically for silica dust with its limited resources. Employers are required to limit worker exposures to respirable crystalline silica and to take other steps to protect workers. Employers can either use a control method or they can measure workers' exposure to silica and independently decide which dust controls work best to limit exposures in their workplaces. About 2.3 million people in the U.S. are exposed to silica at work.

MSHA is further challenged to reduce the number of powered-haulage accidents, which accounted for almost 50% of all fatalities in 2017 and 2018.

### **DEPARTMENT'S PROGRESS**

OSHA states that it encourages employers to comply with illness and injury reporting requirements through a variety of enforcement, outreach, and compliance assistance efforts. Furthermore, OSHA plans to implement the monitoring aspect of the severe injury reporting program and assess the need for continued monitoring based on the results of monitoring inspections.

MSHA reported it has increased sampling of mines for silica, quartz, and diesel particulate emissions and has ordered additional sampling devices for its inspectors and testing equipment for its lab. Further, on August 29, 2019, MSHA published a request for information (RFI) soliciting information and data on technologically feasible best practices to protect coal and metal and nonmetal miners' health from exposure to quartz, including a reduced standard, utilizing protective respiratory technologies and technical and educational assistance. MSHA will also hold a public meeting on October 17, 2019. The comment period for the RFI closes on October 28, 2019. This regulatory action complements the solicitation of information and data on MSHA's 2014 coal dust rule.

MSHA also launched a powered haulage safety initiative in 2018, which included a website, mine-site visits (particularly for mines with large trucks), training videos, and other safety materials, such as pamphlets and stickers. MSHA announced in the Agency's Spring 2019 agenda that it would publish a proposed rule that would require mine operators to develop a safety program for mobile equipment (which include powered-haulage equipment) at surface mines and surface areas of underground mines. MSHA officials stated they expect to publish the proposed rule in March 2020.

### **WHAT REMAINS TO BE DONE**

OSHA needs to complete its initiatives to improve employer reporting of severe injuries and illnesses and enhance staff training on abatement verification, especially of smaller and transient construction employers.

MSHA needs to identify methods for improving mine operators' reporting of accidents, injuries, and illnesses. To ensure mine operators comply with the Respirable Coal Dust rule, MSHA needs to evaluate the effectiveness and implementation of the rule as new information becomes available. MSHA must also identify ways to better protect miners from highly toxic respirable quartz, potentially by increasing testing and enforcement for other airborne contaminants.

Finally, MSHA needs to continue its existing efforts to decrease powered haulage accidents by targeting mines for enforcement, enhancing training, and increasing and sharing its knowledge of available technology.

## **CHALLENGE: Managing Medical Benefits in the Office of Workers' Compensation Programs, Including Opioids**

### **BACKGROUND**

The Office of Workers' Compensation Programs (OWCP) provides compensation and medical benefits to workers for employment-related injuries and occupational diseases. During FY 2018, OWCP paid medical benefits in the amounts of \$950 million under the Federal Employees' Compensation Act (FECA), \$740 million under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), and \$46 million under the Black Lung Benefits Act.

### **CHALLENGE FOR THE DEPARTMENT**

OWCP is challenged to effectively manage the use and cost of pharmaceuticals in the FECA program. Given the high risk of fraud related to prescription payments, OWCP needs to conduct comprehensive analyses and monitoring of FECA costs to promptly detect and address such problems. In one case alone involving compound drug services, OIG identified potential fraud involving nearly \$158 million. Coordination and collaboration between OWCP and OIG on anti fraud matters are key to reducing the amount of fraud impacting the FECA program.

For opioids in particular, it is critical that OWCP develop comprehensive analyses to help ensure prescription drugs reimbursed by the program are medically necessary, safe, and obtained at a fair price. OWCP needs to develop quality information to identify claimants at risk of addiction and determine the associated costs of treatment.

Previous OIG work has shown OWCP allowed prior increases in billings for compounded drugs to go undetected and failed to identify the overuse of opioids. Further, OWCP allowed physicians to prescribe opioids to new users for up to 60 days without establishing a medical necessity, while the Centers for Disease Control reported that prescribing opioids for three days or less was often sufficient and that more than seven days was rarely needed for treatment of acute pain.

OWCP told us it is also challenged to effectively manage home health care costs in the EEOICPA program, which has amounted to \$3 billion since its inception in October 2000. According to OWCP, there has been a significant increase in home health care services requested in the past five years. Providers could have conflicts of interest and employ tactics that are legal but unethical, such as inappropriately bundling or unbundling services. With an aging claimant population, providers can take advantage of the increased demand for home health care services and exploit unknown weaknesses in OWCP's existing controls.

### **DEPARTMENT'S PROGRESS**

According to OWCP, the agency has reviewed questionable providers potentially acting in a fraudulent or abusive manner, implemented procedures to identify prescribers of prescription drugs, imposed quantity limits on initial fills and refills for compounded drugs and opioids, performed an initial analysis of generic drug prescriptions, and implemented drug exclusion lists for drugs and drug ingredients.

Regarding opioids, OWCP stated it is already analyzing prescription data, reaching out to physicians when claimants have long-term prescriptions and high Morphine Equivalent Dose (MED) levels and taking a tailored approach with these claimants/physicians. In June 2017, OWCP developed an authorization requirement for

opioid prescriptions that resulted in a decrease in the cost of non compounded opioids from \$58 million to \$44 million between FY 2016 and FY 2018. Effective September 23, 2019, even stricter controls were imposed for all newly prescribed opioids. Restrictions on all initial opioids fills are now limited to seven days. Three subsequent seven-day fills can be obtained, but prior authorization is required to obtain opioids beyond 28 days.

Regarding compounded drugs, OWCP stated it developed controls including an authorization process that requires physicians to certify medical necessity. As a result of the FECA program's actions, significant decreases in compound expenditures have been achieved, from \$263 million in FY 2016 to \$19 million in FY 2018.

OWCP stated it has taken additional actions to better manage pharmaceuticals in the FECA program, which include: (1) implementing new policies related to the review and approval of pharmacy claims; (2) providing information to claimants and doctors regarding the risks of opioid use and the availability of alternate treatment options; (3) focusing data analytics on the population of opioid users, with the purpose of predicting their future behavior; (4) improving the detection of fraudulent medical providers and risky opioid prescribers; and (5) applying non-procurement suspension and debarment procedures to stop payments to medical providers criminally convicted of or indicted for defrauding FECA.

OWCP stated it is continuing to analyze and audit home health care billing practices in the EEOICPA program for the purpose of modifying billing rules and policies when it uncovers abusive practices. It has also moved the adjudication of home health care into a national office unit that focuses exclusively on medical benefits adjudication and it has provided internal training to that unit. OWCP officials stated that they also implemented a program integrity unit and increased the number of referrals to OIG for investigation. In addition, OWCP has requested that OIG conduct an audit focusing on home health care providers to help identify potential areas for fraud, waste, or abuse.

### **WHAT REMAINS TO BE DONE**

OWCP needs to follow through on its planned actions, including full implementation according to the schedule in the recently completed contract for a Pharmacy Benefit Manager, a third-party administrator of prescription drug programs that will address the options identified below. After completing these planned actions, OWCP needs to measure their impact on use and cost of prescription drugs, as well as consider additional options for monitoring and managing medical costs. For the FECA program, these options include the following:

- Conducting drug utilization reviews to prevent potentially harmful drug interactions,
- Implementing drug exclusion and formulary lists for all drugs and drug ingredients,
- Ensuring continued use of the best methods for calculating fair and reasonable pharmaceutical pricing,
- Requiring the use of preferred pharmacy providers, and
- Improving edit checks to identify high drug prices requiring additional review and authorization.

OWCP should continue its efforts to identify what insurance providers and other federal, state, and local agencies are doing to manage medical costs and determine which best or promising practices may be transferable.

OWCP should also continue its efforts to analyze home health care billings for abusive practices and to identify and refer allegations involving potential fraud or abuse to OIG for further investigation. Finally, OWCP needs to expand its use of data analytics to monitor payments for pharmaceuticals, particularly opioids, and identify trends, risks, and appropriate treatment plans.

## **CHALLENGE: Integrity of DOL Rulemaking Processes**

### **BACKGROUND**

DOL issues rules and guidance to promote the welfare of workers, job seekers, and retirees by helping them improve their skills, find work, and recover after job loss, injury, or illness and by safeguarding their working conditions, health and retirement benefits, and wages. Rules are government agency statements that either (1) implement, explain, or prescribe law or policy; or (2) describe an agency's organization, procedure, or practice requirements. By contrast, guidance documents explain the rules for stakeholders including agency staff, workers, job seekers, retirees, and employers.

### **CHALLENGE FOR THE DEPARTMENT**

DOL faces challenges in ensuring transparency during the rulemaking process. OIG has received Congressional requests to review a wide range of DOL's rulemaking activities. The requests involve the transparency of information provided to the public, delaying safety standard effective dates, and relaxing child labor standards in health care occupations. Based on concerns with recently proposed and finalized rules, DOL must issue rules that are transparent to the American taxpayer and comply with the requirements of the Administrative Procedure Act (APA) and other applicable executive orders.

We recently reviewed OSHA's process for issuing guidance documents and have two ongoing audits reviewing DOL rulemaking processes to address many of the concerns received. With regard to our OSHA audit, we found between 2014 and 2016 DOL may have issued guidance that could be construed as changing rules in violation of the APA and other federal laws. While OSHA developed procedures to provide reasonable assurance that guidance accurately reflected its rules and policies, it lacked a procedure to determine the appropriateness of issuing a document as guidance rather than as a rule. As a result, OSHA risked issuing guidance that would create new rules or change existing rules in violation of laws requiring public notice and comment during agency rulemaking.

### **DEPARTMENT'S PROGRESS**

DOL is aware of the concerns facing its rulemaking process, and has initiated a comprehensive review and analysis of DOL's rulemaking process, to include evaluating enforcement and compliance assistance materials to ensure they are current, accessible, and easy to understand.

DOL's Office of the Assistant Secretary for Policy is responsible for overseeing DOL's regulatory activities, and is working to: 1) resolve policy discrepancies and clarify methodologies prior to drafting rules; 2) communicate efficiently and timely with drafters regarding decisions; and 3) ensure internal SOPs are followed to the extent practicable. OSHA also stated it was developing a training webinar for staff and managers to describe the steps necessary for issuing guidance documents. OSHA expects the revised policy and webinar to be completed by the end of FY 2020.

### **WHAT REMAINS TO BE DONE**

In response to our audit work over the past year, the Department informed us it will seek to use notice and comment rulemaking as its exclusive means of altering the rights and obligations of regulated persons, and cease the use of sub regulatory guidance to alter rights and obligations. To accomplish this goal, the Department needs to complete its review and analysis of guidance and rulemaking, and implement any recommendations to ensure

DOL's guidance and rulemaking materials are current, accessible, and easy to understand. DOL also needs to establish a monitoring function to ensure internal SOPs are followed to the extent practicable.

In addition, OSHA informed us it intended to revise its guidance issuance policy, and that the Office of the Solicitor of Labor would consider any possible legal risks and ensure adherence to the requirements of APA and the Occupational Safety and Health Act. DOL needs to ensure OSHA issues its revised policy and rolls out its training webinar for staff and managers. Finally, DOL needs to ensure all agencies that issue guidance have similar policies and training to prevent DOL from issuing guidance that changes rules.

## **CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs**

### **BACKGROUND**

The Immigration and Nationality Act and related laws assign certain responsibilities to the Secretary of Labor for employment-based immigration and guest worker programs. These responsibilities include determining whether there are able, willing, and qualified U.S. workers available for the job and whether there would be any adverse impact on similarly-employed U.S. workers if a labor certification allowing the admission of a foreign worker were granted. To carry out these responsibilities, the Secretary has delegated to ETA's Office of Foreign Labor Certification (OFLC) the processing of prevailing wage determinations and applications from employers seeking to hire (1) immigrant workers for permanent jobs, (2) non immigrant workers for temporary specialty jobs, and (3) non-immigrant workers for temporary or seasonal agricultural and non-agricultural jobs.

The Department's Wage and Hour Division conducts civil investigations to enforce Foreign Labor Certification (FLC) labor protections involving wages and working conditions, making sure similarly employed U.S. workers are not adversely affected in terms of hours, shifts, vacation periods, benefits, etc.

### **CHALLENGE FOR THE DEPARTMENT**

The Department is challenged with balancing the thorough review of FLC applications to protect workers with the timely processing of applications to meet employer workforce demands. In the H 2B program, for example, which is used to hire foreign workers for temporary, non-agricultural jobs, rising application levels and seasonal spikes in employer workforce demands have resulted in periodic application processing delays.

Over the last decade, OIG, along with other federal partners, conducted more than 70 criminal investigations related to fraud in the H-2B program. These investigations have shown OFLC programs are susceptible to fraud and abuse by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. OIG investigations have also uncovered instances of unscrupulous employers misusing OFLC programs to engage in human trafficking, with victims often exploited for economic gain.

Further, the Department's limited statutory authority to act on potentially fraudulent H-1B foreign labor applications has been a challenge, at times leading to unscrupulous employers misusing FLC programs for labor and human trafficking. OIG investigations have shown that the H-1B program, which allows U.S. employers to employ foreign workers temporarily in specialty occupations, is susceptible to significant fraud and abuse, often by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. One of the reasons for this abuse is that the Department is statutorily required to certify H-1B applications within seven (7) days unless it determines them to be "incomplete or obviously inaccurate."

OIG continues to investigate various fraud schemes within the H-1B program, including labor leasing,<sup>2</sup> benching of foreign workers,<sup>3</sup> and wage kickbacks.<sup>4</sup> In a recent investigation, a university entered into a criminal plea agreement with the U.S. Attorney's Office for obtaining H-1B visas for their employees and paying their respective salary and benefits as employees of the university although they actually worked for a privately held company. In the agreement, the board of the university accepted responsibility for visa fraud offenses on behalf of the university and agreed to pay the federal government \$1 million in restitution.

## **DEPARTMENT'S PROGRESS**

The Department recently updated its procedures for processing H-2B applications to better handle high volumes of activity and implemented a procedure on July 3, 2019, to randomly assign H-2B applications based on the date of filing and the requested start date of work instead of using a receipt date and time stamp approach. OFLC now randomly assigns for processing all H-2B applications requesting the earliest start date of work permitted under the semi-annual visa allocation (i.e., October 1 or April 1) and filed during the first three calendar days of the regulatory time period for filing H-2B applications. Once first actions are issued, OFLC then randomly assigns for processing all other H-2B applications filed on a single calendar day.

Additionally, partly due to a recent OIG investigative advisory report, the Department updated its H-2B Application for Temporary Employment Certification (Form ETA 9142B) and appendices to: (1) better align information collection requirements with the Department's regulations; (2) provide greater clarity to employers on regulatory requirements; (3) streamline information collection to reduce employer burden in preparing applications; and (4) promote greater transparency in OFLC's labor certification decisions.

The Department further stated it has implemented amendments to its attestation-based Labor Condition Application (Form ETA 9035/9035E), which now requires H-1B employers to provide more detailed information about worksites, including the specific number of sponsored H 1B workers and the legal names of end user entities operating any third party worksites. Additionally, H-1B dependent employers and willful violators claiming an educational exemption from additional attestations on displacement and recruitment of U.S. workers must provide evidence that all H-1B workers employed under the application have attained a Master's degree or higher.

According to Department officials, every year since FY 2016, the Department has requested authorization, through its annual budget formulation process, to establish and retain fees to cover the operating costs for FLC programs. This proposal aligns the Department with the funding structures used by the Department of Homeland Security and the Department of State to finance their application-processing activities related to these programs. Employing a similar model for foreign labor certifications would eliminate the need for Congressional appropriations and create a funding structure responsive to market conditions.

## **WHAT REMAINS TO BE DONE**

The Department needs to continue its efforts to ensure H-2B applications are processed in time for employers to hire foreign workers by their dates of need while at the same time ensuring the review process protects the interests of U.S. workers.

<sup>2</sup> Labor Leasing - The provision of labor to a third party, usually providing limited or no benefits to the workers and for a limited time. Most commonly used to describe agricultural and construction contract labor arrangements.

<sup>3</sup> Benching of foreign workers - Benching of foreign workers occurs when an employer, during a time of low productivity or otherwise slow business, refuse to pay foreign workers their wages, a.k.a. "benching" them.

<sup>4</sup> Wage Kickbacks - The third-party placement firms that obtain H-1B workers pay a lower wage than what the U.S. employer would have paid.

Further, the Department needs to seek statutory and regulatory authority to strengthen its ability to debar those who abuse the H-1B program. Department officials also need to refer all potentially criminal violations to OIG in a timely manner and enhance the reporting and application of suspensions and debarments government wide. In the H 1B program, the Department needs to seek statutory authority to verify the accuracy of information provided on labor condition applications.

Because OIG is the only agency within the Department that is statutorily authorized to investigate criminal fraud within FLC programs, OIG is concerned over its ability to respond to increases in criminal referrals that result from greater coordination among Departmental agencies. To mitigate this concern, OIG has requested authorization to access funds received from visa fees to conduct necessary criminal investigations and audits to combat threats against FLC programs.

## **CHALLENGE: Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families**

### **BACKGROUND**

The Employee Benefits Security Administration (EBSA) is responsible for protecting the integrity of pensions, health, and other employee benefits for about 149 million people. This responsibility includes enforcement authority over approximately 703,000 private retirement plans, 2.3 million health plans, and millions of welfare benefit plans, which together hold approximately \$10.6 trillion in assets. It also includes interpretive and regulatory responsibilities for Individual Retirement Accounts, which hold about \$8.8 trillion in assets.

EBSA also provides oversight of the federal Thrift Savings Plan (TSP), the largest defined contribution plan in the United States, with nearly 5.7 million participants and \$600 billion in assets as of June 2019.

### **CHALLENGE FOR THE DEPARTMENT**

EBSA is challenged to allocate its limited resources in a way that will maximize the positive impact of its efforts as a small organization with oversight of a large plan universe. This is especially significant given the potential expansion of the health and retirement marketplaces that will likely result from recently issued final rules on association health plans (AHP) and multiple employer retirement plans (MEPs). EBSA needs to maximize its resources to conduct the number of investigations, audits, reviews, and compliance assistance activities needed to best protect workers' pensions, health, and other benefits.

One specific challenge EBSA faces is finding an effective way to protect the public from fraud and mismanagement in connection with Multiple Employer Welfare Arrangements (MEWAs). While a minority of MEWAs are fraudulent or mismanaged, they are hard to detect until it is too late, and, by the time the violations are detected, tens of thousands of plan participants may have been deprived of promised health benefits.

EBSA is further challenged because it has no legal authority to force certain plans to conduct full-scope audits, which would provide significantly stronger assurances to participants than limited scope audits. Past OIG work revealed that as much as \$3.3 trillion in pension assets, including an estimated \$800 billion in hard-to-value alternative investments, received limited-scope audits. Independent public accountants performing these limited scope audits generally did not need to audit investment information already certified by certain banks or insurance

carriers, which meant the independent public accountants expressed “no opinion” on the valuation of these assets. These limited scope audits weaken assurances to stakeholders and put retirement plan assets at risk because they provide little to no confirmation regarding the existence or value of plan assets.

Finally, EBSA is challenged to obtain compliance with its TSP audit recommendations given its limited legal authority to compel the TSP Board to act on its recommendations.

### **DEPARTMENT’S PROGRESS**

In June 2018, EBSA issued regulatory guidance regarding AHPs and MEWAs, as well as other related reforms in the health care market. In July 2019, EBSA released a final rule expanding the availability of MEPs, along with a request for information on “open MEPs,” which would allow unrelated employers to band together in forming a retirement plan.

EBSA also stated it has: (1) requested an increase of 45 FTEs and \$10 million in additional funding for enforcement and administration of its responsibilities with respect to MEWAs and AHPs; (2) made efforts to place the repeal of the limited scope audit exemption on the Department’s legislative agenda, as well as worked to increase the information it collects from plans which take advantage of this exemption; and (3) taken a number of steps to improve its TSP audit risk assessment and encourage the TSP Board to implement audit recommendations.

### **WHAT REMAINS TO BE DONE**

EBSA needs to develop new outreach, education, and enforcement strategies for AHPs and the expanded MEPs to accommodate the new diversity of plans now available in the market. Given the new regulations enabling AHPs and the expansion of MEPs likely to result from those new regulations, EBSA will have to determine how best to allocate its resources to oversee the expansion both in numbers of plans as well as the increased numbers of types of plans it has to regulate. In addition, given the dollar amounts involved, EBSA should continue to pursue legislative repeal of the limited scope audit exemption to ensure better security for retirement plans. Limited scope audits offer participants significantly reduced assurances of plan asset values as compared to full-scope audits, and the proliferation of plan assets subject only to limited-scope audits greatly increases the risk of loss to participants.

Finally, EBSA needs to consistently apply its newly-developed audit risk assessment for the TSP to improve the usefulness of its TSP audits, as well as seeking amendments to the Federal Employee Retirement Security Act to improve its ability to ensure TSP audit recommendations are implemented.

## **CHALLENGE: Identifying and Reducing Unemployment Insurance Improper Payments**

### **BACKGROUND**

In FY 2019, the Department continued to identify the Unemployment Insurance (UI) benefit program as susceptible to improper payments (IP). The UI program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet other eligibility requirements of state law.

The UI program paid benefits totaling \$26.91 billion during the period July 1, 2018, to June 30, 2019. Of this, estimated IP totaled \$2.86 billion, making the estimated improper payment rate 10.61%. Although this estimate remained above the \$2 billion threshold established by the Office of Management and Budget under the authority of the Improper Payment Elimination and Recovery Improvement Act of 2012 for designation as a “high priority” program, the new estimate represents a 23% reduction from this time last year.

### **CHALLENGE FOR THE DEPARTMENT**

The Department continues to face challenges in ensuring UI improper payments are detected, prevented, and reported in a timely and accurate manner.

The UI program is required to make timely benefit payments on a weekly basis while ensuring claimants meet eligibility requirements. A payment may later be determined improper as a result of the receipt of information that was not available at the time the payment was required to be made or as a result of the requirement that claimants be provided with due process prior to stopping payment of benefits. Inadequate information at the time initial eligibility is determined and the need to reassess payment eligibility each week contribute to the Department’s challenges in helping states address the leading causes of UI improper payments:

- *Work Search* - Claimants who fail to meet active work search requirements,
- *Benefit Year Earnings* - Overpayment to claimants who continue to claim benefits after they return to work, and
- *Separation* - Failure of employers or their third party administrators to provide timely and adequate information on the reason for an individual’s separation from employment.

Fraud also continues to be a significant threat to the integrity of the UI program, as identity thieves and organized criminal groups have found ways to exploit program weaknesses. For example, the payment of benefits using non state issued, prepaid debit cards provides anonymity to those who are submitting fraudulent claims.

### **DEPARTMENT’S PROGRESS**

The Department stated that the DOL Deputy Secretary personally sent “call to action” letters to the Governor and State Workforce Administrator in each state requesting their leadership in addressing UI improper payments. Further, the Department provided technical assistance to 10 states with high IP rates that significantly affected the national rate. The technical assistance included support from the UI Integrity Center of Excellence’s (Integrity Center) State Intensive Services to help states with the reduction of their improper payment rates attributable to specific root causes.

Department officials also stated they have continued to develop an Integrity Data Hub to serve as a secure portal for states to cross match public and private sources of data, including new identity verification tools that will help prevent improper payments before they occur. One component of the Integrity Data Hub is the Suspicious Actor Repository, a tool now used in 18 states to share specific data elements associated with fraudulent UI claims for cross-matching purposes. An additional 11 states have completed usage agreements to implement the repository. The Department is currently working with the Integrity Center to further enhance state participation with and use of the Integrity Data Hub.

To improve the effectiveness of states’ use of the National Directory of New Hires (NDNH) and to identify claimants who have returned to work and yet continue to claim benefits, the Department issued letters to six states encouraging them to actively promote employer compliance with new hire reporting and to impose and

enforce sanctions for employers that fail to comply. Additionally, the Department issued guidance to states on enhanced recommended operating procedures (ROPs) for the use of NDNH and State Directory of New Hires cross-matching activity.

The Department has also taken corrective actions to address OIG's recommendations aimed at reducing UI improper payments related to two of the three top causes: (1) Separation, and (2) Benefit Year Earnings. According to Department officials, the following legislative proposals were included in the FYs 2018, 2019, and 2020 President's Budget requests:

- Requiring states to implement certain improper payment reduction strategies, such as the State Information Data Exchange System, to improve timely and accurate receipt of the reason for a claimant's separation from employment;
- Requiring states to use tools to better identify individuals who continue to claim benefits after returning to work, such as the NDNH;
- Requiring states to cross match with Social Security Administration's prisoner database and other prisoner information repositories;
- Providing the Secretary of Labor greater authority to require corrective actions by state UI agencies;
- Allowing states to retain up to five percent of UI overpayment recoveries for program integrity use;
- Requiring states to use penalty and interest collections solely for UI administration; and
- Requiring states to use the UI Integrity Center's Integrity Data Hub (included in the FY 2020 President's Budget request only).

### **WHAT REMAINS TO BE DONE**

The Department needs to continue its ongoing work with states to implement strategies designed to reduce the UI improper payment rate, which would include sharing best practices identified among states. According to Department officials, they will work with the Integrity Center to expand the functionality of the Integrity Data Hub to include a new front-end claimant identity verification tool as well as other resources to assist states in reducing Benefit Year Earnings overpayments.

The Department will also work with states in supporting UI claimants' ability to meet their responsibilities to be available for work, actively seek work, and become reemployed in suitable work as quickly as possible as conditions of UI eligibility. As part of this effort, ETA is seeking OMB's approval for its work search guidance that addresses states "formal warnings" policies that underestimate improper payment rates. Further, the Department needs to continue pursuing the UI program integrity legislative proposals included in the Department's FY 2018, 2019, and 2020 budget proposals.

## **CHALLENGE: Securing and Managing Information Systems**

### **BACKGROUND**

The Department's major information systems contain sensitive information central to its mission and programs. For instance, Departmental systems are used to analyze and house some of the nation's leading economic indicators, such as the unemployment rate and the Consumer Price Index. Departmental systems also maintain critical and sensitive data related to financial activities, enforcement actions, job training services, pensions, welfare benefits, and workers safety and health. In FY 2020, the Department's Chief Information Officer (CIO)

will have oversight of information technology investments estimated at \$756 million, used in implementing the Department's services and functions to safeguard the American workforce.

### **CHALLENGE FOR THE DEPARTMENT**

The Department remains challenged with safeguarding its data and information systems. For more than 10 years, OIG has identified the security of DOL's information technology systems and data as a top management challenge. Although DOL has made progress in this area, we remain concerned about the Department's information technology governance; its modernization efforts; and its ability to identify, protect, and recover information systems and data.

OIG continues to identify information security deficiencies in the areas of configuration management, third party oversight, risk management, and continuous monitoring. While the Department has made improvements in these areas, these deficiencies continue to exist and represent ongoing risks to the confidentiality, integrity, and availability of the Department's information. The Department also faces management challenges in maintaining its current systems, modernizing or replacing legacy systems, and moving additional systems into secure cloud services.

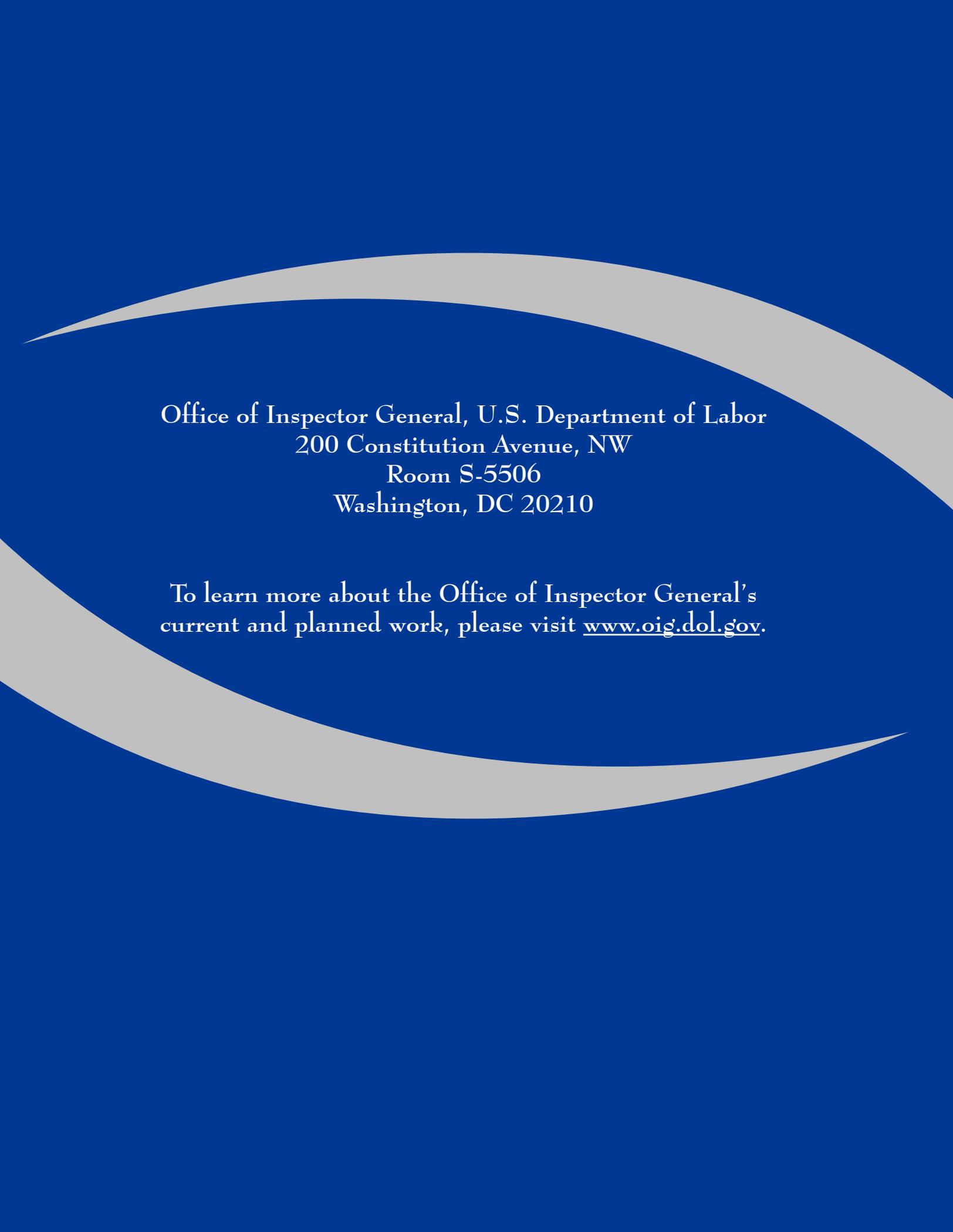
### **DEPARTMENT'S PROGRESS**

Department officials stated they have acquired new programs and systems designed to strengthen security operations. They also stated that the Office of the CIO (OCIO) re organized to better manage projects for modernizing, securing, and consolidating information technology. These improvements helped the OCIO to increase its FISMA maturity results. In addition, the Department has begun enhancing the CIO oversight capability of IT systems and resources through: (1) an Enterprise-wide Shared Services initiative that is bringing all DOL information technology functions under the supervision of the OCIO; and (2) a requirement that the OCIO approve any system Authority to Operate.

### **WHAT REMAINS TO BE DONE**

Consistent with the intent of the Clinger-Cohen Act, we continue to recommend the Department realign the position of the CIO to provide greater independence and authority for implementing and maintaining an effective information security program. Under the Department's current organizational structure, the CIO reports to the Assistant Secretary of Administration and Management, who is the CIO's largest customer.

Additionally, the CIO needs to: (1) address information security deficiencies, some of which are in control areas that have been the source of recurring issues since FY 2003; (2) ensure agencies adhere to the Department's information security policies, procedures, and controls; and (3) enhance implementation of tools to improve its FISMA maturity posture.



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

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