2004

U.S. Department of Labor
Performance and Accountability Report

**SERVING THE NEEDS OF A CHANGING
TWENTY-FIRST CENTURY WORKFORCE**

Management and Performance Challenges

investigation disclosed that a Mexican non-traditional organized crime group was involved, allowing for the systematic filing of thousands of fraudulent claims in four states.

One key way for DOL to mitigate UI fraud is to make states more aware of its dangers and of typical fraud schemes, such as identity theft or creation of fictitious companies to obtain UI benefits for alleged former employees. We therefore recommended and continue to work with ETA to provide training for state UI personnel on fraud prevention and detection.

Integrity of Foreign Labor Certification Programs

Reducing the susceptibility of DOL foreign labor certification programs to abuse remains a challenge to the Department. These programs allow U.S. employers to hire foreign workers when their admission does not adversely impact the job opportunities, wages, and working conditions of citizens and legal residents. DOL received almost 400,000 employer applications for foreign workers through these programs in FY 2003. Problems with the integrity of the labor certification process and fraud against the program persist. This may result in economic hardship for American workers, the abuse of foreign workers, and may have national security implications when applications are not adequately screened before being certified.

Problems with the Labor Certification Process

DOL's ETA is responsible for approving employers' labor certification applications, which is the first step in the process by which foreign nationals obtain work visas from U.S. immigration officials. However, the Department's role in the labor certification process continues to be perfunctory.

In the Permanent Labor Certification program, we are concerned that DOL will approve questionable applications received prior to implementation of a new automated processing system. All applications received before the systems' implementation, known as backlogged applications, will be processed by companies contracted by ETA before approval/denial by the Department's certifying officer. The backlog (315,000 applications as of May 2004) was mostly created by a December 2000 amendment to the Immigration and Nationality Act, which allowed foreign labor certification applications for alien workers already in the United States. This provision applied from January 1 through April 30, 2001, and resulted in a 450% increase in applications over the prior year.

A recent OIG audit disclosed that 69% of the backlogged applications we reviewed were misrepresented or incomplete; 84% of the aliens did not have legal status to work in the U.S.; 72% of the aliens did not have a legal status to be in the U.S.; and 67% of the aliens were already working for the employer at the time of application, including 28% who had worked for the employer for over 5 years. Because of the priority to eliminate the backlog, the OIG is concerned that many applications that should be denied will be approved.

Regarding automation of the Permanent Labor Certification approval system, ETA has made a significant effort to develop labor certification applications for the system that would assist in automatic fraud detection. Automation of the certification process must ensure controls and safeguards to promote transparency and oversight of the program.

In the H1-B Temporary Specialty Workers program, under current law DOL must approve labor condition applications if they are complete and free of obvious errors. Without the authority to validate information on the application, DOL's role in this program does little to add value to the process of protecting American jobs and wages. We recommend DOL seek legislative action to rectify this situation.

Regulatory Change Needed

The OIG is also concerned about regulations that allow employers to obtain permission to hire a specific foreign worker cleared by immigration officials to fill the job. Since entering the U.S. as a substitute worker on an approved labor certification is quicker than starting at the beginning of the application process, alien workers are willing to pay for approved certifications. The practice of allowing substitutions therefore provides incentive for filing fraudulent applications. One attorney filed 1,000 applications using false worker names and then sold the certifications to others. The OIG is also concerned that approved labor certifications do not have an expiration date, and can therefore be used indefinitely. ETA is working to address the problem of substitution, prohibit the

sale or purchase of certifications, and shorten the period a certification is valid in coordination with the OIG and the Departments of Justice and Homeland Security.

Labor Certification Fraud
OIG continues to identify fraud cases that involve corrupt immigration attorneys and labor brokers who file fraudulent labor certification applications with DOL using either a fictitious company name or the name of a real company without its knowledge. They then collect fees up to $20,000 from foreign workers for the certifications. In one OIG case alone, the defendant was convicted of obtaining 2,800 fraudulent labor certification applications. Moreover, the OIG is concerned about the vulnerability of DOL's foreign labor certification programs to fraud by non-traditional, transnational organized crime groups. In one such case, five members of a Russian organized crime group were sentenced for their roles in a complex scheme using fictitious companies, falsified computer generated visas, and false social security cards to help illegal aliens, some of which are Russian organized crime associates, obtain H1-B visas.

Financial and Performance Accountability
In order to manage DOL programs for results and fully integrate budget and performance, the Department needs timely financial data, a managerial cost accounting system that matches cost information with program outcomes, quality performance data, and useful information from single audits that cover 90 % of its expenditures. While DOL has received high marks on the President's Management Agenda scorecard for financial performance and budget and performance integration, it faces challenges in fully implementing improvements undertaken in these areas.

Financial Accounting
DOL is developing a new core accounting system that will be the foundation for all financial management activity, including preparation of the Department's financial statements. Among the challenges the Department will encounter are: fully testing the system, performing validation and verification of data transferring from the old system, and ensuring that the system fully meets Federal financial system requirements and users' needs. The OIG is planning to provide audit oversight of the system's development.

Managerial Cost Accounting
OIG previously reported a substantial noncompliance with the Federal Financial Management Improvement Act (FFMIA) because DOL's accounting system did not comply with managerial cost accounting requirements specified by Federal accounting standards. Spurred in part by the OIG's FY 2002 and FY 2003 FFMIA findings, in March 2003 the DOL's Office of the Chief Financial Officer (OCFO) launched a redesign of the cost accounting initiative to achieve full implementation of a DOL-wide managerial cost accounting system.

The implementation project has led to the successful development of cost models for substantially all of DOL's major agencies and programs. These cost models integrate program activities, outputs, costs, and non-financial data to provide the basis for reporting useful managerial cost accounting information. OCFO has recently selected cost accounting software and is in the process of importing the cost model structures. In the near future, OCFO will provide final training to agency personnel and effect formal transfer of system ownership to the agencies. The remaining challenges rest with agency and program management to refine the cost models and successfully institutionalize the use of cost accounting information to achieve improved program operations and better reporting of program results.

Quality Performance Data
Many program results data required by DOL to measure attainment of its strategic plan goals are generated by states and other sources below the Federal level. This presents challenges for ensuring data quality and evaluating program effectiveness. Past OIG audit work has disclosed high error rates in grantee-reported performance data and raised concerns about the use of that data for decision-making. ETA has developed a data validation program to improve the reliability of program data.

Single Audit
The Department relies on audits conducted under the Single Audit Act to provide oversight of more than 90% of its expenditures. OIG is concerned about the adequacy of information DOL receives from these audits, which are conducted by public accountants or state auditors and procured with DOL grant funds. Quality control reviews we

Management's Response

Management's Response to the Inspector General's Statement on the Top Management Issues Facing the U.S. Department of Labor (September, 2004)

Since the announcement of the President's Management Agenda in 2001, the Department of Labor (DOL) continues to make solid progress in implementing the five Government-wide initiatives: *Strategic Management of Human Capital, Competitive Sourcing, Improved Financial Performance, Expanded Electronic Government*, and *Budget and Performance Integration*. DOL remains one of the leaders among Cabinet agencies — with status scores of *Green* for four of the five Government-wide initiatives, and progress scores of *Green* for all five. Nonetheless, we recognize the areas needing improvement and have plans in place to achieve success.

The Department recognizes that the nine challenges identified by the Inspector General represent issues of significant potential impact on the effectiveness and efficiency of DOL's programs and operations. The Department's responses identify extensive actions to address these challenges, all of which have been completed or are currently in progress. The Department anticipates that the results of initiatives to address several management issues during FY 2004 and a reassessment of other issues should enable the Inspector General to report even further progress next year.

Several of the challenges reference specific concerns reported in detail in OIG audits issued over the past several years; the management response summarizes corrective action plans taken or planned by the Department. We anticipate that the majority of these findings should be corrected within the next year. Other challenges require legislative action or require that DOL take actions jointly with non-DOL government agencies. Performance goals and strategies are provided in either the Departmental or agency annual performance plans, whenever a sustained effort requires several years to address an OIG management challenge that impacts a core program or management priority. Actions taken or planned by the Department to address each management challenge identified by the OIG are discussed below.

Top Management Challenges Facing the Department of Labor

Following are areas the Office of Inspector General (OIG) considers to be the most serious management and performance challenges facing DOL. They involve compliance, accountability, and delivery of services and benefits:

- Reducing Improper Payments
- Safeguarding Unemployment Insurance
- 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
- Workforce Investment Act Reauthorization

Reducing Improper Payments

Unemployment Insurance and the Use of New Hire Data
DOL was very pleased with the enactment of P.L. 108-295, which is based on draft legislation proposed DOL, and which gives state UI agencies access to the National Directory of New Hires. This will enhance states' ability to detect unreported work violations by UI claimants working in other states or for certain multi-state employers who may report all new hires to only one state. ETA is working with the Department of Health and Human Services on implementation details and will encourage states to use the directory when it becomes accessible. ETA continues to promote activities to prevent and detect overpayments. In FY 2004, $2.3 million in funds is being made available to states that submitted acceptable proposals to implement or enhance benefit payment control activities such as computer cross-matches to detect overpayments. An example of these activities would

include the use of the states' Directories of New Hires as well as an electronic data exchange between state UI agencies and the Social Security Administration.

Federal Employees' Compensation Act Program Controls
While ESA agrees that obtaining current medical evidence for long-term disability cases is important, the absence of it is not evidence of or even a likely indicator of an improper payment. Existing procedures for requesting and verifying medical reports are manual and rely on ad-hoc tracking utilized by individual claims examiners in each of the FECA Program District Offices. The long-term solution rests with the FECA Program's new automated claims processing system, which will include a disability review function that determines the presence or absence of current medical evidence in file. This will update automated claims examiner task and reminder lists through the system's workload tracking function and will also provide supervisors with the ability to list overdue tasks and ensure follow-up. The new system will be deployed in FY 2005.

The Central Bill Processing service encountered a number of problems at start-up, many of which are documented in the audit findings. The audit also documents a significant reduction in medical bill processing problems by the third quarter of FY 2004. Throughout the start-up period and on an ongoing basis, as OWCP and the contractor identify problems, corrective actions were developed and put into place. For example, completion of the medical bill Receivables Tracking/Adjustment processing design will include automated recoupment of overpayments from future payments and completion of an interface with FECA's new claims processing system. This will enable review of previous adjustments made to medical bills and creation of receivable/credit records for those adjustments. The program will be able to record the overpayments and credits currently stored in Medical Bill History to the receivable system. The development of a medical bill processing audit plan for the FECA Program based on the successful Black Lung Program's model is ahead of schedule. Draft procedures for the plan will be developed by September, 2004, with plan implementation by October 2004.

Safeguarding Unemployment Insurance

DOL again notes that there is no Federal solvency standard, and that states can borrow to make up any shortfall during economic downturns.

Unemployment Trust Fund Resources
DOL shares the OIG concern regarding IRS overcharges for administering the Unemployment Trust Fund (UTF). ETA has had several meetings with IRS to learn details and provide input into the complex methodology that has been developed, the most recent meeting being August 5, 2004. The new methodology, which IRS intends to implement beginning October 1, 2004, produces charges of the same magnitude that the OIG reported to be excessive. ETA is particularly concerned about charges for compliance and the reliance on "area experts" to estimate the amount of time devoted to collection of Federal Unemployment Tax Act (FUTA) taxes when audits are conducted related to other taxes. Problems have also surfaced relating to how IRS scrutinizes returns from multi-state employers while charging the UTF for the service.

Identity Theft and Organized Crime Activity in Unemployment Insurance Fraud
On September 17, 2004, ETA announced a second round of funding for *Benefit Payment Control* integrity-related projects. These funds will provide additional resources to implement or enhance activities, such as various computer cross-matches to detect overpayments including fraud related to identity theft. Unemployment insurance data is cross-matched with a variety of data bases including states' Directories of New Hires, Bureau of Vital Statistics, Departments of Corrections, Departments of Motor Vehicles, as well as data exchanges with the Social Security Administration.

Integrity of Foreign Labor Certification Programs

To clarify, DOL does not admit aliens into the country who may pose national security risks. Our responsibility extends only to ascertaining whether the area of intended employment has been adequately tested such that there are no available, willing, able, and prepared U.S. workers for the position being proposed by an employer.

Problems with the Labor Certification Process

We concur that reinstating Section 245(i) of the Immigration and Nationality Act (INA) resulted in dramatic increases in applications for permanent labor certification creating a major backlog in the processing of applications. ETA has attempted to eliminate the large backlog through administrative means available, however additional resources have been appropriated to begin eliminating the entire backlog.

ETA has always required, and will continue to require, foreign labor certification applications to be processed in compliance with all applicable statutes, regulations, and policies. Notices of Findings are issued routinely, as warranted, by ETA Certifying Officers. Whether an alien has earned experience with the petitioning employer is addressed in ETA policy and is routinely reviewed during the certification adjudication process. ETA is establishing central processing centers where the majority of the permanent program backlog cases referenced in the OIG will be reviewed and adjudicated. We agree with the OIG recommendation to verify an employer's current in-business status prior to certification and refer to OIG Office of Labor Racketeering and Fraud Investigations any applications where the employer is determined not to be a *bona fide* employer; accordingly, we have already built this verification process into the case-management software.

Regarding automation of the Permanent Labor Certification Program, ETA has developed a fraud detection/prevention module for use in the new Program Electronic Review Management (PERM) system. This module is being designed to quickly validate applicant information and highlight signs of risk or fraud using a public record database to be supplied and updated by a third party vendor. ETA is considering the use of additional safeguards to authenticate the identity of an employer and to maintain the integrity of the process. Once the new system is implemented, the re-engineered PERM system will mark a significant change to the labor certification process in helping to validate information. The program will identify ineligible employers using automated system edit checks.

ETA believes that statutory limitations restricting ETA in reviewing H-1B applications for completeness and obvious inaccuracies is a structural flaw in the program. Requiring employers to conduct a labor market test as part of the application process could provide a reasonable degree of protection for U.S. workers.

Regulatory Change Needed

ETA is working with representatives from interested Federal agencies on the issue of fraud in the Permanent Labor Certification Program. To clarify the point regarding substitution of aliens on approved labor certifications, the Department of Homeland Security, not the Department of Labor, receives requests from employers for an alien substitution and decides whether or not to approve the request.

Labor Certification Fraud

When denying an application for H-2B Labor Certification, alien labor certification staff attach a detailed explanation outlining all deficiencies within the application. These explanations should reduce the number of overturns by U.S. Citizenship and Immigration Services (CIS). ETA continues to work with CIS to improve H-2B application processing. ETA meets quarterly with CIS and Department of State to discuss ways to reduce fraud in the foreign labor certification programs. ETA and CIS have formed a subgroup that meets monthly to improve information sharing on employers that are currently being investigated for fraud. ETA's Foreign Labor Certification program has filled a policy analyst position whose sole focus will be on quality control and fraud-related issues.

Financial and Performance Accountability

Financial Accounting

OCFO recognizes effective project management as among the most important factors affecting the eventual success of the New Core Financial Management System Project (NCFMS). Effective and responsive project monitoring, oversight, and controls, clear and effective direction, and systems of governance can mitigate the risk of missing the intended end result. Project risks for the NCFMS are managed through the use of detailed project plans and resourced Work Breakdown Structures (WBS), which also populate the Department's Earned Value Management System. The project plan and WBS enable effective management of tasks to be performed at the activity level, monitoring resource and time consumption, and comparing baseline estimates with actual costs and