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BUREAU OF LABOR STATISTICS



BLS NEEDS TO STRENGTHEN SECURITY OF PRE-RELEASE ECONOMIC DATA IN THE BLS/STATE LABOR MARKET INFORMATION COOPERATIVE PROGRAMS

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BRIEFLY...

Highlights of Report Number 17-12-005-11-001, issued to the Acting Commissioner of the Bureau of Labor Statistics.

WHY READ THE REPORT

Since 1917, the Bureau of Labor Statistics (BLS) has used cooperative agreements with States and territories to provide funding for the collection and analysis of Labor Market Information (LMI) data. Economic data and statistics that have not yet been released to the public — such as official BLS estimates and other official BLS statistical products — are called “pre-release information,” which BLS considers to be confidential.

In January 2012, Senator Richard Burr wrote a letter to the OIG raising concerns about the cooperative agreement between BLS and the State of North Carolina. Furthermore, in May 2012, news media reported that the Governor of Wisconsin released employment statistics derived from State Unemployment Insurance information prior to the data being approved by BLS and officially becoming Quarterly Census of Employment and Wages.

WHY OIG CONDUCTED THE AUDIT

Our audit objectives were to answer the following questions:

1. Were any Federal statutes or BLS requirements related to the protection of confidential pre-release information violated in the LMI cooperative programs?
2. To what extent did BLS ensure that States were protecting confidential pre-release information from unauthorized use or disclosure?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2012/17-12-005-11-001.pdf>.

September 2012

BLS NEEDS TO STRENGTHEN SECURITY OF PRE-RELEASE ECONOMIC DATA IN THE BLS/STATE LABOR MARKET INFORMATION COOPERATIVE PROGRAMS

WHAT OIG FOUND

We determined that no Federal statutes related to pre-release information existed; as such, none were violated in the LMI cooperative programs. However, we did find that all four States violated at least some BLS requirements contained in the cooperative agreement. Specifically, we determined that the early release of data by the Governor of North Carolina was a violation of the cooperative agreement; however, we found that the early release of data by the Governor of Wisconsin was not. Further, we found that BLS could do more to ensure States protect pre-release information by clarifying definitions in the cooperative agreement and implementing appropriate controls from the Office of Management and Budget (OMB) Statistical Policy Directive (SPD) No. 4 to protect pre-release information and reduce the risk of future security breaches.

WHAT OIG RECOMMENDED

We recommend that the Acting Commissioner for BLS not only amend the cooperative agreement to fully incorporate the requirements of OMB SPD No. 4, but also require that individuals with access to confidential pre-release information be informed annually of their responsibilities to protect that information and acknowledge their acceptance of those responsibilities in writing. We also recommend that the Acting Commissioner provide clear guidance to the States and BLS Regional Offices for granting agent agreements and access to pre-release information, increase monitoring of States to include adherence to the confidentiality requirements established by the cooperative agreement, clarify which estimates and statistical products are BLS-owned, and provide clear definitions of pre-release information and related terms to the States and BLS Regional Offices.

BLS agreed with three recommendations and acknowledged that the audit uncovered pieces of the cooperative agreement process that could be improved. However, BLS disagreed with two recommendations and some elements of our findings.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



September 28, 2012

Assistant Inspector General's Report

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Since 1917, the Bureau of Labor Statistics (BLS) has used cooperative agreements with States and territories to provide funding for the collection and analysis of Labor Market Information (LMI) data. Economic data and statistics that have not yet been released to the public — such as official BLS estimates and other official BLS statistical products — are called “pre-release information,” which BLS considers to be confidential. BLS confidentiality provisions require that pre-release information not be disclosed or used in an unauthorized manner before it is released to the public in order to protect the integrity and credibility of BLS and guarantee that no one can gain an economic or political advantage through advance knowledge of the information. Until pre-release information is officially released to the public, it can only be accessed by authorized persons. Under the terms of the cooperative agreement, an authorized person must be designated as a BLS agent and must have signed a BLS agent agreement. States do not have access to any national statistics prior to their release by BLS, but they do have access to pre-release information related to their State, such as State employment and unemployment estimates.

Within BLS, the Office of Field Operations (OFO) is responsible for monitoring the LMI cooperative agreements with the States. Each cooperative agreement defines the products to be delivered to BLS, time frames for delivery, and other administrative requirements including the State's responsibilities to safeguard confidential information. States are required to agree to BLS's confidentiality provisions as part of the cooperative agreement.

The cooperative agreement covers five statistical programs: Current Employment Statistics (CES), Local Area Unemployment Statistics (LAUS), Occupational Employment Statistics (OES), Quarterly Census of Employment and Wages (QCEW), and Mass Layoff Statistics (MLS). QCEW and MLS are derived from State Unemployment Insurance (UI) information which, at the State level, BLS considers to be State-owned data and not subject to BLS confidentiality provisions.

In January 2012, Senator Richard Burr wrote a letter to the OIG raising concerns about the cooperative agreement between BLS and the State of North Carolina. According to allegations made in an online news posting, the Governor of North Carolina's press office received access to confidential employment data from BLS in 2011, which the Governor subsequently released in a speech made to a Rotary Club one day prior to the data's scheduled public release date. Furthermore, independent of Senator Burr's request, we learned that in May 2012, the news media reported that the Governor of Wisconsin released employment statistics derived from State UI information prior to the data being approved by BLS and officially becoming QCEW.

Our audit objectives were to answer the following questions:

1. Were any Federal statutes or BLS requirements related to the protection of confidential pre-release information violated in the LMI cooperative programs?
2. To what extent did BLS ensure that States were protecting confidential pre-release information from unauthorized use or disclosure?

The audit covered the Fiscal Year (FY) 2012 cooperative agreement between BLS and four states — North Carolina, Wisconsin, Washington and Louisiana. We selected North Carolina in response to Senator Burr's complaint, and Wisconsin because of its release of State UI data that BLS had not approved. We selected Washington and Louisiana randomly but ensured that each State was from a different BLS region. Also, because about half of the States routinely release their CES and LAUS estimates in advance of the monthly BLS release, we ensured that our sample of States was evenly distributed based on this factor. Washington typically released its statewide CES and LAUS estimates in advance of the BLS release of those data. Louisiana released its Statewide CES and LAUS estimates at the same time or later than the BLS release. We interviewed representatives from BLS and the States to gain an understanding of the policies, procedures and practices in place to protect pre-release information from unauthorized use or disclosure. We identified and reviewed all applicable Federal and BLS criteria to which BLS and the States were held accountable for ensuring the protection of pre-release information. We analyzed agent agreements, training records, press releases, State LMI websites, and other documents to determine if States complied with requirements in the cooperative agreement. We also analyzed the forthcoming FY 2013 cooperative agreement for prospective changes and their impact on our audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additional background information is detailed in Appendix A, and our objectives, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

We determined that no Federal statutes related to pre-release information existed; as such, none were violated in the LMI cooperative programs. However, we did find that all four States violated at least some BLS requirements contained in the cooperative agreement to protect pre-release information from unauthorized use or disclosure. Specifically, we determined that the early release of data by the Governor of North Carolina was a violation of the cooperative agreement; however, we found that the early release of data by the Governor of Wisconsin was not. In addition, we found that BLS could do more to ensure States protect pre-release information. Further, the cooperative agreement BLS used to ensure States protected pre-release information lacked clear definitions which resulted in inconsistent interpretations by BLS and the States as to what information was subject to BLS confidentiality requirements and who could have access to pre-release information. The cooperative agreement also lacked appropriate controls from the Office of Management and Budget (OMB) Statistical Policy Directive (SPD) No. 4 to protect pre-release information.

Without strengthening its controls in the cooperative agreement to the extent possible with respect to pre-release information, BLS will miss an opportunity to reduce the risk of future security breaches, which could cause the public to lose confidence and trust in BLS and its statistical products.

We recommend that the Acting Commissioner for BLS amend the cooperative agreement to not just fully incorporate the requirements of OMB SPD No. 4, but to also require that individuals with access to confidential pre-release information be informed annually of their responsibilities to protect that information and acknowledge their acceptance of those responsibilities in writing. We also recommend that the Acting Commissioner provide clear guidance to the States and BLS Regional Offices for granting agent agreements and access to pre-release information, increase monitoring of States to include adherence to the confidentiality requirements established by the cooperative agreement, clarify which estimates and statistical products are BLS-owned, and provide clear definitions of pre-release information and related terms to the States and BLS Regional Offices.

BLS RESPONSE

BLS agreed with three of the five recommendations in the report, but disagreed with the other two recommendations and some elements of the individual findings. BLS agreed that individuals were remotely accessing pre-release information in violation of the cooperative agreement, the State of North Carolina violated the cooperative agreement, and the cooperative agreement lacked clear definitions.

BLS did not agree that under the cooperative agreement only individuals designated as BLS agents could have access to pre-release information. BLS contends that the BLS agent agreement was intended for State employees who required access to micro-data protected under CIPSEA and was never intended to cover all employees with access to

pre-release information. BLS conceded, however, that “the cooperative agreement had some structural inconsistencies and definitional issues that created confusion regarding those people requiring BLS agent designations in order to see micro-data versus those able to see pre-release information.” BLS contended that the audit should have based its findings on BLS’s stated intent rather than the literal language of the cooperative agreement.

BLS also disagreed that changes in the FY 2013 cooperative agreement introduced additional control weaknesses, stating that the changes strengthen protections by covering employees who were not previously covered. Furthermore, Commissioner’s Order 3-11 provides for an exemption to signing a non-disclosure agreement, which BLS has exercised because the pre-release certification form¹ complies with the requirements of OMB SPD No. 4.

In addition, BLS disagreed that the use of non-BLS email accounts to transmit pre-release information violated the cooperative agreement and that it is not possible to issue BLS email accounts to all employees within a State who need to see pre-release information. BLS noted the Statement of IT Assurance within the cooperative agreement is intended to ensure that State systems comply with requisite security procedures to guarantee the secure transmission of data internally when technical constraints impede States’ abilities to use BLS email accounts. Therefore, according to BLS, the use of non-BLS email accounts should in no way lessen the security of data transmitted nor be considered a violation of the cooperative agreement.

Finally, BLS disagreed that the cooperative agreement lacked appropriate controls to protect pre-release information. BLS believes the current cooperative agreement effectively protects pre-release information and imposing additional provisions of OMB SPD No. 4 is unnecessary and could exceed BLS’s authority over the States. In particular, BLS does not believe it has the statutory authority to direct State Governors to sign a statement in order to access pre-release information. Implementing other elements of OMB SPD No. 4 would also cause BLS to create policy necessary for compliance by Governors’ offices the implementation and enforcement of which would be impossible across all States negatively impacting the Federal-State partnership in producing labor market information.

The BLS response is included in its entirety at Appendix D.

OIG CONCLUSION

While BLS states that agent agreements were only intended to cover employees with access to CIPSEA-protected information, this was not the actual practice that was implemented by the States and BLS Regional Offices we audited. Furthermore, the language of the cooperative agreement clearly required all State employees with access to confidential information – including pre-release information – to sign BLS agent

¹ For additional information, see “*Changes to the Cooperative Agreement Introduce Additional Control Weaknesses*” on pages 9-10.

agreements, regardless of whether the confidential information was covered by CIPSEA.

Although the new BLS pre-release certification form in the FY 2013 cooperative agreement may cover some State employees who were not previously covered by agent agreements, BLS is not requiring employees with access to pre-release information to sign a non-disclosure agreement, which BLS internal procedures require of non-BLS employees with access to pre-release information, and will not provide those employees annual confidentiality training. OIG believes these changes could significantly reduce the effectiveness of the new controls in protecting pre-release information from unauthorized use or disclosure, particularly for those State employees who previously signed BLS agent agreements and completed the annual training but whose agent agreements will be revoked by BLS because they do not require access to CIPSEA-protected information.

Regarding the use of non-BLS email accounts for transmitting confidential information, BLS did not explain why it is impossible to issue BLS email accounts to all employees within a State who need email access to confidential information. However, if BLS believes that the Statement of IT Assurance provides for the same level of security when transmitting confidential information, BLS should clarify this in the cooperative agreement so that confidential information, such as pre-release information, is handled by the States in a consistent manner. If BLS email accounts are not necessary to adequately protect confidential information, BLS should waive the requirement entirely and eliminate all BLS email accounts in the program.

OIG does not believe that extending additional provisions from OMB SPD No. 4 will exceed BLS's authority. Although BLS believes it lacks statutory authority to require State Governors to sign an agreement in order to access BLS pre-release information, BLS provided no evidence on behalf of this argument. Even if Governors refused to sign an agreement, BLS could require all the other State employees with access to pre-release information to sign an agreement and then develop an alternate procedure for granting access to Governors. Moreover, BLS claims it is sufficient for the State Cooperating Representative to certify that all State employees have been made aware of the confidentiality requirements and have agreed to them. That would include any Governors of the States granted access to pre-release information, thereby undermining BLS's argument that it lacks authority to require compliance by the Governors.

OIG also does not believe that implementing the other provisions from OMB SPD No. 4 would cause BLS to create unnecessary policy compliance by Governors' offices, as claimed by BLS. In fact, it is highly unlikely that any of the other provisions of OMB SPD No. 4 would require policies applicable to anyone but the State LMI units. For example, requiring that States release data to the public immediately in the event of a breach, or requiring that States provide the public an annual schedule of when statistical products will be released, would not require any policy necessary for compliance by a Governor's office.

RESULTS AND FINDINGS

Objective 1 — Were any Federal Statutes or BLS requirements related to the protection of confidential pre-release information violated in the LMI cooperative programs?

States violated provisions of the cooperative agreement, exposing BLS pre-release information to unnecessary risk of unauthorized use or disclosure.

While there were no violations of Federal statutes related to pre-release information because no such Federal statutes existed, we found that all four States violated BLS requirements contained in the cooperative agreement to protect pre-release information from unauthorized use or disclosure.

Finding 1 — All four States violated security controls contained in the cooperative agreement to protect confidential pre-release information from unauthorized use or disclosure.

All four States violated security controls established by the cooperative agreement, exposing BLS pre-release information to unnecessary risk of unauthorized use or disclosure. We found instances in which individuals who were not properly authorized had access to confidential pre-release information. We also found that individuals were using State email accounts to transmit confidential pre-release information rather than the required BLS email accounts. Additionally, two States allowed individuals to have remote access to confidential pre-release information, but that access had not been approved by BLS as required by the cooperative agreement. This occurred because BLS relied on the States to follow the cooperative agreement, but did not actively monitor State compliance with confidentiality requirements.

Our review of the circumstances surrounding the possible mishandling of BLS data in North Carolina and Wisconsin revealed differences in the types of data that were released. We found the early release of BLS estimates derived from CES and LAUS data by the Governor of North Carolina violated the cooperative agreement. Conversely, we found the early release of employment data derived from State UI information by the Governor of Wisconsin did not violate the cooperative agreement because BLS considered the data to be State-owned until it was provided to BLS to develop the QCEW.

States Allowed Unauthorized Access to Pre-Release Information.

In all four States, we found individuals with access to pre-release information who were not properly authorized to have that access under the terms of the cooperative agreement. Specifically, we identified 95 of 259 individuals who had access to pre-release information but had not signed BLS agent agreements as required by the cooperative agreement (see Table 1).

Table 1: Access to Pre-Release Information

State	Individuals With Pre-Release Access	Individuals with Authorized Access	Individuals with Unauthorized Access
Louisiana	23	17	6
North Carolina	46	43	3
Washington	87	36	51
Wisconsin	103	68	35
Total	259	164	95

Subsequent to our audit, the State of Washington obtained agent agreements for 12 individuals and was in the process of obtaining agent agreements for 36 others. Three other individuals in the State of Washington no longer had access to pre-release information.

The State of Louisiana agreed that three individuals did not have agent agreements but claimed three others had signed agent agreements; however, the agent agreements State officials provided were not signed by an authorizing BLS Regional Office official. The Dallas BLS Regional Office officials stated that they were in the process of approving one agent agreement for the State of Louisiana, but the other five individuals did not work directly on the cooperative agreement or have access to information protected by the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) and, therefore, were not eligible for agent agreements.

The State of North Carolina claimed that individuals without agent agreements were not required to have them because they did not have access to CIPSEA-protected information. However, we noted that other individuals in North Carolina who would not have access to CIPSEA-protected information, such as the Assistant Secretary for Communications and External Affairs and the Public Information Officer, had signed agent agreements.

The State of Wisconsin did not dispute our numbers; however, the Chicago BLS Regional Office stated that the reason the 35 individuals did not have agent agreements was because they did not have access to CIPSEA-protected information. The Chicago BLS Regional Office revoked agent agreements for an additional 8 individuals in the State because they no longer had access to CIPSEA-protected information even though they still had access to pre-release information. Additionally, BLS National Office officials told us that they may have to revoke some of the agent agreements that were currently in process or recently granted.

The Cooperative Agreement Required BLS Agent Agreements

Senior BLS officials advised us that it was never the intent of BLS to require that all State employees with access to any “confidential information” have signed BLS agent agreements. Rather, these officials informed us that BLS agent agreements were

intended to be required only for individuals with access to CIPSEA-protected information. In support of this contention, BLS indicated that CIPSEA was a relatively new statute and before its enactment in 2002, there were no BLS agent agreements. Yet State employees were, for many years, permitted to access confidential information such as pre-release information. According to BLS, the creation of BLS agent agreements was not meant to change State employees' longstanding access to pre-release information, but rather only to require that State employees with access to information covered by CIPSEA have signed BLS agent agreements.

However, our review of the provisions contained in the FY 2012 cooperative agreement and documents incorporated by reference found that, despite the BLS claims, the cooperative agreement required all State employees with access to any "confidential information," including pre-release information, to have signed BLS agent agreements, regardless of whether the "confidential information" was covered by CIPSEA.

The cooperative agreement defined "confidential information" expansively as "all data collected as part of the LMI programs under sole BLS authority or joint BLS/State authority."² The only exceptions contained in the cooperative agreement related to UI information included in the QCEW files. The cooperative agreement then provided several examples of "confidential information," including "pre-release information such as official BLS estimates and other official BLS statistical products prior to their official date and time of release by the BLS."³ Similarly, BLS Commissioner's Order No. 1-06, which was explicitly made applicable to the State agencies and State employees and agents by the cooperative agreement,⁴ broadly defined "confidential information" to include, among other things, pre-release economic data.⁵ Neither the cooperative agreement nor the Commissioner's Order limited the definition of "confidential information" to information or data covered by CIPSEA.

Commissioner's Order No. 1-06 also defined an "authorized person" as an agent falling within one of five listed groups. The first group listed was "State agency employees who are directly involved in the BLS/State cooperative programs, who are subject to the provisions of the BLS/State cooperative agreement, and who have signed a BLS agent agreement."⁶ The remaining four categories of individuals also required that the individuals signed a BLS agent agreement in order to be an "authorized person." The cooperative agreement itself did not define the term "authorized person," but rather defined the apparently interchangeable term "authorized agents" as "individuals who have been designated by the BLS to work directly on the activities covered by this cooperative agreement and who have signed a BLS agent agreement."⁷

²LMI Cooperative Agreement, p. I-10, ¶ S.2.a

³LMI Cooperative Agreement, p. I-11, ¶ S.2.a.vi

⁴LMI Cooperative Agreement, p. I-10, ¶ S.1

⁵BLS Commissioner's Order No. 1-06, ¶ 6.a.ii

⁶BLS Commissioner's Order No. 1-06, ¶ 8.b (1) (emphasis added)

⁷LMI Cooperative Agreement, p. I-12, ¶ 4.b (emphasis added)

With respect to who may have access to confidential pre-release information, the cooperative agreement stated that the “State agency agrees that pre-release information such as official BLS estimates and other official BLS statistical products will not be disclosed or used in an unauthorized manner before they have been released by the BLS, and will be accessible only to authorized persons.”⁸ The cooperative agreement went on to state that “State employees may not have access to data collected on behalf of the BLS for exclusively statistical purposes, unless they are designated as “authorized agents” of the BLS.”⁹ It further stated that “the State agency will assure that there will be no access to confidential information by any person other than an agent designated pursuant to this agreement.”¹⁰ Similarly, Commissioner’s Order No. 1-06 provided that “pre-release economic data ... prepared for release to the public will not be disclosed or used in an unauthorized manner before they officially have been released, and will be accessible only to authorized persons.”¹¹

Based on the above-referenced provisions of the cooperative agreement and Commissioner’s Order No. 1-06, it is clear that, under the operative documents, pre-release information should not be accessed by any individual who had not signed a BLS agent agreement. This is because, by not having a signed agent agreement, that individual was not an authorized person or agent and, therefore, that individual was not allowed to access any confidential information, including pre-release information.

BLS Regional Offices Interpreted Cooperative Agreement Requirements Inconsistently

BLS Regional Offices generally relied on the States to determine who needed to sign agent agreements, but they also interpreted the cooperative agreement requirements for designating agents inconsistently. For example, the BLS San Francisco Regional Office said it wanted someone to have an agent agreement in case something happened in the future and interpreted the need for an agent agreement broadly, but the BLS Dallas Regional Office was more restrictive and said only people who worked directly on the LMI programs should be granted agent agreements and that Information Technology (IT) staff were covered under the Statement of Assurance for Information Security that every State submitted with the cooperative agreement. Other BLS Regional Offices granted agent agreements to any IT staff with potential access to confidential information.

Changes to the Cooperative Agreement Will Introduce Additional Control Weaknesses

The FY 2013 cooperative agreement will expand the definition of “authorized persons” to include State employees who have been approved for access to pre-release information as certified by the State Cooperating Representative.¹² This will require the

⁸LMI Cooperative Agreement, p. I-12, ¶ 3.b (emphasis added)

⁹LMI Cooperative Agreement, p. I-12, ¶ 4.b

¹⁰LMI Cooperative Agreement, p. I-12, ¶ 4.d

¹¹BLS Commissioner’s Order No. 1-06, ¶ 7.b (emphasis added)

¹²The State Cooperating Representative is the State official designated to act as the BLS representative for the cooperative agreement and is responsible for ensuring that the cooperating State agency understands and complies with all provisions of the cooperative agreement.

State Cooperating Representative to identify and list all non-BLS agents (i.e., individuals who have not signed an agent agreement) with access to pre-release information and certify, by signing a “Pre-Release Certification Form,” that those individuals have been informed of their responsibilities and obligations and accepted those conditions.¹³ The FY 2013 cooperative agreement will no longer require a signed BLS agent agreement in order to access pre-release information.

However, these proposed changes will introduce additional control weaknesses. Under the FY 2013 cooperative agreement, non-BLS agents will be informed of the conditions for handling BLS pre-release information through reading or listening to the requirements. They will be allowed to accept these conditions through verbal affirmation provided to the State Cooperating Representative, but will not be required to acknowledge their acceptance in writing via a signature. BLS internal procedures, documented in Commissioner’s Order 3-11, require that non-BLS employees with access to pre-release information sign either an agent agreement or a non-disclosure agreement. BLS officials stated that it would be difficult to enforce the cooperative agreement if they required high-level State officials (i.e., State Governors) to sign a non-disclosure agreement. Additionally, the cooperative agreement will only require those individuals listed to be informed of their responsibilities one time and will not require that they take the annual confidentiality training (since they are not BLS agents). These weaknesses may lead to State employees not fully understanding and being held accountable for their responsibilities to protect pre-release information.

States used non-BLS email accounts to transmit pre-release information.

All four States used State email systems to transmit pre-release information. This typically occurred when the LMI unit shared CES and LAUS pre-release information outside the unit with individuals who were involved in the press release process who did not have BLS email accounts.

The cooperative agreement required that all LMI-related email containing confidential information be transmitted using the BLS mail server, unless prevented by technical constraints.

States allowed remote access to pre-release information without prior approval.

Two States allowed individuals to remotely access pre-release information without prior written approval from the Regional Office. However, the cooperative agreement required that States prohibit remote access to confidential BLS program data from offsite locations without prior written approval from BLS.

¹³The FY 2013 cooperative agreement no longer directly references any external policies and procedures, such as BLS Commissioner’s Order 1-06.

North Carolina violated the cooperative agreement while Wisconsin did not.

Our review of the circumstances surrounding the possible mishandling of BLS data in North Carolina and Wisconsin revealed differences in the types of data that were released.

North Carolina

The cooperative agreement required States to establish a publication schedule for CES and LAUS data and report any changes to the schedule on the State's website. The cooperative agreement also allowed the State LMI unit to share CES and LAUS estimates with individuals outside the LMI unit (i.e., the Governor's Office) after the estimates were cleared by BLS as final and ready for publication but prior to the estimates' public release. However, there were no requirements in the cooperative agreement clarifying or explaining the conditions under which that sharing could take place.

According to officials from the State of North Carolina, as part of the State's normal data release process, the LMI unit regularly shared a draft of the press release with the Governor's office with a reminder that the data was embargoed. We found that the release of BLS estimates derived from CES and LAUS data to a Rotary Club in a speech on August 18, 2011 – one day prior to the scheduled public release date – by the Governor of North Carolina was a violation of the cooperative agreement. The State LMI unit released the data to the public on August 19, 2011, in accordance with its publication schedule.

North Carolina officials believed a violation of the cooperative agreement occurred and reported the suspected breach to BLS, as required by the cooperative agreement, after they discovered that the news media were reporting on employment and unemployment numbers on the morning of Friday, August 19, 2011. The BLS Atlanta Regional Office stated that the incident was a violation of the cooperative agreement because the State released the data at a time other than what was indicated on its website.

Wisconsin

We found that the release of employment data derived from State UI information for the fourth quarter of 2011 on May 16, 2012, by the Governor of Wisconsin was not a violation of the cooperative agreement because BLS considered this data to be State-owned until it was provided to BLS. Moreover, the cooperative agreement stated that, at the State level, UI information included in the QCEW files is considered the State's data and is subject to State confidentiality provisions and is not subject to BLS confidentiality provisions.

Objective 2 — To what extent did BLS ensure that States were protecting confidential pre-release information from unauthorized use or disclosure?

Deficiencies in the cooperative agreement resulted in inconsistent treatment of pre-release information and increased the risk of security breaches.

BLS could do more to ensure that States protected pre-release information from unauthorized use or disclosure. While BLS used the cooperative agreement to ensure that States protected pre-release information, the cooperative agreement lacked clear definitions of pre-release information and related terms. This allowed for inconsistent interpretations by States and BLS Regional Offices concerning what information was subject to BLS confidentiality requirements. The cooperative agreement also lacked appropriate controls from OMB SPD No. 4 to protect pre-release information. Although BLS had extended some provisions of OMB SPD No. 4 to the States, it did not extend all of the provisions intended to protect the release and dissemination of statistical products. While OMB SPD No. 4 applies directly only to Federal statistical agencies, BLS could extend more of these requirements to the States through the cooperative agreement.

Finding 2 — The cooperative agreement lacked clear definitions of pre-release information and related terms.

Although the cooperative agreement provided some examples, it did not adequately define pre-release information or other related terms used throughout, such as “official BLS estimates and other official BLS statistical products” and “State estimates.” States and Regions had varying definitions of pre-release information, which differed from the official BLS definition as referenced in Commissioner’s Order No. 1-06.

Commissioner’s Order No. 1-06 defined pre-release information as “statistics and analyses that have not yet officially been released to the public, whether or not there is a set date and time of release before which they must not be divulged.”

The cooperative agreement stated that “pre-release information such as official BLS estimates and other official BLS statistical products prior to their official date and time of release by the BLS” were considered confidential and could not be disclosed or used in an unauthorized manner. It also stated that the State’s confidentiality responsibilities with respect to pre-release information did not affect the ability of States to publish State estimates; however, the cooperative agreement never clarified which estimates and products belonged to BLS and which belonged to the States. State-owned estimates would not be subject to the BLS confidentiality provisions under the cooperative agreement.

BLS National Office officials stated that all LMI programs provided some level of pre-release information.

The BLS Dallas Regional Office and the State of North Carolina said that CES and LAUS estimates, once approved for release by BLS, were State-owned data and not subject to BLS confidentiality provisions. According to the Dallas Regional Office, OES, QCEW and MLS all had some level of pre-release information.

The BLS San Francisco and Chicago Regional Offices said that CES, LAUS and OES data were pre-release information once approved by BLS until the data was actually released. Both offices agreed that QCEW had no pre-release information but Chicago officials said that MLS had pre-release information while San Francisco officials said MLS did not.

The State of Louisiana said that all LMI program data was pre-release information until it was actually released to the public.

The State of Wisconsin said that CES and LAUS data were pre-release information because those programs had scheduled release dates, but since the other LMI programs did not have schedules the data in those programs could not be “pre-released.”

These differing definitions allowed for inconsistent interpretations by States and Regional Offices concerning what information was subject to BLS confidentiality requirements. All BLS estimates and statistical products, regardless of whether or not there is a scheduled release date and time, should be considered pre-release information subject to BLS confidentiality requirements. In order to properly protect confidential BLS information, BLS must clarify which estimates and statistical products are BLS-owned in each of the LMI cooperative programs. It must also establish clear definitions of pre-release information and related terms, and communicate those definitions to the States and BLS Regional Offices.

Finding 3 — The cooperative agreement lacked appropriate controls to protect pre-release information from unauthorized use or disclosure.

The cooperative agreement lacked appropriate controls from OMB SPD No. 4 to protect pre-release information. Although BLS had extended some provisions of OMB SPD No. 4 to the States, it did not extend all of the provisions intended to protect the release and dissemination of statistical products. Although OMB SPD No. 4 applies only to Federal statistical agencies, BLS could extend more of these requirements to the States through the cooperative agreement.

OMB SPD No. 4 provides guidance to Federal agencies on the release and dissemination of statistical products. The procedures in OMB SPD No. 4 are intended to ensure that statistical data releases adhere to data quality standards through equitable, policy-neutral, transparent, and timely release of information to the general public.

BLS had extended some of the provisions of OMB SPD No. 4 to the States through the cooperative agreement. BLS extended the requirement that statistical agencies must

not share estimates outside of the agency until those estimates are final and ready for publication. It also extended the requirement that statistical agencies annually provide the public with a schedule of when each regular or recurring statistical product is expected to be released during the upcoming calendar year by publishing it on its website, but only for the CES and LAUS products.

BLS did not extend a number of additional OMB SPD No. 4 provisions to the States through the cooperative agreement, specifically:

1. Agencies shall establish arrangements and impose conditions on the granting of access to pre-release information that are necessary to ensure there is no unauthorized dissemination or use.
2. Agencies shall ensure that any person or organization with access to pre-release information has been fully informed of, and has acknowledged acceptance of, these conditions.
3. Statistical press releases produced and issued by agencies must provide a policy-neutral description of the data and must not include policy pronouncements.
4. Agencies must release data to the public immediately in the event that pre-release information is disseminated or used in an unauthorized manner before a specific date and time.
5. Agencies shall provide the public with an annual schedule of when each regular or recurring statistical product is expected to be released during the upcoming calendar year by publishing it on their website.¹⁴
6. Agencies should provide complete documentation of their dissemination policies on their website.

Some States already had practices or procedures that incorporated some of these requirements. For example, one State required individuals with access to pre-release information to sign a form acknowledging that they would not use pre-release information for any purpose other than preparing the public release of the information. Without extending OMB SPD No. 4 requirements to States through the cooperative agreement, BLS cannot be assured that BLS/State cooperative statistical products will be released to the public in an equitable, policy neutral, transparent, and timely manner.

BLS officials stated that differences in the organization and authority of State LMI offices would make implementation and enforcement of specific requirements difficult or impossible, and would negatively impact the partnership that BLS has with the States. Therefore, BLS opted not to impose all the specific components of the directive on the States. According to BLS officials, this OMB directive, along with other Federal and agency guidelines, were highlighted during a presentation to the LMI Directors in order to provide a greater understanding of BLS policies and procedures.

¹⁴Currently the cooperative agreement only requires States to develop an annual release schedule for CES and LAUS estimates.

However, BLS has already proposed to extend more provisions from OMB SPD No.4 by incorporating them into the FY 2013 cooperative agreement, thereby strengthening controls over pre-release information. The FY 2013 cooperative agreement will require that individuals be made aware of and acknowledge their responsibilities to protect pre-release information and that releases issued by State LMI units be policy-neutral (provisions 2 and 3 above).

Our review of the FY 2013 cooperative agreement identified that it does not adequately define the term “release.” Officials from one State we visited said that press releases and related commentary were outside the scope of the cooperative agreement. Because the cooperative agreement stated that publication included the posting of information or linking the information to the BLS website, and given the manner in which data was published on the State’s website, officials concluded that data releases could not be political. This contradicted BLS National Office officials, who stated that the term “release” included the actual data release and any accompanying materials published such as a press release.

Without strengthening its controls in the cooperative agreement to the extent possible with respect to pre-release information, BLS will miss an opportunity to reduce the risk of future security breaches which could cause the public to lose confidence and trust in BLS and its statistical products.

RECOMMENDATIONS

We recommend that the Acting Commissioner for BLS:

1. Provide clear guidance to the States and BLS Regional Offices for granting agent agreements and granting access to pre-release information.
2. Amend the cooperative agreement to require that individuals with access to confidential pre-release information be informed annually of their responsibilities to protect that information and acknowledge their acceptance of those responsibilities in writing.
3. Amend the cooperative agreement to fully incorporate the requirements of OMB SPD No. 4.
4. Ensures that BLS increase its monitoring of States to include adherence to the confidentiality requirements established by the cooperative agreement.
5. Clarify which estimates and statistical products are BLS-owned in each of the LMI cooperative programs, and provide clear definitions of pre-release information and related terms to the States and BLS Regional Offices.

We appreciate the cooperation and courtesies that BLS and State personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

Appendices

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Background

BLS is responsible for the production of some of the nation's most sensitive and important economic data. Since 1917, BLS has used cooperative agreements with States and territories to provide funding for the collection and analysis of LMI data that BLS uses in its national statistical programs. Economic data and statistics that have not yet been released to the public — such as official BLS estimates and other official BLS statistical products — are called “pre-release information,” which BLS considers to be confidential. BLS confidentiality provisions require that pre-release information not be disclosed or used in an unauthorized manner before it is released to the public in order to protect the integrity and credibility of BLS and guarantee that no one can gain an economic or political advantage through advance knowledge of the information. Until pre-release information is officially released to the public, it can only be accessed by authorized persons. An authorized person must be designated as a BLS agent and must have signed a BLS agent agreement. States do not have access to any national statistics prior to their release by BLS, but they do have access to pre-release information related to their State, such as State employment and unemployment estimates.

Within BLS, the Office of Field Operations is responsible for monitoring the cooperative agreements with the States. Each cooperative agreement defines the products to be delivered to BLS, time frames for delivery, and other administrative requirements including the State’s responsibilities to safeguard confidential information. States are required to agree to BLS’s confidentiality provisions as part of the cooperative agreement.

The cooperative agreement covers five statistical programs:

- CES
- LAUS
- OES
- QCEW
- MLS

QCEW and MLS are derived from State UI information which at the State level, BLS considers to be the State’s data and not subject to BLS confidentiality provisions.

BLS considers the following types of information to be confidential:

- Pre-Release Information: All economic data and statistics not yet released to the public, including analyses supported by the data and statistics, until the data and statistics are released.
- Respondent Identifiable Information: Any information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct or indirect means. Respondent Identifiable Information is

protected under CIPSEA, which established fines and penalties for willful unauthorized disclosure of respondent data.

In January 2012, Senator Richard Burr wrote a letter to the OIG raising concerns about the cooperative agreement between BLS and the State of North Carolina. According to allegations made in an online news posting, the Governor of North Carolina's press office received access to confidential employment data from BLS in 2011, which the Governor subsequently released in a speech made to a Rotary Club prior to the data's scheduled public release date. Furthermore, independent of Senator Burr's request, we learned that in May 2012, the news media reported that the Governor of Wisconsin released employment statistics derived from State UI information prior to the data being approved by BLS and officially becoming QCEW.

Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

Our audit objectives were to answer the following questions:

1. Were any Federal statutes or BLS requirements related to protection of confidential pre-release information violated in the LMI cooperative programs?
2. To what extent did BLS ensure that States were protecting confidential pre-release information from unauthorized use or disclosure?

Scope

The audit covered the FY 2012 LMI cooperative agreement between BLS and four states - North Carolina, Wisconsin, Washington and Louisiana. We also analyzed the forthcoming FY 2013 LMI cooperative agreement.

We conducted fieldwork at the BLS national office in Washington, D.C., BLS regional offices in Atlanta, Chicago, Dallas and San Francisco, and State LMI offices in North Carolina, Wisconsin, Louisiana, and Washington.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology

We interviewed representatives from BLS and the States to gain an understanding of the policies, procedures and practices in place to protect confidential pre-release information from unauthorized use or disclosure. We identified and reviewed all applicable Federal and BLS criteria that BLS and the States were held accountable to for ensuring the protection of pre-release information. We analyzed agent agreements, training records, press releases, State LMI websites, and other documents to determine if States complied with requirements in the cooperative agreement. We also analyzed the forthcoming FY 2013 LMI cooperative agreement for prospective changes and their impact on our audit.

We selected North Carolina in response to Senator Burr's complaint, and Wisconsin because of its release of State UI data that BLS had not approved. We selected Washington and Louisiana randomly but ensured that each State was from a different BLS region. Also, because about half of the States routinely release their CES and

LAUS estimates in advance of the monthly BLS release, we ensured that our sample of States was evenly distributed based on this factor. Washington typically released its Statewide CES and LAUS estimates in advance of the BLS release of those data. Louisiana released its Statewide CES and LAUS estimates at the same time or later than the BLS release.

In planning and performing our audit, we considered BLS’s internal controls that were relevant to our audit objectives. We confirmed our understanding of these controls through interviews and reviews of policies and procedures. Our consideration of internal controls relevant to our audit objectives would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, noncompliance may nevertheless occur and not be detected.

In conducting our audit, we did not rely on computer-processed data; therefore, the sufficiency and reliability of data was not applicable in meeting the audit’s objective.

Criteria

- OMB SPD No. 4
- BLS - LMI FY12 Cooperative Agreement
- BLS Commissioner’s Order No. 1-06¹⁵, “Confidential Nature of BLS Statistical Data”
- BLS Commissioner’s Order No. 3-11, “BLS Pre-Release Information”

¹⁵ Although BLS replaced this Commissioner’s Order in November 2011, the reference in the LMI cooperative agreement (effective October 2011) was not updated. According to BLS officials, the changes would have no effect on States’ responsibilities to protect confidential data.

Appendix C

Acronyms and Abbreviations

BLS	Bureau of Labor Statistics
CES	Current Employment Statistics
CIPSEA	Confidential Information Protection and Statistical Efficiency Act of 2002
FY	Fiscal Year
IT	Information Technology
LAUS	Local Area Unemployment Statistics
LMI	Labor Market Information
MLS	Mass Layoff Statistics
OES	Occupational Employment Statistics
OIG	Office of Inspector General
OMB	Office of Management and Budget
QCEW	Quarterly Census of Employment and Wages
SPD	Statistical Policy Directive
UI	Unemployment Insurance

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BLS Response to Draft Report

U.S. Department of Labor

Bureau of Labor Statistics
2 Massachusetts Ave. N.E.
Washington, D.C. 20212



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MEMORANDUM FOR: ELLIOTT P. LEWIS
Assistant Inspector General for Audit
Office of Inspector General

FROM : JOHN M. GALVIN *John M. Galvin*
Acting Commissioner
DANIEL J. LACEY
Associate Commissioner
for Administration

SUBJECT : BLS Response to the Recommendations in Office of Inspector General
BLS Needs to Strengthen Security of Pre-Release Economic Data in
the BLS/State Labor Market Information Cooperative Programs 17-
12-005-11-001

Thank you for providing the Bureau of Labor Statistics (BLS) with the Office of Inspector General (OIG) Draft Report, "BLS Needs to Strengthen Security of Pre-Release Economic Data in the BLS/State Labor Market Information Cooperative Programs." We appreciate the opportunity to provide comments.

As the principal fact-finding agency for the Federal Government in the broad field of labor economics and statistics, the BLS is committed to the integrity and objectivity of our data. The BLS produces impartial, timely, and accurate data relevant to the needs of our users on the social and economic conditions of our Nation, its workers, and their families. The BLS strives to operate effectively and to comply with all Federal regulations and standards.

As noted in the OIG draft report, BLS has engaged in cooperative agreements with States and territories since 1917. These agreements have enabled BLS to produce a vast array of statistical data covering the labor market information sector. The statistical programs included in these agreements consist of: Current Employment Statistics (CES), Local Area Unemployment Statistics (LAUS), Occupational Employment Statistics (OES), Quarterly Census of Employment and Wages (QCEW), and Mass Layoff Statistics (MLS). The continued success of the partnership between BLS and labor market information offices in the States and territories who participate in these programs relies on the structured nature of the cooperative agreement, which stipulates deliverables, quality measures, and security requirements among its many provisions. The focus of the audit is on the handling of State pre-release information not national economic statistics, which is not clear from the title of this report.

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Currently, 50 States, 3 territories, and the District of Columbia participate in cooperative agreements with BLS to provide labor market information. Every month in excess of 100 releases are produced across the Nation detailing CES and LAUS estimates within the States. The estimates released by the States are deemed final and ready for publication prior to being provided by BLS. The cooperative agreement directs states to establish and follow a release schedule for their State CES and LAUS estimates in order to ensure that the public, media, and other users have access to these estimates at the same time. In the event that a State releases these data in advance to some group smaller than the general public, it is considered to be in violation of the cooperative agreement and must report the incident upon its discovery. That reporting process seamlessly occurred in the incident that transpired in North Carolina which precipitated this OIG audit.

BLS agrees with elements of this report and appreciates that the audit uncovered pieces of the cooperative agreement process that could be improved by BLS taking additional measures. BLS would like to emphasize, however, the isolated nature of this incident given that well over a thousand releases occur annually, the fact that these are State data that have already been deemed final by BLS, and that the cooperative agreement process for handling situations of early release was successfully engaged when this incident occurred in North Carolina. The controls and processes in place between BLS and the States performed exactly as expected. The following are BLS comments on the OIG's findings and recommendations:

Finding 1:

BLS recognizes that some security controls established by the cooperative agreement were violated by States involved in the audit, but disagrees with a basic underpinning of the OIG in conducting this audit—that under the cooperative agreement only individuals designated as BLS agents could have access to pre-release data. The OIG audit determined that no Federal statutes exist in protecting State pre-release labor market information from unauthorized use or disclosure. Therefore, BLS is the organization responsible for establishing procedures utilized by States for handling these data. Early in the audit, it became clear that the cooperative agreement had some structural inconsistencies and definitional issues that created confusion regarding those people requiring BLS agent designations in order to see microdata versus those able to see pre-release information. BLS repeatedly clarified the intent of its language and provisions, yet the OIG continued to follow what they believed the policies to be based on their reading of the agreement. Instead of making a recommendation to BLS to clear up these inconsistencies within the cooperative agreement, the OIG ignored the BLS practices as explained to them and continued to evaluate BLS based on their reading of the document. The BLS agent agreement was implemented following the passage of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). CIPSEA established regulations regarding the protection of statistical information, specifically respondent data or microdata, and in 2002 BLS developed the agent agreement to inform States of their responsibilities in this area. The BLS agent agreement was intended for State employees who require access to microdata protected under CIPSEA provisions and was never intended to cover all employees with access to pre-release State estimates. The table and narrative within this finding cited BLS for State employees who can access pre-release information who are not agents. Prior to FY 2013, BLS had no provisions in place within the cooperative agreement

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covering employees with access to pre-release State estimates that were not also designated as agents, since they had no need to utilize protected microdata. It was in no way a violation of the cooperative agreement for States to have employees within this category.

The OIG report contends that the changes made to the FY 2013 cooperative agreement introduce additional control weaknesses. The BLS believes that the changes strengthen protections by now covering employees with access to pre-release information who are not already designated as agents, which was not done prior to FY 2013. As a result of the North Carolina incident, and in advance of the OIG audit, BLS moved to address this gap in coverage of policies for State staff to improve overall controls after consulting with State partners. The FY 2013 cooperative agreement now requires a certification by the State that all employees approved for access to pre-release information have been informed of their responsibilities and obligations and accepted those conditions. BLS disagrees with the OIG contention that these procedures introduce additional weaknesses.

Furthermore, the OIG report seems to suggest that this certification does not comply with Commissioner's Order 3-11, the BLS policy on pre-release information, as this Order requires non-BLS employees to sign non-disclosure agreements for access to pre-release information. The Commissioner's Order provides for an exemption to signing the non-disclosure agreement. In this instance, the BLS is exercising this exemption as the certification form complies with the requirements of Office of Management and Budget (OMB) Statistical Policy Directive (SPD) No. 4 that individuals being provided access to pre-release information be fully informed of and acknowledge acceptance of conditions to access such information.

Finding 1 goes on further to discuss definitional issues that create misunderstanding of BLS policies and procedures. These structural problems within BLS operating documents and the cooperative agreement are clearly leading to confusion and should be reconciled in future BLS documents. The BLS has begun to clarify the definitions through delineating the different types of confidential information in the FY 2013 Cooperative Agreement. The combination of clearer language and increased training to States and BLS regional offices will successfully eliminate any further misunderstanding.

BLS also disagrees with the contention that the use of non-BLS email accounts to transmit pre-release information constitutes a violation of the cooperative agreement. Employees within each States' labor market information office are issued BLS email accounts and are directed to use those accounts for transmission of information unless prevented by technical constraints. It is not possible for all employees within a State with a need to see pre-release data to be issued BLS email accounts. The Statement of IT Assurance within the cooperative agreement is intended to ensure that State systems comply with requisite security procedures to guarantee the secure transmission of data internally when technical constraints impede States' abilities to use BLS email accounts. Therefore, the use of non-BLS email accounts should in no way lessen the security of data transmitted nor be considered a violation of the cooperative agreement. BLS agrees with the final two elements within Finding 1. The audit uncovered that some individuals were remotely accessing pre-release information. Prior to FY 2013, remote access required permission by BLS and no such permissions were given. The FY 2013 cooperative agreement includes provisions that would allow a State to have remote access. These new requirements extend similar security parameters for remote access as those utilized by BLS in an effort to enable States to embrace telework in the same manner as the Federal Government. The

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last element of Finding 1 states that North Carolina violated the cooperative agreement while Wisconsin did not. We agree that this was the case. Cooperative agreement procedures were immediately implemented by BLS and the State when the North Carolina situation was discovered demonstrating the commitment by all parties for the security of pre-release information and the controls established within the cooperative agreement.

Finding 2:

BLS agrees with the finding that the cooperative agreement lacked clear definitions. As stated earlier, it became apparent to BLS through the OIG process of auditing State and BLS regional offices that inconsistencies and definitional problems exist within the document. BLS appreciates that the audit uncovered such a range of understanding of policies and terms. BLS can take additional measures to clarify definitions in order to match the intent of policies and provide training to State and BLS regional office employees to ensure that everyone has a complete and accurate understanding of elements within the cooperative agreement.

Finding 3:

BLS disagrees that the cooperative agreement lacks appropriate controls to protect pre-release information. Thousands of releases issued by the States throughout the past decade without early release of data would indicate that BLS does have effective and appropriate protections in place. Further, the estimates released by the States have already been deemed final and ready for publication prior to being provided to States by BLS. The protections in place are designed to ensure that a State releases its data on a set schedule so that no unauthorized party or individual has early access to State data.

The report recommends that BLS extend all provisions of OMB SPD No. 4 to the cooperative agreement. This statistical directive provides guidance to Federal statistical agencies on the release and dissemination of statistical products. While this directive does not apply to State agencies, BLS has incorporated some aspects of the provisions within the cooperative agreement. The provisions employed are intended to provide additional instruction regarding pre-release security procedures and mitigate the politicization of State data. BLS believes that the current cooperative agreement is successful in achieving this and does not require further amending to address additional aspects of OMB SPD No. 4.

Specifically, OIG recommends employing all provisions while extending the controls of one beyond the OMB guidelines. Provision No. 2 directs agencies to ensure that individuals with access to pre-release information be informed of and acknowledge acceptance of conditions for access to these data. The report recommendations add to this provision by requiring that these individuals acknowledge acceptance of those responsibilities in writing. BLS believes it lacks the statutory authority to direct State Governors to sign such a statement which would be one result of implementing this recommendation. The policy established by BLS within the FY 2013 cooperative agreement requiring a certification by the State that employees with access to pre-release information have been informed of their responsibilities and obligations and accepted those conditions is sufficient and consistent with Provision No. 2. Implementing other elements

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of OMB SPD No. 4 would also cause BLS to create policy necessary for compliance by Governors' offices.

The cooperative agreement is fully reviewed and evaluated on a three-year schedule by OMB. This past spring, BLS cleared the FY 2013 cooperative agreement through this three-year review. OMB was fully aware of the changes made to the cooperative agreement and understood the context for those changes. At no point did OMB suggest that BLS should push down to States all elements of their Federal directive. BLS agrees that this is unnecessary and the implementation of additional provisions could impede States' rights. BLS believes that the current cooperative agreement effectively addresses these issues to the level enforceable by BLS through the cooperative agreement.

BLS Response to OIG Recommendations:

BLS acknowledges and supports the recommendations in this report which are listed below:

1. Ensure that OFO provides clear guidance to the States and BLS regional offices for granting agent agreements and granting access to pre-release information.
4. Ensure that OFO increases its monitoring of States to include adherence to the confidentiality requirements established by the cooperative agreement.
5. Ensure that OFO clarifies which estimates and statistical products are BLS-owned in each of the LMI cooperative programs, and provides clear definitions of pre-release information and related terms to the States and BLS regional offices.

BLS disagrees with the recommendations in the report listed below:

2. Ensure that OFO amends the cooperative agreement to require that individuals with access to confidential pre-release information be informed annually of their responsibilities to protect that information and acknowledge their acceptance of those responsibilities in writing.
3. Ensure that OFO amends the cooperative agreement to fully incorporate the requirements of OMB SPD No. 4.

For the reasons delineated within this response, BLS believes that it has demonstrated an ability to effectively protect pre-release State information. BLS believes that these two additional requirements would extend BLS, and therefore, the Federal Government beyond the scope of its authority. Further, BLS believes that implementation and enforcement of these additional requirements would be impossible across all States and would negatively impact the Federal-State partnership in producing labor market information.

Conclusion:

While BLS supports some recommendations of this report, we disagree with other recommendations and dispute some of the individual findings. Regarding Finding 1, the report

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focuses on the OIG interpretation of language within the cooperative agreement rather than the BLS practice, even after BLS acknowledged the definitional issues and explained to the auditors the intent, which causes BLS to dispute the specifics of the reported violations of the cooperative agreement. Regarding Finding 3, BLS questions the need for and authority to implement additional elements of OMB SPD No. 4 beyond those already being implemented in the FY 2013 cooperative agreement.

We would like to thank you and the audit team for its work and commitment to helping to further us in our mission.

Appendix E

Acknowledgements

Key contributors to this report were Tracy Michael Katz, Stephen Sovich, and Brian Devaney.

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