Office of Inspector General

U.S. Department of Labor's Top Management and Performance Challenges

November 2023

As required by the Reports Consolidation Act of 2000, the Office of Inspector General (OIG) has identified the most serious management and performance challenges facing the U.S. Department of Labor (Department or DOL).

These challenges are included in DOL's "Agency Financial Report" for FY 2023.

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

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

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CHALLENGE:

Reducing Unemployment Insurance Improper Payments

BACKGROUND

The unemployment insurance (UI) program is a joint federal-state program with each state[1] administering a separate UI program under its own laws while following uniform guidelines established by federal law. The U.S. Department of Labor's (Department or DOL) Employment and Training Administration (ETA) is responsible for providing UI program direction and oversight. The UI program provides benefits to eligible workers who are unemployed through no fault of their own and meet other state eligibility requirements.

For over 20 years, the Office of Inspector General (OIG) has reported[2] on weaknesses in the Department's ability to measure, report, and reduce improper payments in the UI program. The UI program has experienced some of the highest improper payment rates across the federal government, with an estimated rate above 10 percent[3] for 16 of the last 19 years.[4] The long-standing challenge with UI improper payments can be further exacerbated in times of crisis, including natural disasters and economic downturns. Recent examples include hurricanes, the Great Recession, and the COVID-19 pandemic.[5]

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1 When referring to UI, this Top Management and Performance Challenges report uses "state" or "state workforce agency" to refer to the administrative body that administers the program within the state, district, or territory. For the 50 states, as well as the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the District of Columbia, that administrative body is a state workforce agency. There are, therefore, 53 state workforce agencies. The CARES Act also provided certain UI benefits to American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, and the Republic of Palau, provided they signed an agreement with the Department.

2 To learn more about the UI program and our oversight in this area, please visit our UI Oversight webpage at: https://www.oig.dol.gov/doloiguioversightwork.htm.

3 To fully comply with the Payment Integrity Information Act of 2019, agencies must report an improper payment rate of less than 10 percent for each program and activity for which an estimate was published.

4 UI improper payments data for FY 2004 through FY 2022 as reported to the Office of Management and Budget

5 For example, we identified over $100 million in potential improper payments related to UI program benefits in response to the devastating impact of Hurricanes Katrina and Rita in 2005. States also did not detect an estimated $6.5 billion in improper payments from the UI funding provided by the American Recovery and Reinvestment Act of 2009.

UI benefits are generally funded by state employer taxes with administrative costs funded by the federal government. However, during emergencies or disasters, enhanced UI benefits have generally been funded by the federal government. According to ETA, in response to the COVID-19 pandemic, more than $888 billion in total federal and state UI benefits were paid for benefit weeks during the UI pandemic period,[6] including an unprecedented more than $720 billion in federal UI funds. While rapid deployment of UI funds was critical to helping workers in need as the country shut down, it also led to increased improper payments, including fraud.[7] ETA's estimated improper payment rate, exclusive of the Pandemic Unemployment Assistance (PUA) program, increased from 18.71 percent in Fiscal Year (FY) 2021 to 21.52 percent in FY 2022. A significant portion of pandemic-related improper payments went to fraudsters. Based on audit and investigative work, the improper payment rate for pandemic-related UI programs was likely higher than 21.52 percent.

WHAT IS AN IMPROPER PAYMENT?

A payment is improper if it should not have been made or was to the wrong recipient.

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Examples include overpayments and underpayments.

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An improper payment can be unintentional or intentional.

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Intentional improper payments are more commonly referred to as financial fraud.

The OIG continues to review and evaluate improper payment rates. For example, in August 2023, ETA published a report[8] that included a PUA improper payment rate of 35.9 percent. At the time of the publication of this Top Management and Performance Challenges report, the OIG has not audited the reported PUA improper payment rate. The OIG will assess that rate's compliance with the Payment Integrity Information Act of 2019 for FY 2023. That audit report will be available in Summer 2024.

6 With the exception of Pandemic Unemployment Assistance, for which claims could be backdated to January 27, 2020, we define the UI pandemic period as March 27, 2020, through September 6, 2021.

7 Fraud is a type of improper payment. The Office of Management and Budget explains that, at a high level, a payment is "improper" if made in an incorrect amount or to the wrong recipient. Improper payments can result in a money loss that was either unintentional (accidental) or intentional (fraud). For more information, see Office of Management and Budget, Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, Memorandum (March 5, 2021), last accessed September 27, 2022, available at: https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf.

8 ETA, "Pandemic Unemployment Assistance Improper Payment Rate Report" (August 21, 2023), last accessed October 13, 2023, available at: https://oui.doleta.gov/unemploy/improp_pay.asp#

CHALLENGE FOR THE DEPARTMENT

When prevention fails, timely and accurate detection and reporting—as well as recovery of all practicable funds—becomes essential.

The Department continues to face challenges in ensuring UI improper payments are reduced—first and foremost through prevention. The Department has not, however, taken sufficient action to prevent excessive improper payments, including fraud. When prevention fails, timely and accurate detection and reporting—as well as recovery of all practicable funds—becomes essential. If ETA does not take sufficient action to course correct, improper payments within the UI program will likely remain high. Essentially, not enough has been done to ensure UI benefits are being deployed expeditiously and efficiently—concurrent with the reduction of improper payments—during regular times and during times of crisis.

Improper payments have largely resulted from a combination of four primary causes. First, some claimants fail to demonstrate that they meet their states' requirements for searching for new jobs (work search).[9] Second, some claimants continue to claim UI benefits after returning to work or misreport earnings (benefit year earnings). Third, some employers, or their third-party administrators, fail to provide prompt and adequate information about why individuals left their employment (employee separation). Finally, some improper payments have been caused by fraud, such as those arising from schemes perpetrated during the pandemic.[10]

Prevention

One key challenge in preventing improper payments is ensuring UI benefits are paid to only those individuals eligible under program requirements. Accurate initial determinations of eligibility are critical to ensuring that benefits are granted only to those intended by the programs. Before the pandemic, even with historically low claim numbers, states struggled to determine eligibility accurately due to factors such as limited staff, outdated information technology (IT) systems, and complex program guidelines and regulations.

9 The Middle Class Tax Relief and Job Creation Act of 2012 requires that individuals receiving UI benefits must be able to work, available to work, and actively seeking work, as a condition of eligibility for regular compensation for any week. Accordingly, states generally require that unemployed workers demonstrate they were actively seeking work. Work search overpayments occur when states pay UI claimants who do not comply with a state's required work search activities.

10 ETA has included fraud as an element of the leading causes rather than as a separate cause. From July 2016 to March 2020, the other three causes resulted in over $9 billion in improper payments. Of this total, more than $3 billion was attributable to fraud. Since the pandemic started, fraud has significantly increased.

Then the pandemic worsened the challenge with its historic impact on the UI system. Following the start of the pandemic in the United States in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels. On March 14, 2020, the Department reported 282,000 initial unemployment claims. By early April 2020, initial claims rose to 10 times pre-pandemic levels, far higher than state systems were designed to handle.[11] Within 5 months, through August 15, 2020, the Department reported more than 57 million initial claims, the largest increase since the Department began tracking UI data in 1967. States were challenged by the volume of claims and also by the implementation of new UI programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

By early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels.

Our April 2020 advisory report[12] outlined areas of concern that the Department and states should consider as they implemented the CARES Act UI programs. Our identification of these areas represents years of work relating to DOL's UI program, including the response to past disasters. One of these areas was state preparedness, specifically the issues of staffing and system capabilities. Our audit work has confirmed these issues persisted into the pandemic.[13] For example, many states had not developed or implemented UI IT modernization plans that improved the timeliness or accuracy of UI benefits processing.[14] Ensuring states have these plans in place—and are actively pursuing implementation—would be a strong step toward improving the administration of benefits, particularly during a future crisis.

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11 COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf

12 CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), available at: https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf

13 COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf

14 COVID-19: Audit of State Workforce Agencies' Information Technology Systems Capability in Processing Unemployment Insurance Claims, Report No. 19-23-008-03-315 (September 19, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/19-23-008-03-315.pdf

In addition to the sheer volume of claims, states had to develop new systems to implement the new UI programs. For example, the expanded coverage from the PUA program, for a population of claimants who were traditionally ineligible to receive UI benefits,[15] presented significant challenges to states. The CARES Act initially allowed reliance solely on claimant self-certifications without documentation substantiating the individual's prior employment or self-employment. This initial reliance, during PUA's first 9 months, rendered the program particularly susceptible to improper payments, including fraud. Notably, in the first 6 months after the CARES Act passed, we found four states paid $1 out of every $5 in PUA benefits to likely fraudsters.[16] Subsequent to our work identifying the fraud risks, Congress took action under the Continued Assistance for Unemployed Workers Act of 2020 to require supporting documentation from claimants to improve states' abilities to ensure proper claimant eligibility and to mitigate fraud. However, a significant amount of UI benefits had already been paid to likely fraudsters.

As we reported, ETA and states made significant efforts under extreme circumstances. For example, after the CARES Act passed, ETA worked quickly to obtain signed state agreements and ensure pandemic-related UI funds were available. Despite this and other efforts, ETA's guidance and oversight were not timely enough to prevent historic improper payments of UI benefits, including fraud. ETA also allowed states to suspend a primary oversight tool for the first 3 months of the CARES Act UI programs. In April 2022, ETA stated that a swift rollout of a new government benefit program would be 30 to 48 months. The OIG acknowledges ETA's statement that states' ability to provide benefit payments within 1 to 2 months for a new, temporary UI program is a very impressive achievement given the extensive, complex requirements and activities that were necessary for implementation.

ETA stated a swift rollout of a new government benefit program would be 30 to 48 months. However, we remained concerned that states would be unlikely to have that long to rollout an emergency program.

However, we remain concerned that, given the nature of emergency situations, states would be unlikely to have a lengthy rollout period for emergency programs. ETA and states must include risk planning that would identify measures to facilitate the creation of new programs similar to the ones created in response to the pandemic.

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15 The new PUA program extended unemployment benefits to the self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who were unable to work as a direct result of COVID-19.

16 COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf

Detection

Our April 2020 advisory report also advised that identity thieves and organized criminal groups had found ways to exploit program weaknesses. Over the past 3 years, our reporting has identified continuing program weaknesses in internal controls, reporting, and program monitoring. Because some states were not prepared to process the volume of claims under new UI programs, some controls were not initially implemented. Inspector General Larry D. Turner, during his March 2022 congressional testimony,[17] reported that the unprecedented infusion of federal funds into the UI program, combined with continuing program weaknesses and easily attainable stolen personally identifiable information, provided a high-value target for fraudsters to exploit.

For example, an individual could make a fraudulent claim with relatively low risk of being caught and, as time went on, one fraudster could have been issued several UI debit cards, with tens of thousands of dollars on each card. In fact, in an audit, we found 1 claim that was filed from a 3-bedroom house shared the same physical address as 90 other claims and used the same email address as 145 other claims.[18] In total, the likely fraudster(s) received more than $1.5 million in UI benefits. In the same audit, we found that, from March 28, 2020, to September 30, 2020, in four states, potentially fraudulent claims were paid more than 60 percent of the time.

Our investigators have identified crimes related to UI fraud both throughout the United States and by foreign bad actors, and our investigative work has resulted in the conviction of over 950 criminals, including:

- two members of the Robles Park criminal organization—whose members and associates engaged in acts involving murder, assault, narcotics trafficking, identity theft, and other crimes;
- a massive and sophisticated criminal enterprise targeting the State of Maryland's UI system for more than $500 million;
- former state or federal employees who targeted more than $5 million;
- individuals using sham companies to obtain $1.1 million;
- federal and state inmates who targeted more than $2 million;
- a Nigerian national sentenced for both UI and elder fraud schemes; and even
- an individual who was sentenced to 77 months in prison and ordered to pay more than $700,000 in restitution after bragging online about his efforts to defraud a state UI agency.

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17 "Pandemic Response and Accountability: Reducing Fraud and Expanding Access to COVID-19 Relief through Effective Oversight," Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; Senate Committee on Homeland Security and Governmental Affairs (March 17, 2022), available at: https://www.oig.dol.gov/public/testimony/20220317.pdf

18 COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf

We have published four alert memoranda[19] on specific high-risk areas. As of September 2023, our investigators, auditors, and data scientists have collaboratively identified $46.9 billion in potentially fraudulent UI benefits paid from March 2020 to April 2022 in the now six specific high-risk areas, to individuals with Social Security numbers:

1. filed in multiple states,
2. of deceased persons,
3. of federal prisoners,
4. used to file UI claims with suspicious email accounts,
5. (NEW) belonging to individuals under 14 years of age, and
6. (NEW) belonging to individuals 100 years of age or older (see Figure 1).

FIGURE 1: SIX HIGH-RISK AREAS FOR POTENTIAL UI FRAUD IDENTIFIED BY THE OIG

Source: OIG data analysis of state UI claims data

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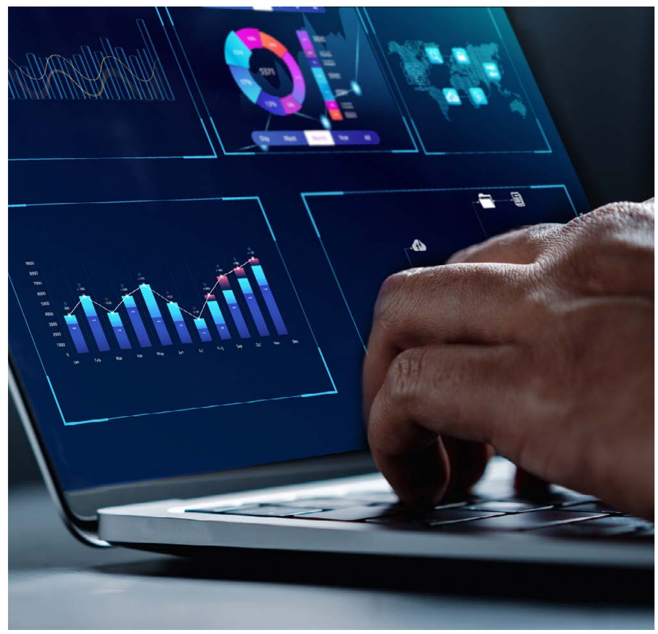
19 (1) Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas, Report No. 19-21-002-03-315 (February 22, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf;
(2) Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf;
(3) Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to $45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf; and
(4) Alert Memorandum: ETA Needs to Incorporate Data Analytics Capability to Improve Oversight of the Unemployment Insurance Program, Report No. 19-23-012-03-315 (September 25, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/19-23-012-03-315.pdf

The potential fraud we identified through the use of data analytics techniques shows how effective and beneficial this capability can be in providing program oversight and identifying trends to assist in combatting fraud. However, ETA currently does not have direct access to state UI claims data nor the capability to analyze said data.

In support of the OIG's oversight activities, the OIG also needs access to UI claimant data and wage records from state workforce agencies to verify claimants' eligibility for UI benefits, including both initial eligibility (and amounts) and continuing eligibility. Timely access to these records will facilitate the OIG's efforts to identify claimants who are part of large-scale fraud schemes or are receiving benefits improperly due to systemic program weaknesses.

Establishing a data analytics capability with a dedicated team of data scientists at the federal level would allow ETA to monitor and analyze UI claims data on an ongoing basis. ETA would then be able to identify high-risk areas across multiple states and quickly flag potentially fraudulent claims that can be referred to the OIG and states for further action, which could help prevent future losses to fraudsters. Likewise, incorporating a data analytics capability into its program oversight function would improve ETA's ability to detect trends and emerging issues that could negatively impact the timeliness or equity of UI payments—before the issues grow into critical problems.



During the pandemic, identity theft emerged as a significant problem. Specifically, the UI programs were vulnerable to imposter claims, such as those being filed with stolen or synthetic[20] identities. ETA reported that, because synthetic identities combine multiple data points, it is more difficult to detect and prevent this type of fraud. To do so, the use of cross-matches with additional data sources to support detection is needed. While states are employing a wide array of strategies to verify the identities of UI claimants through cross-matches, state-developed tools, and private vendor services, it is unclear how sufficient or effective these measures are in combating fraud within the UI program.

20 A synthetic identity is a combination of fabricated personally identifying data points where the implied identity is not associated with a real person. For example, a synthetic identity could include a potentially valid Social Security number with other accompanying false personally identifiable information, such as date of birth.

Reporting

In May 2021, we reported[21] that, for the period of March 27, 2020, to September 30, 2020, 42 percent of states did not complete the required quarterly reporting for overpayments in “ETA 227 Overpayment Detection and Recovery Activity” and “ETA 902P Pandemic Unemployment Assistance Activities” reports (ETA 227 and ETA 902P reports), and 60 percent did not do so for fraudulent payments. In addition, during our audit of the Department’s financial statements for FY 2021, the issue of states’ nonreporting of overpayment activity in ETA 227 reports continued to exist. This was one of the two issues that ultimately resulted in the Department receiving its first qualified opinion on its consolidated financial statements in 25 years.[22] Specifically, the $4.4 billion reported in UI benefit overpayments could not be relied upon because certain states did not report UI overpayment activity. Furthermore, the Department’s financial statements for FY 2022[23] also received a qualified opinion due to unreliable estimates for overpayment receivables and UI obligations.

In August 2022, we issued an alert memorandum[24] about deficient reporting by states regarding the CARES Act UI programs. Our examination of required reports identified that some states did not submit reports to ETA or reported zero activity. For instance, seven states reported zero overpayments for the PUA program. This lack of accurate state performance information hinders Congress and ETA’s ability to: assess state activities, mitigate overpayments risks, identify program weaknesses, and improve future temporary programs.

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21 COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf

22 The Department received a qualified opinion on its FY 2021 financial statement audit. See FY 2021 Independent Auditor’s Report on the DOL Financial Statements, Report No. 22-22-003-13-001 (November 19, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2022/22-22-003-13-001.pdf.

23 FY 2022 Independent Auditor’s Report on the DOL Financial Statements, Report No. 22-23-002-13-001 (December 13, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2023/22-23-002-13-001.pdf

24 Alert Memorandum: Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs, Report No. 19-22-004-03-315 (August 2, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-004-03-315.pdf

Our recommendations have specifically included the need for the Department to estimate improper payments within federally funded temporary emergency programs. In August 2020, we recommended[25] ETA estimate the improper payment rate for pandemic-related UI programs. In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent that ETA applied to two of the three key pandemic-related UI programs, Federal Pandemic Unemployment Compensation and Pandemic Emergency Unemployment Compensation. In December 2022, ETA reported an improper payment rate estimate of 21.52 percent, which it also applied to Federal Pandemic Unemployment Compensation and Pandemic Emergency Unemployment Compensation.[26] Based on audit and investigative work, the improper payment rate for pandemic-related UI programs was likely higher than 21.52 percent.

In congressional testimony in February 2023,[27] we reported updated information, including reporting on actual expenditures[28] rather than on estimated funding. With those updates, more than $888 billion in total federal and state UI benefits were paid for benefit weeks during the UI pandemic period.

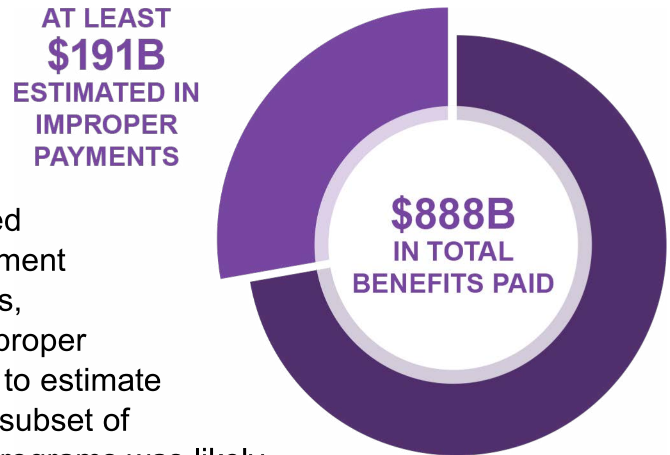
25 COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation under the CARES Act, Report No. 19-20-008-03-315 (August 7, 2020), available at: https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf

26 In FY 2021, the Department found the PUA, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation programs to be susceptible to significant improper payments. The Payment Integrity Information Act of 2019 and its implementing guidance in Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, requires the Department to produce an improper payment and unknown payment rate in the fiscal year following the fiscal year in which the risk assessment determination was made. ETA's reported improper payment rate estimate of 21.52 percent does not include the PUA program.

27 "The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud," Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; House Committee on Ways and Means (February 8, 2023), available at: https://www.oig.dol.gov/public/testimony/02082023.pdf

28 According to ETA, the data provided reflects CARES Act UI program activity through January 23, 2023, with the exception of the Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week program, which was through December 31, 2022; data provided regarding the regular UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Servicemembers programs reflect the monthly totals from April 2020 through September 2021.

Applying the estimated 21.52 percent improper payment rate to the approximate $888 billion in pandemic UI expenditures, at least $191 billion in pandemic UI payments could have been improper payments, with a significant portion attributable to fraud. To recover the improperly paid benefits and mitigate the impact of these losses, collaboration between ETA and the states is vital. These issues have persisted after the pandemic; the OIG is seeing, and ETA and states are still reporting, elevated levels of improper payments.



Further, ETA did not publish an improper payment rate estimate for PUA—the program identified as being particularly susceptible to improper payments including fraud[29]—until nearly 2 years after the program ended. In August 2023, the Department reported that the PUA program had a total improper payment rate of 35.9 percent.[30] According to ETA officials, the small-scale review used to calculate the improper payment rate estimate for PUA cannot be used to estimate the PUA fraud rate. The fraud rate—which is a subset of improper payments—for pandemic-related UI programs was likely higher than the fraud rate for regular UI programs. Notably, in the first 6 months after the CARES Act passed, we found 4 states paid $1 out of every $5 in PUA benefits to likely fraudsters. In 2023, the Government Accountability Office (GAO) estimated the pandemic-related fraud rate, including PUA, was 11 to 15 percent for the period April 2020 to May 2023, and estimated up to $135 billion was lost to fraud.[31]

Estimating the improper payment rate for all emergency UI programs is critical for the efficient operation of the program. ETA and the states, under their program operating responsibilities, must determine the improper payment rate, including the fraud rate, for pandemic UI programs. The potential loss of at least $191 billion of taxpayer money highlights the urgent need for systemic improvements.

29 "Waste, Fraud, and Abuse Go Viral: Inspectors General on Curing the Disease," Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; U.S. House of Representatives Committee on Oversight and Accountability, Subcommittee on Government Operations and the Federal Workforce (March 9, 2023), available at: https://www.oig.dol.gov/public/testimony/03092023.pdf

30 This breakdown includes an overpayment rate of 17 percent, an underpayment rate of 1.5 percent, and a 17.4 percent rate for benefits whose classification—whether valid, overpaid, or underpaid—could not be determined. This information was reported in ETA's report, "Pandemic Unemployment Assistance Improper Payment Rate Report" (August 21, 2023), last accessed October 13, 2023, available at: https://oui.doleta.gov/unemploy/improp_pay.asp#.

31 GAO, Unemployment Insurance: Estimated Amount of Fraud during Pandemic Likely Between $100 Billion and $135 Billion, GAO-23-106696 (September 2023), available at: https://www.gao.gov/assets/gao-23-106696.pdf

Recovery

ETA and individual states are facing a daunting task in recovering the estimated $191 billion of improper payments made through the UI programs. From April 1, 2020, to October 5, 2023, states have reported recovering approximately $7.2 billion in UI program funds.

In terms of fraudulent activities, states reported that only $1.3 billion of UI funds that ended up in the hands of criminals have been recovered so far. A critical timeline underpins this recovery effort; the statute of limitations pertaining to the majority of these UI cases will begin to expire in early 2025. Beyond this point, not only will the recovery of these UI funds become exceedingly difficult, but the ability to hold fraudsters accountable will also become increasingly unlikely. The importance of swift and effective action in these recovery efforts cannot be overstated.

The statute of limitations pertaining to the majority of these UI cases will begin to expire in early 2025.

In addition, we are concerned the ability of state workforce agencies to recover UI overpayments is negatively affected by the waiver authority granted by the CARES Act and blanket waivers processed under ETA's guidance. In Spring 2023, we started assessing the effects of waivers, including blanket waivers, on the recovery of UI overpayments, including fraud. While the Department has provided guidance stating recovery of fraudulent payments may not be waived, there is a risk that states—operating under weak program controls—may have waived or will waive fraudulent payments. As of October 2, 2023, states reported waiving recovery of more than $4.8 billion in overpayments for the three key CARES Act programs: PUA, Federal Pandemic Unemployment Compensation, and Pandemic Emergency Unemployment Compensation.

DEPARTMENT'S PROGRESS

The Department has emphasized the progress it has made in addressing challenges with the UI program. According to DOL, one of the challenges associated with the pandemic-related UI programs was that the programs did not include an adequate preparation period. ETA officials stated a swift rollout of a new government benefit program, including policy formulation, product development, and operational procedures, typically requires a timeframe of 30 to 48 months. Unfortunately, the challenges associated with the pandemic-related UI programs had to be resolved in real-time while states grappled with an extraordinary tenfold increase in claims volume. The Department's statements reinforce the OIG's position that the Department must be prepared before disasters occur.

According to DOL, since the passage of the CARES Act, ETA and states have instituted efforts to focus on program integrity when implementing the pandemic-related UI programs. These efforts include measures like secure sign-in services, in-person identity verification, and a new identity fraud reporting website being introduced to mitigate fraud. Additionally, ETA made available up to $765 million in fraud prevention grants, and expert Tiger Teams provided states with assessments and improvement recommendations for UI processes. ETA also facilitated the secure availability of incarceration data to cross-reference UI claims against prisoner information.

Further, ETA reported it continued to provide oversight and technical assistance through the State Quality Service Plans, the Integrity Action Plan, the UI Integrity Center, and through information provided by the OIG. ETA also stated it worked with the Office of the Chief Financial Officer to develop a UI fraud risk profile in line with GAO's Fraud Risk Framework. In addition, in its FY 2024 Congressional Budget Justification, the Department proposed provisions designed to provide new and expanded tools and controls for states to help ensure workers are properly paid and to prevent improper payments, including fraud, in the UI system.

The Department issued a policy granting the OIG's access to UI data for benefit weeks covered by CARES Act programs and related extensions. ETA also announced its intent to amend its regulations to facilitate the OIG's ongoing access by February 2025 and, in July 2023, requested public comment on potential revisions that would require states to disclose unemployment compensation to the OIG for oversight including audits. ETA has also required sharing of state UI data as a condition of the fraud prevention grants to provide such access through 2025 and recently issued guidance supporting additional grants that would provide access for potentially the next 2 to 5 years. According to ETA, 52 of 53 state workforce agencies received grants. The Inspector General is authorized to have timely access without constraints to this data under the Inspector General Act of 1978, as amended, and needs access to all UI program data.

On August 31, 2021, the Department established the Office of Unemployment Insurance Modernization to work with state agencies and federal partners to modernize and reform the UI system. According to the Department, the Office of Unemployment Insurance Modernization will provide oversight and management of the $1 billion[32] allotted to UI initiatives by the American Rescue Plan Act of 2021 to prevent and detect fraud, promote equitable access, ensure timely benefits payments, and reduce backlogs. To achieve this, the Office of Unemployment Insurance Modernization has allocated targeted grants to states and territories, offered improved guidance, directed assistance, and tested technology-driven solutions.

The Department also noted it has announced and provided grant opportunities to states, including funds for pilot states to engage community-based organizations to help workers learn about UI benefits and related services. These opportunities also support state agencies in delivering timely and accurate benefits to workers. The Department has launched the UI IT Modernization Project - Claimant Experience Pilot, partnering with states for product development, with outcomes published online. Moreover, over $200 million in IT modernization grants have been awarded to 19 states, aiming to foster the adoption of modular and evidence-driven strategies.

For perspective, $191 billion could have provided more than $3.5 billion to each state workforce agency toward ensuring preparedness for emergencies, including modernizing UI IT systems, enhancing staffing levels, and formulating robust contingency plans.

WHAT REMAINS TO BE DONE

It is crucial that the Department take proactive steps to improve improper payment prevention and detection. These improvements are essential in ordinary circumstances, and their importance escalates during emergencies. For perspective, $191 billion could have provided more than $3.5 billion to each state workforce agency toward ensuring preparedness for emergencies, including modernizing UI IT systems, enhancing staffing levels, and formulating robust contingency plans.

For the UI program, the Department needs to:

- Obtain direct access to state UI data and wage records and develop a data analytics capability at the federal level to regularly monitor the data to proactively detect and prevent improper payments, including fraud, and to identify trends and emerging issues that could negatively impact the UI program.

32 The American Rescue Plan Act of 2021 initially allotted $2 billion to UI initiatives; however, $1 billion was rescinded by the Fiscal Responsibility Act of 2023.

- Amend 20 C.F.R. § 603.5 and § 603.6(a) to ensure and reinforce that state UI information must be provided to the OIG for all Inspector General engagements authorized under the Inspector General Act of 1978, as amended, including audits, evaluations, and investigations. This needs to be done by the end of 2025, when Integrity Grants expire and the OIG's direct access to state UI information would again be impeded.
- Continue its ongoing work with states to identify and implement strategies designed to reduce the UI improper payment rate, including sharing best practices identified among states. The Department must continually ensure these strategies address and remediate the most common types of fraud.
- Work with state workforce agencies to upgrade their technological capabilities to modernize the delivery of UI benefits and ensure their systems are sufficient to manage sudden spikes in claims' volume and protect federal benefits from improper payments, including fraud.
- Create a clear and concise plan to identify and estimate improper payments, including fraud, and methods to recover those federal funds, that will allow ETA to work toward recovering historic levels of improper payments while holding states accountable for billions of dollars of improper payments.
- Continue to work with states to modernize their UI systems and leverage technology and automated solutions to prevent and detect improper payments.
- Implement OIG recommendations on reporting, including by:
    - assisting states with claims, overpayment, and fraud reporting to create clear and accurate information, then using the overpayment and fraud reporting to prioritize and assist states with fraud detection and recovery;
    - developing policies and procedures to coordinate with state workforce agencies to obtain the necessary information needed to support related balances and assumptions and to perform benchmarking or other analyses to validate new assumptions or both; and
    - designing and implementing controls over ETA's respective estimates to ensure management's review of the estimates are performed at a sufficient level of detail; maintaining documentation of the reviews performed; and providing additional training to the reviewers of the estimates to reinforce established policies and procedures, as necessary.

CHALLENGE:

Protecting the Safety and Health of Workers

BACKGROUND

Federal law entitles U.S. workers to a safe and healthful workplace. Failure to keep workplaces free of known safety and health hazards can lead to injuries, illnesses, fatalities, and serious legal consequences. The Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977 are federal laws administered by, respectively, the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) to keep employees safe and healthy at work. OSHA is responsible for the safety and health of approximately 130 million workers employed at more than 8 million worksites while MSHA is responsible for the safety and health of approximately 300,000 miners who work at nearly 13,000 mines.

CHALLENGE FOR THE DEPARTMENT

OSHA and MSHA face significant challenges in completing their mandates to ensure the protection of American workers' safety and health, particularly in high-risk industries such as health care, meat packing, agriculture, construction, fishing, forestry, manufacturing, and underground and surface mining. We found OSHA had challenges verifying hazards were abated timely while MSHA had challenges with writing violations and verifying operators abated hazards timely. Additional worker safety challenges for the Department include completing inspections, employer reporting, reaching a sufficient number of worksites, standards on infectious diseases, workplace violence, and protecting workers from respirable crystalline silica.

We found OSHA had challenges verifying hazards were abated timely while MSHA had challenges with writing violations and verifying operators abated hazards timely.

OSHA faces difficulties in verifying hazard abatement at both general industry and construction worksites. As previously reported, the agency closed many construction worksite citations for safety violations, not because the employers corrected the hazards, but because the construction projects had ended.[33]

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33 OSHA Could Do More to Ensure Employers Correct Hazards Identified During Inspections, Report No. 02-17-201-10-105 (March 31, 2017), available at: https://www.oig.dol.gov/public/reports/oa/2017/02-17-201-10-105.pdf

As a result, OSHA received no assurances employers would improve safety and health practices at future construction worksites. For MSHA, we found thousands of violations did not comply with the Federal Mine Safety and Health Act of 1977 and MSHA handbook requirements.[34] Additionally, we found inspectors terminated nearly a third of violations after the abatement due date.

We also found both OSHA and MSHA have challenges performing inspections. The underreporting of injuries and reporting noncompliance by employers limits OSHA's ability to focus inspection and compliance efforts where they are most needed.[35] Additionally, GAO's written testimony released on May 25, 2022,[36] found OSHA had limited procedures for encouraging compliance with the injury and illness reporting requirement and for penalizing employers for noncompliance.

MSHA has not completed mandatory inspections mostly due to the elimination of inspection requirements when a mine was initially inaccessible by an inspector.[37] This led to MSHA not inspecting 176 mines for at least 2—and, in some cases, 4—consecutive years. Additionally, MSHA is challenged with identifying when a mine needs a change in the mine's operating status or verifying its status, which factors into how many inspections MSHA conducts at the mine. Not maintaining an accurate mine status in its system has also led to other significant issues. For example, MSHA's system showed 6,070 underground coal mines that it had changed to "abandoned" status prior to FY 2018 but had not changed to "abandoned-sealed" status. This indicated the mine's underground openings still had not been sealed in accordance with the Federal Mine Safety and Health Act of 1977 and potentially presented a danger to the public.

MSHA has not completed mandatory inspections mostly due to the elimination of inspection requirements when a mine was initially inaccessible by an inspector.

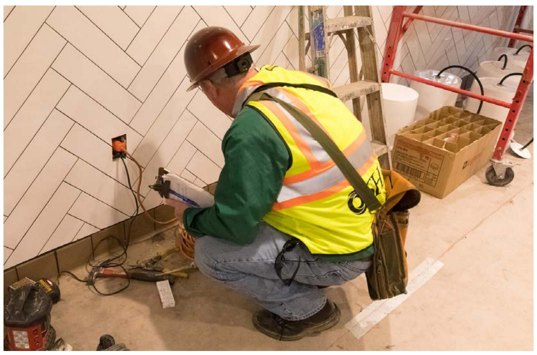
34 MSHA Can Improve How Violations Are Issued, Terminated, Modified, and Vacated, Report No. 05-21-002-06-001 (March 31, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/05-21-002-06-001.pdf

35 COVID-19: OSHA Needs to Do More to Address High Injury Rates of Warehouse Workers, Report No. 19-23-013-10-105 (September 27, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/19-23-013-10-105.pdf

36 "Workplace Safety and Health: Data and Enforcement Challenges Limit OSHA's Ability to Protect Workers during a Crisis," Hearing, Statement for the Record of Thomas M. Costa, Director, Education, Workforce, and Income Security; Subcommittee on Workforce Protections, Committee on Education and Labor, House of Representatives, GAO-22-105711 (May 25, 2022), available at: https://www.gao.gov/assets/gao-22-105711.pdf

37 COVID-19: MSHA Did Not Complete or Accurately Report Mandatory Inspections, Report No. 19-24-001-06-001 (October 17, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2024/19-24-001-06-001.pdf

Employer reporting also presents a challenge when ensuring worker safety. A recent OIG audit identified, on average, between 2016 and 2020,[38] 59 percent of establishments in all industries failed to submit their mandatory annual injury and illness reports to OSHA. Additionally, OSHA could not identify if an establishment met the criteria for mandatory reporting and, therefore, could neither proactively remind specific establishments that they must report nor effectively cite employers for non-compliance. Non-reporting continues to be a challenge for OSHA and results in an incomplete view of workplace injury and illness.



While OSHA has increased its number of inspectors—from 750 in 2021 to 931 as of March 31, 2023—it continues to be challenged with reaching the number of worksites for which it is responsible. Lack of available inspectors and time for an inspector to become fully trained can lead to less inspections, diminished enforcement of high-risk industries, and ultimately, greater risk of injuries or compromised health for workers.

In March 2022, we reported that OSHA did not attempt to collaborate with external federal agencies' enforcement and oversight personnel during the COVID-19 pandemic, which resulted in its failure to realize the potential benefits achieved through interagency collaboration to protect vulnerable workers.[39] In the event of a future global health crisis, it would help OSHA to be prepared with a whole-of-government approach by leveraging partnerships within the regulatory community.

OSHA continues to be hampered by the lack of a permanent standard on infectious diseases aimed at protecting workers in all high-risk industries. While OSHA did issue an emergency temporary standard during the COVID-19 pandemic that covered the health care industry only, in December 2021, OSHA substantially withdrew the emergency temporary standard, retaining only its logging and recordkeeping provisions.[40] Without a permanent standard on infectious diseases, OSHA will not be in a position to effectively protect the safety and health of workers operating in high-risk industries during future pandemics or endemics.

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38 At the time of our fieldwork, Calendar Year 2021 data for the "Summary of Work-Related Injuries and Illnesses" form was not available. This information was reported in COVID-19: OSHA Needs to Do More to Address High Injury Rates of Warehouse Workers, Report No. 19-23-013-10-105 (September 27, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/19-23-013-10-105.pdf.

39 COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies, Report No. 19-22-003-10-105 (March 31, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/19-22-003-10-105.pdf

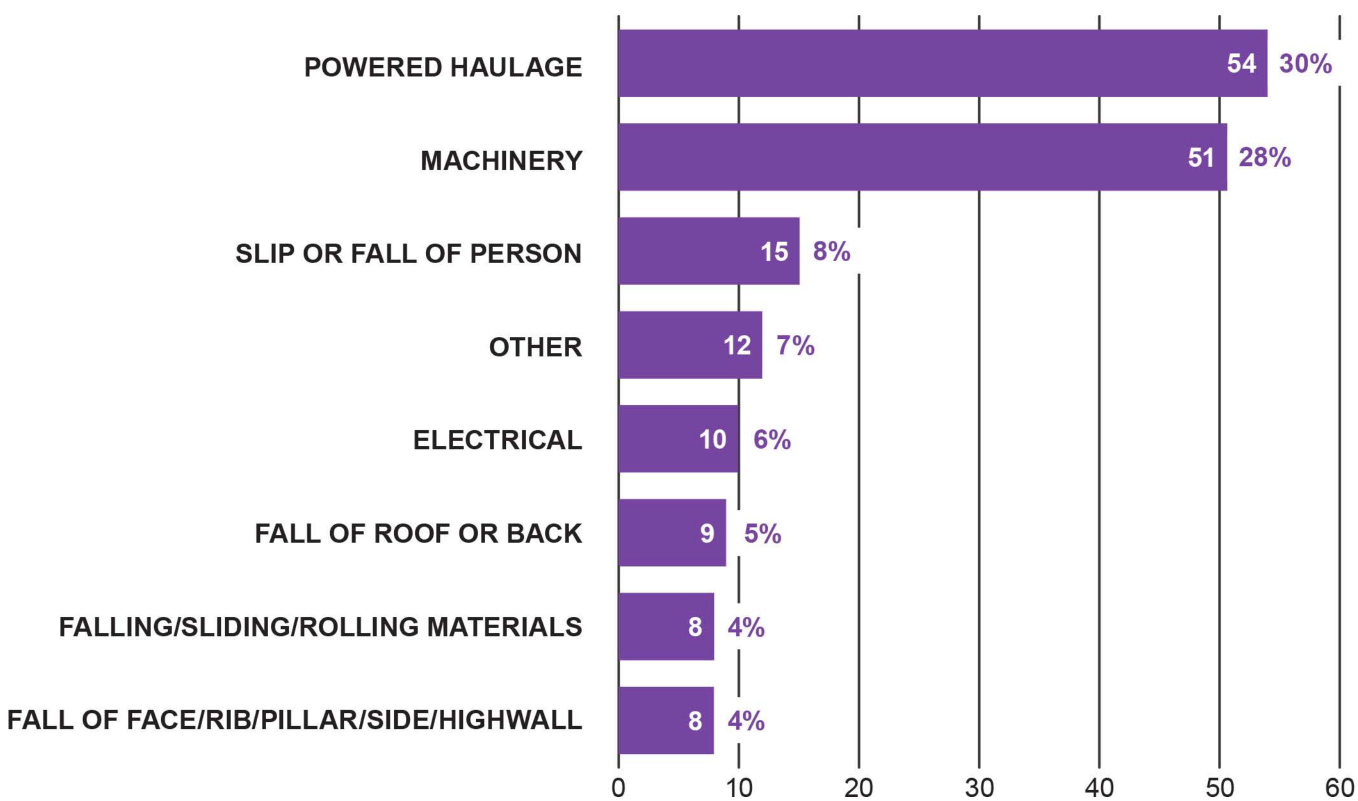
40 For more details, OSHA's webpage on "Statement on the Status of the OSHA COVID-19 Healthcare ETS" (December 27, 2021), last accessed October 12, 2022, is available at: https://www.osha.gov/coronavirus/ETS.

OSHA also needs to address worksite violence, a major problem shown to be the fourth-leading cause of death on the job and the fifth-leading cause of nonfatal injury resulting in days away from work in private industry. In 2021, nearly 1 in every 7 work-related deaths were attributed to worksite violence for a total of 761—an increase from 705 in 2020—which exceeded the total number of reported fatalities resulting from exposure to harmful substances or environments, or fires and explosions.

In addition, while MSHA has issued its proposed rule on respirable crystalline silica, which is found in coal mine dust and various construction materials, the final rule has yet to be published. Therefore, miners are still susceptible to higher levels of exposure, which can lead to increased chances of developing not only cancer and black lung disease but also silicosis, a deadly and incurable disease, as well as many other chronic conditions.

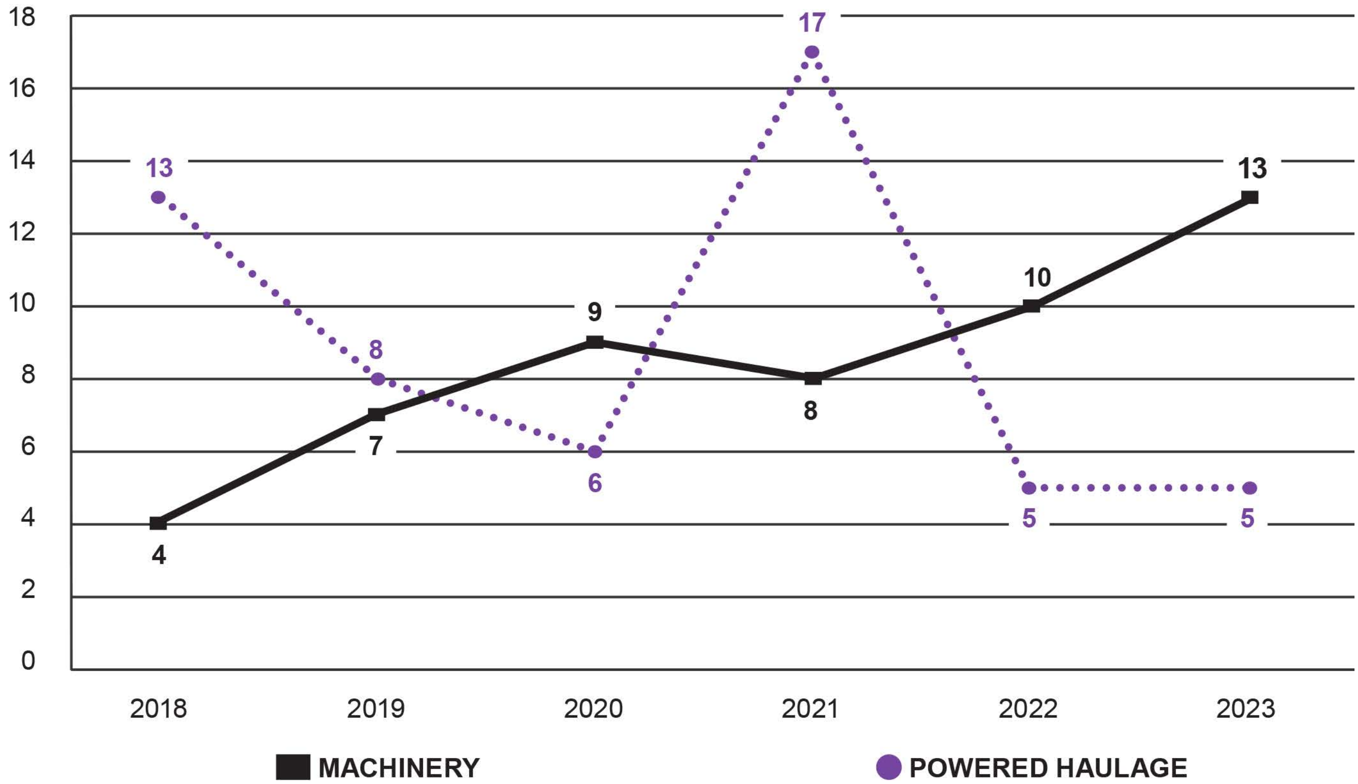
Finally, for MSHA, reducing the number of powered haulage and machinery accidents needs to be a top priority as they are the leading causes of mine fatalities (see Figure 2 and Figure 3). Together, they accounted for half of all mine fatalities in 2022 and that percentage has already increased as of September 2023.

FIGURE 2: NUMBER AND PERCENTAGE OF TOP 8 CLASSES OF MINING FATALITIES, CALENDAR YEARS 2018–2023



Source: MSHA's Accident Injuries public dataset, as of September 8, 2023

FIGURE 3: COMPARISON OF POWERED HAULAGE AND MACHINERY ACCIDENTS BY CALENDAR YEAR



Source: MSHA's Accident Injuries public dataset, as of September 8, 2023

DEPARTMENT'S PROGRESS

OSHA finalized a new injury and illness reporting rule that will go into effect January 1, 2024. The rule revises the injury and illness reporting requirements for employers by adding a new category of workplaces—establishments with 100 or more employees in industries designated as very high-risk. Specifically, the rule not only requires continued annual submission of the "Summary of Work-Related Injuries and Illnesses" form, which lacked details into those injuries and illnesses, but also requires annual submission of the "Log of Work-Related Injuries and Illnesses" form as well as the "Injury and Illness Incident Report" form.

On July 13, 2023, MSHA published its proposed rule for lowering miners' exposure to respirable crystalline silica and improving respiratory protection. Specifically, this rule proposes to set permissible exposure limits of respirable crystalline silica in addition to other requirements designed to protect miner health, such as exposure sampling, corrective actions to be taken when miner exposure exceeds the permissible exposure limit, and medical surveillance for metal and nonmetal miners.

MSHA continues its initiative to lower powered haulage accidents through guidance on preventing accidents and meeting with mine personnel to emphasize best safety practices and training. On September 8, 2023, the Office of Management and Budget received MSHA's final rule submission requiring mines to have written safety programs for surface mobile and powered haulage equipment.

WHAT REMAINS TO BE DONE

To protect the safety and health of workers, OSHA needs to:

- Create a permanent standard aimed at protecting workers in all high-risk industries from infectious diseases.
- Complete its initiatives to improve employer reporting of severe injuries and illnesses.
- Enhance staff training on hazard abatement verification, especially of smaller and transient construction employers.
- Explore mechanisms to enhance interagency collaboration, such as memoranda of understanding or other agreements, to take advantage of inspections being conducted by OSHA's counterparts in the federal government.

To improve the safety and health of miners, MSHA needs to:

- Improve the internal control system for the mandatory inspections program.
- Provide additional training to inspectors and improve internal controls related to its violation process.
- Add machinery accidents to the initiative efforts to lower powered haulage accidents.
- Publish final rule lowering silica exposure limit for miners and increasing silica sampling and enforcement at mines.

CHALLENGE:

Helping Adults and Youth Succeed in the Labor Market

BACKGROUND

ETA manages programs that provide U.S. workers with job training services to enhance their employment opportunities primarily through state and local workforce development systems. In FY 2023, ETA received $4.1 billion to operate a system of education, skill-based training, and employment services for U.S. workers, including low-income and dislocated adults as well as at-risk and out-of-school youth. ETA also received more than $1.7 billion for its Job Corps program, which provides education, training, and support services to disadvantaged, at-risk youth, ages 16 through 27, at more than 100 Job Corps centers. In addition to room and board, Job Corps offers specific training to help students complete their high school education, acquire career technical skills, and obtain employment.

CHALLENGE FOR THE DEPARTMENT

The Department is challenged to ensure its job training programs provide participants with the education, skill-based training, and employment services they need to succeed in the labor market. This includes: (1) effectively managing its workforce development grants, (2) ensuring its training investments align with employers' needs, and (3) ensuring Job Corps funding is used efficiently to help youth succeed in the labor market.

In March 2022, we issued an advisory report that highlighted three areas of concern where our body of work over the past decade identified weaknesses in DOL's management of its workforce development grants: (1) awarding grants, (2) reviewing grant recipients' use of funds, and (3) measuring grant recipients' performance.[41] Although the Department has addressed many of the related recommendations from our prior reports, the Department needs to ensure these issues do not reoccur. In our September 2021 report,[42] we found ETA's American Apprenticeship Initiative grant program was unlikely to achieve at least one of its major goals because of the way it was designed and executed. Insufficiently designed grant goals and metrics make it difficult for ETA to determine if the goals and agency's expected outcomes are being achieved.

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41 ETA's Management of Workforce Development Grants: Key Concerns, Report No. 09-22-001-03-001 (March 31, 2022), available at: https://www.oig.dol.gov/public/reports/oa/2022/09-22-001-03-001.pdf

42 ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program, Report No. 05-21-004-03-375 (September 30, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/05-21-004-03-375.pdf

Most recently, we reported in September 2023[43] that ETA needs to improve its oversight of grant recipients and sub-recipients[44] in the State of New Jersey to ensure that grant funds serve their intended purposes. The State of New Jersey received statutory[45] and discretionary grant funds to provide training and supportive services to eligible job seekers, but ETA did not ensure these funds were consistently used for the grants' intended purposes. Specifically, we found ETA did not ensure grant recipients effectively: (1) used over $100 million to serve the intended population; (2) enrolled eligible individuals, costing $96,580 in training services; and (3) complied with federal requirements when paying $168,460 for services. In addition, statutory grant sub-recipients did not have a system in place to account for $6.9 million in grant funding, including how it was spent.

Specifically, we found ETA did not ensure grant recipients effectively: (1) used over $100 million to serve the intended population; (2) enrolled eligible individuals, costing $96,580 in training services; and (3) complied with federal requirements when paying $168,460 for services.

ETA is also challenged to ensure its training investments align with employers' needs. Our audit work from September 2020[46] found that, although ETA had data to determine whether or not participants were employed after exiting grant-funded training programs, it lacked more specific data to measure the impact of credentials on participants' professional outcomes, such as job titles and the necessity of credentials for the jobs in question. Similarly, in a 2018 audit[47] that followed up on the employment status of a sample of Job Corps students 5 years after they left the program, we found that ETA was unable to demonstrate the extent to which its training programs helped those participants obtain meaningful jobs appropriate to their training.

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43 COVID-19: The Employment and Training Administration Needs to Improve Oversight of Grants Awarded in New Jersey, Report No. 19-23-016-03-391 (September 28, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/19-23-016-03-391.pdf

44 A sub-recipient is a non-federal entity that receives a sub-award from a pass-through entity to carry out part of a federal program. It does not include an individual who is a beneficiary of the program.

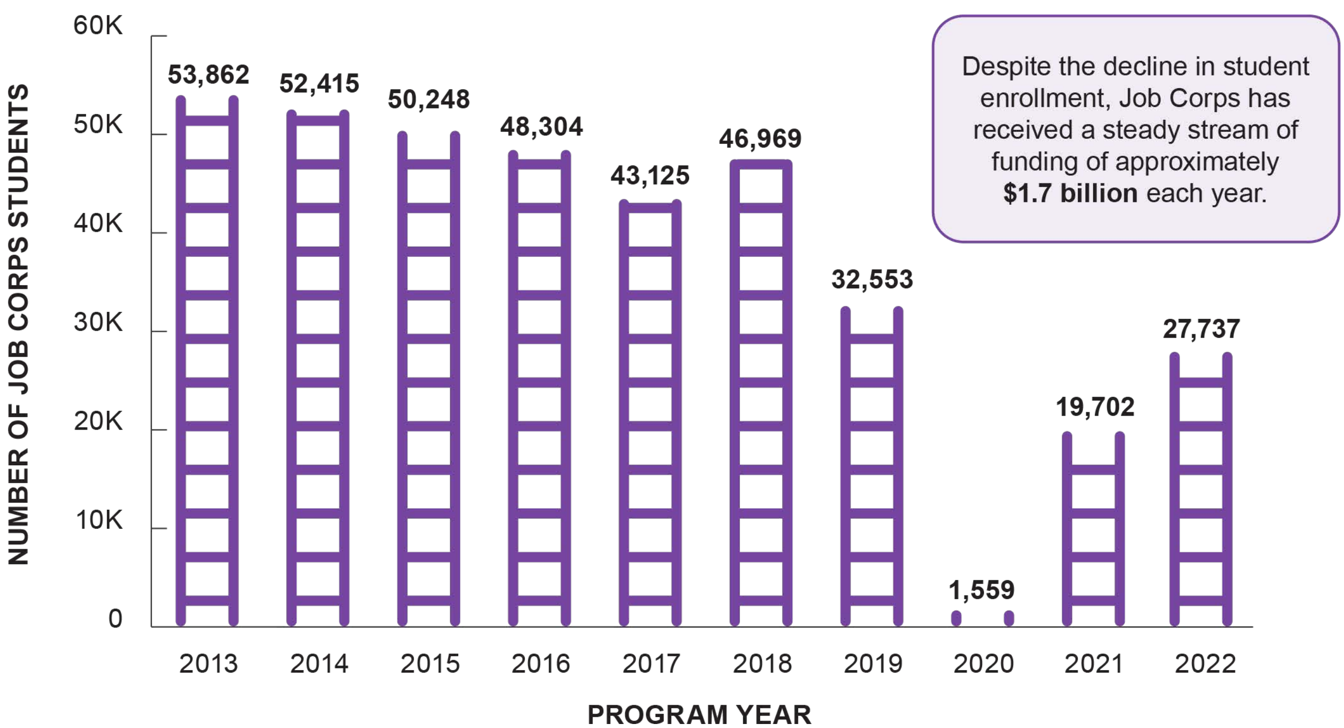
45 Statutory grants are noncompetitive grants required by law to be given to the state or outlying area based on statistical criteria. Discretionary grants are awarded based on competitive selection and eligibility.

46 ETA Could Not Demonstrate That Credentials Improved WIOA Participants' Employment Outcomes, Report No. 03-20-002-03-391 (September 30, 2020), available at: https://www.oig.dol.gov/public/reports/oa/2020/03-20-002-03-391.pdf

47 Job Corps Could Not Demonstrate Beneficial Job Training Outcomes, Report No. 04-18-001-03-370 (March 30, 2018), available at: https://www.oig.dol.gov/public/reports/oa/2018/04-18-001-03-370.pdf

Another challenge for the Job Corps program is ensuring funds are used efficiently to help youth succeed in the labor market—particularly because enrollment has continued to decline while funding remains relatively the same. Prior to the pandemic, enrollment declined from a high of 53,862 in Program Year (PY)[48] 2013 to 46,969 in PY 2018. During the pandemic, enrollment dropped to as low as 1,559 during PY 2020 due to suspending in-person instruction and new enrollments. In April 2021, Job Corps began to transition back to in-person instruction and started enrolling students again. However, student enrollment was still significantly below pre-pandemic levels in PY 2022. Despite the decline in enrollment, Job Corps has requested and received a constant level of similar funding of approximately $1.7 billion each year (see Figure 4). The OIG plans to examine Job Corps funding, specifically center operations contracts, and how it impacts the program and students in future work.

FIGURE 4: JOB CORPS STUDENT ENROLLMENT FROM PY 2013 TO PY 2022

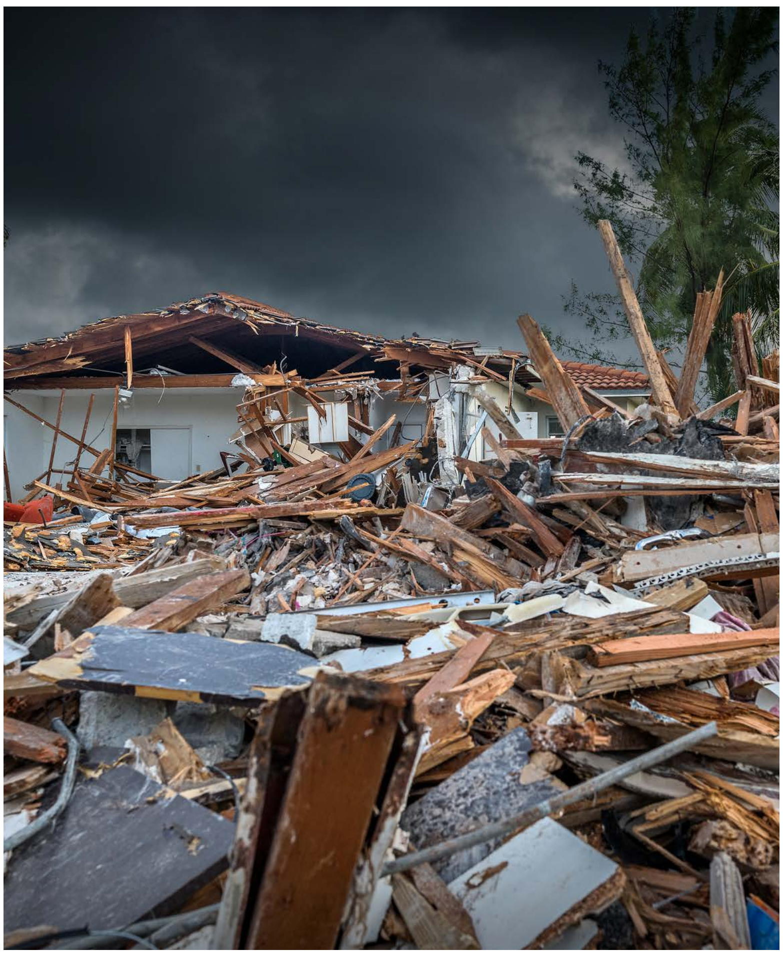


Source: Data provided by ETA

48 Job Corps is operated on a program year basis, which runs from July 1 of a given year to June 30 of the following year. For example, PY 2022 ran from July 1, 2022, through June 30, 2023.

DEPARTMENT'S PROGRESS

With regard to credentials, ETA officials stated they have continued to provide resources through CareerOneStop.org to better inform job seekers, businesses, and career counselors about: which credentials are available; the quality and labor market value of those credentials; and the licensing, education, and training requirements for given credentials and occupations. ETA also stated it has continued to emphasize the importance of credential attainment in its grant competitions. It has provided technical assistance to states on credentials, including information to further define and accurately report credentials, and convened a group of several state teams to develop useful strategies and tools to assess appropriate credentials.



ETA has also taken actions to improve grant oversight of its Disaster National Dislocated Worker Program. A prior audit[49] found ETA needed to improve grant recipient oversight to ensure timely community restoration, expedited disaster relief assistance, and efficient use of grant funds for maximum employment outcomes. In June 2022, ETA issued Training and Employment Guidance Letter 16-21,[50] which emphasizes the importance of quickly beginning services to support post-disaster employment and economic recovery. It clarifies self-attestation as an acceptable use of eligibility determination and the expectation for subsequent efforts at obtaining appropriate documentation. The guidance also provides additional information on allowable cleanup and recovery activities.

49 ETA Needs to Improve Its Disaster National Dislocated Worker Program, Report No. 02-21-002-03-391 (January 29, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/02-21-002-03-391.pdf

50 ETA, Training and Employment Guidance Letter 16-21, Updated National Dislocated Worker Grant Program Guidance (June 16, 2022), last accessed October 5, 2023, available at: https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2021/TEGL_16-21.pdf

WHAT REMAINS TO BE DONE

The Department needs to continue to:

- Manage more effectively its workforce development grants by having sufficient controls to ensure proposals submitted by grant applicants meet all solicitation requirements, grant recipients use grant funding as intended, and ETA properly measures grant recipients' performance, especially in relation to grant program objectives.
- Ensure it has appropriate data to allow the Department to make evidence-based and data-driven decisions about job training programs.
- Better identify and account for risks associated with grant fund use and confirm grant recipients can account for and report on federal awards.
- Develop programs supporting investments in training and education that lead to improved job skills and employment.
- Bolster Job Corps student enrollment while reassessing the program's budgetary needs as student enrollment remains significantly below capacity.

CHALLENGE:

Maintaining the Integrity of Foreign Labor Certification Programs

BACKGROUND

Foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. These programs are designed to assure that the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

The programs involve a number of government agencies within the Department, as well as the state workforce agencies, the U.S. Citizenship and Immigration Services, and the U.S. Department of State. The Immigration and Nationality Act and related laws assign specific responsibilities to the U.S. Secretary of Labor for employment-based immigration and guest worker programs.

The Department's responsibilities include certifying whether able, willing, and qualified U.S. workers are available for jobs and whether there would be any adverse impacts on similarly employed U.S. workers if labor certifications allowing admission of foreign workers were granted. To carry out these responsibilities, the Secretary has delegated to ETA's Office of Foreign Labor Certification the processing of prevailing wage[51] determinations and reviewing the permanent labor certification program (PERM), H-1B, H-2A, and H-2B employer applications.

51 The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. For more details, DOL's webpage on "Prevailing Wage Information and Resources" is available at: https://www.dol.gov/agencies/eta/foreign-labor/wages.

In addition, the Department's Wage and Hour Division conducts civil investigations of employers issued Foreign Labor Certifications (FLC) to enforce certain worker protections that involve wages, working conditions, and similarly employed U.S. workers not being adversely affected in terms of working conditions and other employment benefits as a direct result of foreign workers being hired.

CHALLENGE FOR THE DEPARTMENT

The Department's primary challenge in ensuring the integrity of FLC programs is approving applications for all four FLC programs based on employers' attestations. Such attestations are the main criteria; meaning, employers agree to the conditions of employment without providing supporting documentation to validate their agreements. For example, a farmer may apply and state that, due to a lack of appropriate skilled local labor, the farm needs 50 foreign laborers for the upcoming season. The farmer attests that: the farm needs all those workers, will pay the proper wage, and will provide proper working conditions.

The Department is reliant on an employer's attestation that a given application meets its requirements for impacts on U.S. workers.

The Department is reliant on an employer's attestation that a given application meets its requirements for impacts on U.S. workers, including whether there might actually be local labor available or whether the hiring of a foreign worker might otherwise adversely affect wages and working conditions of similarly employed U.S. workers. In addition, DOL must balance a thorough review of FLC visa applications with the need to timely process these applications to meet workforce demands. For example, with the H-2B program, which is used to hire foreign workers for temporary non-agricultural jobs, application processing delays tend to occur in advance of the peak spring and summer hiring seasons, typically December and January, when application levels and employer workforce demands spike because of the upcoming spring and summer seasons.

OIG investigations continue to reveal FLC program integrity challenges. Over the last decade, the OIG, along with other federal partners, have conducted more than 160 criminal investigations related to fraud in FLC programs. These investigations have shown FLC programs to be susceptible to significant fraud and abuse by perpetrators, including certain immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. For example, in one recent OIG investigation, an employer was sentenced to 18 months in prison and ordered to pay more than $1.1 million in restitution for fraudulently placing H-2B workers in jobs not approved by DOL and for exploiting workers by paying them significantly less than the wages required under the H-2B program.

Significantly, OIG investigations have also uncovered illegal activities of employers misusing FLC programs to engage in human trafficking—with victims being exploited for employers' economic gain. For example, an OIG criminal investigation found that certain defendants, affiliated with a transnational criminal organization allegedly responsible for sponsoring approximately 71,000 H-2A workers between 2015 and 2021, exploited H-2A workers. Certain members of this criminal organization were alleged to have exploited these H-2A workers by: demanding they pay unlawful fees; holding their immigration documents hostage; requiring them to perform physically demanding work for little or no pay; requiring them to live in crowded, unsanitary, and degrading living conditions; and threatening them with deportation and violence.

DOL continues to have limited authority over the H-1B and PERM programs, which challenges the goal of protecting the welfare of the nation's workforce.

Also, each of the four FLC programs have unique rules and some resulting specific integrity challenges. In 2003, the OIG issued a white paper[52] outlining vulnerabilities in the PERM, H-1B, H-2A, and H-2B visa programs. In 2020, we issued a similar report[53] that found rulemaking since 2003 had revamped the PERM, H-2A, and H-2B visa programs and addressed some of the vulnerabilities cited in audits and investigations by the OIG and GAO. Those same rules created challenges regarding DOL's responsibilities, specifically, implementing employer attestation programs. Additionally, DOL continues to have limited authority over the H-1B and PERM programs, which challenges the goal of protecting the welfare of the nation's workforce.

The statute limits DOL's ability to deny H-1B applications and to investigate potential violations. Specifically, DOL may only deny incomplete and obviously inaccurate H-1B applications and has only limited authority to conduct H-1B investigations in the absence of a complaint. DOL established a process for information-sharing between U.S. Citizenship and Immigration Services and the Wage and Hour Division related to Secretary-initiated H-1B investigations. The PERM program itself is persistently vulnerable to employers not complying with its qualifying criteria. Therefore, both the PERM and H-1B programs remain prone to fraud.

52 Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs, Report No. 06-03-007-03-321 (September 30, 2003), available at: https://www.oig.dol.gov/public/reports/oa/2003/06-03-007-03-321.pdf

53 Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs, Report No. 06-21-001-03-321 (November 13, 2020), available at: https://www.oig.dol.gov/public/reports/oa/2021/06-21-001-03-321.pdf

The H-1B visa program, which allows U.S. employers to temporarily hire foreign workers in specialty occupations such as software engineers, software developers, or systems analysts, has significant vulnerability. OIG investigations have shown the H-1B visa program is susceptible to significant fraud and abuse by certain immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. One reason for this is the statutory requirement that the Department certify H-1B visa applications within a short 7-day window unless it determines the applications to be "incomplete or obviously inaccurate."[54] The OIG continues to investigate and discover various fraud schemes within the H-1B program, including labor leasing,[55] benching of foreign workers,[56] and wage kickbacks.[57] In addition, the Wage and Hour Division is generally limited by statute[58] to conducting investigations of alleged H-1B violations only when a complaint has been filed. That puts tremendous pressure on and increases the risk for vulnerable individuals as foreign workers are generally reluctant to file complaints in fear of retaliation and losing their jobs.

The H-2B program, which allows U.S. employers to hire foreign workers for temporary or seasonal jobs, has seen rising demand while the availability of visas remains limited. The increase in applications impacts DOL's ability to process applications in a timely manner. These increases can temporarily overload FLC's case processing and increase the risk of delays. DOL is challenged to balance a thorough review of H-2B visa applications with the need to timely process these applications to meet workforce demands.

54 According to 8 U.S.C. § 1182(n) and (t)

55 Labor leasing is when workers are provided to a third party that usually offers limited or no benefits to the workers and for a limited time.

56 Benching of foreign workers is when employers, during a period of low productivity or otherwise slow business, refuse to pay foreign workers their wages, also known as "benching" them.

57 Wage kickbacks are when third-party placement firms obtain H-1B workers and pay them lower wages than what U.S. employers would have paid. Moreover, this arrangement does not meet the employer-employee relationship required by U.S. Citizenship and Immigration Services whereby H-1B beneficiaries are being used to supplement needs of staffing companies to fulfill contracts at various end client users with little to no oversight by the petitioning employer.

58 Under the Immigration and Nationality Act, before the Secretary may investigate an employer of H-1B workers, the Secretary must either: (a) have already found an employer to have willfully failed to meet the statutory requirements or (b) receive specific credible information from a known source likely to have knowledge of an employer's non-compliance or willful violations.

PERM, which allows employers to hire foreign workers on a permanent basis in the United States, is another program that predominantly relies on attestations to verify whether employers are complying with its qualifying criteria. Once PERM visa applications are certified, ETA does not review applications post-adjudication, unlike the H-2A and H-2B programs, to validate the integrity of employers' attestations. On its end, the Wage and Hour Division does not have investigatory authority in the PERM program and does not conduct follow-up investigations to verify whether the foreign workers are still working for those employers indicated in the original application.

DEPARTMENT'S PROGRESS

According to the Department, as part of its technology modernization initiative, the Foreign Labor Application Gateway (FLAG) system and SeasonalJobs.dol.gov website were developed to replace the legacy iCERT System, improve customer service, and modernize the administration of FLC programs. Employers can electronically file applications and upload documents into FLAG, the Department's case management system, which issues all decisions on employers' applications electronically from DOL to the U.S. Department of Homeland Security (DHS). According to the Department, the FLAG system also enhanced data sharing between the Department and state workforce agencies.

SeasonalJobs.dol.gov is an online portal to help job seekers identify and apply for open seasonal and temporary jobs under the H-2A and H-2B visa programs. In addition to providing more search capabilities that tailor results to the geographic location of U.S. workers, the website was designed to integrate employment postings with third-party job search websites to make these job opportunities more accessible to job seekers.

As of June 2023, ETA has transitioned the PERM application process to the FLAG system and updated the PERM application forms. According to the Wage and Hour Division, the Department has established a process to initiate Secretary-certified H-1B investigations and entered into a memorandum of agreement with DHS to allow the following information to be shared with the Wage and Hour Division: DHS data and U.S. Citizenship and Immigration Services referrals of suspected violations of the terms of H-1B labor condition applications.

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

WHAT REMAINS TO BE DONE

For all FLC programs, the Department needs to:

- Refer all potentially criminal violations to the OIG in a timely manner.
- Enhance the reporting and application of suspensions and debarments government-wide when employers are found culpable of abusing the program.
- Pursue statutory and regulatory authority to strengthen its ability to debar employers who abuse this program.

For the H-1B visa program, the Department needs to:

- Take action to protect U.S. workers from any adverse effects on wages and working conditions caused by employing H-1B visa holders.[59]
- Seek statutory authority to verify the accuracy of information provided on H-1B labor condition applications.

For the H-2B visa program, the Department needs to:

- Continue with its efforts to ensure the applications are processed in time to hire foreign workers by employers' dates of need while also ensuring the review process protects the interests of U.S. workers.

For the PERM visa program, the Department needs to:

- Perform post-adjudication reviews to validate the integrity of employers' attestations once applications have been certified since the majority of the applications are submitted for review without documentation to prove or support employers' attestations.
- Investigate whether PERM workers are still working for the employers designated in the applications.

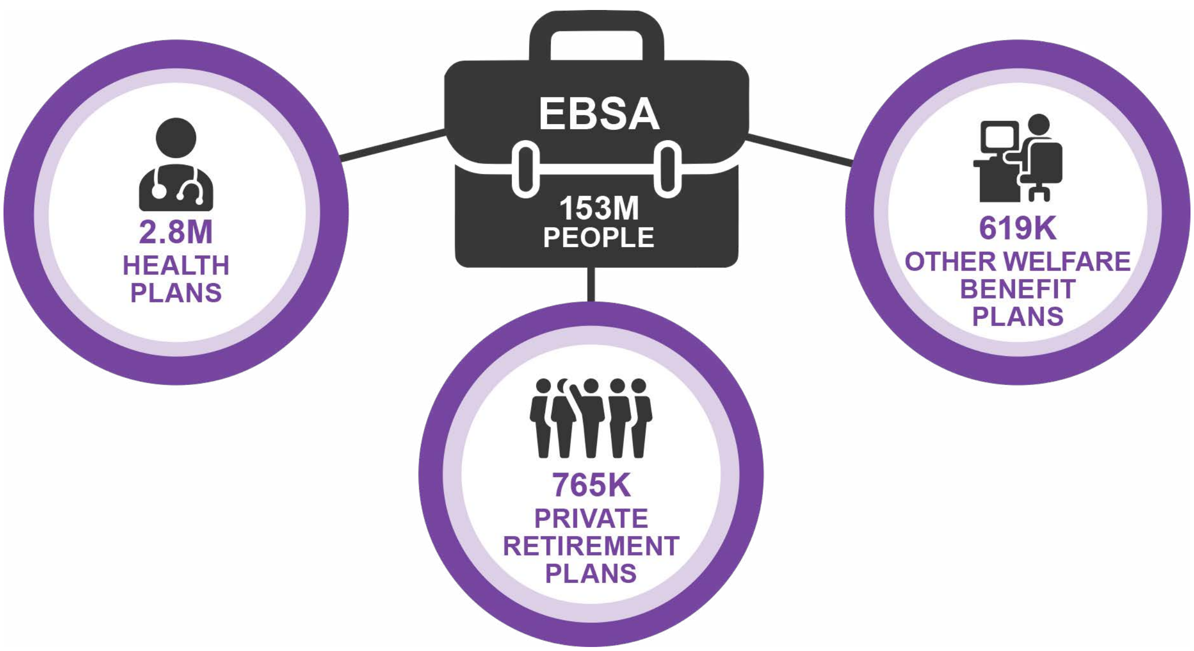
59 As required of DOL and DHS, according to Executive Order 13940, Aligning Federal Contracting and Hiring Practices with the Interests of American Workers, issued on August 3, 2020

CHALLENGE:

Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families

BACKGROUND

The Employee Benefits Security Administration (EBSA) protects the integrity of pension, health, and other employee benefit plans of about 153 million workers, retirees, and their families under the Employee Retirement Income Security Act of 1974 (ERISA).[60] The agency's responsibilities include enforcement authority over approximately 2.8 million health plans, 765,000 private retirement plans, and 619,000 other welfare benefit plans, which altogether hold approximately $12.8 trillion in assets. It also has interpretive and regulatory responsibilities for Individual Retirement Accounts, which hold about $10.8 trillion in assets.



EBSA also provides oversight of the federal government's Thrift Savings Plan (TSP), the largest defined contribution retirement plan in the United States, with nearly 6.85 million federal employees and uniformed military service members participating and $814 billion in assets according to EBSA as of July 31, 2023.[61]

60 ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to protect individuals in these plans.

61 The total value of TSP assets fluctuates over time and is affected by market volatility. For example, according to TSP financial statements, the asset value was $726 billion as of December 31, 2022, as compared to $814 billion as of July 31, 2023, according to EBSA.

CHALLENGE FOR THE DEPARTMENT

EBSA faces the challenge of how to allocate limited resources in a way that will maximize its efforts. For example, at current staffing levels, EBSA has the enforcement capacity of less than 1 investigator for every 12,600 plans and $38.5 billion in assets. This challenge is especially significant given the necessity of being able to quickly adapt to fast-paced market conditions; new and emerging retirement investment options (e.g., cryptocurrencies); and regulatory changes affecting ERISA-covered plans, such as:

- Congress' creation of a new class of plan sponsor (pooled plan providers) in 2019;
- the Consolidated Appropriations Act of 2021's comprehensive amendments to ERISA, which translated into fundamental changes to laws governing:
    - surprise medical bills,
    - price transparency,
    - fee disclosure,
    - prescription drug coverage reporting,
    - air ambulance reporting, and
    - parity in the provision of mental health and substance use disorder benefits; and
- requirements mandated by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE 2.0 Act of 2022).

LESS THAN 1
INVESTIGATOR TO ENFORCE

12,600
PLANS

$38.5B
IN ASSETS

EBSA also faces the challenge of ensuring that group health plans and insurance providers, affecting approximately 134.2 million workers and their families, comply with mental health parity requirements. The Mental Health Parity and Addiction Equity Act of 2008 requires most plans and health insurance companies to cover mental health and substance use disorder benefits in a similar way that they cover benefits for physical health. This is critical as workers suffering from mental health and substance use disorder conditions are often economically and socially disadvantaged with limited resources to access and pay for care when benefits have been improperly denied or limited.

EBSA is further challenged because it has no statutory authority to force certain plans to conduct full-scope audits, which provide significantly stronger assurances than limited-scope audits. Past OIG work[62] revealed that as much as $3 trillion in pension assets—including an estimated $800 billion in hard-to-value alternative investments—received only limited-scope audits. Independent public accountants performing these limited-scope audits generally were not required to audit investment information already certified by certain banks or insurance carriers, which meant the independent public accountants expressed "no opinion" on the valuation of these assets.

According to EBSA, over 80 percent of plan audits are limited-scope audits. Limited-scope audits provide little to no confirmation regarding the actual existence or value of plan assets. These audits deliver weak assurance to plan participants while putting retirement plan assets at great risk.

Because limited-scope audits provide little to no confirmation regarding the actual existence or value of plan assets, they deliver weak assurance to plan participants while putting retirement plan assets at great risk. According to EBSA, over 80 percent of plan audits are limited-scope audits. Though this percentage has remained generally stable in the last 10 years, it is markedly higher than the early 2000s, when closer to half of plan audits were limited-scope. In 2019, the American Institute of Certified Public Accountants replaced limited-scope audits with ERISA Section 103(a)(3)(C) audits and imposed new performance requirements on plan management and auditors. However, it is unclear how these changes impact EBSA's oversight of the vast amount of pension assets it oversees. In FY 2024, the OIG plans to follow up on our previous work on EBSA's oversight of limited-scope audits.

Additionally, EBSA has limited legal authority to enforce its oversight of $814 billion in TSP assets and to compel the Federal Retirement Thrift Investment Board (the Board), which administers the TSP, to act on EBSA's recommendations, including significant recommendations related to cybersecurity. While EBSA has worked with the Board to improve the TSP's cybersecurity posture, a significant portion of the TSP's infrastructure was recently transferred to an outside third-party vendor. Accordingly, EBSA may need to take additional action to ensure TSP assets, accounts, and data are adequately protected. Due to the threat cybersecurity breaches pose to the TSP and potentially trillions of dollars in other ERISA-covered retirement plan assets, and due to the technical expertise required to assess plan security, this is a crucial management challenge as well.

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62 EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments, Report No. 09-13-001-12-121 (September 30, 2013), available at: https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf

DEPARTMENT'S PROGRESS

EBSA is currently reviewing plans for compliance, which includes using a service provider approach to correct violations. In addition, to address cybersecurity risks, EBSA developed a red flag analysis tool and investigative plan to identify vulnerabilities to cyberattacks. EBSA also issued extensive guidance aimed at improving cybersecurity in private retirement plans and routinely includes cybersecurity inquiries as part of its investigations of ERISA-covered plans, such as retirement plans. It has also been working with TSP staff to conduct joint cybersecurity reviews, which has strengthened the TSP's cybersecurity posture.

WHAT REMAINS TO BE DONE

Regarding the challenge of protecting retirement, health, and other benefit plans for workers, retirees, and their families, EBSA needs to:

- Continue to explore options to maximize the impact of its constrained resources to carry out the type and number of investigations, audits, reviews, and compliance assistance activities necessary to best protect workers' pension, health, and other benefits.
- Effectively protect federal employees' retirement assets by seeking amendments to the Federal Employees' Retirement System Act of 1986 that would broaden its enforcement authority and thus compel the Board to implement its audit recommendations regarding the TSP.
- Pursue legislative repeal of the limited-scope audit exemption for meaningful oversight and greater protection of the trillion-plus dollars' worth of assets in retirement plans. Limited-scope audits, as opposed to full-scope audits, offer participants weak assurance of plan asset values. With the proliferation of pension plan assets subject only to limited-scope audits, retirement investments are at much greater risk of loss in value.

CHALLENGE:

Providing a Safe, Secure, and Healthy Learning Environment at Job Corps Centers

BACKGROUND

The Job Corps program provides room and board to most of its students at more than 100 Job Corps centers across the country and is responsible for the safety, security, and health of its on-campus population.

CHALLENGE FOR THE DEPARTMENT

The Job Corps program faces challenges in maintaining a safe, secure, and healthy learning environment for its students and staff. OIG audits over the past several years have found a wide range of safety and security issues at Job Corps centers, from failure to report and investigate serious student misconduct to security staff shortages. Our audits from 2015[63] and 2017[64] found that some Job Corps centers failed to report and investigate serious misconduct, such as drug abuse and assaults. The audits also determined that some Job Corps centers downgraded incidents of violence to lesser infractions, creating an unsafe environment for students and staff.

Some Job Corps centers failed to report and investigate serious misconduct, such as drug abuse and assaults. Some centers downgraded incidents of violence to lesser infractions. The use of fentanyl, a highly dangerous drug, is also an emerging concern.

Further, Job Corps' participants can range in age from 16 to 27 years old.[65] The significant age range poses a number of challenges. Given the occurrence of sexual assaults and harassment on center campuses, there is an inherent risk with having adults cohabitate with minors. The OIG is currently performing an audit focused on whether Job Corps ensured the safety of and mitigated program disruptions involving its minor students.

63 Job Corps Needs to Improve Enforcement and Oversight of Student Disciplinary Policies to Better Protect Students and Staff at Centers, Report No. 26-15-001-03-370 (February 27, 2015), available at: https://www.oig.dol.gov/public/reports/oa/2015/26-15-001-03-370.pdf

64 Review of Job Corps Center Safety and Security, Report No. 26-17-001-03-370 (March 31, 2017), available at: https://www.oig.dol.gov/public/reports/oa/2017/26-17-001-03-370.pdf

65 Individuals aged 16 through 24 years are eligible to enroll in Job Corps and, once enrolled, can be in training for up to 3 years before finishing the program.

In addition to physical security protocols, part of establishing a safe, secure, and healthy learning environment entails Job Corps considering how the program can better serve students facing difficulties, such as those attributed to substance abuse and mental health—which frequently occur in tandem. Our audit from 2021[66] found that center staff reported a high prevalence of issues related to both mental health and substance abuse among students. We also found that center personnel frequently attributed student and staff safety issues with mental health or substance abuse or both. Moreover, the number of students experiencing these issues has steadily increased over time. The use of fentanyl, a highly dangerous drug, is also an emerging concern.

Job Corps must also grapple with higher-than-average health and safety risks inherent in residential on-campus settings with large populations of students and staff. As Job Corps attempts to adjust its operations to post-pandemic conditions, it must ensure the continued health and safety of students and staff on-site at its centers. Although Job Corps has resumed on-campus operations at its centers, it must ensure it is prepared to deal with future outbreaks or pandemics.

DEPARTMENT'S PROGRESS

Our follow-up work completed in December 2017[67] and our ongoing review of Job Corps' corrective actions show that Job Corps has taken steps to improve center safety and security by establishing stronger internal controls and security measures, which included the installation of security cameras, perimeter fencing, and better lighting at centers. Job Corps indicated that its center entry screening process has resulted in increasing reports of students being caught attempting to bring weapons into centers.

66 Job Corps Should Improve Its Pre-Admission Evaluation Process, Report No. 05-21-001-03-370 (March 25, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-03-370.pdf

67 Job Corps Took Action to Mitigate Violence, Drugs, and Other Student Misconduct at Centers, But More Needs to Be Done, Report No. 26-18-001-03-370 (December 29, 2017), available at: https://www.oig.dol.gov/public/reports/oa/2018/26-18-003-03-370.pdf

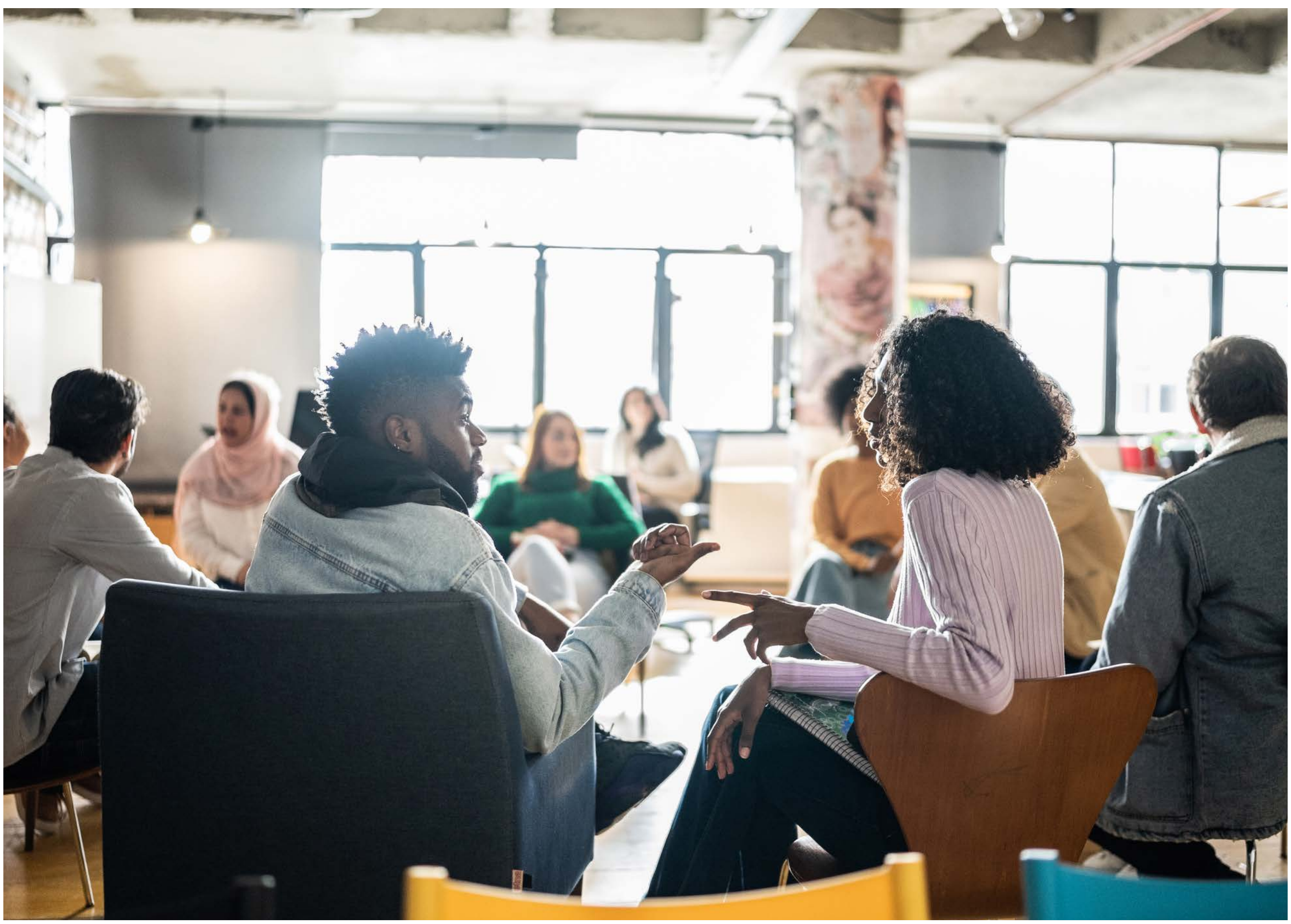
WHAT REMAINS TO BE DONE

To advance health, safety, and security measures for its students and staff on-site at its centers, Job Corps needs to:

- Ensure existing policies and procedures are periodically reviewed and monitored for compliance.
- Ensure center operators and regional office personnel fully enforce Job Corps safety and security policies to improve campus security and control violence.

To inform agency decision-making and to assess the impact of proposed, planned, and implemented security reforms, Job Corps needs to:

- Timely identify and remediate noncompliance.
- Evaluate and deploy tools to help improve the pre-admission applicant screening and enrollment process.



CHALLENGE:

Managing Medical Benefits in the Office of Workers’ Compensation Programs

BACKGROUND

The Department’s Office of Workers’ Compensation Programs (OWCP) provides compensation and medical benefits to workers for employment-related injuries or occupational diseases. Of key interest, during FY 2022, OWCP paid medical benefits in the amounts of $716 million under the Federal Employees’ Compensation Act (FECA) and more than $1 billion under the Energy Employees Occupational Illness Compensation Program Act (Energy Workers).

CHALLENGE FOR THE DEPARTMENT

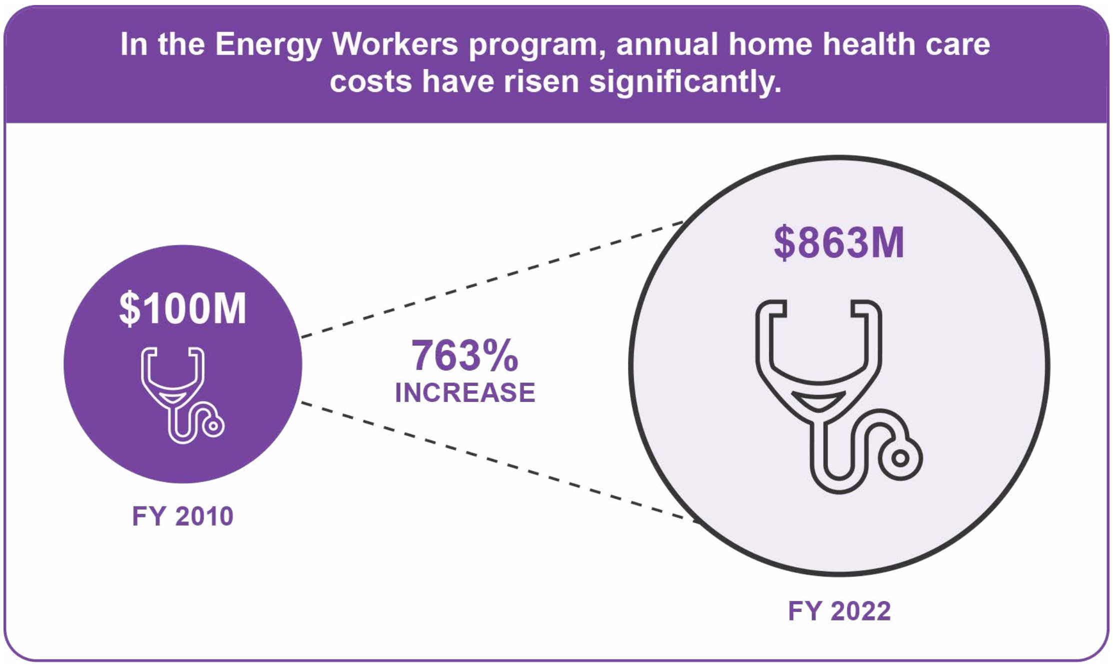
OWCP is challenged to effectively manage medical benefits in its workers’ compensation programs due to the high risk of fraud, waste, and abuse. These challenges include effectively managing the use and cost of pharmaceuticals in the FECA program and in ensuring the necessity and appropriateness of home health care costs in the Energy Workers program.

Our audit work in the FECA program continues to identify concerns with OWCP’s management of pharmaceuticals. In March 2023,[68] we reported OWCP did not effectively manage pharmaceutical spending in the FECA program from FY 2015 through FY 2020. We found OWCP did not pay the best available prices for prescription drugs, which resulted in up to $321 million in excess spending during the audit period. OWCP also did not effectively monitor pharmaceutical policy changes to ensure implementation, which resulted in claimants receiving thousands of inappropriate prescriptions and potentially lethal drugs, including 1,330 prescriptions for fast-acting fentanyl after issuing a policy that restricted its use. We also found OWCP did not timely identify and address emerging issues and did not perform sufficient oversight of prescription drugs that are highly scrutinized and rarely covered in workers’ compensation programs. As a result, OWCP spent hundreds of millions of dollars on drugs that may not have been necessary or appropriate for FECA claimants.

We found OWCP did not pay the best available prices for prescription drugs, which resulted in up to $321 million in excess spending during the audit period.

68 OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program, Report No. 03-23-001-04-431 (March 31, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf

In the Energy Workers program, annual home and residential health care costs have risen from almost $100 million in FY 2010 to approximately $863 million in FY 2022, comprising approximately 82 percent of all medical benefits paid by the program in FY 2022. With an aging claimant population and an increased demand for home health care services, there is a potential for providers to exploit these benefits through unethical practices.



DEPARTMENT'S PROGRESS

OWCP has taken actions to better manage pharmaceuticals in the FECA program. In 2021, OWCP contracted with a pharmacy benefit manager[69] to be responsible for pharmaceutical transactions, including implementation of FECA eligibility determinations and pricing for prescription drugs, and implemented new prescription management policies and a drug formulary system. The new prescription management policies require prior authorizations for non-formulary medications, brand name drugs, opioids outside the established policy, and specialty and compounded drugs. OWCP also enhanced its opioid policies by requiring drug utilization reviews, setting quantity limits on initial fills and subsequent refills, and notifying claimants and prescribers of potential therapeutic concerns such as excessive doses. According to OWCP, use of the pharmacy benefit manager saved approximately $87.9 million on medications in FY 2022.

69 Pharmacy benefit managers are third-party administrators of prescription drug programs, primarily responsible for: developing and maintaining formularies, which include an approved listing of prescriptions; negotiating discounts and rebates with drug manufacturers; and processing and paying prescription drug claims.

In addition, OWCP continues to analyze and audit home health care billing practices in the Energy Workers program for the purpose of modifying billing rules and policies when it uncovers abusive practices. It has moved the adjudication of home health care into a national office unit that focuses exclusively on medical benefits adjudication and has provided internal training to that unit. OWCP officials also implemented a program integrity unit and make referrals to the OIG for investigation.

WHAT REMAINS TO BE DONE

To more effectively manage medical benefits in its workers' compensation programs, OWCP needs to:

- Determine the best practices insurance providers and other federal, state, and local agencies have adopted to successfully manage medical costs and identify those that might be most suitable for its own programs.
- Expand its use of data analytics to monitor medical costs and identify risks, trends, and emerging issues before they become critical issues.

For the FECA program, OWCP needs to:

- Analyze and monitor FECA costs to promptly detect and address problems given the high risk of fraud and abuse related to prescription payments.
- Evaluate alternate pricing methodologies and other sources regularly and update its pricing methodology as appropriate to ensure competitive prices.
- Monitor closely the performance of its pharmacy benefit manager contractor to ensure appropriate price and savings.
- Monitor the effectiveness of policy and process changes related to claimant prescriptions to ensure appropriate implementation.

For the Energy Workers program, OWCP needs to:

- Continue its efforts to analyze home health care billings for unethical practices.
- Continue to identify and refer allegations involving potential fraud or abuse to the OIG for further investigation.

CHALLENGE:

Managing and Securing Data and Information Systems

BACKGROUND

The Department and its program agencies depend on reliable and secure IT systems to perform their mission critical functions. These systems maintain critical and sensitive data related to financial activities, enforcement actions, job training services, pensions, welfare benefits, and worker safety and health. In FY 2023, the Department invested an estimated $795 million in IT to implement services and functions needed to safeguard the U.S. workforce.

Between 2019 and 2021, the Department moved from its decentralized IT management and operations to an IT shared services model that centralized IT for approximately 70 percent of its information systems under the Office of the Assistant Secretary for Administration and Management. Currently, the information systems of the Bureau of Labor Statistics and the Office of Job Corps are the largest agencies not integrated into DOL's IT Shared Services.

CHALLENGE FOR THE DEPARTMENT

The Department continues to be challenged in securing and managing data and information systems, particularly in the following areas: (1) maintaining an effective information security program; (2) implementing, utilizing, and securing emerging technologies; and (3) governing a vast IT portfolio to meet DOL and its program agencies' needs and expectations.

While the Department has moved its information systems to a centralized IT shared services model to improve management and security of its systems, DOL remains challenged to adequately implement information security controls and technology tools required to manage and monitor IT security. We continue to identify recurring deficiencies in the Department's efforts to manage and implement security controls throughout its information security program. In our 2023 audit of DOL's information security program,[70] we identified deficiencies in two of the five information security functional areas as defined by the National Institute of Standards and Technology (NIST) Cybersecurity Framework (Identify and Protect).

70 Under the Federal Information Security Modernization Act of 2014 (FISMA), the OIG is required to perform annual independent evaluations of the Department's information security program and practices.

We found DOL's security program had deficiencies in maintaining policies and procedures to comply with current federal requirements, oversight reviews, configuration management, insufficient vulnerability testing, and contingency testing. Additionally, the Department was unable to close 31 of its prior year FISMA recommendations. These deficiencies continue to hinder the Department in identifying security weaknesses; protecting its systems and data; and detecting, responding to, and recovering from incidents.

The Department will continue to be challenged to effectively implement, utilize, and secure new and emerging technologies, including artificial intelligence, advanced analytics, robotic process automation, quantum computing, low-code technology, and the Internet of Things. DOL struggles in its ability to implement new requirements into its IT practices and programs. The Department has not demonstrated the ability to effectively implement new standards for securing federal data and information systems, such as those applicable to zero trust architecture and supply chain.

What is Zero Trust Architecture?

A cybersecurity approach in which users must prove their authenticity each time they access a network application or data as it assumes a network's security is always at risk to external and internal threats

We also have continuing concerns about the Department's IT governance efforts. In December 2020, the Department had consolidated approximately 70 percent of its information technology and resources under the Assistant Secretary for Administration and Management as part of an IT shared services model. While the Chief Information Officer (CIO) provides the management and oversight of the Department's IT resources for the Assistant Secretary for Administration and Management, the position of the CIO has not been given the independence and authority needed to implement and maintain these resources. By keeping the position under the Assistant Secretary for Administration and Management, the CIO is not aligned with other departmental agency heads and does not report directly to the Secretary or Deputy Secretary as required by law.

Ultimately, the Department faces key challenges in IT security and management that include protecting its IT systems from intrusion by external threats or being compromised by internal entities; securing and safeguarding its data and information systems, including administering endpoint security; managing its IT investment portfolio; and planning, acquiring, replacing, and upgrading IT infrastructure and systems. Further, we are still concerned the remaining systems and agencies that are not part of the IT Shared Services environment are not receiving the governance and oversight required to sufficiently secure all of DOL's data and information systems.

DEPARTMENT'S PROGRESS

The Department has shown improvement in managing and securing IT as part of its shared services model. DOL continues to implement new IT programs and systems designed to strengthen security operations, such as expanding its vulnerability scanning coverage. To better manage resources and projects by modernizing, securing, and consolidating information technology, the Department has reorganized some of its IT resources and capabilities to a shared services environment under the Office of the Assistant Secretary for Administration and Management, and this includes realigning information processes and personnel.

WHAT REMAINS TO BE DONE

DOL needs to improve its governance and management over all of DOL agencies' IT and systems. To improve the security of its information systems, the Department still needs to:

- Strengthen its oversight in implementing information security policies, procedures, and controls.
- Improve its continuous monitoring program.
- Focus on recurring information security deficiencies.
- Implement required information system security standards.
- Ensure the implementation of security requirements with its third-party cloud systems and IT services.
- Plan for emerging cybersecurity enhancements, such as zero trust architecture.

To improve the management of its information systems, while having implemented a shared services model within the Office of the Assistant Secretary for Administration and Management for its information technology, the Department needs to:

- Incorporate the remaining information systems into DOL's IT Shared Services model.
- Elevate the CIO's position to report directly to the Secretary of Labor so the CIO has the necessary authority, independence, and accountability to govern the Department's IT resources.

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