

HIGHLIGHTS



Volume 54 April 1, 2005–September 30, 2005

In this issue...

- Civil RICO Indictment Filed Against Union Officials 2
- Top Union Officials Charged with Racketeering Conspiracy and Embezzlement 2
- Guilty Plea in Health Insurance Scheme 3
- Defendants Ordered to Pay \$39 Million for Diverting Pension Funds 3
- Local Union Presidents Plead Guilty and Admit to Violent Acts 3
- EBSA Should Mandate Electronic Filing of Form 5500 to Improve Data Accuracy 4
- Obstacles Limit State Workforce Agencies' Use of IRS 1099 Data 5
- Unemployment Insurance Identity Theft Schemes 5
- Job Corps Center Overstated Performance Data 6
- Nationwide Participation in Health Coverage Tax Credit Bridge and Gap Programs Is Minimal 6
- Incumbent Worker Training Program Funds 7
- Foreign Labor Certification Investigations 7
- Department Needs to Improve Procedures for Sanitizing Electronic Media 8
- MSHA Proposes to Revise Asbestos Exposure Limit. 8

A Message from the Inspector General

This edition of *Highlights* summarizes the significant activities and accomplishments of the Office of Inspector General (OIG) for the six-month period ending September 30, 2005. During this reporting period, our investigative work led to 353 indictments, 182 convictions, and over \$182 million in monetary accomplishments. Our audits of Department of Labor (DOL) programs and operations resulted in \$11 million in questioned costs and \$42 million in recommendations that funds be put to better use.

Among our many achievements this period is our investigative effort leading to the first-ever civil complaint filed against the International Longshoremen's Association using the Racketeer Influenced and Corrupt Organizations statute. In addition to our work to combat labor racketeering in the American workplace, we also continued to assist the Department in making improvements in program operations through our audits and evaluations.

Finally, in keeping with our efforts to prevent and recognize fraud, waste, and abuse in DOL programs, we are working collaboratively with government officials at all levels to provide oversight of funds dedicated to providing relief and recovery to those affected by Hurricanes Katrina and Rita.

Gordon S. Heddell
Inspector General

The Civil RICO filed against the International Longshoremen's Association seeks to end Organized Crime's control of the Union.

CIVIL RICO INDICTMENT FILED AGAINST UNION OFFICIALS

A civil complaint was filed against the International Longshoremen's Association (ILA) and its related benefit funds in July 2005. The complaint, which sought to end organized crime's control of the union, was filed against: the ILA; certain ILA officials from its Executive Board, including its president; various ILA employee health, welfare, and pension benefit plans; and organized crime members from the LCN Genovese and Gambino families.

The charges are based on decades of evidence relating to corruption and LCN influence within the union and businesses, including commercial shipping terminals operating on the New York/New Jersey waterfront and the Port of Miami. This is the first prosecution brought against the ILA under the Racketeer Influenced and Corrupt Organizations Act (RICO). It seeks court-ordered relief that will assist in reforming and overseeing the union and its benefit plans, bar current union officials and LCN members from the waterfront, and prevent them from managing or influencing the operations of the union and its benefit funds.

In September 2005, ILA's executive vice president pled guilty to conspiracy charges and signed a consent judgment pursuant to the complaint, agreeing to resign from all of his positions with the union and its benefit plans. In addition to giving up his union membership, he also agreed to not associate with any organized crime members or engage in acts of racketeering.

The civil RICO action will seek to appoint a monitor to enforce democratic reforms enabling the ILA to become a corruption-free labor organization. This complaint is the result of a collaborative effort with the FBI, the New York City Waterfront Commission, and the U.S. Attorney's Office for the Eastern District of New York.

TOP UNION OFFICIALS CHARGED WITH RACKETEERING CONSPIRACY AND EMBEZZLEMENT

In September 2005, four defendants, including the national president and secretary-treasurer of the American Maritime Officers Union, were charged with racketeering conspiracy, embezzlement from the union and its employee benefit plans, mail fraud, witness tampering, kickbacks, and other violations involving union and benefit plan records. From 1993 to 2005, the defendants allegedly engaged in racketeering activity by using their positions to dominate the operations of the union and its plans. The embezzlement schemes involved vendors, bonuses to union and plan employees for making political campaign contributions, and false receipts.

DEFENDANT PLEADS GUILTY IN HEALTH INSURANCE SCHEME

The controller of Pacific Group Medical Association (PGMA) pled guilty in June 2005 to charges of insurance fraud and money laundering. In 1997, PGMA failed with more than \$18 million in unpaid medical claims, making it one of the largest health plan failures in Hawaii's history. PGMA had provided health coverage for 26,000 people, including members of the United Public Workers Union Local 646. As part of his plea, the controller acknowledged that he falsified financial reports that were submitted to the Hawaii Insurance Commissioner (HIC). He also manipulated PGMA's books and records to understate the claims paid and reflect an absurdly low claims liability, thereby deceiving the HIC and defrauding his customers. The defendant misappropriated millions of dollars and diverted large sums of money to other family companies, and used them to make payments toward personal credit cards and other personal expenses, including automobiles and gambling debts. This was a joint investigation with the IRS Criminal Investigation Division (CID) and the Employee Benefits Security Administration (EBSA).

DEFENDANTS ORDERED TO PAY \$39 MILLION FOR DIVERTING PENSION FUNDS

For their role in orchestrating the domestic and international sale of fraudulent, worthless securities, two former officials of Evergreen Securities Ltd. were sentenced during this reporting period after pleading guilty in May 2002 to charges of securities fraud conspiracy, mail fraud, and wire fraud.

One former official was sentenced to 37 months imprisonment and three years probation, the second was sentenced to 46 months imprisonment and three years of supervised release. They were ordered to pay more than \$25 million and \$14 million, respectively, in restitution for fraudulently obtaining monies from investors and pension funds to be used for their personal benefit and that of others.

From May 1991 through January 2001, they devised a scheme to defraud over 2,000 investors and qualified

pension plans by selling securities in the form of debt instruments or bonds. Upon obtaining the investor funds and plan monies, the defendants moved the money to offshore bank accounts in the Caribbean and Central America, converting much of the money for their own purposes. The investigation was conducted jointly with the FBI, U.S. Postal Inspections Service (USPIS), the IRS CID, and the Florida Comptroller's Office.

LOCAL UNION PRESIDENTS PLEAD GUILTY AND ADMIT TO VIOLENT ACTS

The president of Laborers International Union of North America Local 91 pled guilty in September 2005 to charges of racketeering and conspiracy. He admitted responsibility for several acts of violence and property sabotage directed against non-union companies and trades persons, including throwing explosive devices into the home of a non-union worker. The purpose of the violent, extortionate acts was to obtain jobs and the associated wages and benefits.

In another case involving Local 91, a former business manager and president pled guilty to charges of racketeering and conspiracy for using his position to direct members to inflict property sabotage and other violent acts against both union and non-union workers. To date, 12 defendants have been convicted in this six-year scheme that used violence to curb the progress of non-union companies. Both investigations were conducted jointly with the FBI, the New York Police Department, the Niagara County Sheriff's Department, and the Niagara Falls Police Department.

**To receive a printed copy of
the full report, write or e-mail:**

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

LaborOIGinfo@oig.dol.gov

**\$5 million
could be saved
annually and
data quality
could be
improved if
EBSA required
Form 5500 to
be filed
electronically.**

EBSA SHOULD MANDATE ELECTRONIC FILING OF FORM 5500 TO IMPROVE DATA ACCURACY

The OIG conducted a performance audit of the EBSA ERISA Filing and Acceptance System (EFAST) to determine if EFAST accurately captured data on Form 5500 filings submitted by employee benefit plans. Developed and operated by an EBSA contractor, EFAST is used to meet the legislatively mandated mission to protect the pensions and other employee benefits of the American workforce.

Our audit disclosed that EFAST data from Form 5500s filed on paper, which account for about 99% of the data, have consistently not met all the accuracy standards EBSA established in the contract. Our review of 35 paper Form 5500s found that only 23, or 62%, of the filings tested were accurately input, with 12 of the 35 filings including at least one error in a critical field. Additionally, the contractor's own quality control testing, for the period of time audited by the OIG, showed that paper filings were not meeting the accuracy standards specified in the contract.

Despite improvements in data accuracy over time, the contractor continues to be non-compliant. While EBSA has been aware of this lack of compliance and has pressed the contractor to improve, EBSA has not been able to obtain compliance. EBSA officials stated that although the contract standards have not been met, the contractor has been making good faith efforts to meet the standards and has been improving overall data accuracy recently. The levels of accuracy required by EBSA were agreed to in the initial contract; however, for six years, the contractor has received payment but has not delivered the required accuracy. EBSA continues to work closely with the contractor to improve and achieve compliance with the data accuracy standards. EBSA has had to invest additional staff resources to perform special analyses to correct EFAST data, and it has contracted for special services to adjust statistical data for EFAST inaccuracies.

In contrast, we found that data from electronically filed Form 5500s were accurate. However, since these data comprise only about 1% of the total Form 5500 data, it did not allow the EFAST data to meet data accuracy standards overall.

The OIG recommended EBSA require electronic filing of Form 5500 data, which we estimate could save over \$5 million annually in contract costs. We also recommended that EBSA strengthen future contracts' performance remedies and withhold payment when current contractual standards are not met. EBSA concurred with all three recommendations. Moreover, EBSA welcomed the OIG's support of its efforts to mandate electronic filing. EBSA also provided information about actions planned to address the remaining recommendations.

Worker Benefits

OBSTACLES LIMIT STATE WORKFORCE AGENCIES' USE OF IRS 1099 DATA

The OIG conducted an audit to assess the extent of State Workforce Agencies' (SWAs) use of 1099-MISC Income Data (1099 data) to identify potential employer misclassification of employees as independent contractors, thus avoiding paying Unemployment Insurance (UI) taxes. Since August 2001, the IRS has permitted SWAs to apply for 1099 data for use in UI field tax audits. The IRS developed a 1099 extract tailored for the SWAs that contained non-employee compensation Federal tax information.

The audit found that, as of December 2004, only 9 of 52 SWAs contacted were using the 1099 data. Another 10 SWAs had applied to the IRS for the data but encountered obstacles that prevented them from obtaining and using it. Among the obstacles reported by the SWAs were competing priorities, the age of the 1099 data, and meeting IRS security safeguards.

Where SWAs used 1099 data, UI field tax audits in seven of the nine SWAs resulted in identification of misclassified employees, recovery of underreported UI tax contributions, and adjustment of overreported UI tax contributions. As of December 2004, the seven SWAs reported that they: identified 7,118 misclassified employees; recovered \$1,492,521 in underreported UI tax contributions; and adjusted \$328,634 for overreported UI tax contributions associated with these workers. The IRS reported that 16 additional SWAs have since applied to receive the 1099 data in 2005.

Our recommendations to ETA included that it provide assistance and guidance to the 16 new SWAs that applied for the 1099 data to increase their success in obtaining and using the data and encourage SWAs to apply for the 1099 data during the 2006 IRS enrollment period and use it in their UI field tax audit programs. ETA agreed with our recommendations and has already initiated corrective action.

Most OIG audits can be viewed on the OIG's Web site: www.oig.dol.gov

GUILTY PLEAS IN IDENTITY THEFT SCAM

Two men, who devised a scheme to defraud the UI program by using more than 200 stolen identities, pled guilty in separate court appearances, to identity theft and mail fraud charges. The two men stole the Social Security numbers of applicants who had pursued employment at their fictitious janitorial services business. They then used legitimate employers' names and addresses to file 222 UI claims and obtain more than \$693,000 in UI benefits from February 2001 through February 2005. This was a joint investigation conducted with the USPIS, U.S. Immigration and Customs Enforcement (ICE), and the SSA OIG.

IDENTITY THEFT RINGLEADER ORDERED TO PAY NEARLY \$700,000

After pleading guilty in February 2005 to charges of conspiracy to commit mail fraud, the leader of an identity theft ring was sentenced in May 2005 to 21 months in prison, three years probation, and ordered to pay restitution of \$697,559. From April 2002 through March 2004, the ringleader and others perpetrated a scheme to fraudulently obtain UI benefits from the State of California. They accomplished this by using stolen payroll data containing confidential information. The ring then contacted the California Employment Development Department via telephone or the Internet in order to file fraudulent UI claims.

Report Fraud, Waste, and Abuse Call or E-mail the OIG Hotline

202-693-6999
1-800-347-3756
hotline@oig.dol.gov



**The OIG hotline is open 24 hours a day,
7 days a week to receive allegations
of fraud, waste, and abuse.**

SAN DIEGO JOB CORPS CENTER OVERSTATED PERFORMANCE DATA

We initiated an audit of the San Diego Job Corps center in response to a hotline complaint that alleged that management had ordered staff to tell students to leave their resignation forms undated. This action would have allowed San Diego personnel to manipulate student resignation dates to inflate San Diego's reported student attendance as reflected in the student on-board strength (OBS) performance measure. We also expanded our review to four other performance measures reported by San Diego. Job Corps uses various performance and outcome measures, including OBS, as part of a comprehensive management system to assess program effectiveness. Specifically, Job Corps uses OBS to measure a center's capacity utilization and to help monitor program costs.

We found the substance of the allegation to be valid. San Diego staff obtained undated resignation forms/letters from students so that San Diego staff could place students on leave as a way to delay reporting that they had separated from the San Diego center. In fact, San Diego's practice of prolonging student stays was widespread and was not isolated to students who resigned, but also included students who completed a vocation. San Diego's inflation of its OBS may have prevented the responsible ETA regional office from identifying enrollment issues at San Diego, thereby avoiding closer supervision.

We also found that while two other performance measures (60-day commitment date and GED/high school diploma attainment rate) were reliable, the vocational completion rate was not. Training records did not support over 50% of the vocation completions tested. Students either did not complete required tasks at all or completed them with a less-than-proficient rating.

Job Corps had already begun taking action in response to two earlier OIG audit reports on Job Corps performance measures; however, we recommended ETA specifically ensure that Job Corps address the manipulation of student attendance records and unsupported vocational completions at the San Diego center. ETA agreed with our recommendations. Job Corps had begun taking action to

ensure performance data reliability at all its centers. Further, Job Corps obtained a Corrective Action Plan from the center operator specifically for San Diego, and corrective actions have begun.

NATIONWIDE PARTICIPATION IN HEALTH COVERAGE TAX CREDIT BRIDGE AND GAP PROGRAMS IS MINIMAL

We conducted a performance audit of the National Emergency Grant (NEG) used to administer the Health Coverage Tax Credit (HCTC) Bridge and Gap programs established by the Trade Adjustment Assistance Reform Act of 2002 (TAARA). TAARA established a Bridge and Gap mechanism to provide interim health insurance coverage cost assistance to eligible individuals during the IRS's HCTC advance credit implementation and enrollment processes. Our objectives were to determine whether a significant number of individuals potentially eligible for the HCTC availed themselves of the program and to identify barriers to participation. We conducted audit work in three participating states, covering the period from grant inception through June 30, 2004, for each selected state. We also surveyed Bridge and Gap participants and nonparticipants, as well as participating and nonparticipating states, to determine why participation in the program was low.

The OIG found that, as of June 30, 2004, nationwide participant levels were 4.8% of the potentially eligible population, and expenditure levels were less than 7% of appropriated funds. We identified several barriers to individuals' participation such as high premium and up-front costs, effective exclusion of PBGC populations, lack of program awareness, and overall program complexity. Thirty-nine states did not participate, primarily due to lack of administrative funding, staffing, and systems to run the program. As a result, the majority of the potentially eligible population did not have the opportunity to avail themselves of the program, since they could not participate unless their states opted into the program.

The OIG made 19 recommendations to ETA aimed at expanding both states' and individuals' participation in

Employment and Training

HCTC, including: conduct an immediate needs assessment of NEG funds, including \$24 million in unobligated funds, and based on the assessment, redirect funds as appropriate; work with states, Federal lawmakers, and other partners to address identified barriers to enhance both state and individual participation; and work with the IRS office to implement a consistent system of communication between the states and the IRS and ensure that proper controls are instituted to safeguard Federal funds.

ETA generally agreed with our recommendations and acknowledged that opportunities for improvement exist, including the possibility of allowing states with excess HCTC funds to redirect such funds to Hurricane Katrina response activities.

DEPARTMENT SHOULD STRENGTHEN GUIDANCE ON USE OF INCUMBENT WORKER TRAINING PROGRAM FUNDS

In connection with an OIG audit issued during the last reporting period in which we found that Arkansas had improperly paid Workforce Investment Act (WIA) funds to Nestle Corporation to train newly hired workers under the guise of an incumbent worker training program, we issued a management letter to ETA regarding state processes for using WIA incumbent worker funds. Specifically, the management letter discussed two issues: Federal incumbent worker training funds are intended to pay for upgrading current workers' skills, not business start-up costs; and Federal criteria do not define how long an employer must be in business or an employee must be employed to qualify as an incumbent worker. Therefore, a state could decide that any employer or employee could qualify for a WIA-funded incumbent worker program.

ETA disagreed with the OIG's findings that Arkansas' use of WIA funding for incumbent worker training was contrary to WIA statute and regulations. ETA does not agree with limiting the states' definition of "incumbent workers" and stated that its position is that incumbent worker may include any employed worker. Despite this disagreement, ETA stated that clarity is needed regarding the incumbent worker training policy.

Foreign Labor Certification

IMMIGRATION ATTORNEY SENTENCED FOR VISA FRAUD

In September 2005, an immigration attorney was sentenced to 78 months in prison and ordered to pay \$25,000 in fines after being convicted on visa fraud charges. His law firm was ordered to pay \$200,000 in fines. The attorney, his associate who was previously convicted, and others, conspired to file 144 fraudulent permanent labor certification applications with DOL. The attorney directed his staff to file applications without the employers' knowledge and to falsify signatures of both employers and employees. The attorney also created fraudulent employer correspondence and work experience documents. The attorney paid his associate money in exchange for using the name of the associate's company on approximately 17 false applications. To date, six employers have been convicted on charges of conspiracy to commit visa fraud. This was a joint investigation with ICE.

IMMIGRATION BROKER AND ASSOCIATES SENTENCED IN VISA FRAUD SCHEME

In September 2005, an immigration broker and principal defendant was sentenced to 66 months in prison, three years probation, and a forfeiture of \$300,000. He had pled guilty in April 2005 to various conspiracy charges and money laundering involving the submission of more than 200 fraudulent asylum and labor certification applications. To date, 20 defendants have pled guilty and been sentenced for their roles in the scheme. The immigration broker operated the Chinese Indonesian American Society, one of four brokerages, to prepare fraudulent applications for labor certification on behalf of Indonesian immigrants seeking to remain in the United States. The investigation revealed that much of the information in the applications was false, including the existence of the job, qualifications of the immigrants, and the immigrants' intended U.S. address. This investigation was conducted jointly with ICE, the Department of State, the IRS, the SSA OIG, the Secret Service, the FBI, and the Fairfax County Police Department.

Information Technology

DEPARTMENT NEEDS TO IMPROVE PROCEDURES FOR SANITIZING ELECTRONIC MEDIA

Our performance audit of the Department's effectiveness in sanitizing surplus electronic media found that while policies and procedures exist within the Department and its agencies, they allow for inconsistencies and/or bypassing of certain steps. These weaknesses increase the risk associated with the unintentional release of information through transfer or disposal of electronic media.

Of 46 computer hard drives that were ready to be transferred or disposed of, we found that: all 24 of the regional office computer hard drives were properly sanitized; and 11 of the 22 national office computer hard drives contained varying degrees and combinations of software and unencrypted data of a sensitive, personal, and/or confidential nature.

DOL's Chief Information Officer generally agreed with the report findings and our recommendations regarding ensuring uniformity of policy, IT-specific training, periodic verification of sanitization procedures, and research of emerging technologies. The Department has begun taking actions to address the recommendations.

Worker Safety

MSHA PROPOSES TO REVISE ASBESTOS EXPOSURE LIMIT

In response to a March 2001 OIG evaluation report on the Mine Safety and Health Administration's (MSHA's) handling of inspections at a surface vermiculite mine, MSHA issued a proposed rule in the July 29, 2005, Federal Register. The proposed rule would lower MSHA's Permissible Exposure Limit (PEL) for asbestos. Our 2001 evaluation report found that even though laboratory analysis of samples taken by MSHA inspectors were generally under MSHA's PEL, a large number of former mine employees and family members contracted asbestos-related illnesses. This occurrence, coupled with current scientific evidence, indicated a need for MSHA to lower its asbestos PEL. MSHA's action satisfied one recommendation of the evaluation report to "lower the permissible exposure limit for asbestos to a more protective level." Further, the proposed MSHA levels are consistent with OSHA's asbestos standards.

Most OIG audits can be viewed on the OIG's Web site: www.oig.dol.gov

Selected Statistics

April 1, 2005–September 30, 2005

Investigative monetary accomplishments	\$182.7 million
Questioned costs	\$11 million
Audit and evaluation reports issued	76
Indictments	353
Convictions	182
Investigative cases opened	241
Investigative cases closed	264
Investigative cases referred for prosecution	349
Investigative cases referred for administrative/civil action	173
Debarments	45