

September 28, 2007

MEMORANDUM FOR: EMILY STOVER DeROCCO
Assistant Secretary for Employment
and Training



FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: The Louisiana Department of Labor Paid \$51 Million
in Hurricane-related Unemployment Benefits on
Questionable Claims
Management Letter No. 06-07-003-03-315

INTRODUCTION

This Office of Inspector General (OIG) Management Letter is being issued as part of OIG's audit in response to the 2005 Gulf Coast hurricanes. The complete results of the audit will be summarized in a roll-up report.

Only after the information reported in this Management Letter is investigated by the OIG's Office of Labor Racketeering and Fraud Investigations and the Louisiana Department of Labor (LDOL) can a determination be made as to the legitimacy of the unemployment claims discussed herein.

BACKGROUND

Following the devastating impact of Hurricanes Katrina and Rita, Louisiana was faced with an unprecedented number of Disaster Unemployment Assistance (DUA) and Unemployment Compensation (UC) claims. To expedite handling these claims and delivering benefits to Hurricane victims, LDOL temporarily removed its basic eligibility review controls.

Those unemployed as a result of Hurricanes Katrina and Rita were eligible for one of two unemployment benefits programs. The first, State UC, provides benefits to eligible workers who are unemployed through no fault of their own, and meet eligibility requirements established by their states. UC benefits are state funded except for former federal employees. The second, DUA, provides financial assistance to individuals whose employment or self-employment has

been lost or interrupted as a direct result of a major disaster declared by the President of the United States. Before an individual can be determined eligible for DUA, it must be established that the individual is not eligible for regular UC benefits.

DUA is federally funded by the Federal Emergency Management Agency (FEMA) through transfer of funding to ETA for allocation of funds to State Workforce Agencies, such as LDOL. Immediately after all payment activity has been concluded for a disaster—up to 26 weeks after its declaration—funding should be closed out and unexpended funds returned to FEMA, via ETA.

An Office of Management and Budget Memorandum for the President's Management Council, dated October 13, 2005, provided guidance to Federal agencies on streamlining the delivery of benefits to victims of the Hurricanes. While the memorandum provided that eligibility requirements be temporarily waived, it also required implementation of post-payment controls to ensure benefits only went to individuals who qualified for them.

To expedite payment of unemployment benefits to affected Hurricane victims, LDOL established a period through November 19, 2005, designated as "Autopay" where claimants were **not** required to comply with normal procedures of calling the agency to report weeks that they continued to be unemployed. Instead, during Autopay, LDOL automatically paid benefits to claimants who initiated a DUA or UC claim as a result of the Hurricanes and had not informed LDOL of any changes in their eligibility.

As of December 15, 2005, and again, as of June 30, 2006, LDOL matched its hurricane-related claims against the National Directory of New Hires¹ (NDNH), which is a compilation of information from state agencies on newly hired workers. As of July 12, 2007, 34 State Workforce Agencies (SWAs) utilize NDNH as a tool to identify persons who obtain employment while simultaneously receiving DUA or UC benefits, which could affect their eligibility for continued benefits. Eight states have signed agreements with the U.S. Department of Health and Human Services (HHS) in place, and Louisiana's use of NDNH is pending.

LDOL used the results from the December 15, 2005, NDNH match--a 2,589 page report representing over 20,000 claims--to confirm with employers whether claimants earned wages during weeks in which they also received unemployment benefits. Temporary staff was hired to perform most of these duties, including manually tracking each employer's response to the report. If an employer returned a positive confirmation indicating a claimant had earned

¹ New Hire reporting is a process by which an employer reports information on newly hired employees to a designated state agency shortly after the date of hire. The primary purpose for requiring the reporting of new hires is to locate individuals with child support obligations; however, SWAs are allowed access to this data to match against their UC and DUA claims.

wages, LDOL established an overpayment to recover any ineligible benefits. However, when employers reported no wages were paid to a claimant, LDOL considered the issue with a claimant's eligibility to be resolved.

As of October 2006, LDOL provided us the status for 4,163 claims, or approximately 20 percent of the NDNH match results. According to LDOL's manual count, 1,957² claims had been identified and/or set up as overpayments, and 60 were forwarded for investigation. In addition, 1,448 claims represented non-responses from employers. Despite the lack of response from so many employers, LDOL had conducted no further followup with these employers.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine if LDOL:

1. effectively utilized NDNH to make timely determinations of claimants' eligibility for continued hurricane-related unemployment benefits; and
2. timely notified claimants who received overpayments of their obligation to repay the overpaid benefits.

To determine the monetary impact of LDOL results from its initial December 2005 match with NDNH, we used LDOL's payment files to quantify payments made to matched claimants on or after February 1, 2006. (We selected this date in order to evaluate the status several weeks after LDOL's match in December 2005.)

To update LDOL's December 2005 results from NDNH, we worked with LDOL to submit hurricane-related DUA and UC claims to Louisiana's Department of Social Services to have claimants matched against NDNH through June 30, 2006. We then compared the results generated from NDNH to the \$902,897,467 in hurricane-related DUA and UC benefits that LDOL had paid as of October 23, 2006 to further quantify potential overpayments.

To achieve our audit objectives, we relied on computer-processed data contained in LDOL's claims system. We assessed the reliability of this data and found it to be adequate except for a discrepancy that resulted from a backlog in LDOL's processing of an unprecedented number of transactions. We believe this discrepancy will be resolved once LDOL eliminates the claims backlog. Therefore, we feel that the data reported in LDOL's claims system is complete with the exception of these unprocessed transactions.

We also relied on computer-processed data contained in NDNH. However, we did not assess the reliability of this data because we had no means to do so.

² In addition to its manual results, LDOL provided us with a separate report from its claims system that showed overpayments established for 3,451 Hurricane claimants, totaling \$1,715,696, as a result of receiving positive confirmations from employers.

Consequently, additional investigations are needed to determine whether unemployment benefits identified as a result of our work were in fact paid on ineligible claims.

Our audit period was based on benefits paid for the weeks ending September 10, 2005, through June 3, 2006³. We conducted fieldwork at LDOL's central administrative offices in Baton Rouge, Louisiana, and analyzed LDOL's electronic claims files in our Denver Office, from January 2006 to February 2007. In July 2007, we obtained from ETA the number of SWAs with agreements in place to use NDNH.

RESULTS

LDOL did not effectively and timely utilize NDNH matches to make determinations on claimants' continued eligibility.

Results from the December 15, 2005 match were not timely and effectively utilized to determine claimants' eligibility for continued benefits. LDOL could have used these matches to initiate investigations and temporarily stop benefit payments based on ETA's interpretation of section 303(a)(1) of the Social Security Act in the Unemployment Insurance Program Letter 04-01 Interpreting Federal Unemployment Insurance Law [11/28/2000] / Volume 65, Number 229, Page 70939-70947, which states, in part:

When a question concerning continued eligibility for benefits for a given week arises, the State agency conducts an investigation of the facts and makes a determination of eligibility or ineligibility. While such a determination is pending, the State agency need not issue payment for the week in question until it issues a determination regarding eligibility, provided the determination is timely. Sometimes the question of eligibility affects future weeks. In such circumstances, not issuing payment for these later weeks because of the earlier eligibility issue is acceptable until a timely determination is made.

Had LDOL used ETA's authorized option to suspend payments, it could have potentially avoided paying \$13,409,575 to 11,723 claimants who reportedly obtained employment subsequent to the Hurricanes hitting the Gulf coast area, but on or before December 15, 2005. The table below shows the benefits paid to these claimants for weeks beginning on or after February 1, 2006.

³ Hurricane Katrina benefits were payable through the week ending June 3, 2006. Hurricane Rita benefits were payable through the week ending June 24, 2006.

DUA & UC Benefits Paid on or after February 1, 2006 to Hurricane Claimants Reportedly Hired on/before December 15, 2005		
Program	Number of Claimants	Benefits Paid
Hurricane Katrina DUA	5,556	\$8,607,444
Hurricane Katrina UC	5,949	4,526,678
Hurricane RITA DUA	91	132,699
Hurricane RITA UC	127	142,754
Total	11,723	\$13,409,575

LDOL's June 30, 2006, updated match between its hurricane-related claims and NDNH identified \$51,180,655 in DUA and UC benefits that were paid to 35,623⁴ claimants after they reportedly obtained employment after the Hurricanes hit the Gulf Coast Region. Of this amount:

- \$15,596,394 was paid to 18,388 claimants during the Autopay period
- \$35,584,261 was paid to 25,735 claimants after the Autopay period ended

Further investigation of claims paid after the Autopay period may show these to be fraudulent since, after that point, claimants were required to certify their continued unemployment in order to remain eligible for benefits.

LDOL had not timely notified claimants of their obligation to repay benefits to which they were not entitled.

As of October 10, 2006, LDOL had identified and coded in its claims system, \$108,741,716⁵ in overpaid Hurricane-related unemployment benefits that it intended to recover from claimants. However, limited resources have kept LDOL from timely notifying claimants of their obligation to repay benefits to which they were not entitled. Timely notification is a key factor as to whether these funds will be collected in full.

LDOL has an obligation to identify persons who have received benefits for which they were not eligible and recover those funds. A state's responsibility regarding payments made to those not entitled to DUA benefits is outlined in the Code of Federal Regulations, Title 20, Section 625.14(a) and reads as follows:

If the State agency of the applicable State finds that an individual has received a payment of DUA to which the individual was not entitled under the Act and this part, whether or not the payment was due to the individual's fault or misrepresentation, the individual

⁴ This total does not separately account for the 8,500 claimants who received benefits both during and after the Autopay period.

⁵ In addition, LDOL also identified \$5,862,548 in overpayments for non-Hurricane DUA and UC claims.

shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

Of the amount LDOL plans to recover from claimants, \$5,925,024 should be returned to ETA for benefits paid under the FEMA funding for DUA grants. To comply with Federal policies, it is imperative that these funds be returned to ETA on FEMA's behalf in order for FEMA to reobligate these resources for other regions affected by a disaster.

According to the Employment and Training Handbook, No. 356, Chapter IX, Closeout:

Once payment activity has ceased or the end of the disaster assistance period, it is important to close out the disaster as soon as possible. This is necessary because disaster funds are no-year funds and any unused state funds will be reobligated by FEMA for future disasters.

RECOMMENDATIONS

We recommend the Assistant Secretary for Employment and Training:

1. Work with LDOL to conduct investigations to determine whether \$51,180,655 of DUA and UC benefits paid to those who reportedly obtained employment--according to NDNH matches--should be recovered; and ensure appropriate actions are taken for those claimants found to have fraudulently obtained benefits;
2. Provide assistance and resources to LDOL along with other SWAs in establishing procedures to utilize data from NDNH in the most effective and efficient manner to mitigate the risk of overpayments and improve the prospects of cost recovery through early detection of claimants who are ineligible for benefits;
3. Ensure that LDOL receives the resources and assistance needed to implement effective and efficient collection methods to recover overpaid benefits from their claimants; and
4. Encourage the states to use the UIPL 01-04 option of suspending payments while eligibility determinations are pending.

AGENCY RESPONSE

In response to the draft Management Letter, the Assistant Secretary for Employment and Training stated that ETA regional staff conducted an on-site review of LDOL in March 2007 and, at that time, LDOL estimated it needed an additional nine months to complete case investigations related to its NDNH data matches. The regional staff will conduct a follow-up visit in fiscal year 2008. ETA stated it has provided funds to states to implement data matching with NDNH, and the regional staff has provided assistance in this matter, and to LDOL specifically concerning its benefit overpayment recovery efforts. Regarding the use of UIPL 01-04 to suspend benefit payments while eligibility determinations are pending, ETA stated that the Computer Matching Agreement between HHS and the states prohibits the suspension of payments while NDNH information is verified. The Assistant Secretary's response is included in its entirety as an Attachment.

OIG CONCLUSION

Based on the Assistant Secretary's response, we consider the recommendations resolved. They will be closed upon receipt of documentation to support LDOL's and ETA regional staff's actions taken to address the recommendations, as described in the response.

This final Management Letter is submitted for appropriate action. We request a response within 60 days describing and documenting actions taken in response to the recommendations.

If you have any questions concerning this Management Letter, please contact David Williams, Regional Inspector General for Audit, in Dallas at (972) 850-4005.

Attachment

cc: Howard Radzely
Acting Deputy Secretary


Phyllis Newby
ETA Audit Liaison

U.S. Department of Labor

Assistant Secretary for
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Washington, D.C. 20210

SEP 28 2007

MEMORANDUM FOR ELLIOT P. LEWIS

FROM: EMILY STOVER DeROCCO 

SUBJECT: The Louisiana Department of Labor Paid \$51 Million in Hurricane
Related Unemployment Benefits on Questionable Claims
Draft Management Letter No. 06-07-003-03-315

This response addresses recommendations for the Employment and Training Administration (ETA) contained in the Office of Inspector General (OIG), Draft Management Letter No. 06-07-003-03-315. During an audit, in response to the 2005 Gulf Coast Hurricanes, the OIG determined that the Louisiana Department of Labor (LDOL) did not effectively and timely utilize the National Directory of New Hires (NDNH) to make determinations on claimants' continued eligibility. The OIG also determined that LDOL had not timely notified claimants of their obligation to repay benefits to which they were not entitled.

Our response to each recommendation is provided below:

Work with LDOL to conduct investigations to determine whether \$51,180,655 of DUA and UC benefits paid to those who reportedly obtained employment—according to NDNH matches—should be recovered; and ensure appropriate actions are taken for those claimants found to have fraudulently obtained benefits.

ETA Regional Office staff conducted its most recent on-site review of the LDOL during the week of March 26-30, 2007. At that time, LDOL estimated that an additional nine months of work were needed to complete the case investigations related to the NDNH data matches. An on-site follow up visit will be conducted in Fiscal Year 2008.

Provide assistance and resources to LDOL along with other SWAs in establishing procedures to utilize data from NDNH in the most effective and efficient manner to mitigate the risk of overpayments and improve the prospects of cost recovery through early detection of claimants who are ineligible for benefits.

Since Fiscal Year 2005, funds have been provided to states to implement data matching against the NDNH. The ETA Dallas Regional Office assisted Louisiana in implementing the NDNH data matching system, and Louisiana has taken actions to establish overpayments using NDNH information. The Dallas Regional Office also assisted the other states in the region to implement NDNH data matching, and all states in the region are now using it to prevent and detect overpayments.

Ensure that LDOL receives the resources and assistance needed to implement effective and efficient collection methods to recover overpaid benefits from their claimants.

The ETA Dallas Regional Office has also provided technical assistance to the LDOL concerning its benefit overpayment recovery efforts. It sanctioned the LDOL plan to use the Louisiana Attorney General's Office to assist in this effort.

Encourage the states to use the UIPL 01-04 option of suspending payments while eligibility determinations are pending.

UIPL 04-01 permits states to withhold/suspend UI benefit payments while a potential eligibility issue is resolved only when that issue can be resolved on a timely basis. Federal guidelines define "timely" as 14 days from the date an issue is identified. Judicial interpretation of Federal UC law prohibits states from suspending payments indefinitely while such issues are resolved. Data matches against the NDNH only indicate a "possible" overpayment. States must verify the week(s) in which wages were earned to determine whether an overpayment exists or not, and some overpayments will occur while these investigations are underway. The Computer Matching Agreement between the Department of Health and Human Services and the states specifies that states shall not suspend payment or take any adverse action against individuals until the NDNH information is verified. The ETA Dallas Regional Office will monitor the states' adherence to this guidance.