



HIGHLIGHTS

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A Message from the Acting Inspector General

This Highlights edition provides a summary of selected noteworthy activities, accomplishments, and concerns that the Department of Labor (DOL) Office of Inspector General (OIG) reported in its *Semiannual Report to Congress* for the six-month period ending September 30, 2010.

Our audits made significant recommendations addressing vulnerabilities in the Department’s programs and operations. We issued 38 audit and other reports which, among other things, recommended that \$1.3 billion in funds be put to better use. In addition, our investigations continue to combat labor racketeering in the workplace and fraud against the Department’s programs, particularly the Foreign Labor Certification programs. During the reporting period, our investigative work resulted in 175 indictments, 158 convictions, and \$85 million in monetary accomplishments.

We look forward to continuing to work with the Department to ensure the rights and benefits of American workers and retirees are safeguarded.

Daniel R. Petrole, Acting Inspector General

Selected Statistics

Investigative monetary accomplishments.....	\$85 million
Funds recommended for better use.....	\$1.3 billion
Questioned costs	\$4.3 million
Audit and other reports issued	38
Indictments.....	175
Convictions.....	158
Debarments.....	19
Investigative cases opened.....	246
Investigative cases closed.....	278
Investigative cases referred for prosecution.....	190
Investigative cases referred for administrative/civil action.....	83

Top Management Challenges

In November 2010, the OIG issued the Top Management Challenges report required under the Reports Consolidation Act. This report identifies the programs or functions of the Department vulnerable to mismanagement, error, fraud, waste, or abuse, as follows:

- Achieving the Goals and Protecting the Investment Provided by the American Recovery & Reinvestment Act
- Protecting the Safety and Health of Workers
- Improving Performance Accountability of Workforce Investment Act Grants
- Ensuring the Effectiveness of the Job Corps Program
- Safeguarding Unemployment Insurance
- Improving the Management of Workers’ Compensation Programs
- Maintaining the Integrity of Foreign Labor Certification Programs
- Securing Information Technology Systems and Protecting Related Information Assets
- Ensuring the Security of Employee Benefit Plan Assets
- Ensuring DOL’s New Core Financial Management System Produces Reliable, Accurate, and Timely Financial Information

Mine Safety and Health Administration (MSHA)

As we have done over the last several years, the OIG continued to identify serious management and program weaknesses in MSHA.

- During this reporting period, we conducted a performance audit of MSHA's administration of its pattern of violations (POV) authority following the April 2010 mine accident at the Upper Big Branch Mine South in West Virginia, which resulted in the death of 29 miners. We found that in 32 years MSHA has never successfully exercised its POV authority, having only once issued a POV notice to a mine operator during the period.

Furthermore, our audit revealed that the Department did not implement regulations for administering MSHA's POV authority until 1990, and those regulations created limitations that made it difficult for MSHA to place mines on POV status. We also identified delays in MSHA's testing of rock dust samples in underground coal mines that could cause critical delays in identifying serious safety hazards.

We recommended that MSHA give priority to new rulemaking to eliminate or modify POV authority limitations created by current regulations and ensure the integrity and timeliness of inspection data and results used to determine patterns of violations.

Occupational Safety and Health Administration (OSHA)

We also identified and recommended ways of strengthening OSHA's enforcement of safety and health programs.

- We conducted a performance audit to determine if OSHA effectively evaluated the impact of penalty reduction incentives on workplace safety and health and found that OSHA has not effectively done so. We found that up to \$127 million in reductions may not have been appropriate because OSHA's directives for reducing penalties did not provide clear guidance, and did not integrate the size, good faith, and informal settlement reductions with an employer's overall character.

We made 11 recommendations to OSHA to effectively evaluate the impact of hundreds of millions of dollars in penalty reductions, improve information systems, and revise and implement clearer policies and procedures.

- The OIG audited the extent to which OSHA ensured that complainants received appropriate investigations under its Whistleblower Protection Program. We estimated that 80% of the whistleblower investigations for the three sampled programs did not meet one or more of eight essential investigative elements. By not providing complainants with thorough investigations, OSHA could not ensure that workers were protected as intended under the various whistleblower protection statutes.

We recommended that OSHA implement controls to oversee and monitor investigations and caseloads, develop specific performance measures, update the Whistleblower Investigations Manual, and designate subject matter experts with technical competencies in specific whistleblower statutes.

Job Corps

Our audit oversight of Job Corps Program operations continued to identify management and reporting lapses on the part of contractors, and in some cases, insufficient monitoring on the part of the program.

- Our audit of Applied Technology Systems, Inc. (ATSI), a Job Corps center contractor, was conducted at the request of DOL. We found that ATSI violated the Federal Acquisition Regulation and its contract provisions by failing to submit required annual indirect cost proposals needed to determine approved rates and any amounts to be reimbursed to the Federal government. We also found that DOL personnel in two cognizant agencies were unclear as to their monitoring responsibilities, resulting in insufficient program monitoring. Moreover, DOL did not have effective processes to ensure proper reimbursement of costs. Among our findings and recommendations was that \$1.8 million in questioned costs be recovered.
- In another audit, we uncovered that MINACT, Inc., a Job Corps center contractor, did not comply with Job Corps requirements for managing center safety and health programs relative to student misconduct and safety and health inspections at the Excelsior Springs Center. As a result, potentially dangerous students may have been allowed to remain at the center. Moreover, students and staff were potentially exposed to hazards that could have been identified and abated through the inspection process.
- We also found that, while the Management Training Corporation (MTC) generally took adequate actions to address student misconduct, it did not report significant incidents to Job Corps, as required.

Employee Benefits Security Administration (EBSA)

We continued our oversight of EBSA which is responsible for protecting the funds of more than 150 million Americans covered by more than 708,000 private retirement plans, 2.8 million health plans, and welfare benefit plans totaling more than \$5 trillion in assets.

- We conducted a performance audit to determine if EBSA has taken action to evaluate and reduce risk of harm to retirement plan participants from conflicts of interests by pension service providers. We found that EBSA has taken several actions to this end, such as following up on a 2005 Security and Exchange Commission report on conflicts, initiating 12 specific investigations.

At the same time, we found that EBSA could do more to address critical regulatory areas that have hampered its enforcement program. We recommended that EBSA broaden the definition of a fiduciary for investment advisers, and develop regulations requiring disclosure of all conflicts of interest and consideration of conflicts of interest in selection of service providers.

Wage and Hour Division

The OIG investigated individuals who submit to the Department falsified payroll and other records to avoid paying Federally-mandated wages

- In one case, the former controller for a New York construction company, was ordered to pay \$5,786,204 in restitution and sentenced to one year probation. The defendant was involved in multiple schemes, one of which was to substantially underpay the company's employees by more than \$5.7 million.
- In another investigation, three brothers were sentenced to serve 30 months in prison and ordered to collectively make restitution in the amount \$1.4 million to the IRS for back taxes owed. In addition, one of the brothers, who owned the restaurant, paid \$659,341 to compensate underpaid wages of the restaurant employees. The brothers hired undocumented workers, and lied to and provided the Wage and Hour Division with false documents about their employees and their businesses.

Federal Employees' Compensation Act Program

Our investigations in the workers' compensation area focused on preventing ineligible recipients from receiving benefits, and identifying fraud by service providers and individual claimants.

- In one case, a massage therapist, who misrepresented herself and billed the government for physical therapy services, was sentenced on July 2, 2010, to 78 months in prison, 3 years' supervised release, and was ordered to pay \$1.6 million in restitution, after being found guilty of committing health care fraud.
- In another investigation, pharmaceutical manufacturer Allergan, Inc. agreed on September 1, 2010, to plead guilty to a criminal misdemeanor for misbranding and to pay \$600 million to resolve its criminal and civil liability stemming from the promotion of its product, Botox[®], for uses not approved as safe and effective by the Food and Drug Administration. As a result of the misbranding, DOL's Office of Workers' Compensation Programs paid more than \$1.6 million in Botox[®]-related costs.

Unemployment Insurance (UI)

We conducted audit and investigative oversight of the multi-billion dollar UI program, which provides income maintenance to those who are unemployed.

- We conducted a performance audit to determine why states had not applied for UI modernization funds under the American Recovery and Reinvestment Act, and the status of their implementation plans and benefit payments to claimants. Nine states indicated that they were unlikely to apply for \$1.3 billion of UI modernization benefits, most often citing the cost of increased benefit payments that would continue after the incentive payments are exhausted. We recommended that ETA work with Congress to reinstate unused UI modernization funds into the Federal Unemployment Account and work with the states to ensure that \$500 million of administrative funds are spent as intended.
- One UI investigation resulted in the owner of a temporary employment company pleading guilty to tax evasion, theft from a health care benefit program, and mail fraud. The owner underreported substantial amounts of wages and failed to pay between \$7 million and \$20 million in Federal withholding, Social Security, and Medicare taxes. To further his scheme, the company owner underreported the number of employees in order to defraud the State of Rhode Island UI Tax Program.

Foreign Labor Certification

OIG investigations continue to demonstrate that the Foreign Labor Certification process continues to be compromised by attorneys, labor brokers, employers, and others.

- An OIG investigation resulted in a husband, wife, and son pleading guilty to charges of visa fraud, conspiracy, and encouraging undocumented workers to come to, and remain in the United States. The defendants, who owned and operated eleven staffing companies, facilitated the approval of fraudulent H-2B visas allowing more than 1,000 foreign nationals to work as temporary workers.
- In another investigation, 6 of 12 defendants pled guilty after being indicted on Racketeer Influenced and Corrupt Organizations Act charges for criminal activities which occurred in 14 states. Among the criminal acts included in the indictment are forced labor trafficking, identity theft, visa fraud, extortion, and fraud in foreign labor contracting. The individuals face fines, imprisonment, and forfeiture.

Labor Racketeering

The OIG has a unique programmatic responsibility to investigate labor racketeering and/or organized crime with respect to unions, employee benefit plans, and labor-management relations. Our investigations continue to yield impressive results.

- A former business agent for the New Jersey Regional Council of Carpenters (NJRCC), who was the *de facto* business manager and member of the NJRCC Local Union 455, was convicted May 17, 2010, of embezzling approximately \$85,000 in funds from Local 455.
- An investment adviser was sentenced on June 17, 2010, to 9 years and 4 months in prison, 3 years' supervised release, and restitution of \$26,411,414. As president and co-owner of a company that invested approximately \$169 million of union pension funds, the defendant withdrew and invested portions of the funds for his own personal gain, resulting in losses totaling approximately \$24 million for the union pension funds.
- A physician was sentenced on May 27, 2010, to 30 months in prison, 3 years' supervised release, and restitution of \$959,735 for her role in a scheme to defraud the Las Vegas Hotel and Restaurant Employees International Union Welfare Fund. She and others submitted claims for unauthorized cosmetic surgeries, and billed the Fund for the procedures as legitimate treatments. The Fund paid more than \$3 million on the claims.
- An Illinois cardiologist was sentenced on August 10, 2010, to 5 years in prison, 2 years' supervised release,

and restitution of \$13,122,348 for his role in a fraudulent health care reimbursement scheme. He received fraudulent reimbursements from Medicare and other health care insurers, as well as several ERISA-covered union health and welfare funds, for cardiac care that was not performed.

- Between April and September 2010, guilty pleas were entered by 9 of 11 defendants for their alleged roles in a scheme by which several officials of the United Brotherhood of Carpenters and Joiners, in return for bribes, allowed construction contractors to avoid full payment of union wages and benefits at various jobsites in New York City. Two of the defendants are associated with the Genovese and Luchese Organized Crime Families. Two of the 11 defendants received sentences ranging from 5 years' supervised release to 19 months in prison and forfeiture totaling \$120,000.

Legislative Recommendations

The OIG continued to propose legislative recommendations that have remained markedly unchanged over the last several years. The OIG continues to believe that the following legislative actions are necessary to increase the efficiency and integrity of Departmental programs and functions.

- Improve the integrity of the FECA program by moving claimants into a form of retirement after a certain age, and granting authority to DOL to directly access SSA records.
- Allow DOL access to wage records to reduce overpayments in employee benefit programs, including UI, FECA, and DUA.
- Amend pension protection laws by expanding the authority of EBSA to require correcting substandard benefit plan audits; requiring direct reporting of ERISA violations to DOL; and strengthening criminal penalties in Title 18 of the US Code.
- Provide authority to ensure the integrity of the foreign labor certification process, including the ability to verify the accuracy of information provided on labor condition applications.
- Enhance the WIA program through reauthorization by improving state and local reporting of WIA obligations; modifying WIA to encourage the participation of training providers; resolving uncertainty about the release of WIA participants' personally identifying information; and strengthening incumbent worker guidance to states.
- Clarify MSHA's authority to issue verbal mine closure orders.