

HIGHLIGHTS

October 1, 2010 - March 31, 2011 Volume 65

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 March 31, 2011.

Our audits made significant recommendations addressing vulnerabilities in Department's programs and operations. We issued 29 audit and other reports which, among other things, recommended that \$5.7 million in funds be put to better use, and questioned \$3.4 million in costs during this reporting period. In addition, our investigations continue to combat labor racketeering in the workplace and fraud against the Department's programs. During the reporting period, our investigative work resulted in 207 indictments, 133 convictions, and \$155 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.....	\$155 million
Funds recommended for better use.....	\$5.7 million
Questioned costs issued during the reporting period.....	\$3.4 million
Outstanding questioned costs resolved during this period.....	\$14.6 million
Audit and other reports issued	29
Indictments.....	207
Convictions.....	133
Debarments.....	49
Investigative cases opened.....	279
Investigative cases closed.....	234
Investigative cases referred for prosecution.....	175
Investigative cases referred for administrative/civil action.....	76

Occupational Safety and Health Administration (OSHA)

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

- We conducted a performance audit of OSHA's monitoring of State Plans to determine whether OSHA ensured that OSH programs operated by State Plans were at least as effective as the Federal OSHA program. We found that OSHA had not designed a method to examine the impact of state programs on workplace safety and health to ensure that they were effective and to fully evaluate the merits of any program changes. OSHA also had not evaluated the impact of enforcement programs in order to arrive at a minimum criterion to evaluate state programs, nor had it defined effectiveness in the context of State Plan programs.

We made four recommendations to OSHA to define program effectiveness; design measures to quantify the impact of state programs on workplace safety and health; establish a baseline to evaluate state program effectiveness; and revise monitoring processes to include assessments about whether State Plans are at least as effective as Federal OSHA.

- We conducted a performance audit to determine whether OSHA had performed proper investigations of three whistleblower complaints filed by one complainant. We found that OSHA did not follow its own policies and procedures during investigations of two of the complaints. We also found that OSHA exceeded its authority by dismissing the third complaint without conducting an investigation to determine its merits. As a result, OSHA could not provide any assurance that protections were afforded as intended under Federal whistleblower laws. We recommended that OSHA implement controls to ensure that supervisors review all complaints for validity and coverage prior to beginning an investigation.

Federal Employees' Compensation Act Program

Our investigations in the workers' compensation area focused on identifying fraud by service providers and individual claimants.

- A former civilian employee of the Department of the Army was sentenced to 10 months in prison, a year of supervised release, and ordered to pay \$100,000 in restitution after being found guilty of making false statements and fraudulently obtaining Federal workers' compensation benefits over a 10-year period.
- A chiropractor pled guilty to health care fraud in a \$1.5 million scheme in which he and others submitted fraudulent claims for medical services. The chiropractor also forged doctors' signatures on documents supporting false claims filed for Federal workers' compensation benefits.

YouthBuild

We audited the YouthBuild program, which provides educational and job training opportunities within the construction industry for at-risk disadvantaged youth ages 16–24.

- We conducted a performance audit of 27 grantees in eight states to determine ETA's effectiveness in administering the YouthBuild program. Our audit found that 10 of 27 grantees did not enroll eligible youth ages 16–17, due to concerns that this age group was more susceptible to work site injury and had more limited employment potential than older youth. Conversely, we found that 21 grantees provided program services to ineligible participants. Moreover, only 43% of youth who exited the program were placed in jobs or other educational programs, as compared to the goal of 70%; and 64% of those youth who attained placement retained employment or stayed in school, as compared to the goal of 75%. We questioned costs of \$214,124 related to 103 ineligible participants and estimated that \$5.7 million could have been put to better use if funds had been expended on eligible participants.

We made eight recommendations to ETA to ensure that the YouthBuild program meets program objectives.

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 what EBSA is doing to assess whether employee participation in retirement plans and average retirement savings are increasing. We found that EBSA needs to develop a process to determine whether the qualified default investment alternative (QDIA) regulation is helping to increase employee participation and average investment returns in retirement plans through automatic enrollments. Since participation and investment returns are critical to the retirement savings of American workers, it is important to monitor these indicators. Without a monitoring process in place, EBSA cannot know if the QDIA regulation is having its intended effect. We recommended that EBSA develop and implement a process to monitor whether average investment returns and employee participation in retirement plans increase over time. We also recommended that EBSA take appropriate action if needed, and determine whether any modifications to the QDIA regulation are warranted.
- We conducted a performance audit to determine the extent to which EBSA had assurances that fiduciaries were voting on items such as proposals concerning corporate policies and governance, solely for the economic benefit of plan participants and beneficiaries. We found that EBSA does not have adequate assurance that fiduciaries voted solely for the economic benefit of plans or that they monitored proxy voting activities because they do not require that plans document either of these. Additionally, EBSA has devoted few resources to enforcing proxy-voting requirements. EBSA's previous proxy-voting projects found that monitoring of investment managers needed to improve in order to ensure that proxies were voted in accordance with stated policies. We made three recommendations to EBSA to strengthen its authority, to assess monetary penalties for proxy-voting noncompliance; require documented support for fiduciary monitoring and the economic benefit of proxy-voting decisions; and include fiduciary proxy-vote monitoring in its enforcement investigations.

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.

- We conducted a performance audit to determine whether the Los Angeles Job Corps Center (LAJCC) had awarded subcontracts and claimed costs in accordance with Federal Acquisition Regulation (FAR) requirements. We found that LAJCC had improperly awarded 7 of the 11 subcontracts we reviewed because of noncompliance with the FAR. Moreover, 15 of 95 purchase orders were not properly awarded to vendors. Among our findings and recommendations was that ETA recover \$2.5 million in questioned costs; review all future LAJCC subcontracts for FAR compliance and approval prior to award; and direct the Young Women's Christian Association and LAJCC to establish procedures, training, and oversight to ensure compliance with the FAR.

Unemployment Insurance (UI)

We conducted investigative oversight of the multi-billion dollar UI program. Our investigations continue to find fraud by individual claimants and service providers.

- The owner of a temporary employment agency was sentenced to two years in prison and ordered to pay \$14.3 million in restitution after being found guilty in an UI fraud scheme. The defendant underreported the number of employees employed by his company in order to defraud the State of Rhode Island UI Tax Program.
- Two individuals were sentenced in New Jersey for their roles in defrauding the New Jersey Department of Labor and Workforce Development out of more than \$1.6 million. The defendants recruited approximately 78 individuals into the scheme in order to obtain benefits that they were not entitled to receive. One defendant was sentenced to 17 months in prison; the other, to 27 months in prison; and they were ordered to pay restitution of \$104,000 and \$119,000, respectively.

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.

- A \$55 million judgment was imposed against a husband, wife, and son who owned and operated 11 staffing companies that fraudulently facilitated the approval of H-2B visas allowing more than 1,000 foreign nationals to enter the United States to work as temporary workers. The \$55 million represents the illegal proceeds generated during the course of the visa fraud conspiracy.
- An Assistant Chief Counsel with U.S. Department of Homeland Security Immigration and Customs Enforcement was sentenced to more than 17 years in prison for conspiring to defraud the foreign labor certification process and, in a separate scheme, making false statements to obtain FECA benefits. The defendant, who was also ordered to pay \$296,865 in restitution, was convicted of 36 felony counts including conspiracy, bribery, obstruction of justice, and making false statements to DOL.

Labor Racketeering

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

- A financial secretary for the Boilermakers Southeastern Area Joint Apprenticeship Committee (SAJAC) Fund was sentenced to two-and-a-half years in prison and restitution of more than \$2.5 million after pleading guilty to embezzlement from an employee benefit plan. Another SAJAC employee was indicted for her alleged role in the scheme.
- A former Plumbers Local 55 business manager was sentenced to more than two years in prison and ordered to pay \$11,158 in restitution after pleading guilty to several crimes, including Hobbs Act Conspiracy and union-related benefit embezzlement charges. The defendant participated in a bribery scheme with a county commissioner, improperly used union property to perform work on the homes of his friends, and instructed others to mislead investigators after the corruption investigation became public.

- A chiropractor was sentenced to over five-and-a-half years in prison for fraudulently billing, among others, union health and welfare plans more than \$14 million. He was also ordered to pay restitution to his victims through the forfeiture of \$912,125 and the proceeds from the sale of his property, including two homes and three vehicles.

Legislative Recommendations

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

- Allow DOL access to Social Security Administration's wage records and the National Directory of New Hires to reduce overpayments in employee benefit programs, including UI, FECA, and DUA.
- In the FECA program, in addition to allowing access to wage records, evaluate benefit rates when claimants reach normal Federal or Social Security retirement age and move a three-day waiting period to the beginning of the 45-day continuation-of-pay process to discourage the filing of frivolous claims that resolve very quickly.
- Amend pension protection laws by expanding the authority of EBSA to require correcting of substandard benefit plan audits; requiring direct reporting of ERISA violations to DOL; and strengthening criminal penalties in Title 18 of the U.S. 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 Workforce Investment Act program through reauthorization to provide an opportunity for program improvement: 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.