



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 30, 2012

Mr. Peter M. Rivera
Commissioner
Department of Labor
State Office Campus
Building 12, Room 506
Albany, NY 12240

Re: Report 2011-BSE-3A-006

Dear Commissioner Rivera:

This report summarizes findings and recommendations resulting from our Office's ongoing examination¹ of Department of Labor (DOL) payment requests and related payments for Unemployment Insurance Benefits (UI) during the period January 1, 2011 through December 31, 2011 and the identification of overpayments based on a match of certain DOL files with records of deceased individuals and of New York State employees. The objective of our examination was to determine whether payment requests and payments were appropriate and processed in accordance with applicable Federal and State laws and DOL regulations.

A. Results of Examination

For the period January 1, 2011 through December 31, 2011, our examination identified 9,781 inappropriate payment requests and payments totaling almost \$2.5 million. This includes \$1,096,573 in inappropriate payments, of which we stopped \$136,600 before the payments were made, and \$1,393,974 in potential payments that would have been paid over the life of the UI claim had DOL not taken corrective action based on our findings.

During the examination period, DOL collected \$15,898 from claimants for penalties assessed as the result of our findings. In addition, 2,453 of the inappropriate payments totaling \$383,304 resulted from an erroneous benefit rate calculated at least one year prior. DOL has interpreted Section 597.3 of the State Labor Law to preclude them from stopping, correcting or recouping any overpayments that resulted from an erroneous rate calculation not discovered within one year of the error.

¹ We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law and Article 18, Section 550 of the State Labor Law.

We identified 361 overpayments totaling \$100,126 misclassified as non-recoverable. When DOL classifies an overpayment as non-recoverable, no attempt is made to recoup that overpayment. We also identified 207 overpayments totaling \$54,348 that DOL failed to set up for recoupment. Further, we identified 91 newly hired New York State employees that owed \$151,372 to DOL for UI overpayments. During this same period, DOL recovered \$436,136 from employees identified by our past matches of New York State employees.

We shared a draft report with DOL officials. We considered their comments (Appendix A) in preparing this final report. The comments of the State Comptroller on their response are attached as Appendix B. DOL officials agreed with our recommendations and stated they have proactively taken steps to reduce improper payments and to better recover overpayments.

B. Background and Methodology

DOL administers the Unemployment Insurance Program, which consists of the UI Benefit, Trade Re-adjustment Allowance, and Disaster Unemployment Assistance programs. Workers who exhaust their initial UI benefits may be eligible for an extension of UI benefit payments through supplemental UI benefit programs – the Emergency Unemployment Compensation and Extended Benefit programs. All benefit payment requests are subject to audit by the State Comptroller prior to payment.

To accomplish our objective, we selected benefit payment requests each day for examination based on risk, using “filters” embedded in the DOL payment system. In addition, our examination included other tests designed to identify conditions not readily found by our filters. The results are used to identify and recover any overpayments and to prevent future overpayments. During our examination period, over 26 million payments, totaling more than \$7.6 billion, were made to claimants for the UI Program. Of the total, we selected 39,205 payment requests or related payments for examination. This report summarizes the results of our examinations over the period.

Additionally, we matched certain DOL files and other files to identify (i) payments processed for recently deceased claimants and (ii) newly hired New York State employees who owe DOL money for outstanding benefit overpayments.

C. Details of Findings

Examination of UI Payments

Our examination identified 9,781 inappropriate payment requests and payments totaling almost \$2.5 million that either did not comply with applicable Federal and State laws and DOL

regulations or were processed in error. In the majority of cases, established policies and procedures were not followed or limitations in the DOL UI System led to errors. In some instances, these circumstances were exacerbated by claimants making false statements to obtain benefits. The results of our findings are summarized in the following table:

Finding	Payment Requests	Inappropriate Payments	Current Payments Stopped	Future Payments Prevented	Total Findings
Policies and Procedures not Followed					
Incorrect wage information used to calculate benefit rate	4,552	\$173,173	\$132,205	\$1,187,251	\$1,492,629
Claimant was not authorized to work in the United States	276	\$42,877	\$1,998	\$104,796	\$149,671
UI System Limitations					
System included prior period wage information when calculating current period benefit rate	2,876	\$403,917	\$1,209	\$94,277	\$499,403
Payments exceeded the maximum four days of benefits in the same week	331	\$90,429			\$90,429
Claimants collected benefits from multiple programs in the same week	207	\$35,090			\$35,090
Rate adjustments paid to claimants with holds (i.e., stops) on their account	30	\$3,414	\$743		\$4,157
Duplicate payments made	123	\$12,689	\$445		\$13,134
Claimants Made False Statements to Obtain Benefits					
Claimants certified they were eligible to receive benefits when the UI file indicated they were out of the country	89	\$22,123			\$22,123
Claimants certified they were eligible to receive benefits when the UI file indicated they either fully or partially employed	1,255	\$165,066		\$7,650	\$172,716
Certifications were made after a claimants' date of death	42	\$11,195			\$11,195
Total	9,781	\$959,973	\$136,600	\$1,393,974	\$2,490,547

In addition to the findings identified in the above table, DOL collected \$15,898 from claimants for 223 “forfeit days” imposed as the result of our findings. DOL imposes a penalty (i.e., forfeit days) on a claimant when it determines the claimant made a willful false statement to obtain benefits they were not eligible to receive. The claimant then forfeits one day of benefit payments for each forfeit day imposed, which DOL collects from future benefit payments.

In response to our recommendation to ensure staff follows established policies and procedures, DOL officials stated staff have been advised and retrained on the proper methods used to solicit wage information. DOL officials also stated procedures have been updated to provide further clarity and staff is being apprised of changes in procedures via an E-mail alert.

Continued Overpayments to UI Claimants

According to DOL officials, Section 597.3 of the State Labor Law prevents DOL from stopping, correcting or recouping overpayments resulting from an erroneous benefit rate determination if: (i) the claimants did not make a willful misstatement to obtain the benefits, and (ii) the overpayment is not discovered within one year from the date DOL made the erroneous benefit determination.

During 2011, we identified 2,453 overpayments totaling \$383,304 resulting from an erroneous benefit rate determination. In each case, more than one year elapsed from the date DOL calculated the incorrect benefit rate. Based on Section 597.3 of the State Labor Law, DOL took no action to correct, stop or recoup these overpayments.

DOL should consider whether, for overpayments discovered greater than one year past the initial determination, re-evaluation of correcting *future* payments is appropriate and necessary authority may be sought. Otherwise, claimants will continue to receive overpayments even after the error is found, and those overpayments will not be recouped.

DOL officials agreed to undertake a review of Section 597.3 of the State Labor Law in consultation with business, labor, and advocacy organizations.

Classification of Overpayments

When DOL identifies an overpayment, depending on the circumstances, it classifies the overpayment as either recoverable or non-recoverable. DOL attempts to recoup all overpayments classified as recoverable from the claimants. However, DOL waives recoupment of all overpayments classified as non-recoverable.

During our examination period, we identified 361 overpayments totaling \$100,126 that DOL staff had misclassified as non-recoverable that should have been classified as recoverable. We

also identified 207 overpayments totaling \$54,348 for which DOL staff failed to seek recoupment. Therefore, no attempt was being made to recoup these 568 overpayments.

Based on our notification, DOL corrected the misclassified overpayments. DOL also set up a recoupment for all claimants that received these overpayments.

Recovered Overpayments to New York State Employees

We also matched the DOL UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees who owe DOL money. During the period of our examination, we identified 91 newly hired employees who owed \$151,372 to DOL for UI overpayments. During this same period, DOL reported that they recovered \$436,136 from employees we identified in prior matches.

Recommendations

- 1. Ensure staff follows established policies and procedures when processing claims.*
- 2. Establish and implement controls to prevent overpayments resulting from system limitations identified in this report, e.g., exception reports or system edits to identify duplicate payments, payments exceeding maximum allowable days, and claimants collecting benefits from multiple programs.*
- 3. Establish procedures to prevent payments to claimants while employed or out of the country.*
- 4. Ensure staff follows established policies and procedures when classifying overpayments as recoverable or non-recoverable.*
- 5. Recoup overpayments identified in the examination from claimants, as appropriate.*
- 6. Determine the financial impact of Section 597.3 of the State Labor Law on the Unemployment Insurance Program. If warranted, consider seeking authority to prevent future overpayments once they are identified.*

We thank the management and staff of the Department of Labor for the courtesies and cooperation extended to our auditors. Since your response to the draft report is in agreement with the recommendations in this report, there is no need for further response unless you feel otherwise. If you choose to provide a response, we would appreciate it by August 30, 2012.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Appendix A & B

cc: Carl Boorn
Mary Batch
Timothy Burleski



New York State Department of Labor
 Andrew M. Cuomo, Governor
 Peter M. Rivera, Commissioner

July 17, 2012

Bernard J. McHugh
 Director of State Expenditures
 110 State Street
 Albany, New York 12236

Dear Mr. McHugh:

This is in response to your letter dated May 14, 2012, regarding Draft Report 2011-BSE-3A-006 containing OSC's ongoing examination of payment requests and related payments for Unemployment Insurance Benefits (UI) during the period January 1, 2011 through December 31, 2011 and the identification of overpayments based on a match of certain Department of Labor files with records of deceased individuals and of New York State employees.

The Department of Labor for this same time period, January 1, 2011 through December 31, 2011 successfully processed 26.3 million payments, totaling more than \$7.7 billion dollars.

The Department of Labor continues to strive towards a 100% UI payment and classification accuracy level. Through our memorandum of understanding, OSC staff conduct this review as an additional measure of control to ensure integrity. The Department appreciates the work performed by OSC on its behalf which further protects the integrity of our unemployment insurance program. The review and feedback provided in this report, along with that given during ongoing and regular meetings between OSC and Department staff has developed best practices that move us toward our common goal. The Department has proactively taken steps to reduce improper payments and to better recover overpayments that have been established. Steps completed or underway include:

1. Establishment of an improper payment prevention strategic plan to develop steps aimed at reducing overpayments caused by claimant fraud. The plan is reviewed regularly and is updated by a cross functional task force representing all aspects of Department operations. The task force coordinates activities in this regard.
2. Creation of exception reports that identify non-recoverable Emergency Unemployment Compensation (EUC) payments, identification of regular UI non-recoverable overpayments that may be questionable, attempts to claim benefits by persons from disallowed locations outside the United States and Canada (internet protocol - IP blocking), further controls on the IP blocking process to put claims on payment control, and identification of claimants who have repeatedly filed fraudulent claims to reduce improper payment recidivism. Data on these claims is reviewed by the UI Integrity and Quality Control Bureau. The Bureau ensures exceptions are adjudicated or returned to

<p>* Comment 1</p>
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W. Averell Harriman State Office Campus
 Building 12, Room 500, Albany, NY 12240
www.labor.ny.gov

staff for possible re-determination. Claimants are required to report in certain circumstances to verify eligibility.

3. The Department will implement Integrity Training for all UI staff by July 2012. The training re-emphasizes how to classify overpayments properly and prevent overpayments.
4. The Department of Labor has received a \$2.1 million Integrity Grant from the United States Department of Labor and applied for further grants recently announced by USDOL. These funds will help prevent improper payment of UI benefits through:
 - a. Technology improvements,
 - b. Staff training,
 - c. Integrity focused messaging to claimants, employers and the public;
 - d. Marketing of the State Information Data Exchange System (SIDES) program implemented on March 31, 2012 allows automated communication with employers about separation issues.
5. Further updates to the SIDES program pilot to add a monetary and wage verification component to the process. This will decrease mailings to participating employers and provide information quicker for both separation and working while collecting issue determinations.
6. The Department began using the State Identification Inquiry (SID) system in the Interstate Connection Network (ICON) application on March 31, 2012. This allows staff to identify claimants who are working in other states while they collect benefits in New York.
7. New York was the first state in the country to implement the Treasury Offset program which has already recovered in excess \$62.4 million from over 52,230 debtors as of June 30, 2012.
8. In August 2012 the Department will change how we handle new hire data. If new hire data indicates the claimant is re-employed, they will not be able to certify on-line or via phone. States with a similar process saw a 60% drop in certifications by those who are re-employed.
9. Lastly, the Department of Labor will implement a secure communication portal by September 30, 2012. This will give staff and employers the ability to communicate in a private, secure manner. This two way messaging will reduce mailing cost and speed up responses from employers. This will help stop overpayments because of the delays that mail and processing time cause.

Below are OSC Recommendations and the Department of Labor's Responses.

OSC Recommendation

1. *Ensure staff follows established policies and procedures when processing claims.*

DOL Response

The Department has reviewed procedures and notices used to solicit information from UI claimants and employers. In light of findings staff have been advised and re-trained on proper methods used to solicit missing wage information. Procedures have been updated to provide further clarity. Staff obligation and knowledge is also being refreshed through the issuance of a UI integrity newsletter, a UI Integrity training module, and a change in the way policy and procedure updates are issued. Going forward, all staff (based on work duties) will receive an E-mail alert when procedures are updated. Procedure changes will be highlighted for quick reference. We are also indexing our procedure manual so that it is easily searchable based on key words.

We are also in the process of implementing a new statistical sampling review of overpayment determinations to ensure policies and procedures are followed. Our Benefit Quality Control Section is providing written quarterly reports noting issues identified in their review samples for discussion with management.

OSC Recommendation

2. *Establish and implement controls to prevent overpayments resulting from system limitations identified in this report, e.g., exception reports or system edits to identify duplicate payments, payments exceeding maximum allowable days, and claimants collecting benefits from multiple programs.*

DOL Response

The Department has and continues to develop data extracts related to areas of concern raised in the report. These extracts are then sampled. If sampling indicates further errors, cases are referred back to staff to be re-determined in a timely manner. This feedback process will better familiarize staff with proper procedure and will ensure accountability. Data extracts are also being reviewed to determine whether patterns may exist so that follow up training and instruction may be offered where necessary. These extracts and revised process will not only reduce and prevent improper payments, but will do so in an automated way that will save staff resources.

OSC Recommendation

3. *Establish procedures to prevent payments to claimants while employed or out of the country.*

DOL Response

The Department implemented an Internet protocol (IP) blocking technology in June 2011. UI claims and certifications attempted from outside allowed area (the United State, its territories, and Canada) are prevented. The Department's efforts in this regard have been recognized by the United States Department of Labor as a recommended best practice for other states. The Department also reviewed older logs of access attempts and identified potential improper payments. The Department continues to refine its blocking technology and is in the processing of changing the procedure for assigning and lifting claims controls.

The Department is also improving new hire data matching during the weekly certification process. This revised process will not only reduce and prevent improper payments, but will do so in an automated way that will save staff resources. If new hire data indicates that the claimant has become re-employed, they will not be able to certify on-line or via telephone. Other states using similar methods have experienced an immediate 60% drop in certifications by those working. We expect that this process, to be implemented in early Fall 2012.

OSC Recommendation

4. *Ensure staff follows established policies and procedures when classifying overpayments as recoverable or non-recoverable.*

DOL Response

The Department has developed a training module specific to integrity and overpayment prevention. An initial training session has been held with a key management audience to help refine and improve upon the training. By July 2012 the Department will be implementing integrity training for all UI staff across program areas. Up-front prevention of improper payments as well as the proper classification of overpayments and their recoverability is stressed in this training. As noted in item 1 above, we have taken steps to ensure procedures are being updated and followed.

OSC Recommendation

5. *Recoup overpayments identified in the examination from claimants, as appropriate.*

DOL Response

The Department is in process of re-examining claims noted in the report. A database of cases has been developed to track the actions taken by staff and to document outcomes. If our examination determines that the overpayment was a result of willful misrepresentation or, if it is determined that the overpayment was not due to willful misrepresentation, but it occurred less than one year from the re-determination date, we will issue a determination of recoverable overpayment. If the non-willful overpayment

occurred greater than one year in the past, we are prevented by law from taking any action.

We have developed an exception report related to Federal emergency unemployment compensation determinations to ensure they are accurate. We implemented a system of additional controls and supervisory checks on our EUC overpayment determination system in September 2011. A limited number of staff is allowed to determine EUC overpayments as non-recoverable. These determinations are audited through the above noted extracts. We have found that this control process has significantly minimized inappropriate determinations of EUC non-recoverability achieving a decrease in non-recoverable EUC overpayment determinations by 89% for the January to May 2012 period when compared to last year.

The Department has also increased its ability to collect overpayments. Beginning in February 2011 the Department became the first state in the nation to participate in the Treasury Offset Program (TOP). This program offsets Federal tax returns for those required to repay improperly collected benefits. Thus far the Department has recouped in excess of \$60 million in overpayments. Existing efforts to recover funds include a program with the Department of Tax and Finance to offset state tax returns, the offset of wages to state employees owing overpayments and other methodologies using routine collection procedures.

OSC Recommendation

6. *Determine the financial impact of Section 597.3 of the State Labor Law on the Unemployment Insurance Program. If warranted, consider amending the statute to prevent future overpayments once they are identified.*

DOL Response

Subsection 597.3 provides that "Any determination regarding a benefit claim may, in the absence of fraud or willful misrepresentation be reviewed only within one year from the date it is issued because of new or corrected information." The statute does provide for proper equity in non-fraud re-determinations that would be effected by over-reaching when fault and willfulness are not a factor. The Department is considering legislation to bring current statutes into conformity with changes instituted in the Trade Adjustment Assistance (TAA) Extension Act of 2011. Those changes impose additional penalties for willful misrepresentation and will reduce errors caused by late or incomplete information provided by employers. The Department will undertake a review of Section 597.3 in consultation with business, labor, and advocacy organizations.

Other efforts

Preventing payments to decedents: Both OSC and the Department review a database of deceased individuals to ensure only proper payments are made. Both OSC and the Department use the same system yet results differ somewhat. The Department and your

Office expect to coordinate so that results are brought into alignment and there is no duplication of effort. This will result in ensuring proper payment while minimizing the expenditure of resources. The Department is also working with the Department of Health Vital Records to develop a new cross match against state decedent records.

Preventing payments to those without work authorizations: OSC has developed a cross-matching process that better ensures payments are not made to those without authorization to work in the United States. The Department will work with your Office to duplicate this process internally.

Modernizing UI systems: The Department is in the midst of a major re-engineering of its unemployment insurance systems. Current systems are decades old, some dating back to the 1960's. The UI Systems Improvement (UISIm) project will take into consideration the outcomes of the queries provided by OSC staff.

If you have any comments, please contact Carl Boorn, Director Unemployment Insurance Division (518) 457-2177.

Sincerely,



Peter M. Rivera
Commissioner

State Comptroller Comments on Auditee Response

1. The Comptroller's Office is pleased DOL appreciates the work performed by our auditors. It is important to note that the auditors' activities related to DOL payment requests and payments are fulfilling the Comptroller's constitutional and statutory requirement to audit all State expenditures prior to payment. The auditors' activities are not performed through a memorandum of understanding or as an additional measure of control to ensure integrity.