



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 14, 2013

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

Re: Report 2012-BSE-3A-001

Dear Commissioner Rivera:

This report summarizes the findings and recommendations resulting from our Office's ongoing examination¹ of Department of Labor (DOL) payment requests and related payments for Unemployment Insurance (UI) benefits during the period January 1, 2012 through December 31, 2012. The objective of our examination was to determine whether payment requests and related 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, 2012 through December 31, 2012, our examination identified 8,622 inappropriate payment requests and related payments totaling almost \$3.1 million. This includes \$1,165,050 in inappropriate payments, \$479,903 in payment requests our Office stopped before they were paid, and \$1,427,622 in future payment requests 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 \$1,060,466 from claimants and New York State employees because of our Office's past and current examination efforts. This includes \$607,346 from claimants for UI penalties DOL assessed as a result of our findings and \$453,120 from New York State employees we identified as overpaid by DOL in prior examination periods. In addition, during this examination period, we identified 118 newly hired New York State employees that owed \$228,075 to DOL for UI overpayments.

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 DOL's response are

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.

attached as Appendix B. DOL officials stated they implemented system improvements in 2012 that will result in reduced findings going forward. In addition, DOL received two grants totaling \$17.6 million that will be used to improve technology, reduce improper payments and establish the national Unemployment Insurance Integrity Center of Excellence in New York to develop and implement innovative strategies to prevent, detect and recover improper payments in the UI program.

B. Background and Methodology

DOL administers the UI 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 routinely selected benefit payment requests for examination based on risk, using “filters” our Office embedded in the DOL UI payment system. In addition, our examination included other tests designed to identify conditions not readily found by our filters. We used the results to identify and recover any inappropriate payments and to prevent future inappropriate payments. During our examination period, over 24.3 million payments, totaling over \$6.6 billion, were made to claimants for the UI Program. Of this, we selected 61,735 payment requests and related payments for examination. This report summarizes the results of our examination over the period.

Additionally, we matched the DOL UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees who owed DOL money for outstanding benefit overpayments.

C. Details of Findings

Examination of UI Payment Requests and Payments

Our examination identified 8,622 inappropriate payment requests and related payments totaling almost \$3.1 million that did not comply with applicable Federal and State laws and DOL regulations. In the majority of cases, either DOL staff did not follow established policies and procedures that allowed inappropriate payments to occur or individuals made false statements to obtain benefits they were not entitled to receive. Other inappropriate payments resulted from limitations in the DOL UI payment system. The results of our findings are summarized in the following table:

Finding	Payment Requests	Inappropriate Payments	Inappropriate Payment Requests Stopped	Future Payments Prevented	Total Savings
Policies and Procedures Not Followed by DOL Staff					
Incorrect wage information used to calculate benefit rate	3,633	\$220,061	\$141,518	\$717,434	\$1,079,013
Claimant was not authorized to work in the United States	175	19,280	11,723	95,338	126,341
File indicated claimant should have been disqualified from receiving benefits	517	118,915	4,988	53,947	177,850
Individuals Made False Statements to Obtain UI Benefits					
Claimants certified they were eligible to receive benefits when they were out of the country	2,729	495,077	316,820	538,419	1,350,316
Claimants certified they were eligible to receive benefits when they were either fully or partially employed	975	213,879	2,502	-	216,381
Certification was made after a claimant's date of death	171	35,528	-	695	36,223
UI System Limitations					
System included prior period wage information when calculating current period benefit rate, resulting in an increased benefit rate	112	8,574	-	21,789	30,363
Payments exceeded the maximum four days of benefits in the same week	141	35,397	255	-	35,652
Claimants collected benefits from multiple programs in the same week	66	9,598	276	-	9,874
Duplicate payments made	103	8,741	1,821	-	10,562
Total	8,622	\$1,165,050	\$479,903	\$1,427,622	\$3,072,575

In addition to the savings summarized in the preceding table, DOL collected \$607,346 in penalties from UI claimants as the result of our findings. DOL imposes a penalty on a UI claimant when it determines the claimant willfully made a false statement or representation to obtain UI benefits that the claimant was not eligible to receive. DOL collects these penalties from future UI benefit payments or directly from the claimant.

In response to our draft audit report, DOL officials stated that they had also identified payments made to deceased claimants prior to our audit and continue to explore other options to improve processes for identifying deceased claimants before payments are approved. DOL officials also indicate they implemented new technology in August 2012 to help prevent claims certifications from out-of-country locations and will enhance safeguards to stop the remaining issues arising from the original claims identified by our examination.

Overpayments to New York State Employees

We matched the DOL UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees who owed DOL money for outstanding benefit overpayments. During the period of our examination, we identified 118 newly hired employees who owed \$228,075 to DOL for UI overpayments. During this same period, DOL recovered \$453,120 from employees we had identified in prior examinations.

Recommendations

- 1. Ensure staff follows established policies and procedures when processing claims.*
- 2. Establish and implement controls to prevent overpayments resulting from limitations in the DOL UI payment system identified in this report.*
- 3. Recoup overpayments identified in the report from claimants, as appropriate.*

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 July 12, 2013.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enclosures: Appendix A
Appendix B

cc: Carl Boorn
Mary Batch
Jeffrey Stein



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

May 13, 2013

Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. McHugh:

This is in response to your letter dated March 26, 2013, regarding Draft Report 2012-BSE-3A-001 containing the Office of the State Comptroller's (OSC's) ongoing examination of payment requests and related payments for Unemployment Insurance (UI) Benefits during the period January 1, 2012 through December 31, 2012 and the identification of overpayments based on a match of certain Department of Labor (Department) files with records of deceased individuals and of New York State employees.

The Department for this same time period, January 1, 2012 through December 31, 2012 successfully processed 24.3 million payments, totaling nearly \$7.1 billion dollars.

The Department continues to strive towards a 100% UI payment and classification accuracy level. Of note, an analysis of the Comptroller's report against prior year's findings indicates a net decrease of over 1,200 in errors found. In addition, the Department implemented system improvements in 2012 that further prevent and control issues. This will reduce findings going forward. 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. As part of Governor Cuomo's 2013-2014 budget, significant reforms to the State's UI system were adopted. This new law contains integrity provisions which will improve fraud and other improper payment prevention, detection and recovery. In addition, 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. Continual review and modification of an improper payment prevention strategic plan that establishes steps necessary to primarily prevent, but also identify overpayments caused by claimant fraud.
2. The Department has received two grants totaling \$17.6 million that assist us in preventing, discovering, and recapturing improper payment of UI benefits through:
 - a. Establishment of the National Unemployment Insurance Integrity Center of Excellence in New York. New York is leading the national effort to develop, implement, and promote innovative integrity strategies, including the prevention, detection, and recovery of improper payments in the UI program.

- b. Technology improvements including improvements in federal reporting verification and quality control mechanisms and enhancements to data security.
 - c. A Business Process Improvement project aimed at reducing the level of improper payments caused by separation issues.
3. Further updates to the State Information Data Exchange System (SIDES) program pilot continue. The next phase will be completed by September 30, 2013. This enhancement adds a monetary component to the process. The Department is also adding a wage verification enhancement in a subsequent phase expected to be completed by December 31, 2014. These combined enhancements will assist employers in responding to claims timely and adequately and will decrease mailing and overhead costs.
4. Continued use of the Treasury Offset program which has already recovered in excess of \$87.8 million from over 72,500 debtors between February 2011 and March 31, 2013.
5. Implementation of a new hire data matching program in August 2012. Matched claimants identified as re-employed cannot certify on-line or via phone and must speak to an agent to resolve the issue. New York has seen a 67% drop in certifications by those who are re-employed. We estimate UI trust fund savings of \$44 million annually as a result of the new hire data matching program.
6. Enhancements to New York's internet protocol (IP) blocking technology, first implemented in June 2011. This enhancement not only blocks persons from filing a claim or certifying for benefits from disallowed locations, but stops payments until proof of return is offered.
7. Implementation of a secure communication portal in September 2012 and on-going enhancement to the portal that provides staff and employers the ability to communicate in a private, secure manner. This system reduces mailing costs and speeds up responses from employers. Claims adjudication proceed based on more timely responses and any issues or questions identified during adjudication may be quickly resolved.

Review of selected OSC findings.

OSC Finding

1. *Certification was made after a claimant's date of death.*

DOL Response

The Department conducted a thorough review of the cases noted in the OSC report. We found that the Department had already identified these claimants as deceased several months before OSC discovered the issue, and as soon as information was available through

existing data sources that indicates the claimant is deceased. Department safeguards control these issues sooner than OSC reviews. Decedent accounts had already been flagged for adjudication and recovery by Department staff as clearly noted and available to OSC staff in the Department’s claimant log. Department staff works the cases in priority order. In these cases, the decedent is no longer claiming benefits and as such the cases are given a lower level of priority for review. It is unclear as to the value of OSC duplicating the process of identifying cases discovered months earlier by Department staff. The Department would value being alerted if there are any cases it had not discovered on its own. The Department continues to explore other data sources to improve its processes. It would be helpful if OSC could advise if there are any other system applications that provides date-of-death information sooner in the process than the system currently used by the Department.

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Comment
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OSC Finding

2. Future Payments Prevented

DOL Response

We believe OSC’s projection of “Future Payments Prevented” is calculated incorrectly. The OSC estimate is based upon findings projected by using the maximum amount of benefits a claimant could collect over the life of his or her claim. Since the average duration of a claim in New York is 18.2 weeks, OSC should base its estimate on average duration, not maximum duration. When we asked OSC staff they noted that they interpreted the word “indefinite” in the claimant log to mean “maximum.” This interpretation is incorrect. The Department defines “indefinite” as “until additional information is provided by the claimant.” OSC thus misread the meaning of the log postings and projected errors inappropriately.

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Comment
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Future payments prevented would be substantially reduced if OSC had appropriately used the average duration of a claim instead of the maximum duration. OSC was unable to provide the Department with their calculations so we could determine a more accurate estimate of future payments prevented. We have requested the data, however, they indicated it would take up to two weeks to produce this information.

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Comment
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OSC Finding

3. Claimants certified they were eligible to receive benefits when they were out of the country

DOL Response

During the prior year’s discussion with OSC, and as noted in the Department’s response to the 2012 Draft Report 2011-BSE-3A-006, the Department advised OSC of its efforts aimed

at preventing claims and certifications from disallowed locations. The Department advised OSC of its IP blocking technology, implemented in June 2011, and its planned enhancements to the system which were underway. OSC took action on out-of-country cases starting June 11, 2012 after the Department already advised OSC of the controls it had put in place and was continuing to improve. In 2011 OSC found only 89 out-of-country issues even though the Department was blocking thousands of claims. OSC identified 2,789 out-of-country issues in 2012, the vast majority of which were between the Department's discussion with OSC and the Department's full implementation of additional safeguards. OSC findings following the Department's implementation of additional safeguards on August 22, 2012 is negligible. The small number of findings after August 22, 2012 relate to original claims filed from disallowed locations. In those cases an individual with an existing UI account, attempting to open an original claim from a disallowed location, is flagged by OSC for non-payment. The Department will enhance its safeguards to stop the small number of remaining issues arising out of original claims.

* Comment 4

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 actively reviews procedures and notices used to solicit information from UI claimants and employers. In light of findings, staff are advised and re-trained on proper methods used to solicit missing wage information and process claims. Procedures have been updated to provide further clarity. Procedure changes are highlighted for quick reference. We are also indexing our procedure manual so that it is easily searchable based on key words.

OSC Recommendation

2. *Establish and implement controls to prevent overpayments resulting from limitations in the DOL UI payment system identified in this report.*

DOL Response

The Department has developed 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. *Recoup overpayments identified in the examination from claimants, as appropriate.*

DOL Response

The Department actively pursues debts owed as a result of improper payments. In fact, the Department is a national leader in the recovery of improper payments. Through the various tools and techniques including correspondence, telephone calls, re-payment agreements, the Treasury Offset Program, State Offset Programs, and referral for civil or criminal action significant recovery is made. Changes to the Unemployment Insurance law enacted in the Governor's 2013-2014 budget provide the Department with more tools to assist in collection. These collection provisions take effect January 1, 2014.

Other efforts

Modernizing UI systems: The Department is in the midst of a major re-engineering of its UI 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

Cc: Carl Boorn
Mary Batch
Jeffrey Stein

State Comptroller Comments on Auditee Response

1. We noted in the final report DOL's response related to deceased claimants.
2. While the average duration of a claim may be 18.2 weeks, all claimants are entitled to collect the full length of their claim. Therefore, projecting "Future Payments Prevented" on that basis is a fair representation of the future payment requests that would have been paid over the life of a claim had DOL not taken corrective action based on our findings. In addition, our projection is based on the number of weeks remaining for a claimant to collect the full length of their claim. The word "indefinite" in the claimant log has no bearing on our projection.
3. We advised DOL it would take up to two weeks to produce a spreadsheet, as requested, summarizing our calculations for 8,622 "Future Payments Prevented." However, we offered DOL the option to review the calculations immediately at our office as an alternative. We have since provided DOL with the calculations they requested.
4. We agree that the volume of out-of-country findings has decreased greatly since DOL implemented additional safeguards in August 2012. However, we continue to identify claimants receiving UI benefits while out-of-country. We also found that some claimants use a third party to certify their eligibility while they are out of the country to circumvent the controls DOL implemented in August 2012. We will continue to provide DOL with these findings for corrective action.