



Top Management and Performance Challenges Facing the U.S. Department of Labor

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As required by the Reports Consolidation Act of 2000, the Office of Inspector General has identified the most serious management and performance challenges facing the U. S. Department of Labor (DOL). These challenges are included in DOL's "Agency Financial Report" for FY 2021.

The Department plays a vital role in the nation's economy and in the lives of workers and retirees, and therefore, must remain vigilant in its important stewardship of taxpayer funds, particularly in the era of shrinking resources.

In this report, we summarize the challenges, significant DOL progress to date, and what remains to be done to address them. The challenges we identified are:

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CHALLENGE: Identifying and Reducing Unemployment Insurance Improper Payments

BACKGROUND

The Unemployment Insurance (UI) program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and meet other eligibility requirements according to state law. In Fiscal Year (FY) 2020, the Department continued to identify the UI program as susceptible to improper payments. Due to the COVID-19 pandemic beginning in March 2020, this issue was further exacerbated with jobless rates soaring and millions of U.S. workers filing unemployment compensation claims. However, in calculating the total amount of UI benefits paid and related estimated improper payments, UI benefits funded by the Coronavirus Aid, Relief, and Economic Security (CARES) Act were excluded because the temporary programs were not in existence for at least 12 months as of the reporting period, which is a requirement of the Office of Management and Budget (OMB) to make such calculations for a new program. Despite the exclusion, the estimated improper payment total for UI has consistently exceeded the \$2 billion threshold established by OMB for designation as a “high-priority” program under the authority of the Improper Payments Elimination and Recovery Improvement Act of 2012 and the Payment Integrity Information Act of 2019.¹

The CARES Act provided major funding to the state-federal UI program, including covering workers not typically covered by UI, who could self-certify that they were able to and available for work but unemployed due to COVID-19 related reasons. Following the start of the pandemic in the U.S. in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels. On March 14, 2020, the Department reported 282,000 initial claims. Within 5 months, through August 15, 2020, the Department reported 57.4 million initial claims, the largest increase since the Department began tracking UI data in 1967. As of September 30, 2021, the Department reported approximately \$665.1 billion in UI payments has been expended under the CARES Act and its related extensions. These benefits have been shown to be particularly susceptible to improper payments. Although the Department has not estimated an improper payment rate for CARES Act-funded UI benefits because it was not required at that time, as previously mentioned, the reported improper payment estimate for the regular UI program has been above 10 percent for 14 of the last 18 years. Estimates for the CARES Act and its related extensions range up to \$872.5 billion. Therefore by program end, assuming an improper payment rate of 10 percent or higher, \$87.3 billion in CARES Act-funded UI benefits could be paid improperly, with a significant portion attributable to fraud.

CHALLENGE FOR THE DEPARTMENT

The Department continues to face challenges in ensuring UI improper payments are timely and accurately detected, reported, and prevented.

The UI program requires states to make weekly benefit payments while ensuring claimants meet eligibility requirements. A state workforce agency (SWA) may determine a payment is improper after a claimant receives benefits: (a) based on new information that was unavailable when the SWA approved the benefit payment or (b) as a result of the requirement that claimants be provided with due process prior to stopping payment of benefits.

¹ The Payment Integrity Information Act of 2019 repealed and replaced the Improper Payments Elimination and Recovery Improvement Act of 2012. The Payment Integrity Information Act of 2019 was not fully effective until FY 2021.

Improper payments often occur as a result of four leading causes:

- *Claimants Do Not Meet Work Search Requirements* – Claimants who fail to demonstrate they meet state requirements for work search.
- *Benefit Year Earnings* – Claimants who continue to claim benefits after they return to work, or who misreport earnings during a week in which benefits are claimed.
- *Employers Do Not Timely Report Employees' Separation* – Employers or their third-party administrators who fail to provide timely and adequate information about why individuals separated from their employment.
- *Fraud* – Claimants who received UI benefits through fraudulent schemes, such as those perpetuated during the COVID-19 pandemic.

These causes exacerbate the Department's challenges in helping states address improper payments.

The COVID-19 pandemic resulted in an unprecedented increase in new unemployment claims, and the subsequent difficulties the states encountered when implementing new programs and processing claims highlighted the need for states to have sufficient staffing and IT system resources to manage sudden surges of UI claims and payments. The expanded coverage offered under the temporary Pandemic Unemployment Assistance (PUA) program posed significant challenges to states as they implemented processes to determine initial and continued program eligibility for participants. The reliance solely on claimant self-certifications without evidence of eligibility and wages during the program's first nine months rendered the PUA program vulnerable to higher risk for improper payments and fraud. However, under the Continued Assistance for Unemployed Workers Act of 2020, Congress provided additional requirements in an effort to mitigate the risk of improper payments. Despite this effort, our work identified about \$17 billion in potential fraud in four high risk areas: multi-state claims, deceased persons, federal inmates, and suspicious email accounts. Furthermore, the Department needs to continue its work on how to incorporate the impact of UI improper payments, including fraud, related to temporary programs, such as those created by the CARES Act, into the traditionally estimated improper payment rate calculations.

DEPARTMENT'S PROGRESS

The Department made efforts to focus on program integrity when implementing the CARES Act programs by putting agreements in place with states to comply with all applicable requirements to receive CARES Act funds, issuing operating guidance, and providing technical assistance to states individually and through webinars. The Department included requirements for states to focus on program integrity in guidance issued related to the CARES Act. In addition, the Department reinforced the need for states to actively partner with the Office of Inspector General (OIG) to address fraud in the UI program.

Department officials stated the UI Integrity Center,² which operates in partnership with the National Association of State Workforce Agencies, has continued to develop the Integrity Data Hub (IDH) to serve as a secure portal for states to cross-match public and private sources of data, including new tools that will help prevent improper payments. The Department is working with the UI Integrity Center to further enhance state participation in and use of the IDH through additional guidance and regular communication with states.

² The UI Integrity Center, established by the Department and operated by the National Association of State Workforce Agencies, is designed to assist states in their efforts to more effectively prevent, detect, and recover improper and fraudulent payments, and improve program integrity by developing and promoting innovative program strategies.

The Department has taken corrective actions to address the OIG's recommendations aimed at reducing UI improper payments related to the two of the top causes: (1) *Employers Do Not Timely Report Employees' Separation* and (2) *Benefit Year Earnings*, which refer to UI benefits paid to claimants after they return to work and fail to report their earnings, or who misreport earnings during a week in which benefits are claimed. The Department has also taken action to correct Work Search errors, another leading cause of improper payments. In addition, legislative proposals aimed at improving UI program integrity were included in the FY 2018, FY 2019, FY 2020, FY 2021, and FY 2022 President's Budget Requests.

On August 31, 2021, the Department announced the establishment of the Office of Unemployment Insurance Modernization to provide strategic leadership as it works with state agencies and federal partners to modernize and reform the UI system. Operating within the Office of the Secretary, this newly created unit will work in conjunction with the Employment and Training Administration (ETA), Office of the Chief Information Officer (OCIO), and Office of the Assistant Secretary for Administration and Management (OASAM) to develop and support implementation of the strategic vision outlined in the UI modernization plans³ released on August 11, 2021. The Office of Unemployment Insurance Modernization will provide oversight and management of the \$2 billion allotted to UI initiatives by the American Rescue Plan Act of 2021 to prevent and detect fraud, promote equitable access, ensure timely benefits payments, and reduce backlogs. Of this \$2 billion in funding, two grant programs have been set up: (1) a \$140 million program for fraud grants to be awarded to states to cover subscription costs for identity verification tools, establishment and expansion of data analytics, and implementation of cybersecurity defense strategies; and (2) a separate \$260 million program for equity grants to be awarded to states to improve customer service and claimant outreach, reduce claims backlogs, and improve access for workers in communities that may have historically experienced barriers to access.

WHAT REMAINS TO BE DONE

The Department needs to continue its ongoing work with states to identify and implement strategies designed to reduce the UI improper payment rate, including sharing best practices identified among states. According to Department officials, they are working with the UI Integrity Center to expand the functionality of the IDH to include datasets as well as other resources to assist states in detecting improper payments and to continue promoting states' use of the IDH. One of the datasets soon to be available to states through the IDH is an Account Verification Services (AVS) solution(s). The AVS solution(s) will provide states with access to real-time or near real-time information to proactively identify and authenticate bank account information that a UI claimant provides by validating the account's legitimate status and ensuring the individual identified as the claimant is the account owner and/or authorized user prior to initiating the UI benefit payment.

The Department must work with states to enforce UI claimants' requirements to meet the conditions of UI eligibility, including: (1) being available for work, (2) actively seeking work, and (3) accepting suitable work when offered. As part of this effort, ETA indicated it is developing work search guidance that addresses states' "formal warnings" policies that exclude and therefore underestimate improper payment rates. The Department needs to continue pursuing legislative action included in previous budget proposals to improve UI program integrity. To

³ For more details, a fact sheet about the UI modernization plans is available online at: https://oui.doleta.gov/unemploy/pdf/FactSheet_UImodernization.pdf.

improve delivery of UI benefits to claimants while combatting improper payments, including fraud, ETA should also establish a central repository for states' UI claims data, with the OIG having direct access to this data.

As the pandemic and its impact on the U.S. workforce population evolves, the Department will need to issue further guidance consistent with any new laws or changes to current UI programs. In addition, the Department will need to monitor and provide oversight in all states for UI programs related to future legislation similar to the CARES Act.

CHALLENGE: Protecting the Safety and Health of Workers

BACKGROUND

The Department's Occupational Safety and Health Administration (OSHA) is responsible for the safety and health of 130 million workers employed at more than 8 million establishments, while the Department's Mine Safety and Health Administration (MSHA) is responsible for the safety and health of approximately 300,000 miners who work at nearly 13,000 mines.

CHALLENGE FOR THE DEPARTMENT

OSHA and MSHA face challenges in determining how to best use their resources to help protect the safety and health of workers, particularly in high-risk industries such as health care, meat packing, agriculture, construction, fishing, forestry, manufacturing, and mining. This challenge has been exacerbated by the ongoing COVID-19 pandemic and the limitations imposed on traditional inspection or investigation activity. Further, employers who underreport injuries limit OSHA and MSHA from focusing their inspection and compliance efforts on the most hazardous workplaces.

Since the start of the pandemic, OSHA has been challenged to fulfill essential mission functions, including protecting its own workers during this unprecedented health crisis. News outlets across the U.S. have continuously been raising concerns about worker safety and pandemic-related deaths. In response to the pandemic, OSHA has used alternative or modified protocols to ensure worker safety, such as conducting inspections remotely and verifying the abatement of hazards through remote follow-up with employers. This is in addition to performing programmed and unprogrammed inspections.

However, challenges persist for OSHA. Labor organizations representing health care, meat processing, transportation, and other essential personnel have expressed concerns that OSHA has not been able to provide the necessary level of enforcement efforts to ensure employers are providing adequate protection to their workers needed at various work sites during the pandemic. In February 2021 we reported that OSHA received 15 percent more complaints in 2020, but performed 50 percent fewer inspections compared to a similar period in 2019. Therefore, the risk that OSHA may not ensure the level of protection that workers need at various job sites has increased leaving more employees vulnerable to safety risks. Besides COVID-19 related challenges, when inspections result in citations, the agency continues to face difficulties in verifying hazard abatement at both general industry and construction sites. In addition, OSHA has been challenged to protect workers who report potential workplace safety violations and complete subsequent whistleblower investigations within the statutory requirements of 30, 60, or 90 days. Escalating this challenge, the pandemic caused a significant increase in whistleblower complaints OSHA received, while the number of full-time equivalent (FTE) employees, including investigators, decreased in OSHA's Whistleblower Protection Program.

MSHA is also specifically challenged to continue performing all its activities during the COVID-19 pandemic. While continuing to perform mandatory inspections, MSHA has limited or suspended certain non-mandatory inspection and enforcement activities and will have to determine how to resume these activities safely and manage any potential backlog resulting from suspended activities. Furthermore, MSHA is challenged to write violations that adhere to the Mine Act and MSHA guidance and to timely verify that operators are abating hazards by required due dates without requesting unjustified extensions (e.g., for the convenience of MSHA inspectors).⁴

Additionally, MSHA is challenged by a 25-year high in the number of black lung cases, as reported by the American Journal of Public Health (AJPH),⁵ and needs to develop strategies for addressing this issue. MSHA solicited public comments, data, and information for a study to assess the impact of the August 2014 Coal Dust Rule, which reduced allowable exposure levels for harmful coal dust, on the health of miners. However, because of the latency period between exposure to coal dust and development of black lung disease, it will likely take a decade or more to complete the study. MSHA faces another challenge in reducing the number of powered-haulage accidents, with 9 miner fatalities, the highest number since 2006, and 185 miner injuries taking place from January 1, 2021, through July 12, 2021, as a direct result of such accidents.

Finally, MSHA and OSHA both regulate the maximum amount of exposure workers can have to respirable silica dust, but the standards for permissible exposure level differ between the two agencies. In the U.S., about 2.3 million workers are annually exposed to respirable silica dust at the worksite, a situation that can lead to silicosis, a deadly and incurable disease, as well as many other chronic conditions. MSHA is challenged to develop better protections for miners against airborne contaminants, such as respirable silica dust. OSHA's challenge is targeting the highest risk workplaces specifically for respirable silica dust given the agency's limited resources.

DEPARTMENT'S PROGRESS

To facilitate its COVID-19 enforcement efforts, OSHA developed an interim enforcement response plan⁶ and conducted a webinar to help compliance officers with handling complaints, referrals, and severe injury reports. OSHA also developed an internal triage document to assist field staff with prioritizing certain types of inspections (e.g., fatalities and catastrophes) to better utilize its resources. To ensure the safety of its own staff members, OSHA developed a guide as part of its internal safety and health management system to inform staff about the evolving pandemic and efforts to minimize their exposure to COVID-19.

According to OSHA, the agency encourages employers to comply with illness and injury reporting requirements through a variety of enforcement, outreach, and compliance assistance efforts. OSHA issued the *COVID-19 Healthcare Emergency Temporary Standard*,⁷ which went into effect on June 21, 2021, to address the COVID-19 hazard for health care workers.

⁴ This is according to the findings in our audit report, *MSHA Can Improve How Violations Are Issued, Terminated, Modified, and Vacated*, DOL OIG Report No. 05-21-002-06-001 (March 31, 2021), available online at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-002-06-001.pdf>.

⁵ The AJPH report, *Continued Increase in Prevalence of Coal Workers' Pneumoconiosis in the United States, 1970–2017*, Vol. 108, Issue 9, is available online at: <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2018.304517>.

⁶ The *Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)* is available online at: <https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>.

⁷ For more details, a fact sheet about the *COVID-19 Healthcare Emergency Temporary Standard* is available online at: <https://www.osha.gov/sites/default/files/publications/OSHA4122.pdf>.

On July 7, 2021, OSHA revised its National Emphasis Program (NEP) – Coronavirus Disease 2019 (COVID-19) to help ensure that employees in high-hazard industries or work tasks are protected from the risk of contracting COVID-19. The NEP augments OSHA's efforts addressing unprogrammed COVID-19 related activities — e.g., complaints, referrals, and severe incident reports — by adding a component to specifically target high-hazard industries or activities where COVID-19 would be most prevalent. The NEP targets establishments that have workers with increased potential exposure to this hazard and thus puts the largest number of workers at serious risk.

OSHA also published a revised NEP on respirable crystalline silica on February 4, 2020, along with a revised directive on Inspection Procedures for the Respirable Crystalline Silica Standards, published on June 25, 2020, to assist in protecting workers and managing risk. Subsequent to the release of its respirable crystalline silica directive, OSHA conducted a webinar for compliance officers across the country to better understand how to conduct silica inspections and enforce the various provisions of the new standards.

MSHA reduced unnecessary contact during the COVID-19 pandemic by temporarily suspending or decreasing a number of enforcement activities. As of August 2021, MSHA had suspended 3 of its enforcement activities and reduced the capacity of how it conducted 15 activities, such as its accident reduction program and mine emergency operations. It was still conducting 15 activities at full capacity, including its fatal accident investigations and regular safety and health inspections. Further, MSHA posted an information sheet on its website as guidance during the pandemic to its workforce and to the mining industry. It addressed matters such as maintaining social distancing, disinfecting equipment, and washing hands. However, in 2020, MSHA decided not to issue an emergency temporary standard related to pandemics such as COVID-19.

MSHA reported it has increased sampling of mines for respirable crystalline silica dust and diesel particulate emissions and has ordered additional sampling devices for its inspectors and testing equipment for its lab. MSHA's Regulatory Agenda for Spring 2021 includes proposed rulemaking for respirable crystalline silica and powered-haulage safety. MSHA also continues to focus on powered-haulage safety by issuing guidance on preventing accidents and meeting with mine personnel to emphasize best safety practices and training. On September 9, 2021, MSHA released a proposed rule requiring mines to have written safety programs for mobile and powered-haulage equipment.

WHAT REMAINS TO BE DONE

OSHA needs to complete its initiatives to improve employer reporting of severe injuries and illnesses and enhance staff training on abatement verification, especially of smaller and transient construction employers. As previously noted, because of the pandemic, there has been an increase of complaints but a reduction in inspections, with most inspections not conducted on-site. OSHA needs to ensure it is providing the level of protection that workers need at various job sites. The American Rescue Plan Act provided OSHA with approximately \$100 million. OSHA plans to use a large portion of it to support COVID-19 enforcement efforts and whistleblower investigators to assist with its growing number of COVID-19 related complaints.

MSHA needs to do more to address any potential backlog of suspended and reduced enforcement activities resulting from the pandemic and develop a plan to manage the backlog once full operations resume. Further, MSHA needs to monitor COVID-19 outbreaks at mines and use that information to determine whether to issue an emergency temporary standard related to the pandemic. Doing so would allow its inspectors to issue citations and

orders to respond to more aspects of the COVID-19 pandemic and enhance miner safety. MSHA also needs to provide additional training to inspectors and improve internal controls related to its violation process.

To ensure mine operators comply with the Coal Dust Rule that went into effect in August 2014, MSHA needs to evaluate the effectiveness and implementation of the rule as new information becomes available. It must also identify ways to better protect miners from highly toxic respirable silica dust, potentially by increasing testing and enforcement for other airborne contaminants. Finally, MSHA needs to continue its existing efforts to decrease powered-haulage accidents by targeting mines for enforcement, enhancing training, and increasing and sharing its knowledge of available technology.

CHALLENGE: Helping Adults and Youth Succeed in the Labor Market

BACKGROUND

In FY 2021, the Department's Employment and Training Administration (ETA) received \$3.7 billion under the Workforce Innovation and Opportunity Act (WIOA) to operate a system of education, skill-based training, and employment services for U.S. workers, including low-income and dislocated adults as well as at-risk and out-of-school youth.

CHALLENGE FOR THE DEPARTMENT

The Department is challenged to ensure its job training programs provide participants with the education, skill-based training, and employment services they need to succeed in the labor market, particularly in light of the health and economic crisis created by the COVID-19 pandemic. This includes helping: (1) job seekers, businesses, and career counselors better understand the availability and value of skill-based training and credentials; (2) employers recognize the benefit of hiring and training apprentices for their middle- and high-skilled job vacancies; and (3) to ensure all state outcome data are reliable, valid, and accurate. In our audit work conducted in 2020,⁸ we had found that although ETA had data to determine if participants were employed after exit, it lacked more specific data to measure the impact credentials had on participants' outcomes, such as job title and if a credential was necessary for the job.

The Department is further challenged in developing an effective strategy for helping disadvantaged job seekers — such as justice-involved individuals, individuals with disabilities, and individuals recovering from substance use disorder — gain employment and remain employed. For example, recent studies have reported that users of opioids commonly drop out of the labor market and are less productive and dependable. This makes it difficult for them to obtain and retain employment, and for employers to find workers in opioid-affected areas. Additionally, as a result of the COVID-19 pandemic, the Department needs to ensure all participants who need job search or training services are able to access them either in person or remotely.

Finally, the Department is challenged to ensure the grants it issues are planned and designed so that the grants' goals are clear, measurable, and achievable. A recent audit found that ETA's American Apprenticeship Initiative grant program was unlikely to achieve at least one of its major goals because of the way it was designed and

⁸ The resulting audit report, *ETA Could Not Demonstrate That Credentials Improved WIOA Participants' Employment Outcomes*, DOL OIG Report No. 03-20-002-03-391 (September 30, 2020), is available online at: <https://www.oig.dol.gov/public/reports/oa/2020/03-20-002-03-391.pdf>.

executed. Insufficiently designing the goals and metrics related to a grant makes it difficult for ETA to determine if the grant's goals have been achieved and the outcomes it expected were achieved.

DEPARTMENT'S PROGRESS

With regard to credentials, ETA officials informed us that over the last year, they have continued to provide resources through CareerOneStop.org to help job seekers, businesses, and career counselors better understand: which credentials are available; the quality and labor market value of those credentials; and the licenses, education, and training required for specific credentials and occupations. ETA also stated it has continued to emphasize the importance of credential attainment in its grant competitions. It has provided extensive technical assistance to states on credentials, including information to better define and accurately report credentials, and convened a group of several state teams to develop useful strategies and tools to assess appropriate credentials. Finally, ETA indicated state teams of the Credential Attainment Cohort, a collaboration of the Departments of Labor and Education, developed in June 2020 credential attainment tools that serve as companion resources to the Credential Attainment Decision Tree Tool. To assist with developing their strategies to determine what qualifies as a credential, states were provided with an action plan template. They were instructed to use it only as a general guideline and to create an overall plan that suited the needs, goals, and structure of their specific state.

In June 2020, ETA issued Training and Employment Guidance Letter (TEGL) 23-19: *Guidance for Validating Required Performance Data Submitted by Grant Recipients of U.S. Department of Labor (DOL) Workforce Programs*,⁹ to provide guidelines for validating performance data submitted by grant recipients of workforce development programs that the Department administers. Since the beginning of WIOA, ETA has emphasized the importance of quality data by building into its Workforce Integrated Performance System (WIPS) a multi-pronged approach to validating the data, with upfront edit checks and validation through grant monitoring on the back end.

According to ETA officials, these upfront edit check rules are extensive and facilitate state grant recipients submitting consistent and accurate data. Recently, ETA initiated a Quarterly Report Analysis to ensure states are reporting consistently on a set of key data elements. ETA's regional offices conducted general oversight of state data validation practices during their WIOA monitoring reviews. State data validation policy and practices were discussed and verified, and, in some cases, data validation results were reviewed for one quarter in 2020 during the course of the WIOA monitoring review. ETA's monitoring review found issues with reporting and data validation. ETA regional offices plan to continue prioritizing data validation compliance in monitoring during the current as well as the next fiscal year.

The Department has also been assessing some grant recipient performance under its American Apprenticeship Initiative (AAI) program. Though ETA has made progress in achieving some of the AAI grant program's goals, insufficient program planning and execution resulted in systemic weaknesses. Most apprenticeships did not meet the specialty occupation criteria for H-1B visas and often they were not in occupations using H-1B visas. ETA could have put more than \$155 million in funds to better use by having grantees create apprenticeships that start in H-1B occupations or have career pathways leading to H-1B occupations. The Department stated it has provided, and will continue to provide, technical assistance on sector strategies and performance reporting based on its analysis of the performance measures. ETA continues to make progress on implementing the recently approved changes to the DOL-only Participant Individual Record Layout to add data elements needed by program offices, to have apprenticeship grant recipients report through WIPS, and to support ETA's broader

⁹ TEGL 23-19 is available online at: https://wdr.doleta.gov/directives/attach/TEGL/TEGL_23-19.pdf.

efforts to achieve performance reporting standardization across workforce programs. Concerning opioids, ETA has awarded opioid recovery grants of up to \$133 million to provide employment and training activities, including support services, to address the economic and workforce impacts related to this drug's widespread use, addiction, and incidents of overdose.

WHAT REMAINS TO BE DONE

The Department needs to continue developing programs that support investments in training and education leading to improved job skills and employment. In addition, it must continue to support grant recipients in reporting accurate performance information that allows the Department to make evidence-based and data-driven decisions about job training programs. To optimize this reporting, the Department needs to continue its data validation efforts as well as to provide enhanced technical support to states on accessing and reporting information in the WIOA performance management system and on data analytics, governance, and transparency. Moreover, the Department needs to continue its monitoring efforts to ensure state data used to calculate performance measures are complete and accurate.

While ETA does provide discretionary grant programs access to WIPS for performance reporting and policy support through standardized reporting procedures and technical assistance, such as reporting for the opioid recovery grants, the Department needs to monitor the performance of discretionary grants it has awarded for delivering services to employers and workers. Based on our audit report published in January 2021,¹⁰ we followed up on our prior concerns about ETA's grant investments not achieving performance goals and the agency needing better oversight of its disaster grants, specifically in administering its Dislocated Worker Grant funds in response to national disasters in 2017. We found ETA provided minimal oversight of its state grant recipients and needed to be more efficient and effective in delivering disaster relief assistance to unemployed individuals. During the current COVID-19 global health crisis spanning over 18 months and continuing indefinitely into the future, the OIG is concerned by the latest set of challenges ETA faces in providing employment and training assistance to a sizable jobless population in the U.S. The central question resulting from our January 2021 report recommendations holds true on whether the agency has monitoring and performance management strategies in place to work with grant recipients and ensure the maximum number of qualifying participants secure employment expeditiously through the Department's applicable discretionary grant programs. Finally, ETA must ensure future grants it issues have properly planned and articulated goals tied to concrete performance measures that enable the Department to determine the success of its grant programs.

¹⁰ The audit report, *ETA Needs To Improve Its Disaster National Dislocated Worker Program*, DOL OIG Report No. 02-21-002-03-391 (January 29, 2021), is available online at: <https://www.oig.dol.gov/public/reports/oa/2021/02-21-002-03-391.pdf>.

CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs

BACKGROUND

The Immigration and Nationality Act and related laws assign certain responsibilities to the Secretary of Labor for employment-based immigration and guest worker programs. These responsibilities include determining whether able, willing, and qualified U.S. workers are available for the jobs and whether there would be any adverse impact on similarly employed U.S. workers if labor certifications allowing the admission of foreign workers were granted. To carry out these responsibilities, the Secretary has delegated to ETA's Office of Foreign Labor Certification the processing of prevailing wage determinations and applications from employers seeking to hire: (1) immigrant workers for permanent jobs, (2) nonimmigrant workers for temporary specialty jobs, and (3) nonimmigrant workers for temporary or seasonal agricultural and non-agricultural jobs.

The Wage and Hour Division (WHD) conducts civil investigations to enforce certain worker protections associated with the award of Foreign Labor Certifications (FLC) which involve wages, working conditions, and making sure similarly employed U.S. workers are not adversely affected in terms of working conditions and other employment benefits.

CHALLENGE FOR THE DEPARTMENT

FLC programs rely solely on employers' attestations in determining whether to certify their applications. Thus, it is challenging for the Department to ensure that a U.S. worker might not be available for the job and a foreign worker filling the job would not adversely affect wages and working conditions of U.S. workers similarly employed. As a result, the Department is challenged with balancing a thorough review of FLC applications to protect U.S. workers while timely processing applications to meet employer workforce demands. For example, in the H-2B program, which is used to hire foreign workers for temporary, non-agricultural jobs, rising application levels and seasonal spikes in employer workforce demands for the spring and summer seasons have resulted in periodic application processing delays.

Over the last decade, the OIG, along with other federal partners, conducted more than 70 criminal investigations related to fraud in the H-2B program. These investigations have shown FLC programs to be susceptible to fraud and abuse by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. OIG investigations have also uncovered instances of unscrupulous employers misusing FLC programs to engage in human trafficking, with victims often exploited for economic gain.

By the end of July 2021, the unemployment rate was higher than the rate prior to the pandemic. Given this increase in unemployment, there will be greater scrutiny placed upon the hiring of foreign labor. The Executive Order on *Aligning Federal Contracting and Hiring Practices with the Interests of American Workers*, issued on August 3, 2020, requires DOL and the Department of Homeland Security (DHS) to take action to protect U.S. workers from any adverse effects on wages and working conditions caused by the employment of H-1B visa holders at job sites.

The H-1B program allows U.S. employers to temporarily hire foreign workers in specialty occupations. With the high number of job seekers during the COVID-19 pandemic and the Executive Order in effect, the Department is challenged to: (1) verify whether any U.S. workers are available for a job vacancy where H-1B candidates might be considered and (2) ensure that a foreign worker filling the job will not adversely affect the wages and

working conditions of U.S. workers similarly employed. The fact that these are attestation-based programs further challenges the Department's ability to protect U.S. workers. Moreover, due to social distancing and businesses being permanently or temporarily closed in response to the pandemic, the Department has been limited in its ability to perform on-site investigations. It has increased on-site investigations as different localities in the U.S. have been re-opening. However, these investigations represent a small fraction of the total number of on-site investigations pending that the Department cannot carry out due to the pandemic.

WHD is limited by statute to conducting investigations of alleged H-1B violations only when a complaint has been filed. The Department's limited statutory authority to act on potentially fraudulent H-1B foreign labor applications has been a long-standing challenge, and at times, leads to unscrupulous employers misusing FLC programs for labor and human trafficking. OIG investigations have shown that the H-1B program is susceptible to significant fraud and abuse, often by dishonest immigration attorneys, employers, labor brokers, and organized criminal enterprises. One of the reasons for the fraud and abuse of the H-1B program is that the Department is statutorily required to certify H-1B applications within 7 days unless it determines the applications to be "incomplete or obviously inaccurate." The OIG continues to investigate various fraud schemes within the H-1B program, including labor leasing,¹¹ benching of foreign workers,¹² and wage kickbacks.¹³

Furthermore, ETA's permanent labor certification program (PERM), which allows employers to hire foreign workers on a permanent basis in the U.S., predominantly relies on attestations to verify whether employers are complying with its qualifying criteria. Once PERM applications are certified, ETA does not review applications post-adjudication to validate the integrity of employers' attestations. On its end, WHD does not play a role in the PERM program and does not conduct investigations to verify whether the workers are still working for those employers.

DEPARTMENT'S PROGRESS

As part of the Department's technology modernization initiative, the Foreign Labor Application Gateway (FLAG) System and SeasonalJobs.dol.gov website were developed to replace the legacy iCERT System, improve customer service, and modernize the administration of FLC programs. Employers are able to electronically file applications and upload documents in the FLAG system. The FLAG system is a case management system for the Department and can issue determination letters electronically for a seamless transition of employers' applications from DOL to DHS. The FLAG system also enhanced data sharing between the Department and state workforce agencies.

SeasonalJobs.dol.gov is a mobile-friendly online portal that is designed to help U.S. workers identify and apply for open seasonal and temporary jobs under the H-2A and H-2B visa programs.¹⁴ In addition to providing more robust and personalized search capabilities that tailor results to the geographic location of U.S. workers, this

¹¹ Labor leasing: When workers are provided to a third party that usually offers limited or no benefits to the workers, and for a limited time.

¹² Benching of foreign workers: When employers, during a period of low productivity or otherwise slow business, refuse to pay foreign workers their wages, a.k.a. "benching" them.

¹³ Wage kickbacks: When third-party placement firms obtain H-1B workers and pay them lower wages than what U.S. employers would have paid.

¹⁴ The H-2A program allows U.S. employers to hire foreign workers temporarily for agricultural labor and services, while the H-2B program applies to non-agricultural labor and services.

website makes it easier to integrate employment postings with third-party job search websites to make these job opportunities more accessible to job seekers.

ETA made significant changes to the application form used in the H-2B program in response to the OIG's recommendation to address the form's ambiguity, which had been an impediment for the OIG's Office of Investigations in its past efforts to prosecute offenders committing fraud against this program. These changes include: a) requiring petitioners and preparers to affirm they have read and understood the attestations they declared in the application; b) clarifying the petitioners and preparers' responsibility to accurately complete the application form; and c) acknowledging the consequences of providing misrepresentation on attestations and declarations made on the application.

According to Department officials, every year since FY 2016, the Department has requested authorization, through its annual budget formulation process, to establish and retain fees to cover the operating costs for FLC programs. This proposal aligns the Department with the funding structures used by DHS and the State Department to finance their application-processing activities related to these programs. Employing a similar model for foreign labor certifications would eliminate the need for Congressional appropriations and create a funding structure responsive to market conditions.

ETA is currently in the process of updating the PERM application forms and working with DOL's Office of the Chief Information Officer (OCIO) to upgrade the PERM Case Management System and modernize the application process into a cloud-based program.

WHAT REMAINS TO BE DONE

The Department should seek statutory and regulatory authority to strengthen its ability to debar those who abuse the H-1B program. In furtherance of this, the Department has indicated starting a process to initiate Secretary-certified H-1B investigations and has entered into a memorandum of understanding with DHS to allow sharing with WHD DHS data and U.S. Citizenship and Immigration Services (USCIS) referrals of suspected violations of the terms of labor condition applications. The Department also needs to seek statutory authority to verify the accuracy of information provided on H-1B labor condition applications. Department officials need to refer all potentially criminal violations to the OIG in a timely manner and enhance the reporting and application of suspensions and debarments government-wide.

Regarding H-2B applications, the Department should continue its efforts to ensure those are processed in time to hire foreign workers by employers' dates of need while simultaneously ensuring the review process protects the interests of U.S. workers.

For the PERM program, once applications have been certified, the Department needs to perform post-adjudication reviews to validate the integrity of employers' attestations. The majority of the applications are currently submitted for review without documentation to prove or support employers' attestations. Additionally, the Department should investigate whether PERM workers are still working for the employers designated in the applications.

CHALLENGE: Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families

BACKGROUND

The Employee Benefits Security Administration (EBSA) is responsible for protecting the integrity of pension, health, and other employee benefits for about 158 million people. This responsibility includes enforcement authority over approximately 734,000 private retirement plans, 2 million health plans, and 662,000 other welfare benefit plans, which altogether hold approximately \$12.9 trillion in assets. It also includes interpretive and regulatory responsibilities for Individual Retirement Accounts (IRA), which hold about \$12.6 trillion in assets.

EBSA also provides oversight of the federal government's Thrift Savings Plan (TSP), the largest defined contribution plan in the U.S., with nearly 6.4 million participants and \$790 billion in assets as of August 2021.

CHALLENGE FOR THE DEPARTMENT

EBSA is challenged to allocate its limited staff resources in a way that will maximize the positive impact of its efforts. This is especially significant given the fast pace of market and regulatory changes affecting ERISA-covered plans,¹⁵ including Congress's recent creation of a new class of plan sponsor (pooled plan providers); the Consolidated Appropriations Act of 2021's comprehensive amendments to ERISA, including fundamental changes to the laws governing surprise medical bills, price transparency, fee disclosure, prescription drug coverage, reporting requirements, systems changes, and heightened enforcement requirements for parity in the provision of mental health and substance use disorder benefits; new requirements mandated by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act); COVID-19 payment mandates set forth in the Families First Coronavirus Response Act (FFCRA) and the CARES Act. EBSA must always look for ways to maximize the impact of its limited resources and to conduct the type and number of investigations, audits, reviews, and compliance assistance activities necessary to best protect workers' pension, health, and other benefits.

One specific challenge EBSA faces is finding an effective way to protect the public from fraud and mismanagement in connection with multiple employer welfare arrangements (MEWA), a health care delivery arrangement which aims to provide health benefits to the employees of more than one employer and for which the sponsor is not usually a single employer. When MEWAs collapse through fraud or mismanagement, it often leads to devastating losses for workers and their dependents who were planning to rely on the MEWAs for coverage of their medical expenses. Failed MEWAs leave vulnerable workers responsible for paying back millions of dollars in medical expenses, and this can result in workers foregoing necessary medical treatment, the consequence of which can be catastrophic injuries. Because EBSA does not have the resources to conduct routine audits of the self-funded arrangements most prone to risk, it typically learns about troubled MEWAs only after they have started to collapse, when thousands — or tens of thousands — of participants have suddenly been deprived of promised health benefits. Without a means to build an early warning system for such troubled MEWAs, this will continue to be a high-risk challenge for the agency.

EBSA is further challenged because it has no statutory authority to force certain plans to conduct full scope audits, which would provide significantly stronger assurances to participants than limited-scope audits. Past OIG work

¹⁵ ERISA refers to the Employee Retirement Income Security Act of 1974, which is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

revealed that as much as \$3.3 trillion in pension assets — including an estimated \$800 billion in hard-to-value alternative investments — received limited-scope audits. Independent public accountants performing these limited-scope audits generally were not required to audit investment information already certified by certain banks or insurance carriers, which meant the independent public accountants expressed “no opinion” on the valuation of these assets. These limited-scope audits weaken assurances to stakeholders and put retirement plan assets at risk because they provide little to no confirmation regarding the existence or value of plan assets.

Finally, EBSA is challenged to obtain compliance with its TSP audit recommendations given its limited legal authority to enforce its oversight of more than \$790 billion in TSP assets and to compel the Federal Retirement Thrift Investment Board (the Board), which administers the TSP, to act on these recommendations, including significant recommendations relating to cybersecurity. In our 2018 audit on this subject, we found 73 percent of the recommendations EBSA auditors had made to the Board between 2010 and 2017 remain open. EBSA has also recently issued extensive guidance aimed at improving cybersecurity in private retirement plans and publicly indicated that it intends to routinely include cybersecurity inquiries as part of its investigations of retirement plans. Because of the threat that cybersecurity breaches potentially pose to trillions of dollars in plan assets, and because of the technical expertise required to assess plan security, this too is a significant management challenge.

DEPARTMENT’S PROGRESS

With respect to limited-scope audits, the American Institute of Certified Public Accountants (AICPA) had taken action in July 2019 by issuing its Statement on Auditing Standards (SAS) No. 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. Effective for periods ending after December 15, 2021, for limited-scope audits, SAS No. 136 will require auditors to issue an audit opinion on information not covered by the qualified financial institution’s certification. Accordingly, auditors can no longer “disclaim” opinions subject to limited-scope audits. Nonetheless, they may continue to not opine on the value of plan assets.

At current staffing levels, EBSA has about one investigator for every 12,000 plans and \$38 billion in assets. EBSA stated that it has (1) requested an increase of 185 full-time equivalent (FTE) employees and \$33.6 million in additional funding to restore its investigative and regulatory staff to levels that approximate where it was before reductions pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act issued on March 1, 2013; and (2) taken a number of steps to improve its TSP audit risk assessments and encouraged the Board to implement audit recommendations.

WHAT REMAINS TO BE DONE

EBSA needs to develop new outreach, education, and enforcement strategies for MEWAs and expanded Multi-Employer Plans (MEP) to accommodate the diverse plans available in the market and pooled provider plans established under the SECURE Act. Given the history of insolvency, fraud, and abuse with troubled MEWAs that include nonfilers, and the expansion of MEPs likely to result from the SECURE Act, EBSA will have to determine how best to allocate its limited resources to oversee the expansion in terms of both the number of plans as well as the increased number of plan types it has to regulate.

In addition, given the dollar amounts involved, EBSA should pursue legislative repeal of the limited-scope audit exemption to ensure better security for retirement plans. Notwithstanding SAS No. 136, limited-scope audits (now

known as ERISA Section 103(a)(3)(C) audits) offer participants significantly reduced assurances of plan asset values as compared to full-scope audits. The proliferation of plan assets subject only to ERISA Section 103(a)(3)(C) audits greatly increases the risk of loss to participants.

Finally, EBSA should seek amendments to the Federal Employee Retirement Security Act to broaden its authority and ensure TSP audit recommendations are implemented.

CHALLENGE: Providing a Safe and Healthy Learning Environment at Job Corps Centers

BACKGROUND

The Job Corps program annually provides education, training, and support services to disadvantaged, at-risk youth, ages 16–24, at more than 120 Job Corps centers, which are primarily residential. OIG audits over the past several years found a wide range of security and safety issues at Job Corps centers, from failure to report and investigate serious misconduct to shortages of security staff. Job Corps now faces new challenges in meeting its mission due to health risks that COVID-19 poses to students and staff who are on campus. These challenges have evolved into long-term challenges as Job Corps adjusts its operations to reflect new health requirements.

CHALLENGE FOR THE DEPARTMENT

The Job Corps program faces the challenge of continuously providing safe learning environments for its students and staff. Funding plays a significant role in this challenge, particularly as it relates to the procurement, installation, ongoing maintenance, and upgrade of physical security equipment. This equipment allows for the enforcement of safety and security policies via monitoring. In addition to physical security protocols, part of providing a safe learning environment for students also includes ensuring that Job Corps centers perform appropriate pre-admission screenings of applicants who are already facing challenges.

Job Corps also must ensure the health and safety of students and staff permitted to be on-site at its centers during the pandemic. At the start of the pandemic, Job Corps temporarily suspended operations on its campuses on March 16, 2020, and transported nearly 29,000 students to their homes or found them housing. In November 2020, Job Corps used a phased-in approach and began returning enrolled students to centers. As of June 2021, Job Corps resumed on-campus operations at 112 centers and anticipates all its centers will have students on-site by the end of the year. During this period from November 2020 to June 2021, only 2.3 percent of students on-site have tested positive for COVID-19. However, Job Corps will not continue to operate at reduced capacity as the remaining centers resume on-campus operations, increasing numbers of students return to campus, and new students arrive. With new COVID-19 variants spreading across the U.S. and vaccination rates varying state by state, Job Corps must contend with the challenge of how to maintain a low COVID-19 case rate at each of its centers.

As a result of the pandemic, access to remote training presents a particular challenge for many Job Corps students. Since suspending in-person instruction and shifting to online learning, Job Corps encountered many issues ranging from not having an adequate remote learning infrastructure to ensuring whether or not students had the resources to learn remotely. For example, more than 68 percent of Job Corps students needed basic tools such as computers and internet access. Moreover, much of the training Job Corps typically provides — such as

for automotive and machine repair, welding, carpentry, and advanced cement masonry — is hands-on and cannot be readily adapted to a remote learning model.

DEPARTMENT'S PROGRESS

To improve center safety and security, Job Corps had invested by the close of FY 2020 approximately \$89 million in equipping centers with more than 11,500 cameras and 5,000 physical access control systems, walk-through and hand-held metal detectors, centralized security radio networks, and emergency notification systems, as well as expanding the intercom systems with more than 2,750 speakers. Additionally, Job Corps invested approximately \$1.1 million in essential security equipment, such as radios and magnetometer wands to support security enhancements. In 2020, through the integration of Interagency Security Committee methodology, Job Corps expanded this effort to establish a consistent and effective means to identify and mitigate risk for each center. Moreover, Job Corps rolled out a system-wide readiness tool geared toward helping its centers prepare students for entry into the program in 2019.

According to agency officials, Job Corps continues to take steps to ensure students have the necessary devices to engage in remote learning. Job Corps has already procured 25,000 Google Chromebooks and wireless hotspots for students. They have indicated Job Corps is also implementing an online learning platform that will standardize the data collection and reporting and much of the delivery of educational training to students during and beyond the COVID-19 pandemic. Changes have been made to the program's existing Center Information System to better track weekly student participation hours until a learning management system is in place.

Agency officials also stated that Job Corps continues to take steps to protect the health and safety of students and staff on-site at its centers during the COVID-19 pandemic. Prior to students returning back to campus, Job Corps used a team of federal staff, contracted public health experts and consultants, data analysts, and facility managers to establish the methodology for evaluating and measuring risk and on-site readiness for bringing back those students. This methodology required centers to adhere to current Centers for Disease Control and Prevention protocols, which at the time included masking, social distancing, cohorting and staggering schedules, cleaning and disinfecting frequently, and installing physical barriers, such as sneeze guards and partitions.

WHAT REMAINS TO BE DONE

Job Corps must continue with its progress on executing and enhancing its safety and security plan; training employees and contractors on new policies and procedures; and ensuring existing policies and procedures are periodically reviewed and monitored for compliance. Job Corps needs to ensure center operators and regional office personnel fully enforce Job Corps safety and security policies to improve campus security and control violence. To inform agency decision-making and to assess the impact of proposed, planned, and implemented security reforms, Job Corps should timely identify and remediate noncompliance, expand data collection and analysis, and disseminate information to stakeholders. In addition, Job Corps must evaluate tools to help improve the pre-admission applicant screening and enrollment process. Although Job Corps rolled out the aforementioned system-wide readiness tool in 2019, few centers were aware of its existence. While the program has procured equipment to help students participate in remote learning, some students still have not received equipment, partly due to Job Corps taking numerous months to finalize policies for equipment use. Job Corps needs to work towards ensuring students have access to the equipment and technology that remote learning relies upon.

As Job Corps centers resume full on-campus operations during the pandemic, with most centers having at least partially resumed operations as of June 2021, the program must also protect the health and safety of students and staff.

CHALLENGE: Managing Medical Benefits in Office of Workers' Compensation Programs

BACKGROUND

The Department's Office of Workers' Compensation Programs (OWCP) provides compensation and medical benefits to workers for employment-related injuries and occupational diseases. During FY 2021, OWCP paid \$772 million in medical benefits under the Federal Employees' Compensation Act (FECA), more than \$1.1 billion under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), and \$30 million under the Black Lung Benefits Act.

CHALLENGE FOR THE DEPARTMENT

OWCP is challenged to effectively manage medical benefits in its workers' compensation programs due to the high risk of fraud, waste, and abuse associated with (1) the use and cost of pharmaceuticals in the FECA program and (2) rising home health care costs in the EEOICPA authorized program (the Energy Workers program). Previous OIG work in the FECA program has identified internal control weaknesses related to OWCP's management of pharmaceuticals. For example, OWCP allowed increases in billings for compounded drugs to go undetected and failed to identify the overuse of opioids. Given the high risk of fraud related to prescription payments, OWCP needs to analyze and monitor FECA costs to promptly detect and address such problems. In the Energy Workers program, annual home health care costs have risen from \$100 million in FY 2010 to more than \$675 million in FY 2020, comprising 74 percent of all medical benefits paid by the program in FY 2020. With an aging claimant population, providers can take advantage of the increased demand for home health care services and exploit weaknesses in OWCP's existing controls by employing tactics that are legal but unethical, such as inappropriately bundling or unbundling services. Additionally, the increased use of telehealth as a result of the COVID-19 pandemic could impact OWCP's existing controls over home health care service requests.

DEPARTMENT'S PROGRESS

OWCP has taken actions to better manage pharmaceuticals in the FECA program, including: (1) contracting with a Pharmacy Benefits Manager, a third-party administrator of prescription drug programs; (2) implementing new policies related to the review and approval of pharmacy claims; (3) focusing data analytics on the population of opioid users with the purpose of predicting their future behavior; (4) improving the detection of potentially fraudulent medical providers; and (5) suspending and debaring medical providers criminally convicted of or indicted for defrauding the FECA program to stop payments to these providers.

Additionally, OWCP continues to analyze and audit home health care billing practices in the Energy Workers program for the purpose of modifying billing rules and policies when it uncovers abusive practices. It has also moved the adjudication of home health care into a national office unit that focuses exclusively on medical benefits

adjudication, and it has provided internal training to that unit. OWCP officials also implemented a program integrity unit and increased the number of fraud referrals to the OIG for investigation.

WHAT REMAINS TO BE DONE

In the FECA program, OWCP needs to fully implement its Pharmacy Benefits Manager contract to address the following options:

- Conducting drug utilization reviews to prevent potentially harmful drug interactions;
- Implementing drug exclusion and formulary lists for all drugs and drug ingredients;
- Ensuring continued use of the best methods for calculating fair and reasonable pharmaceutical pricing;
- Requiring the use of preferred pharmacy providers; and
- Performing cost-limit checks to identify high drug prices requiring additional review and authorization.

After completing the above planned actions, OWCP needs to measure their impact on use and cost of prescription drugs as well as consider additional options for monitoring and managing medical costs.

OWCP should continue with its efforts to identify what insurance providers and other federal, state, and local agencies are doing to manage medical costs and determine which best or promising practices may be suitable for its operations. OWCP also needs to expand its use of data analytics to monitor payments for pharmaceuticals and identify trends, risks, and appropriate treatment plans. In the Energy Workers program, OWCP should continue its efforts to analyze home health care billings for abusive practices and to identify and refer allegations involving potential fraud or abuse to the OIG for further investigation. Finally, OWCP should continue monitoring the ongoing COVID-19 pandemic and its impact on OWCP's major compensation programs.

CHALLENGE: Securing and Managing Information Systems

BACKGROUND

The Department's major information systems contain sensitive information central to its mission and programs. These systems maintain critical and sensitive data related to financial activities, enforcement actions, job training services, pensions, welfare benefits, and worker safety and health. In FY 2021, the Department's information technology (IT) investments were estimated at \$685 million. The funds were used in implementing the Department's services and functions to safeguard the U.S. workforce.

CHALLENGE FOR THE DEPARTMENT

The Department faces challenges safeguarding its data and information systems. Although the Department has made progress in this area, we have continuing concerns about DOL's IT governance, modernization efforts, and ability to identify, protect, and recover information systems and data. Moreover, this past year has highlighted the emergence of additional IT challenges in remote operations and supply chain management.

The OIG continues to identify information security deficiencies in the critical areas of configuration management, third-party oversight, risk management, and continuous monitoring. While the Department has made

improvements in these areas, deficiencies continue to exist and represent ongoing risks to the confidentiality, integrity, and availability of the Department's data and information.

The Department consolidated a majority of its information technology and resources under the Assistant Secretary for Administration and Management as part of an IT shared services model in December 2020. While the Chief Information Officer (CIO) provides the management and oversight of DOL's IT resources for the Assistant Secretary for Administration and Management, the position of the CIO has not been given the independence and authority for implementing and maintaining these resources. The CIO's position is not aligned with that of other DOL agency heads, and the CIO does not report directly to the Secretary of Labor, as required.

As an increasing number of DOL employees are gradually able to return on-site for work, the Department will need to determine which functions and operations are suitable for continued telework, and whether its information systems and processes can provide sufficient capability and security.

DEPARTMENT'S PROGRESS

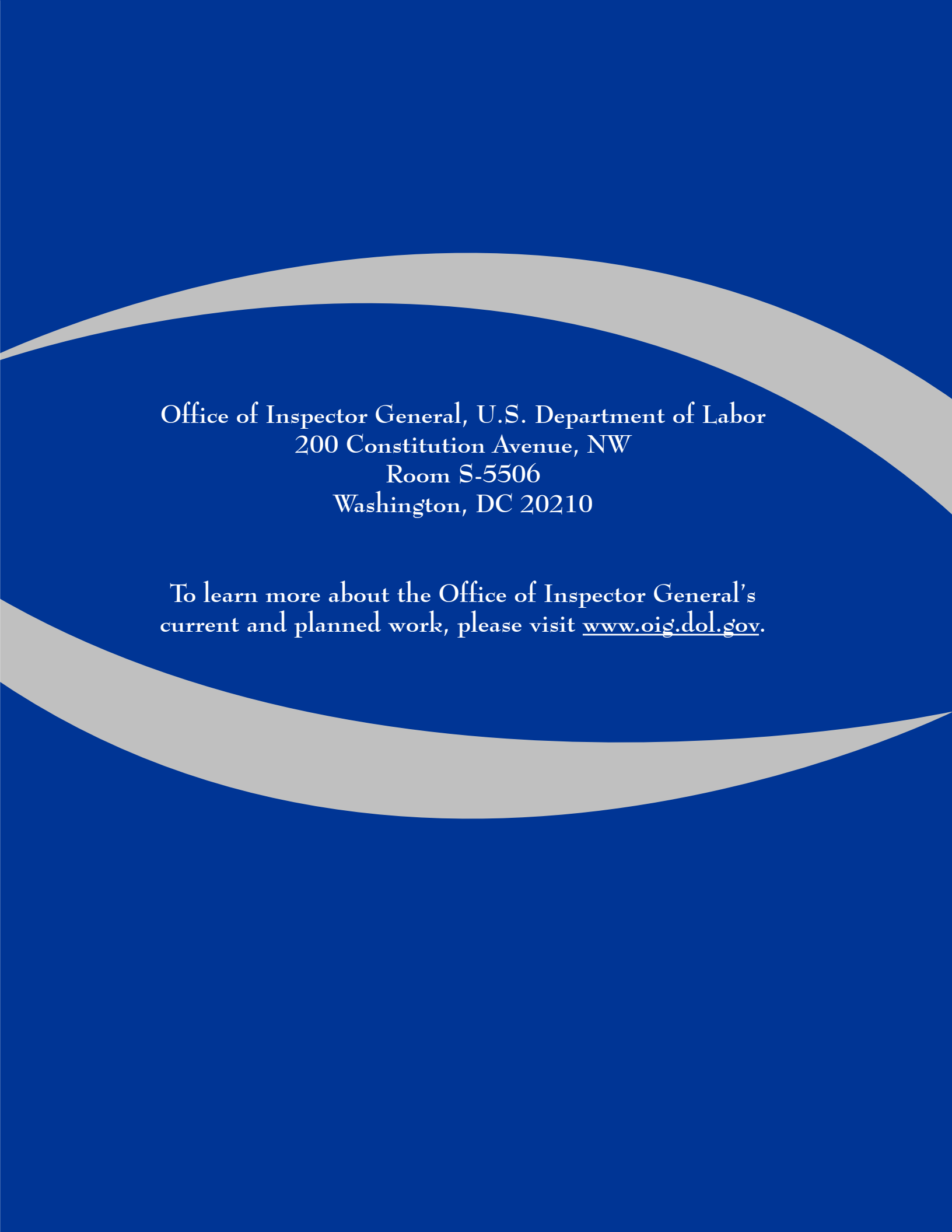
The Department implemented new programs and systems designed to strengthen security operations, including expanding its vulnerability scanning coverage. The Department continues to reorganize its IT resources and capabilities to a more centralized shared services environment under the Office of Assistant Secretary for Administration and Management (OASAM) to better manage resources and projects for modernizing, securing, and consolidating information technology, and this includes realigning information processes and personnel. During the COVID-19 pandemic, the Department quickly enhanced and implemented systems, ensuring continued operation of its systems.

WHAT REMAINS TO BE DONE

While the Department has consolidated the majority of information technology within OASAM, the Department needs to use this opportunity to:

- Address recurring information security deficiencies;
- Strengthen its oversight responsibilities to ensure DOL agencies adhere to the Department's information security policies, procedures, and controls;
- Ensure the implementation of its security requirements with DOL's third-party and cloud systems;
- Enhance its security program by ensuring security tools are effectively implemented; and
- Plan for emerging security threats, such as recent supply chain vulnerabilities.

Furthermore, the Department needs to reassess the incorporation of the Bureau of Labor Statistics (BLS) and the Office of the Chief Financial Officer (OCFO) as part of DOL's IT Shared Services and elevate the reporting structure for the CIO's position from the Assistant Secretary for Administration and Management to the Secretary of Labor and thus ensure the CIO has the authority and accountability to govern DOL's IT resources.



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