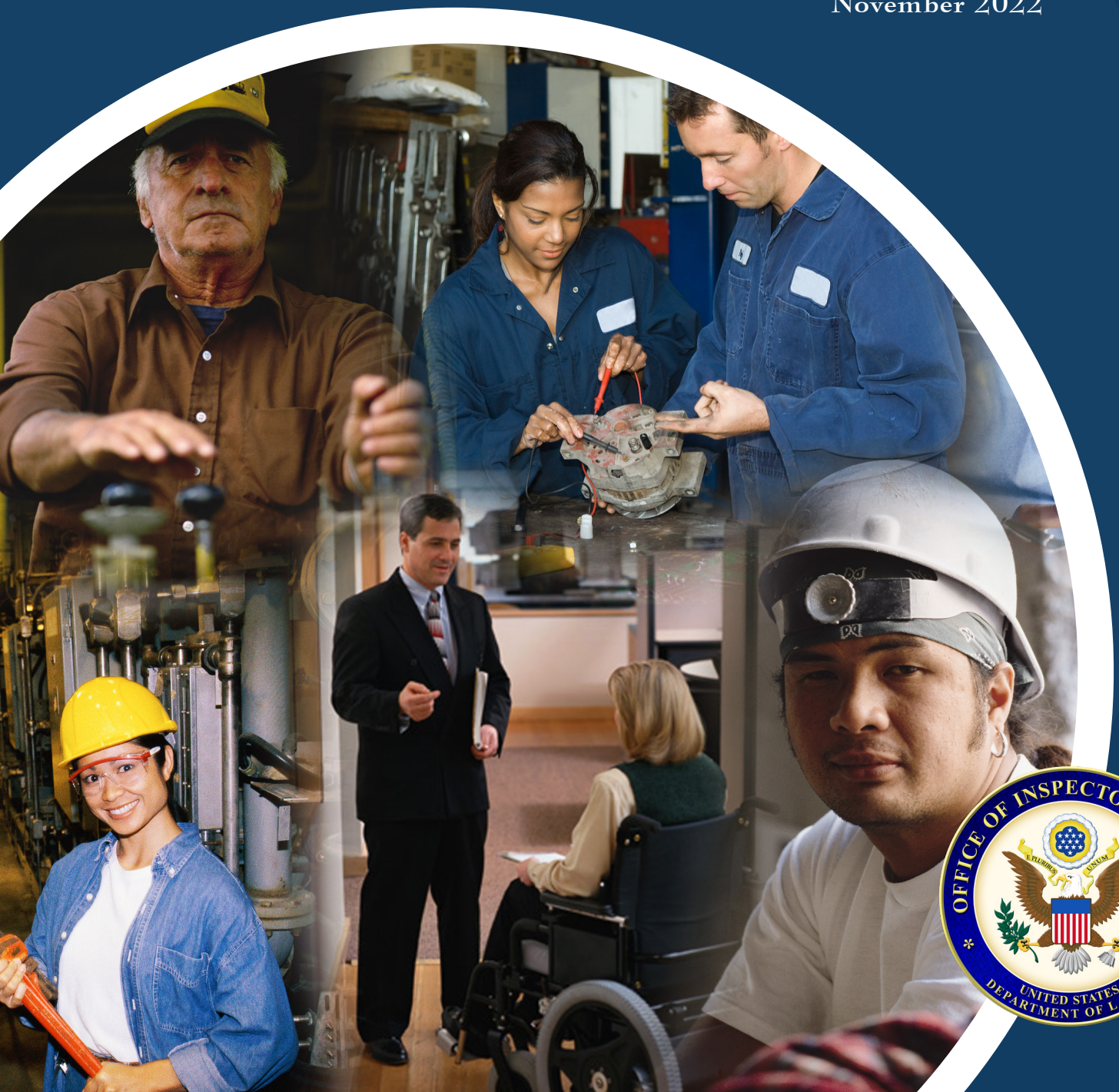


Office of Inspector General

U.S. Department of Labor's Top Management and Performance Challenges

November 2022





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 2022.

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.

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CHALLENGE:

Identifying and Reducing Unemployment Insurance Improper Payments



BACKGROUND



The Unemployment Insurance (UI) program is a joint federal-state program with each state¹ administering a separate UI program under its own laws while following uniform guidelines established by federal law. The Employment and Training Administration (ETA) under the U.S. Department of Labor (Department or DOL) is responsible for providing UI program direction and oversight. The UI program provides benefits to eligible workers who are unemployed through no fault of their own and meet other state eligibility requirements. The program's benefits are generally funded by state employer taxes with administrative costs funded by the federal government. However, during emergencies or disasters, the federal government has generally stepped in with federal funding for UI benefits. In response to the COVID-19 pandemic, the federal government allocated unprecedented levels of federal funding to the UI program, currently estimated at approximately \$872.5 billion.

For over 20 years, the Office of Inspector General (OIG) has reported on the Department's limited ability to measure, report, and reduce improper payments in the UI program. This long-standing challenge with UI improper payments is further exacerbated in times of crises including natural disasters and economic downturns. For example, we identified over \$100 million in potential improper payments related to UI program benefits in response to the devastating impact of Hurricanes Katrina and Rita in 2005. States also

WHAT IS AN IMPROPER PAYMENT?

A payment is improper if it should not have been made or was made to the wrong recipient. Examples include duplicate payments, overpayments, and underpayments.

An improper payment can be:

-  unintentional (accidental in nature) or
-  intentional (occur on purpose, more commonly referred to as financial fraud).

Financial fraud is a type of improper payment resulting from the recipient's willful misrepresentation for the purposes of obtaining the funds, services, or benefits.

To find out more about the UI program and
OIG's oversight work in this area, visit our website at:
<https://www.oig.dol.gov/doloiguioversightwork.htm>

Source: OIG graphic representation based on OMB Memorandum M-21-19, "Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement," dated March 5, 2021.

¹ When referring to unemployment insurance, the 2022 *Top Management and Performance Challenges* report uses "state" or "State Workforce Agency" to refer to the administrative body that administers the program within the state, district, or territory. For the 50 states, as well as the U.S. Virgin Islands, Puerto Rico, and the District of Columbia, that administrative body is a State Workforce Agency. The CARES Act also provided certain UI benefits to American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, and the Republic of Palau, provided the territory signs an agreement with the Department.

did not detect an estimated \$6.5 billion in improper payments from the UI funding provided by the American Recovery and Reinvestment Act of 2009. Due to the economic downturn resulting from the COVID-19 pandemic, unemployment rates skyrocketed in 2020 with millions of U.S. workers filing UI claims. As the OIG reported, states were unprepared to handle the unexpected volume of unemployment claims and struggled to implement the new programs. Some State Workforce Agencies suspended benefit payment controls and reassigned benefit payment control staff to process UI payments, and faced impediments with insufficient information technology (IT) systems. States simultaneously contended with new UI program rules related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

CHALLENGE FOR THE DEPARTMENT

The Department continues to face challenges in ensuring UI improper payments are timely and accurately detected, reported, and recovered—but first and foremost, prevented. However, the Department has not made the changes necessary to prevent excessive improper payments. If ETA does not take the necessary steps to course correct, improper payments within the UI program could remain problematic.

The UI program requires states to make weekly benefit payments in a timely manner while ensuring claimants meet eligibility requirements. A state may determine a payment is improper after a claimant receives benefits based on new information that was unavailable when the state approved the benefit payment or as a result of the requirement that claimants be provided with due process prior to stopping payment of benefits. The leading causes of improper payments have historically been:



CLAIMANTS DO NOT MEET WORK SEARCH REQUIREMENTS² – 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; and



FRAUD – Claims based on fraudulent schemes, such as those perpetrated during the pandemic.³

Following the start of the pandemic in the United States in early 2020, unemployment compensation claims rose exponentially. The states struggled when implementing new programs and processing claims partly due

² The Middle Class Tax Relief and Job Creation Act of 2012 requires that individuals receiving UI benefits must be able to work, available to work, and actively seeking work, as a condition of eligibility for regular compensation for any week. Accordingly, states generally require that unemployed workers demonstrate they were actively seeking work. Work search overpayments occur when states pay UI claimants who do not demonstrate that they were actively seeking work.

³ ETA has included fraud as an element of the leading causes rather than as a separate cause. From July 2016 to March 2020, the other three causes resulted in over \$9 billion in improper payments. Of this total, more than \$3 billion was attributable to fraud. Since the pandemic started, fraud has significantly increased.

to insufficient staffing and IT system resources. Less than a month after the CARES Act passed, we published an advisory report⁴ outlining areas of concern that ETA and the states should consider as they implemented the UI provisions included in the CARES Act. Our identification of these areas represents years of work relating to DOL's UI program, including the response to past disasters. One of these areas was state preparedness, specifically the two issues of staffing and system capabilities. Subsequent analysis and audit work confirmed our concerns as billions of dollars were spent improperly and states cited issues with antiquated IT systems, insufficient staffing, and unclear guidance from ETA.

Our recommendations have specifically included the need for the Department to estimate improper payments within federally-funded temporary emergency programs. In August 2020, we recommended⁵ ETA estimate the improper payment rate for pandemic-related UI programs. In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent for 2021, which ETA applied to two of the three key pandemic-related UI programs, Federal Pandemic Unemployment Compensation (FPUC) and Pandemic Emergency Unemployment Compensation (PEUC). ETA stated it will report the third program, Pandemic Unemployment Assistance (PUA), in 2022.

Applying the 18.71 percent to the estimated \$872.5 billion in pandemic-related UI funding,⁶ at least \$163 billion in UI benefits could have been paid improperly, with a significant portion attributable to fraud. Based on our audit and investigative work, the improper payment rate for pandemic-related UI payments is likely higher.

With fraud becoming an even greater cause of UI improper payments during the COVID-19 pandemic, federal dollars intended for eligible claimants were being diverted away by criminals, based either in the United States or internationally. As the OIG reported, the unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit. That, combined with easily attainable stolen personally identifiable information and continuing UI program weaknesses identified by the OIG over the last several years, allowed criminals to defraud the system. Because many states were not prepared to process the volume of new claims under completely new UI programs, many internal fraud controls that had been traditionally used or recommended for the processing of UI claims were not initially implemented.

⁴ The advisory report, *CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions*, DOL OIG Report No. 19-20-001-03-315 (April 21, 2020), is available online at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>.

⁵ The audit report, *COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation under the CARES Act*, DOL OIG Report No. 19-20-008-03-315 (August 7, 2020), is available online at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>.

⁶ ETA's reported improper payment rate estimate of 18.71 percent does not include the PUA program. However, it is the most current improper payment rate from ETA. Furthermore, PUA had control weaknesses that may have facilitated comparable or greater improper payments. Therefore, applying ETA's rate to all of the estimated \$872.5 billion in CARES Act UI funding including PUA would equate to at least \$163 billion in improper payments.

At least \$163 billion in UI benefits could have been paid improperly, with a significant portion attributable to fraud.

Based on our audit and investigative work, the improper payment rate for pandemic-related UI payments is likely higher.

Identifying and Reducing Unemployment Insurance Improper Payments

This created a high-reward target where an individual could make a fraudulent claim with relatively low risk of being caught. For example, as time went on, one fraudster could have been issued several UI debit cards, with tens of thousands of dollars on each card. In a recent audit, our in-depth analysis of 4 states found that in the 6 months after CARES Act passage, an estimated \$9.9 billion of the \$71.7 billion in PUA and FPUC benefits were paid to likely fraudsters (13.8 percent). In our September 2022 alert memorandum, we identified \$45.6 billion of potentially fraudulent UI benefits paid from March 2020 to April 2022 in four specific high-risk areas, to individuals with Social Security numbers: (1) filed in multiple states, (2) of deceased persons, (3) of federal prisoners, and (4) used to file UI claims with suspicious email accounts.⁷



During the pandemic, identity theft emerged as a significant and pernicious problem. Specifically, the surge in claims revealed pandemic-related programs were vulnerable to imposter claims, such as those being filed with stolen or synthetic⁸ identities. ETA reported that, because synthetic identities combine multiple data points, it is more difficult to detect and prevent this type of fraud. To do so, the use of cross-matches with additional data sources to support detection is needed. While states are employing a wide array of strategies to verify the identities of UI claimants through cross-matches, state-developed tools, and private vendor services, it is unclear how sufficient or effective these measures are in combatting fraud within the UI program.

DEPARTMENT'S PROGRESS

On August 31, 2021, the Department established the Office of Unemployment Insurance Modernization to work with state agencies and federal partners to modernize and reform the UI system. Operating within the Office of the Secretary, this unit works in conjunction with ETA, the Office of the Chief Information Officer (OCIO), and the Office of the Assistant Secretary for Administration and Management (OASAM) to develop and support implementation of the strategic vision outlined in the UI modernization plans⁹ released on August 11, 2021. According to the Department, 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 (ARPA) of 2021 to prevent and detect fraud, promote equitable access, ensure timely benefits payments, and reduce backlogs.

⁷ The alert memorandum, *Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion*, DOL OIG Report No. 19-22-005-03-315 (September 21, 2022), is available online at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>.

⁸ A synthetic identity is a combination of fabricated personally identifying data points where the implied identity is not associated with a real person. For example, a synthetic identity could include a potentially valid Social Security number with other accompanying false personally identifiable information, such as date of birth.

⁹ For more details, a fact sheet about the UI modernization plans is available online at: https://oui.doleta.gov/unemploy/pdf/FactSheet_UImodernization.pdf.

Identifying and Reducing Unemployment Insurance Improper Payments

Since the enactment of ARPA, the Department has announced grant opportunities to states in Unemployment Insurance Program Letters (UIPL), including the following:



UIPL NO. 22-21 — \$140 million to support states with fraud detection and prevention, including identity verification and overpayment recovery activities. As of September 20, 2022, the Department awarded \$134 million in fraud prevention grants to 50 states.



UIPL NO. 23-21 — Up to \$260 million for activities that promote equitable access to UI programs. As of September 21, 2022, the Department awarded over \$150 million in grant funding to 29 states.



UIPL NO. 02-22 — Up to \$200 million to support states in improving UI systems and processes after a consultative assessment with a team of experts provided by DOL. As of September 30, 2022, the Department's Tiger Team initiative has worked with 24 states.



UIPL NO. 11-22 — Funds for pilot states to engage community-based organizations to help workers learn about UI benefits and related services, and to support state agencies in delivering timely benefits to workers.

On December 2, 2021, the Department issued Training and Employment Notice (TEN) No. 16-21, which provides information on grant awards totaling up to \$600,000 made to states selected as partners to participate in the UI IT Modernization Project–Claimant Experience Pilot.¹⁰

The Department has taken some corrective actions to address the OIG's recommendations aimed at reducing UI improper payments related to two of the top causes: *Benefit Year Earnings* and *Employers Do Not Timely Report Employees' Separation*. In addition, the Department stated it has taken corrective actions to address some of the OIG's recommendations¹¹ aimed at helping states implement the Disaster Unemployment Assistance (DUA) Program.

Finally, legislative proposals aimed at improving UI program integrity and reducing high improper payment rates were included annually in the President's Budget Requests from Fiscal Year (FY) 2018 through FY 2021.



¹⁰ For more details, TEN No. 16-21 is available online at: https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEN/2021/TEN_16-21.pdf.

¹¹ The recommendations are from audit report, *ETA Should Do More to Assist Vulnerable States Prepare for Disaster Unemployment Assistance Program Implementation*, DOL OIG Report No. 04-20-002-03-315 (September 29, 2020), available online at: <https://www.oig.dol.gov/public/reports/oa/2020/04-20-002-03-315.pdf>.

WHAT REMAINS TO BE DONE

ETA must take steps to prevent a repeat of similar alarming and rising levels of improper payments before the next emergency strikes. For the UI program, the Department needs to:

- Facilitate the OIG's unfettered access to UI claim data for audit and investigative purposes;
- Plan to prevent similar levels of improper payments in the future by continuing to pursue legislative action included in previous budget proposals to improve UI program integrity;
- Determine if the Integrity Data Hub will significantly reduce the fraud rate;
- Work with State Workforce Agencies to upgrade their technological capabilities to modernize the delivery of UI benefits and ensure their systems are sufficient to manage sudden spikes in claims' volume and protect federal benefits from improper payments, including fraud;
- Create a clear and concise plan to identify improper payments, including fraud, and methods to recover those federal funds, that will allow ETA to work towards recovering historic levels of improper payments while holding states accountable for billions of dollars of improper payments;
- Apply lessons learned during the COVID-19 pandemic to identify areas of highest improper payments including fraud to prevent similar issues in the future; and
- 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. The Department must continually ensure these strategies address and remediate the most common types of fraud.



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 worksites, 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 multiple 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. Due to underreporting of injuries by employers, OSHA and MSHA struggle to determine the most hazardous worksites, which limits their ability to focus inspection and compliance efforts where they are most needed.

OSHA's inspector staffing level has fallen steadily from a high of 860 in 2014 to 750 in 2021.

OSHA's inspector staffing level has fallen steadily from a high of 860 in 2014 to 750 in 2021, as confirmed by an OSHA official. Additionally, it can take up to 5 years for an inspector to be fully trained. Even though OSHA's budget request included the hiring of 155 new inspectors in FY 2022, the current lack of available inspectors and time lag for an inspector to become fully trained can lead to less inspections, diminished enforcement of high-risk industries, and ultimately, greater risk of injuries or compromised health for workers.

With the passing of the American Rescue Plan Act (ARPA) on March 11, 2021, the federal government provided additional relief to address the continued impact of the pandemic on the economy, public health, state and local governments, businesses, and individuals. Through ARPA, funding of not less than \$100 million is for OSHA to carry out COVID-19 related worker protection activities, of which \$10 million is for Susan Harwood training grants and at least \$5 million is for enforcement efforts related to COVID-19 at high-risk worksites, including health care, meat and poultry processing facilities, agricultural worksites, and correctional facilities.

In March 2022, we reported that while complaints spiked during the pandemic, when OSHA needed to ensure it was providing the maximum level of protection to workers at worksites, it in fact reduced the number of inspections, with most not being conducted on-site.¹² In the event of a future global health crisis,

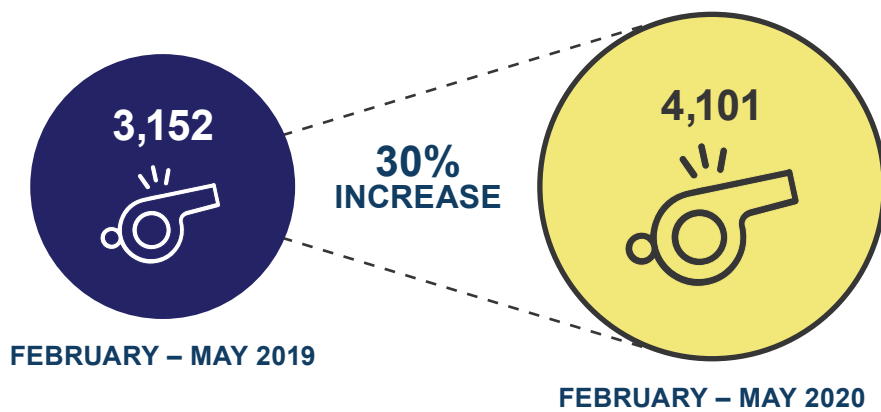
¹² The audit report, *COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies*, DOL OIG Report No. 19-22-003-10-105 (March 31, 2022), is available online at: <http://www.oig.dol.gov/public/reports/oa/2022/19-22-003-10-105.pdf>.

it would help OSHA to be prepared with a whole-of-government approach by leveraging partnerships within the regulatory community.

In addition, OSHA has been at a disadvantage to protect workers who report potential worksite safety violations and complete subsequent whistleblower investigations within the statutory requirement of 30, 60, or 90 days. The pandemic caused a significant increase in the number of whistleblower complaints OSHA received, while the number of full-time equivalent (FTE) employees, including inspectors within OSHA's Whistleblower Protection Program, decreased. For example, during the preliminary months of the pandemic, February 1, 2020, through May 31, 2020, OSHA's Whistleblower Protection Program received 4,101 complaints, which was 949, or 30 percent, more than the complaints received during the same period in 2019. Simultaneously, Whistleblower Protection Program FTEs decreased from 126 in 2019 to 120 in 2020.¹³

The Government Accountability Office's (GAO) written testimony released on May 25, 2022,¹⁴ found OSHA had limited procedures for encouraging compliance with the illness and injury reporting requirement and for penalizing employers for noncompliance. Previously in 2017, we found OSHA faced difficulties in verifying hazard abatement at both general industry and construction worksites. The agency closed many citations for safety violations because construction projects ended rather than verifying that employers corrected the cited hazards.¹⁵ As a result, OSHA received no assurances employers would improve safety and health practices at future construction worksites.

The pandemic caused a significant increase in complaints OSHA received in its Whistleblower Protection Program.



OSHA continues to be hampered by the lack of a permanent standard on infectious diseases aimed at protecting workers in all high-risk industries. While OSHA did issue an emergency temporary standard

¹³ This information is according to audit report, *COVID-19: OSHA Needs to Improve Its Handling of Whistleblower Complaints during the Pandemic*, DOL OIG Report No. 19-20-010-10-105 (August 14, 2020), available online at: <http://www.oig.dol.gov/public/reports/oa/2020/19-20-010-10-105.pdf>.

¹⁴ GAO Testimony Before the Subcommittee on Workforce Protections, Committee on Education and Labor, House of Representatives, *WORKPLACE SAFETY AND HEALTH: Data and Enforcement Challenges Limit OSHA's Ability to Protect Workers during a Crisis*, GAO-22-105711 (May 25, 2022), is available online at: <https://www.gao.gov/assets/gao-22-105711.pdf>.

¹⁵ This is according to audit report, *OSHA Could Do More to Ensure Employers Correct Hazards Identified During Inspections*, DOL OIG Report No. 02-17-201-10-105 (March 31, 2017), available online at: <https://www.oig.dol.gov/public/reports/oa/2017/02-17-201-10-105.pdf>.

(ETS) that covered the health care industry only, in December 2021, OSHA substantially withdrew the ETS, retaining only its logging and recordkeeping provisions.¹⁶ Without a permanent standard on infectious diseases, OSHA will not be in a position to effectively protect the safety and health of workers operating in high-risk industries during future pandemics or endemics.

OSHA also needs to address worksite violence, a major problem that is shown to be the fourth-leading cause of death on the job and the fifth-leading cause of nonfatal injury resulting in days away from work in private industry. In 2020, more than one in every seven work-related deaths were attributed to worksite violence for a total of 705, which exceeded the total number of reported fatalities resulting from exposure to harmful substances or environments, or fires and explosions.



For MSHA, the challenge is to address any potential backlog of enforcement activities stemming from the COVID-19 pandemic. Some MSHA inspectors self-identified as being at high risk during the pandemic, which meant they were no longer required to perform mine inspections. While continuing to perform mandatory inspections, MSHA had suspended or limited certain non-mandatory inspection and enforcement activities.¹⁷ Furthermore, we found MSHA inspectors were not writing violations that adhered to the Federal Mine Safety and Health Act of 1977 and MSHA guidance because they were not following the guidance and system controls were missing or improperly designed. We also found MSHA inspectors were extending violations for unjustified reasons and not timely verifying whether mine operators

had abated hazards by required due dates. This was generally due to inspectors being responsible for mines located across large geographic areas and not revisiting the mines by the due dates.¹⁸

Another concern for MSHA to address is exposure in coal mines to high levels of crystalline silica—a carcinogen and contributing cause of black lung disease. More than three times as many coal miners were identified as having black lung disease from 2010 to 2014 compared to 1995 to 1999, and crystalline silica, a component of respirable coal mine dust, has been linked to this increase. In November 2021, we reported MSHA’s allowable limit for respirable crystalline silica has remained unchanged for more than 50 years, and MSHA has been working on a rule to lower the limit for over two decades.¹⁹

¹⁶ For more details, OSHA’s webpage on “Statement on the Status of the OSHA COVID-19 Healthcare ETS (December 27, 2021),” accessed October 12, 2022, is available online at: <https://www.osha.gov/coronavirus/ETS>.

¹⁷ The audit report, *COVID-19: MSHA Faces Multiple Challenges in Responding to the Pandemic*, DOL OIG Report No. 19-20-006-06-001 (July 24, 2020), is available online at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-006-06-001.pdf>.

¹⁸ This is according to 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>.

¹⁹ The audit report, *MSHA Needs to Improve Efforts to Protect Coal Miners From Respirable Crystalline Silica*, DOL OIG Report No. 05-21-001-06-001 (November 12, 2020), is available online at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-06-001.pdf>.

MSHA and OSHA both regulate the maximum amount of exposure workers can have to respirable crystalline silica dust, but the standards for permissible exposure level differ between the two agencies. In the United States, about 2.3 million workers are annually exposed to respirable crystalline silica dust at their worksites, which can lead to increased chances of developing not only cancer and black lung disease but also silicosis, a deadly and incurable disease, as well as many other chronic conditions. Given OSHA's limited resources, the agency needs to continue targeting those worksites specifically at highest risk for respirable crystalline silica exposure.



Finally, for MSHA, reducing the number of powered-haulage accidents needs to be a top priority as it is a leading cause of mine fatalities. Powered-haulage accidents accounted for almost half of all mine fatalities in 2021 and the trend has been continuing upward, with such accidents representing a disproportionate number of overall fatalities over the last several years.

DEPARTMENT'S PROGRESS

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. On November 5, 2021, OSHA issued the Vaccination and Testing ETS to protect unvaccinated employees of large employers (defined as 100 or more employees) from the risk of contracting COVID-19 by strongly encouraging vaccination. This ETS was later withdrawn on January 26, 2022, following a U.S. Supreme Court ruling and OSHA withdrew it as an enforceable standard. Agency officials stated that it is prioritizing its resources to focus on finalizing a permanent COVID-19 health care standard. Additionally, OSHA issued a March 2, 2022, memorandum that provides instructions and guidance to OSHA Area Offices for a highly focused, short-term inspection initiative directed at hospitals and skilled nursing care facilities that treat or handle COVID-19 patients. Through this initiative, OSHA will assess employer compliance efforts, including the readiness of hospitals and skilled nursing care employers to address any ongoing or future COVID-19 outbreaks.

OSHA has continued to focus on assisting workers exposed to crystalline silica and on February 4, 2020, published a National Emphasis Program (NEP) directive on silica. The purpose of the program is to reduce the incidents of worksite illnesses related to respirable crystalline silica in general industry, maritime, and construction. It targets industries expected to have high exposures to respirable crystalline silica and enforces the new respirable crystalline silica standard, 29 C.F.R. 1910.1053.

MSHA's Spring 2022 Regulatory Agenda continued to include proposed rulemaking for respirable crystalline silica. In addition, MSHA announced in June 2022 a new enforcement initiative to better protect the nation's miners from health hazards resulting from repeated overexposure to respirable crystalline silica. As part of

this initiative, MSHA will conduct silica dust-related mine inspections and expand silica sampling at mines. The initiative is an action MSHA can take now for the health and safety of miners while it continues with the rulemaking process.

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

To protect the safety and health of workers, OSHA needs to:

- Work towards a permanent standard aimed at protecting workers in all high-risk industries from infectious diseases;
- Leverage the ARPA funding it received of at least \$100 million for COVID-19 related worker protection activities, including enforcement efforts at high-risk worksites, such as health care, meat and poultry processing facilities, agricultural worksites, and correctional facilities;
- Complete its initiatives to improve employer reporting of severe injuries and illnesses;
- Enhance staff training on hazard abatement verification, especially of smaller and transient construction employers; and
- Explore mechanisms to enhance interagency collaboration, such as memoranda of understanding or other agreements, to take advantage of inspections being conducted by OSHA's counterparts in the federal government.

To improve the health and safety of miners, MSHA needs 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;
- Provide additional training to inspectors and improve internal controls related to its violation process;
- Identify ways to better protect miners from highly toxic respirable crystalline silica, potentially by adopting a rule for a lower silica exposure limit and increasing silica sampling and enforcement at mines; and
- Continue its existing efforts to decrease powered-haulage accidents by completing required inspections, enhancing training, and increasing knowledge sharing about available technology.

CHALLENGE:

Helping Adults and Youth Succeed in the Labor Market



BACKGROUND

In FY 2022, ETA received \$3.9 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. ETA also received approximately \$1.7 billion for its Job Corps program, which provides education, training, and support services to disadvantaged, at-risk youth, ages 16 through 24, at 121 Job Corps centers. In addition to room and board, Job Corps offers specific training to help students complete their high school education, acquire career technical skills, and obtain employment.

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. This includes how to get: (1) job seekers, businesses, and career counselors to better understand the availability and value of skill-based training and credentials; (2) employers to recognize the benefit of hiring and training apprentices for their middle- and high-skilled job vacancies; (3) eligible, low-income youth the basic job skills training that aligns with labor market needs; and (4) grant recipients, including states, to ensure participant outcome data are reliable, valid, and accurate. Our audit work from September 2020²⁰ found that, although ETA had data to determine whether or not participants were employed after exiting grant-funded training programs, it lacked more specific data to measure the impact of credentials on participants' professional outcomes, such as job titles and the necessity of credentials for the jobs in question.

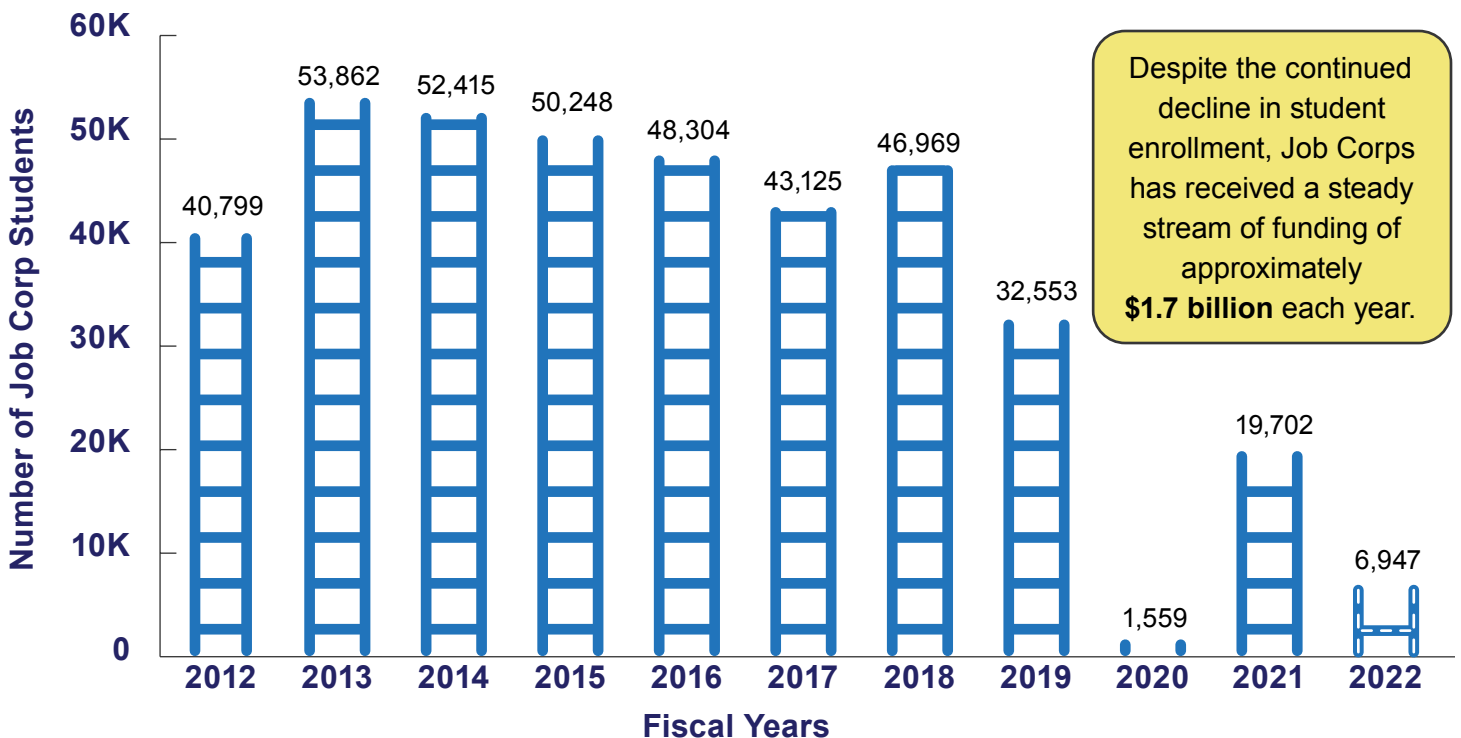
The Department faces particular obstacles when it comes to developing an effective strategy for helping disadvantaged job seekers—such as those individuals overcoming substance use disorders, affected by the justice system, or with disabilities—gain employment and remain employed. For example, an effective strategy to combat economic and workforce impacts associated with the opioid crisis is for the Department to ensure that its grant recipients encourage more job seekers to transition into professions that might address the crisis. Since 2018, the Department has awarded up to \$143 million based on a two-phased grant funding approach to help communities respond to the opioid crisis by providing services, such as career, training, and support activities to dislocated workers. From an equity standpoint, the Department also needs to ensure a level playing field for all job seekers who need employment or training services in terms of making these services accessible either in-person or online.

²⁰ The 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>.

The Department is further challenged in effectively managing its workforce development grants. In March 2022, we issued an advisory report that was a compilation of reports issued over the past decade and highlighted three areas of concern where our body of work identified weaknesses: awarding grants, reviewing grantees' use of funds, and measuring grantee performance.²¹ Although the Department has addressed many of the related recommendations in these reports, the Department needs to ensure these issues do not reoccur. In our September 2021 report, we found 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 executed.²² Insufficiently designed grant goals and metrics makes it difficult for ETA to determine if the goals and agency's expected outcomes are being achieved.

Among Job Corps' challenges is ensuring funds are used efficiently as enrollment has continued to decline. Prior to the pandemic, enrollment significantly declined from a high of 53,862 in FY 2013 to 32,553 in FY 2019. During the pandemic, enrollment dropped to as low as 1,559 during FY 2020 due to suspending in-person instruction and new enrollments. In April 2021, Job Corps transitioned back to in-person instruction and started enrolling students again. However, the on-campus student population, as of June 2022, remained under 13,000 with plans to cap enrollment in 2023 at 23,000 students because of COVID-19. Despite the continued decline in enrollment, Job Corps has requested and received a constant level of similar funding of approximately \$1.7 billion each year.

JOB CORPS STUDENT ENROLLMENT FROM FY 2012 TO FY 2022



Source: Data provided by ETA to DOL OIG.

²¹ The advisory report, *ETA's Management of Workforce Development Grants: Key Concerns*, DOL OIG Report No. 09-22-001-03-001 (March 31, 2022), is available online at: <https://www.oig.dol.gov/public/reports/oa/2022/09-22-001-03-001.pdf>.

²² The audit report, *ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program*, DOL OIG Report No. 05-21-004-03-375 (September 30, 2021), is available online at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-004-03-375.pdf>.

DEPARTMENT'S PROGRESS

With regard to credentials, ETA officials stated they have continued to provide resources through CareerOneStop.org to better inform job seekers, businesses, and career counselors about: which credentials are available; the quality and labor market value of those credentials; and the licensing, education, and training requirements for given 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 further define and accurately report credentials, and convened a group of several state teams to develop useful strategies and tools to assess appropriate credentials.

In June 2020, ETA issued Training and Employment Guidance Letter (TEGL) 23-19²³ to provide guidelines for validating performance data submitted by grant recipients, including states, 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 data, with upfront edit checks and validation through grant monitoring on the back end. ETA continues to streamline the data validation process, align efforts among program areas, and reduce burden on grant recipients.

According to ETA officials, these upfront edit check rules are extensive and facilitate grant recipients submitting consistent and accurate data. In 2020, ETA initiated a quarterly report analysis to ensure grant recipients are reporting consistently on a set of key data elements. During WIOA monitoring reviews, ETA's regional offices conducted general oversight of grant recipients' data validation policy and practices and found issues with the data validation and reporting. According to ETA's national office, its regional offices plan to continue prioritizing data validation compliance in their monitoring reviews.

WHAT REMAINS TO BE DONE

The Department needs to continue with efforts to:

- Bolster Job Corps student enrollment while reassessing the program's budgetary needs as student enrollment remains significantly below capacity since the pandemic;
- Develop programs supporting investments in training and education that lead to improved job skills and employment;
- Optimize grant recipients' reporting by prioritizing data validation;
- Monitor and ensure grant recipients' data used to calculate performance measures are complete and accurate to allow the Department to make evidence-based and data-driven decisions about job training programs; and
- Manage more effectively its workforce development grants by having sufficient controls to ensure proposals submitted by grant applicants meet all solicitation requirements; grant recipients use grant funding as intended; and ETA properly measures grant recipients' performance, especially in relation to grant program objectives.

²³ TEGL 23-19, *Guidance for Validating Required Performance Data Submitted by Grant Recipients of U.S. Department of Labor (DOL) Workforce Programs*, is available online at: https://wdr.doleta.gov/directives/attach/TEGL/TEGL_23-19.pdf.

CHALLENGE:

Maintaining the Integrity of Foreign Labor Certification Programs



BACKGROUND

The Immigration and Nationality Act and related laws assign specific 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 jobs and whether there would be any adverse impacts on similarly employed U.S. workers if labor certifications allowing 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 wage²⁴ determinations and applications from employers seeking to hire: (1) immigrant workers for permanent jobs (PERM visa), (2) nonimmigrant workers for temporary specialty jobs (H-1B visa), and (3) nonimmigrant workers for temporary or seasonal agricultural and non-agricultural jobs (H-2A and H-2B visas). The Wage and Hour Division (WHD) conducts civil investigations associated with the award of Foreign Labor Certifications (FLC) to enforce certain worker protections which involve wages, working conditions, and similarly employed U.S. workers not being adversely affected in terms of working conditions and other employment benefits as a direct result of foreign workers being hired.

CHALLENGE FOR THE DEPARTMENT

FLC programs rely solely on employers' attestations to determine whether or not to certify their applications, which is part of the process employers must undergo to obtain for foreign workers visas necessary to work in the United States. Given the reliance on an employer's word in the attestation, the Department cannot guarantee whether or not a U.S. worker might be available for the job and a foreign worker hired instead would not adversely affect wages and working conditions of U.S. workers similarly employed. The Department then faces the difficulty of balancing a thorough review of FLC visa applications to protect U.S. workers with the need to timely process these applications to meet employer workforce demands. For example, with the H-2B program, which is used to hire foreign workers for temporary non-agricultural jobs, application processing delays tend to occur in advance of the peak spring and summer hiring seasons, typically December and January, when application levels and employer workforce demands spike.



²⁴ The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. For more details, DOL's webpage on "Prevailing Wage Information and Resources" is available online at: <https://www.dol.gov/agencies/eta/foreign-labor/wages#:~:text=The%20prevailing%20wage%20rate%20is,the%20area%20of%20intended%20employment>.

Maintaining the Integrity of Foreign Labor Certification Programs

Over the last decade, the OIG, along with other federal partners, conducted more than 194 criminal investigations related to fraud in FLC programs. These investigations have shown FLC programs to be susceptible to significant fraud and abuse by perpetrators, including certain immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. OIG investigations have uncovered illegal activities of employers misusing FLC programs to engage in human trafficking—with victims being exploited for employers' economic gain.

The H-1B visa program allows U.S. employers to temporarily hire foreign workers in specialty occupations. Once more, the Department is challenged to verify whether U.S. workers are available for a job vacancy where H-1B candidates are being considered and ensure whether 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 are further drawbacks for the Department in being able to protect U.S. workers.

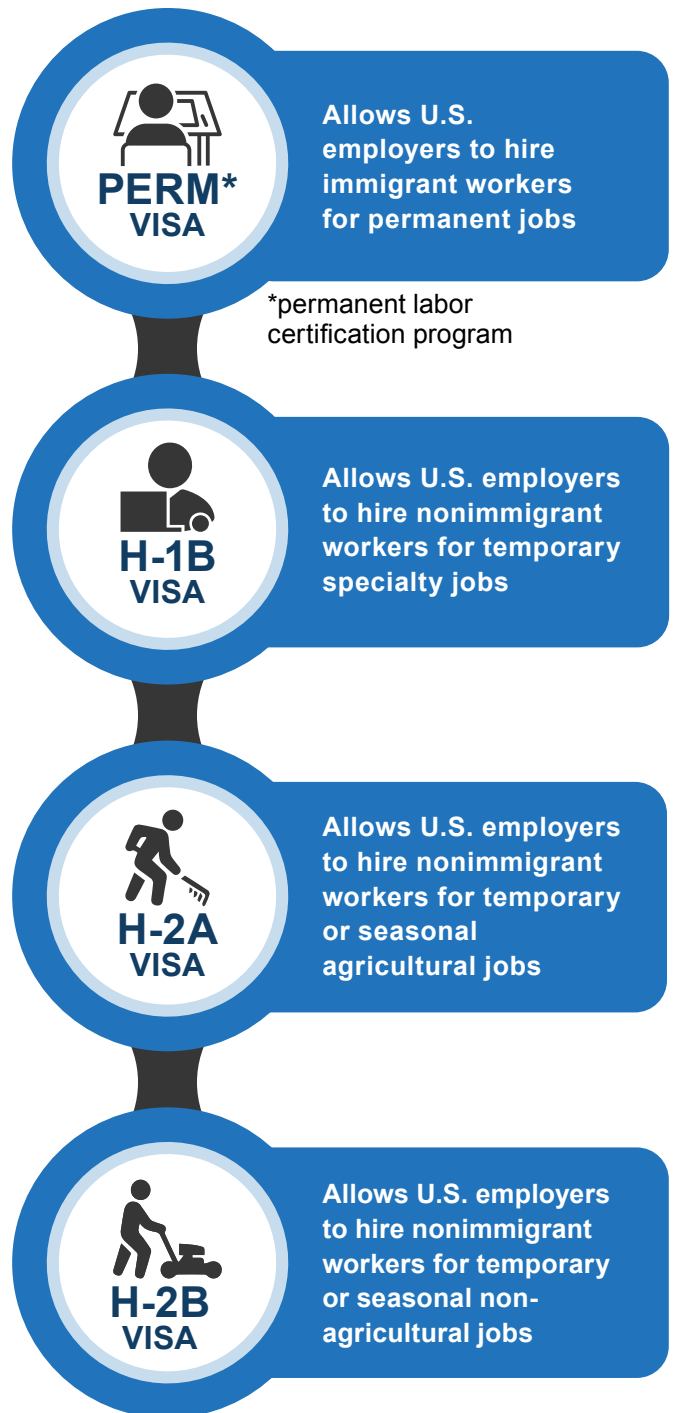
WHD is limited by statute to conducting investigations of alleged H-1B violations only when a complaint has been filed. The Department's limited statutory authority to act on potentially fraudulent H-1B foreign labor visa applications has been a long-standing challenge. OIG investigations have shown the H-1B visa program is susceptible to significant fraud and abuse by certain immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. One reason for this is the statutory requirement that the Department certify H-1B visa applications within a short 7-day window unless it determines the applications to be "incomplete or obviously inaccurate."²⁵ The OIG continues to investigate and discover various fraud schemes within the H-1B program, including labor leasing,²⁶ benching of foreign workers,²⁷ and wage kickbacks.²⁸

²⁵ According to 20 C.F.R. 655 Subpart H.

²⁶ 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.

²⁷ 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.

²⁸ Wage kickbacks: When third-party placement firms obtain H-1B workers and pay them lower wages than what U.S. employers would have paid. Moreover, this arrangement does not meet the USCIS-required employer-employee relationship whereby H-1B beneficiaries are being used to supplement needs of staffing companies to fulfill contracts at various end client users with little to no oversight by petitioning employer.



ETA's permanent labor certification program (PERM), which allows employers to hire foreign workers on a permanent basis in the United States, is another program that predominantly relies on attestations to verify whether employers are complying with its qualifying criteria. Once PERM visa applications are certified, ETA does not review applications post-adjudication to validate the integrity of employers' attestations. On its end, WHD does not have investigatory authority in the PERM program and does not conduct follow-up investigations to verify whether the foreign workers are still working for those employers indicated in the original application.

DEPARTMENT'S PROGRESS

According to the Department, as part of its 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 can electronically file applications and upload documents into FLAG, the Department's case management system, which issues all decisions on employers' applications electronically from DOL to the U.S. Department of Homeland Security (DHS). According to the Department, the FLAG system also enhanced data sharing between the Department and State Workforce Agencies.

SeasonalJobs.dol.gov is an online portal to help job seekers identify and apply for open seasonal and temporary jobs under the H-2A and H-2B visa programs.²⁹ In addition to providing more search capabilities that tailor results to the geographic location of U.S. workers, the website was designed to integrate employment postings with third-party job search websites to make these job opportunities more accessible to job seekers.

ETA is 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.

As of 2021, according to WHD, the Department has established a process to initiate Secretary-certified H-1B investigations and entered into a memorandum of understanding with DHS to allow the following information to be shared with WHD: DHS data and U.S. Citizenship and Immigration Services (USCIS) referrals of suspected violations of the terms of labor condition applications.

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. Having a similar model for foreign labor certifications at DOL would eliminate the need for Congressional appropriations and create a funding structure responsive to market conditions.

²⁹ 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.

WHAT REMAINS TO BE DONE

For all FLC programs, the Department needs to:

- Refer all potentially criminal violations to the OIG in a timely manner;
- Enhance the reporting and application of suspensions and debarments government-wide when employers are found culpable of abusing the program; and
- Pursue statutory and regulatory authority to strengthen its ability to debar employers who abuse this program.

For the H-1B visa program, the Department needs to:

- Take action to protect U.S. workers from any adverse effects on wages and working conditions caused by employing H-1B visa holders;³⁰ and
- Seek statutory authority to verify the accuracy of information provided on H-1B labor condition applications.

For the H-2B visa program, the Department needs to:

- Continue with its efforts to ensure the applications are processed in time to hire foreign workers by employers' dates of need while also ensuring the review process protects the interests of U.S. workers.

For the PERM visa program, the Department needs to:

- Perform post-adjudication reviews to validate the integrity of employers' attestations once applications have been certified since the majority of the applications are submitted for review without documentation to prove or support employers' attestations; and
- Investigate whether PERM workers are still working for the employers designated in the applications.



³⁰ As required of DOL and DHS, according to the Executive Order on *Aligning Federal Contracting and Hiring Practices with the Interests of American Workers*, issued on August 3, 2020.

CHALLENGE:

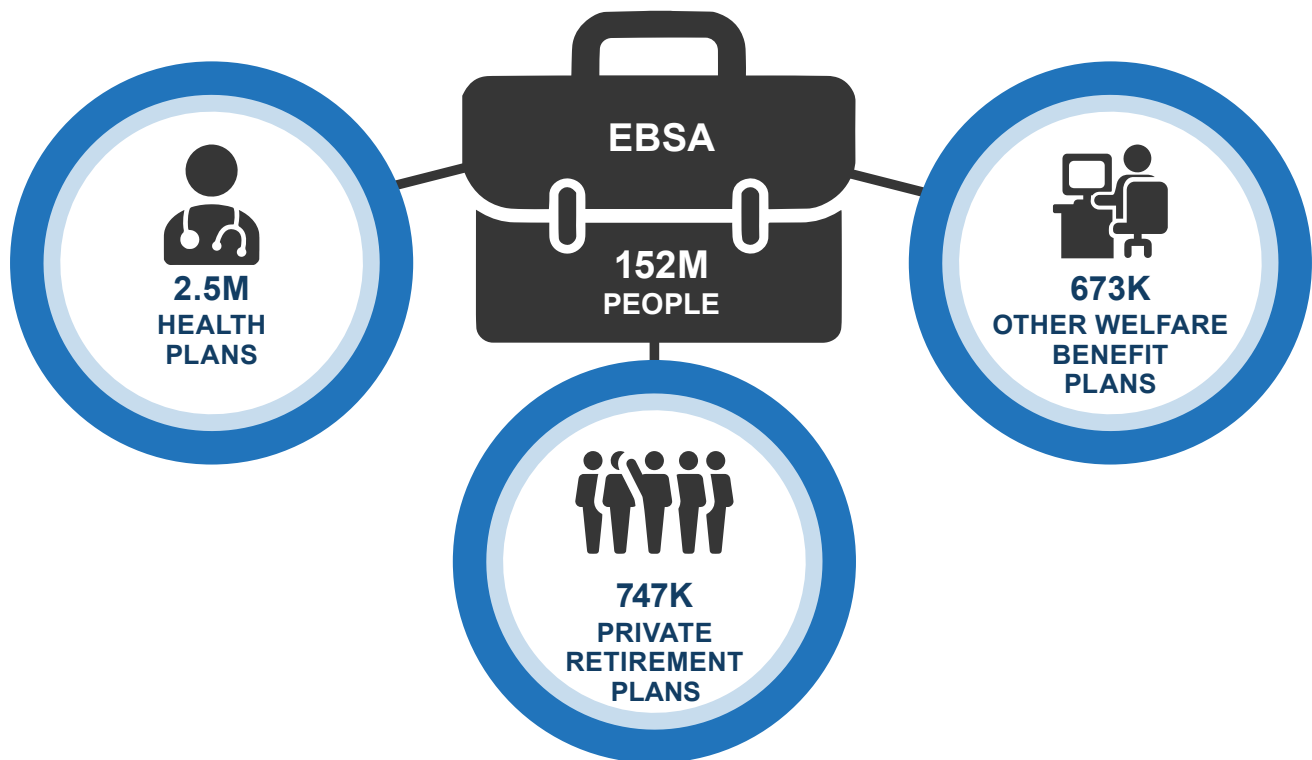
Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families



BACKGROUND

The Employee Benefits Security Administration (EBSA) protects the integrity of pension, health, and other employee benefit plans of about 152 million workers, retirees, and their families under the Employee Retirement Income Security Act (ERISA) of 1974.³¹ The agency's responsibilities include enforcement authority over approximately 2.5 million health plans, 747,000 private retirement plans, and 673,000 other welfare benefit plans, which altogether hold approximately \$12 trillion in assets. It also has interpretive and regulatory responsibilities for Individual Retirement Accounts (IRA), which hold about \$13.2 trillion in assets.

EBSA also provides oversight of the federal government's Thrift Savings Plan (TSP), the largest defined contribution retirement plan in the United States, with nearly 6.65 million federal employees and uniformed military service members participating and \$726 billion in assets according to EBSA as of August 31, 2022.³²



³¹ ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to protect individuals in these plans.

³² The total value of TSP assets fluctuates over time and is affected by market volatility. For example, the asset value was \$827 billion as of December 31, 2021, according to TSP financial statements, as compared to \$726 billion as of August 31, 2022, according to EBSA.

CHALLENGE FOR THE DEPARTMENT

EBSA faces the challenge of how to allocate limited staff resources in a way that will maximize their efforts. At current staffing levels, EBSA has less than 1 investigator for every 12,200 plans and \$37 billion in assets. This challenge is especially significant given the necessity of being able to quickly adapt to fast-paced market conditions, new and emerging retirement investment options (e.g., cryptocurrencies), and regulatory changes affecting ERISA-covered plans, such as:

- Congress's creation of a new class of plan sponsor (pooled plan providers) in 2019;
- The Consolidated Appropriations Act of 2021's comprehensive amendments to ERISA, which translated into fundamental changes to laws governing:
 - Surprise medical bills,
 - Price transparency,
 - Fee disclosure,
 - Prescription drug coverage,
 - Reporting requirements,
 - System changes, and
 - Heightened enforcement requirements for parity in the provision of mental health and substance use disorder benefits;
- Requirements mandated by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act); and
- COVID-19 payment mandates set forth in the Families First Coronavirus Response Act (FFCRA) and the CARES Act.

EBSA should continue to explore options to maximize the impact of its constrained resources to carry out 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 that aims to provide health benefits to 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 relying on MEWAs for medical expense coverage. Failed MEWAs leave vulnerable workers responsible for paying back millions of dollars in medical expenses and could cause workers to forgo necessary medical treatments, ultimately resulting in catastrophic



health consequences. Because EBSA does not have the resources to conduct routine audits of the self-funded arrangements most prone to risk, it typically discovers troubled MEWAs only after they have started to collapse, when thousands—or tens of thousands—of participants are suddenly 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 area for the agency.

EBSA is further challenged because it has no statutory authority to force certain plans to conduct full scope audits, which provide significantly stronger assurances than limited-scope audits (alternatively known as ERISA Section 103(a)(3)(C) audits). Past OIG work³³ revealed that as much as \$3 trillion in pension assets—including an estimated \$800 billion in hard-to-value alternative investments—received only 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. Because limited-scope audits provide little to no confirmation regarding the actual existence or value of plan assets, they deliver weak assurance to plan participants while putting retirement plan assets at great risk. According to EBSA, over 80 percent of plan audits are limited-scope audits. Though this percentage has remained generally stable in the last 10 years, it is markedly higher than the early 2000s, when closer to half of plan audits were limited-scope.

According to EBSA, over 80 percent of plan audits are limited-scope audits.



Additionally, EBSA has limited legal authority to enforce its oversight of \$726 billion in TSP assets and to compel the Federal Retirement Thrift Investment Board (the Board), which administers the TSP, to act on EBSA's recommendations, including significant recommendations related to cybersecurity. While EBSA has worked with the Board to improve the TSP's cybersecurity posture, a significant portion of the TSP's infrastructure was recently transferred to an outside third-party vendor. Accordingly, EBSA may need to take additional action to ensure TSP assets, accounts, and data are adequately protected. Due to the threat cybersecurity breaches pose to the TSP and potentially trillions of dollars in other ERISA-covered retirement plan assets, and due to the technical expertise required to assess plan security, this is a crucial management challenge as well.

³³ The audit report, *EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments*, DOL OIG Report No. 09-13-001-12-121 (September 30, 2013), is available online at: <https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf>.

DEPARTMENT'S PROGRESS

To protect plan participants from MEWA insolvency or fraud, EBSA has started proactively targeting MEWAs based on required filings (such as the M-1 and Form 5500) and worked with states to quickly identify any MEWAs that exhibit red flags. Additionally, EBSA will promptly initiate criminal investigations when it finds evidence of false marketing or fraudulent MEWAs.

To address cybersecurity risks, EBSA developed a red flag analysis tool and investigative plan to identify vulnerabilities to cyberattacks. EBSA also issued extensive guidance aimed at improving cybersecurity in private retirement plans and routinely includes cybersecurity inquiries as part of its investigations of retirement plans. It has also been working with TSP staff to conduct joint cybersecurity reviews, which has strengthened the TSP's cybersecurity posture.

WHAT REMAINS TO BE DONE

Regarding the challenge of protecting retirement, health, and other benefit plans for workers, retirees, and their families, EBSA needs to:

- Effectively protect federal employees' retirement assets by seeking amendments to the Federal Employees' Retirement System Act of 1986 that would broaden its enforcement authority and thus compel the Board to implement its audit recommendations regarding the TSP;
- Develop new outreach, education, and enforcement strategies for MEWAs and expanded Multiple Employer Plans (MEP) to address the diversity of plans available on the market and pooled provider plans established under the SECURE Act;
- Determine how best to allocate its limited resources to oversee both the expanded number of plans as well as plan types it must regulate, given the history of insolvency, fraud, and abuse with troubled MEWAs and the expansion of MEPs likely to result from the SECURE Act; and
- Pursue legislative repeal of the limited-scope audit exemption for meaningful oversight and greater protection of the trillion-plus dollars' worth of assets in retirement plans. Limited-scope audits, as opposed to full-scope audits, offer participants weak assurance of plan asset values. With the proliferation of pension plan assets subject only to limited-scope audits, retirement investments are at much greater risk of loss in value.



CHALLENGE:

Providing a Safe, Secure, and Healthy Learning Environment at Job Corps Centers



BACKGROUND

The Job Corps program provides room and board to most of its students at 121 Job Corps centers across the country and is responsible for the safety, security, and health of its on-campus population.

CHALLENGE FOR THE DEPARTMENT

The Job Corps program faces challenges in maintaining a safe, secure, and healthy learning environment for its students and staff. Funding plays a significant role, particularly as it relates to the procurement, installation, ongoing maintenance, and upgrade of security equipment, as well as training and maintaining security staff. In addition to physical security protocols, part of establishing a safe learning environment for students entails Job Corps considering how the program can better serve students facing difficulties, such as substance abuse and mental health issues. OIG audits over the past several years have found a wide range of safety and security issues at Job Corps centers, from failure to report and investigate serious student misconduct to security staff shortages. Our audits from 2015³⁴ and 2017³⁵ found that some Job Corps centers failed to report and investigate serious misconduct, such as drug abuse and assaults. The audits also determined that some Job Corps centers downgraded incidents of violence to lesser infractions, creating an unsafe environment for students and staff.



³⁴ The audit report, *Job Corps Needs to Improve Enforcement and Oversight of Student Disciplinary Policies to Better Protect Students and Staff at Centers*, DOL OIG Report No. 26-15-001-03-370 (February 27, 2015), is available online at: <https://www.oig.dol.gov/public/reports/oa/2015/26-15-001-03-370.pdf>.

³⁵ The audit report, *Review of Job Corps Center Safety and Security*, DOL OIG Report No. 26-17-001-03-370 (March 31, 2017), is available online at: <https://www.oig.dol.gov/public/reports/oa/2017/26-17-001-03-370.pdf>.

Similar to academic institutions nationwide, Job Corps must also grapple with higher-than-average health and safety risks inherent in residential on-campus settings with large populations of students and staff. These are evolving into long-term challenges as Job Corps attempts to adjust its operations to post-pandemic conditions. Job Corps also had to ensure the continued health and safety of students and staff on-site at its centers during the pandemic. On March 16, 2020, at the start of the pandemic, Job Corps temporarily suspended operations on its campuses and transported nearly 29,000 students to their homes or found them housing. At present, Job Corps has resumed on-campus operations at all 121 centers. Like many other educational institutions, keeping up with evolving safety and health guidance, new COVID-19 variants, and varying vaccine rates across the country will make it a challenge for Job Corps to maintain low COVID-19 case rates at its centers.

DEPARTMENT'S PROGRESS

Our follow-up work completed in December 2017³⁶ and our ongoing review of Job Corps' corrective actions show that Job Corps has taken steps to improve center safety and security by establishing stronger internal controls and security measures, which included the installation of security cameras, perimeter fencing, and better lighting at centers.

Agency officials stated Job Corps continues to take steps to protect the health and safety of students and staff on-site at its centers as COVID-19 variants spread. With students returning to campus, Job Corps continues to work with contracted public health experts and consultants to periodically update guidance based on Centers for Disease Control and Prevention (CDC) protocols, such as for vaccinating, quarantining, and social distancing students and staff.



³⁶ The audit report, *Job Corps Took Action to Mitigate Violence, Drugs and Other Student Misconduct at Centers, But More Needs to Be Done*, DOL OIG Report No. 26-18-001-03-370 (December 29, 2017), is available online at: <https://www.oig.dol.gov/public/reports/oa/2018/26-18-003-03-370.pdf>.

WHAT REMAINS TO BE DONE

To advance health, safety, and security measures for its students and staff on-site at its centers, Job Corps needs to:

- Remain vigilant about the virus's potential impact on the health and safety of students and staff depending on how COVID-19 variants evolve in the immediate future;
- Train employees and contractors on changing policies and procedures that align with new CDC, state, and local health and safety guidelines;
- Maintain necessary COVID-19 safety and health measures as student enrollment continues to increase at Job Corps centers;
- Ensure existing policies and procedures are periodically reviewed and monitored for compliance; and
- 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 needs to:

- Timely identify and remediate noncompliance; and
- Evaluate and deploy tools to help improve the pre-admission applicant screening and enrollment process.



CHALLENGE:

Managing Medical Benefits in the 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 or occupational diseases. During FY 2021, OWCP paid medical benefits in the amounts of \$771 million under the Federal Employees' Compensation Act (FECA), more than \$1.1 billion under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), and more than \$30 million under the Black Lung Benefits Act.

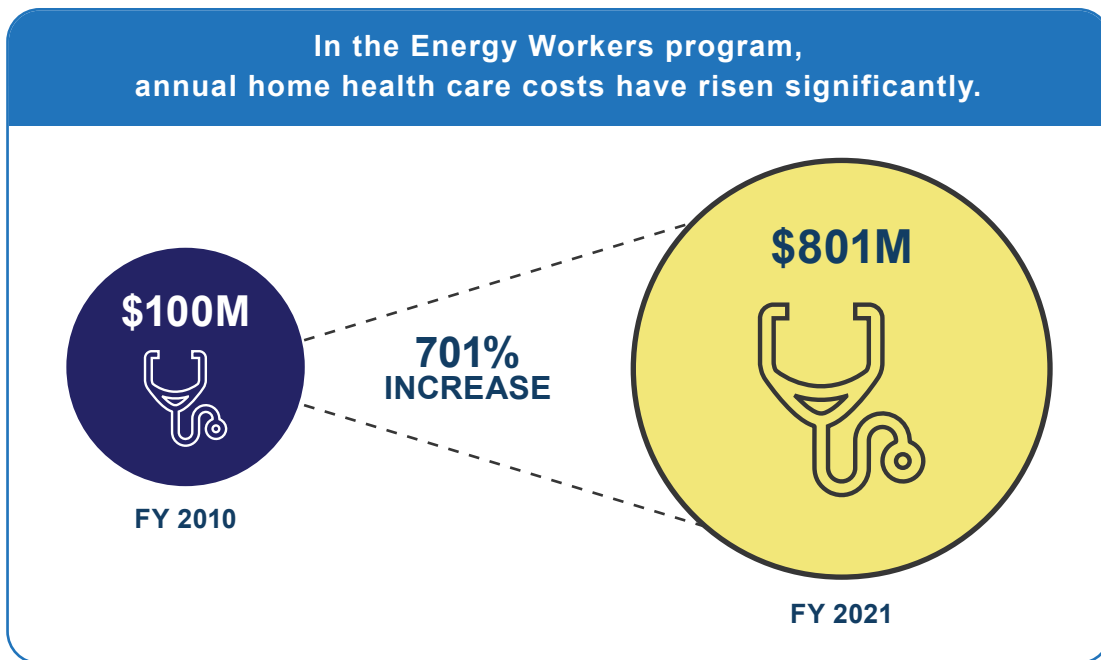
CHALLENGE FOR THE DEPARTMENT

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). The agency is further challenged due to the undetermined reliability of its medical bill payment data. The OIG is currently conducting an audit examining OWCP's management of pharmaceutical spending in the FECA program.



Our previous work concerning 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. After implementing new policies, OWCP significantly decreased total compounded drug spending from almost \$256 million in FY 2016 to less than \$176,000 in FY 2020 and reduced opioid spending from over \$86 million in FY 2016 to approximately \$29 million in FY 2020, according to data the agency provided. However, given the high risk of fraud related to prescription payments, OWCP needs to proactively analyze and monitor FECA program costs to promptly detect and address emerging issues before they manifest into material concerns.

In the Energy Workers program, annual home and residential health care costs have risen from almost \$100 million in FY 2010 to approximately \$801 million in FY 2021, comprising approximately 73 percent of all medical benefits paid by the program in FY 2021. With an aging claimant population and an increased demand for home health care services, there is a potential for providers to exploit these benefits through unethical practices. 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.



Finally, our work identified internal control weaknesses in OWCP's management of its medical bill payment processing and fraud oversight. These weaknesses presented a potential threat to the reliability of medical bill payment data. OWCP's oversight of the process for development of the medical bill payment data and contractor services were undocumented and incomplete.

DEPARTMENT'S PROGRESS

OWCP has taken actions to better manage pharmaceuticals in the FECA program. In March 2021, OWCP announced it had contracted with a pharmacy benefit manager to be responsible for pharmaceutical transactions, including implementation of FECA eligibility determinations and pricing for prescription drugs. In November 2021, OWCP implemented new prescription management policies through its pharmacy benefit manager, including a drug formulary system. The new prescription management policies also require prior authorizations for non-formulary medications brand name drugs, opioids outside the established policy, and specialty and compounded drugs. Other new policies include drug utilization reviews; quantity limits on initial fills and subsequent refills; and additional safety checks, reduced complexity, and increased transparency for prescribers of and claimants with opioid prescriptions. The FECA program also requires claimants to use generic equivalents whenever available.

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 moved the adjudication of home health care into a national office unit that focuses exclusively on medical benefits adjudication and has provided internal training to that unit. OWCP officials also implemented a program integrity unit and increased the number of referrals to the OIG for investigation.

OWCP stated it has addressed our concerns regarding data reliability within its medical bill payment processes. We are planning to conduct follow-up audit work to assess OWCP's progress in this area.

WHAT REMAINS TO BE DONE

To more effectively manage medical benefits in its workers' compensation programs, OWCP needs to:

- Determine the best practices insurance providers and other federal, state, and local agencies have adopted to successfully manage medical costs and identify those that might be most suitable for its own programs;
- Expand its use of data analytics to monitor medical costs and identify risks, trends, and emerging issues; and
- Ensure sufficient internal controls for medical bill payment processes are documented and fully implemented.

For the FECA program, OWCP needs to:

- Analyze and monitor FECA costs to promptly detect and address problems given the high risk of fraud related to prescription payments;
- Ensure it is using the best methods for calculating fair and reasonable pharmaceutical pricing; and
- Monitor closely the performance of its pharmacy benefit manager contractor to ensure appropriate price and savings.

For the Energy Workers program, OWCP needs to:

- Continue its efforts to analyze home health care billings for unethical practices; and
- Identify and refer allegations involving potential fraud or abuse to the OIG for further investigation.



CHALLENGE:

Securing and Managing Information Systems



BACKGROUND

The Department and its 25 program agencies depend on reliable and secure information technology (IT) systems to perform their mission critical functions. 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 2022, the Department invested an estimated \$723 million in information technology to implement its services and functions needed to safeguard the U.S. workforce.

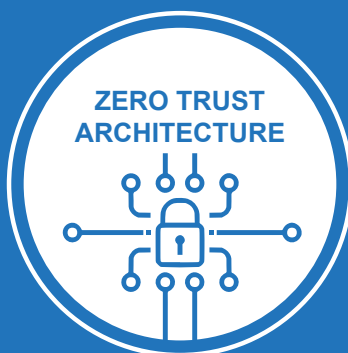
CHALLENGE FOR THE DEPARTMENT

The Department faces key challenges in IT security and management that include protecting its IT systems from intrusion by external threats or being compromised by internal entities; securing and safeguarding its data and information systems, including administering endpoint security; managing its IT investment portfolio; and planning, acquiring, replacing, and upgrading IT infrastructure and systems.

The OIG continues to identify information security deficiencies in the critical areas of configuration management, identity management, risk management, third-party oversight, continuous monitoring, and contingency planning. Furthermore, as new standards for securing federal information systems are required and developed, the Department has not demonstrated the ability to implement in a timely manner these requirements, such as those applicable to zero trust architecture and supply chain, to effectively secure IT systems. This has been a long-standing and serious issue for the Department.

We also have continuing concerns about the Department's IT governance and modernization efforts. In December 2020, the Department had consolidated approximately 70 percent of its information technology and resources under the Assistant Secretary for Administration and Management as part of an IT shared services model. While the Chief Information Officer (CIO) provides the management and oversight of the Department's IT resources for the Assistant

WHAT IS ZERO TRUST ARCHITECTURE?



A cybersecurity approach in which users must prove their authenticity each time they access a network application or data as it assumes a network's security is always at risk to external and internal threats.

Secretary for Administration and Management, the position of the CIO has not been given the independence and authority needed to implement and maintain these resources. By keeping the position under the Assistant Secretary for Administration and Management, the CIO is not aligned with other departmental agency heads and does not report directly to the Secretary of Labor as required by current laws.

DEPARTMENT'S PROGRESS

The Department has been carrying out activities to implement new IT programs and systems designed to strengthen security operations, such as expanding its vulnerability scanning coverage. To better manage resources and projects by modernizing, securing, and consolidating information technology, the Department has reorganized some of its IT resources and capabilities to a more centralized shared services environment under the Office of Assistant Secretary for Administration and Management (OASAM), and this includes realigning information processes and personnel.

WHAT REMAINS TO BE DONE

To improve the security of its information systems, with the majority of its information technology consolidated within OASAM, the Department still needs to:

- Strengthen its oversight in implementing information security policies, procedures, and controls;
- Improve its continuous monitoring program;
- Focus on recurring information security deficiencies;
- Implement required information system security standards;
- Ensure the implementation of security requirements with its third-party cloud systems and IT services; and
- Plan for emerging cybersecurity enhancements, such as zero trust architecture.

To improve the management of its information systems, while having implemented a shared services model within OASAM for its information technology, the Department needs to:

- Complete the initiative of incorporating the Bureau of Labor Statistics (BLS) and the Office of the Chief Financial Officer (OCFO) into the Department's IT shared services model; and
- Elevate the CIO's position to report directly to the Secretary of Labor so the CIO has the necessary authority, independence, and accountability to govern the Department's IT resources.



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