



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

June 9, 2014

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

Re: Report 2013-BSE-3A-001

Dear Commissioner Rivera:

This report summarizes the results of our Office's ongoing examination<sup>1</sup> of Unemployment Insurance (UI) benefit payments during the period January 1, 2013 through December 31, 2013. The objective of our examination was to determine whether payments processed by the Department of Labor (DOL) were appropriate and in accordance with applicable Federal and State laws and regulations, and whether DOL took corrective action based on the results of our findings.

**A. Results of Examination**

We found that DOL generally made appropriate payments based on the information provided by claimants. However, we identified 7,370 erroneous payments totaling over \$2 million. This includes \$728,493 in current payments we stopped, and future payments that would have been made over the life of the claim had DOL not taken corrective action based on our findings. Attachment A summarizes these findings. In addition, DOL has taken steps to recover the erroneous payments, as appropriate.

These erroneous payments occurred because: claimants made false statements to obtain benefits they were not entitled to receive; DOL staff did not follow established policies and procedures; or limitations in the DOL UI payment system permitted erroneous payments.

Notably, we identified 28 claimants who were collecting UI benefits as the result of an employer lock-out. However, it appeared these 28 claimants returned to work and continued to collect UI

---

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

benefits after the lock-out ended. As a result, we referred these claimants to DOL for investigation. We also asked DOL to determine if there were any other claimants who continued to collect UI benefits after the lock-out ended. In response to our draft audit report, DOL officials stated their investigation discovered \$450,732 in overpayments of benefits to 180 workers who returned to work and continued to collect UI benefits after the lock-out ended. This includes 732 payments totaling \$280,712 paid to the 25 claimants we identified and \$42,058 in penalties assessed against those claimants. DOL continues to review the three other claimants we identified.

In addition to the findings in Attachment A, DOL recovered \$1,528,896 from UI claimants and New York State employees as the result of our Office's current and prior year findings. This includes \$811,523 in forfeited UI benefits from claimants who DOL determined from our findings made false statements or representations to obtain benefits they were not eligible to receive, and \$717,373 from New York State employees who owed DOL for UI overpayments made in prior years.

We also identified \$374,295 in potential recoveries from 249 individuals and claimants. This includes \$272,852 from 165 newly hired New York State employees who owe DOL for UI overpayments made in prior years, and \$101,443 from 84 claimants against whom DOL assessed monetary penalties as the result of our findings.

We shared a draft report with DOL officials and considered their comments (Attachment B) in preparing the final report. The State Comptroller's comments on DOL's response are included as Attachment C. DOL officials agree with our findings and recommendations. DOL officials also stated that they continually review and modify the steps necessary to prevent overpayments caused by claimant fraud. DOL has also received \$5.83 million in grants to assist in the detection, discovery and recapturing improper payments.

## **B. Background and Methodology**

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

To accomplish our objective, we used automated "filters" and performed file matches to select payments for examination based on risk. We reviewed the high risk claims identified by the filters and file matches to determine if DOL made erroneous payments and, if so, to prevent future overpayments.

We also matched the DOL UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees who owe DOL money for past UI benefit overpayments.

During our examination period, DOL made over 18 million payments, totaling more than \$5.1 billion, to claimants for the UI Program. Of these, we selected 71,972 payments for examination.

### **Recommendations**

- 1) *Continue to enhance controls to identify claimants falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law.*
- 2) *Ensure staff follows established policies and procedures when processing claims.*
- 3) *Establish and implement controls to prevent overpayments resulting from limitations in the DOL UI payment system identified in Attachment A.*
- 4) *Recoup overpayments and monetary assessments from claimants, as appropriate.*

We thank the management and staff of the Department of Labor for the courtesies and cooperation extended to our auditors. Since your response to the report is in agreement with these recommendations, there is no need for further response unless you feel otherwise. If you choose to provide a response, we would appreciate receiving it by July 8, 2014.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Enc: Attachment A  
Attachment B  
Attachment C

cc: Mary Batch  
Carl Boorn  
John Dormin

**Erroneous Payments**  
**January 1, 2013 through December 31, 2013**

Finding	Total Errors		Value of Errors		
	Number	Amount	Payments Made	Payments Stopped	Future Payments Prevented
<b>Claimants Falsely Certified Eligibility</b>					
When fully or partially employed	2,229	\$573,847	\$572,460	\$1,387	-
After returning to work from an employer lock-out	732	280,712	280,712	-	-
When out of the country	543	182,240	62,532	118,258	1,450
After a claimant's date of death	84	34,733	32,303	-	2,430
Using another person's social security number	26	10,530	10,530		
<b>Policies and Procedures Not Followed</b>					
Incorrect wage information used to calculate benefit rate	2,810	772,140	244,622	66,912	460,606
Claimants not eligible for benefits	99	57,865	7,960	4,124	45,781
<b>UI System Limitations</b>					
Used prior period wage information when calculating current period benefit rate	415	40,349	37,847	-	2,502
Permits more than four days of benefits in the same week	184	48,276	47,692	584	-
Duplicate payments	183	26,923	2,616	24,307	-
Permits payments from multiple programs in the same week	65	7,926	7,774	152	-
<b>Total</b>	<b>7,370</b>	<b>\$2,035,541</b>	<b>\$1,307,048</b>	<b>\$215,724</b>	<b>\$512,769</b>



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

---

May 19, 2014

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

Dear Mr. McHugh:

This is in response to your letter dated April 21, 2014, regarding Draft Report 2013-BSE-3A-001 containing the Office of the State Comptroller's (OSC's) ongoing examination of payment requests and related payments for Unemployment Insurance (UI) Benefits during the period January 1, 2013 through December 31, 2013.

The Department for this same time period, January 1, 2013 through December 31, 2013 successfully processed 18 million payments, totaling nearly \$5.1 billion dollars. The errors detected by OSC amount to .04% of all payments processed by the Department. An analysis of the Comptroller's report against prior year's findings indicates a second year of net decreases in errors found. Over 1,252 fewer errors were noted this year alone.

As part of Governor Cuomo's 2013-2014 budget, significant reforms to the State's UI system were adopted and those reforms were successfully implemented beginning in 2013. This new law contains integrity provisions which improve improper payment prevention, detection and recovery. The Department initiatives continue to reduce improper payments and better recover overpayments that have been established. Steps completed or underway include:

1. Continual review and modification of an improper payment prevention strategic plan that establishes steps necessary to primarily prevent, but also identify overpayments caused by claimant fraud.
2. The Department has received additional grants exceeding \$5.83 million that assist us in preventing, discovering, and recapturing improper payment of UI benefits through:
  - a. Continuation of the National Unemployment Insurance Integrity Center of Excellence in New York. New York is leading the national effort to develop, implement, and promote innovative integrity strategies, including the prevention, detection, and recovery of improper payments in the UI program.

- b. Technology improvements including implementation of an identity proofing solution which will better protect against fraud caused by identity theft.
  - c. Provision for additional staff focused on integrity efforts.
  - d. Funding of the Unemployment Insurance (UI) State Information Data Exchange System (SIDES) which helps employers to respond timely and accurately to claim notices.
3. The State Information Data Exchange System (SIDES) program was implemented in November 2013. The Department is adding a wage verification enhancement in a subsequent phase expected to be completed by December 31, 2014. These combined enhancements will assist employers in responding to claims timely and adequately and will decrease mailing and overhead costs.
  4. Continued use of the Treasury Offset program. Since the Offset Program's inception in February 2011, the Department of Labor has recovered over \$128.3 million. Over \$21.9 million has been recovered thus far in 2014, which is a 10% increase from \$19.9 million in the first quarter of 2013.

Review of selected OSC findings:

**OSC Finding**

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

**DOL Response**

The Department conducted a thorough review of the cases noted in the OSC report. We found that the Department had already identified these claimants as deceased several months before OSC discovered the issue, and as soon as information was available through existing data sources that indicates the claimant is deceased. Department safeguards stopped these payments sooner than OSC reviews. Decedent accounts had already been flagged for adjudication and recovery by Department staff as clearly noted and available to OSC staff in the Department's claimant log. In one particular case, accounting for the largest number of errors found, it was determined that an individual was using the stolen identities of recently deceased individuals to perpetuate a fraud. Our controls picked up the possible fraud, but the criminal provided forged documents that showed that the deceased notification was an error. It was only through renewed investigation did we confirm the fraud and false documents. The Department's pending implementation of an identity proofing solution would prevent similar frauds. The Department continues to explore other data sources to improve its processes including new information that will be available to the Department of Health early in 2015.

* Comment 1
-------------------

**OSC Finding**

2. Employees collected benefits after returning from lock-out

**DOL Response**

The Comptroller found 25 people who were separated from a large employer due to labor lock-out, then returned to work. These workers continued to collect benefits fraudulently after returning to work for their employer. The Department's controls rely in part on employers reviewing their statements sent to them monthly of those who were collecting Unemployment Insurance benefits against their account, and notifying us of the possible fraud. The employer in this case did not notify us. Nevertheless, our investigation showed that there were 180 workers who collected benefits to which they were not entitled. Our investigation discovered \$450,731.76 in overpayments of benefits and we imposed 8,500 Forfeit Effective Days (loss of future benefits). The Department has put in place a process to review the benefit payments made after a known labor action is resolved to prevent such overpayments in the future.

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

**OSC Recommendation**

1. Continue to enhance controls to identify claimants falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law.

**DOL Response**

We agree with the recommendation. The Department expects to see improvements through the reforms implemented as a result of the governor's budget. Employers are incentivized to provide separation information quickly so false claims might be stopped early. Significant additional penalties are imposed on those committing fraud. The Department continues to make improvements in the SIDES system, in data sharing related to incarcerated claimants, and in new systems to prevent fraud through identity theft.

**OSC Recommendation**

2. Ensure staff follows established policies and procedures when processing claims.

**DOL Response**

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

**OSC Recommendation**

3. Establish and implement controls to prevent overpayments resulting from limitations in the DOL UI payment system identified in Attachment A.

**DOL Response**

We agree with the recommendation. The Department has developed and continues to develop data extracts related to areas of concern raised in the report. These extracts are then sampled. If sampling indicates further errors, cases are referred back to staff to be re-determined in a timely manner.

This feedback process will better familiarize staff with proper procedure and will ensure accountability. Data extracts are also being reviewed to determine whether patterns may exist so that follow up training and instruction may be offered where necessary. These extracts and revised process will not only reduce and prevent improper payments, but will do so in an automated way that will save staff resources. For the third year, the Department has requested training from OSC auditors on the detection techniques and tools they use so the Department may implement these earlier in the claims process. Such training is yet to be scheduled by OSC staff.

\*

Comment  
2

**OSC Recommendation**

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

**DOL Response**

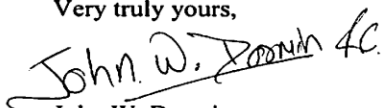
We agree with the recommendation. The Department actively pursues debts owed as a result of improper payments. In fact, the Department is a national leader in the recovery of improper payments. Through the various tools and techniques including correspondence, telephone calls, re-payment agreements, the Treasury Offset Program, State Offset Programs, and referral for civil or criminal action significant recovery is made. Changes to the Unemployment Insurance



law enacted in the Governor's 2013-2014 budget provide the Department with more tools to assist in collection. These collection provisions took effect beginning October 2013.

If you have any comments, please contact Carl Boorn, Director, Unemployment Insurance Division, (518) 457-2878.

Very truly yours,

Handwritten signature of John W. Dormin in black ink, written over a horizontal line.

John W. Dormin  
Acting Director  
Internal Audit Unit

Cc: Mary Batch  
Carl Boorn

### **State Comptroller Comments on Auditee Response**

1. Our examination found 84 errors that resulted in \$34,733 in payments after a claimant's date-of-death. This included 20 payments totaling \$6,788 to five claimants after their date-of-death because DOL entered the incorrect date-of-death on the UI System when they identified those claimants as deceased. It also included 64 payments totaling \$25,515 to one claimant that we referred to DOL for investigation after we found a social security card in the claimants file that did not appear to be authentic. The social security number on that card was issued to an individual who had been deceased for 12 years. Based on our referral, DOL determined the \$25,515 was obtained through fraudulent means. DOL also determined the same individual obtained 26 payments totaling \$10,530 by using another person's social security number.
  
2. We provided training on our detection tools and techniques to DOL Internal Audit staff on February 10, 2010. We have no record of DOL requesting additional training from OSC until May 1, 2014. That training is scheduled for June 25, 2014. In addition to the training we provided DOL Internal Audit, we also provide DOL with a complete summary of our findings each year. We also verbally communicate the methodologies and techniques we use to identify our findings.