



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 17, 2009

Ms. M. Patricia Smith, Commissioner
Department of Labor
State Office Campus, Building 12
Albany, NY 12240

Mr. Brian Fischer, Commissioner
Department of Correctional Services
State Office Campus, Building 2
Albany, NY 12226-2050

Re: 2008-BSE-3A-002

Dear Commissioners Smith and Fischer:

We examined payments made by the Department of Labor (DOL) to individuals receiving unemployment insurance (UI) benefits during the month of June 2008 by matching recipients against the Department of Correction's (DOCS) Undercustody Population file as of June 28, 2008.¹ The objective of our examination was to determine if UI claimants received benefit payments inappropriately.

A. Background and Methodology

Article 18, Title 7, Section 591 of the UI Law states, "no benefits shall be payable to any claimant who is not capable of work or who is not ready, willing and able to work in his usual employment or in any other for which he is reasonably fitted by training and experience." Each claimant is required to certify to his/her capability to work each week. Certification can be made electronically, either by telephone or over the internet. Any incarcerated individual is not "ready, willing and able to work." As a result, he/she does not qualify for UI benefit payments.

The DOL UI Payment file is a monthly file containing information related to each UI benefit payment. It includes such information as claimant name, social security number, benefit amount, and date of payment. The DOCS Undercustody Population file includes information related to individuals incarcerated in a State Correctional Facility (State Facility). This file includes such information as the name of the individual under custody, date of birth, social security number, and dates of incarceration.

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

B. Results of the Examination

We identified 11 claimants who inappropriately received UI benefits of \$29,339 while incarcerated in a State Facility. We stopped an additional \$18,261 in payments that would have been paid to these individuals.

Subsequent to stopping the payments, one claimant attempted to certify for UI benefit payments and continued to contact DOL to inquire on the status of his claim. DOL staff interviewed the claimant, who admitted that he and his wife were certifying for benefits while he was incarcerated. Based on this testimony, DOL is seeking recovery of the \$1,316 in UI benefit payments he received while incarcerated. DOL also imposed a penalty of forfeiture of 80 days of future benefits. DOL and DOCS Officials are working together to determine how these individuals were able to certify for UI benefit payments while incarcerated.

We also identified another 14 claimants who potentially were in a State Facility at the time they received benefits. Upon review, DOCS Officials determined one of these individuals was incarcerated under another person's name, social security number, and date of birth. DOCS Officials referred this matter to the Manhattan District Attorney for prosecution. The UI payments were appropriately being paid to an unemployed individual. The remaining 13 cases were referred to the DOL Office of Special Investigations (OSI) to determine if they were receiving inappropriate UI benefit payments. Nine of the 13 claimants submitted multiple forms of identification confirming them as the sole possessor of the social security number in question. OSI determined these claimants were receiving UI benefit payments appropriately. Based on OSI's review, it appears that the social security numbers for these nine individuals on the DOCS Undercustody Population file are also incorrect.

The remaining four claimants did not respond and all future UI payments were stopped until DOL can verify whether the payments are appropriate. DOL and DOCS Officials told us they will determine if the social security numbers on the DOCS Undercustody Population file are correct for the four claimants that did not respond to OSI's inquiry. If these social security numbers are correct, DOL and DOCS will investigate to determine if the incarcerated individuals sold or shared their social security numbers or had another individual certify his/her capability to work.

Recommendations to DOL

- 1) *Work with DOCS to determine how claimants certified for UI benefits while incarcerated in a State Facility.*
- 2) *Recover all UI benefit payments made to claimants who certified for payments while incarcerated. If applicable, assess the claimant UI penalties for their actions. Report these amounts to the Office of the State Comptroller's Bureau of State Expenditures.*
- 3) *Work with DOCS to determine the identity of the individuals assigned the social security numbers used by the four claimants that did not respond to OSI's inquiry. As appropriate, take action to correct the files, recover funds, and assess*

penalties. Report these amounts to the Office of the State Comptroller's Bureau of State Expenditures.

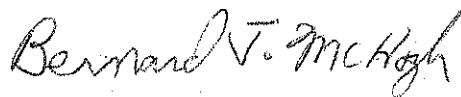
- 4) Obtain and match DOCS's Undercustody Population file to the UI Payment file on a monthly basis to identify claimants receiving UI benefit payments with the same social security number as individuals incarcerated in a State Facility. Investigate and reconcile all matches.*

Recommendations to DOCS

- 1) Work with DOL to determine how claimants certified for UI benefits while incarcerated in a State Facility.*
- 2) Determine the identity of the individuals assigned the social security numbers used by the four claimants that did not respond to OSI's inquiry. Take appropriate actions to correct the files based upon those determinations. Take appropriate action if these individuals certified for UI benefits while incarcerated in a State Facility.*
- 3) Determine if the social security numbers on the Undercustody Population file are incorrect for the nine claimants that provided proof to DOL confirming them as the sole possessor of the social security numbers in question. If appropriate, correct the information on the Undercustody Population file.*
- 4) Provide the Undercustody Population file to DOL on a monthly basis for matching with the UI Payment file. Work with DOL to resolve any matches that indicate claimants receiving UI benefit payments have the same social security number as individuals incarcerated in a State Facility.*

We request that you provide a response to this report by April 17, 2009. We thank the management and staff of DOL and DOCS for the courtesies and cooperation extended to our auditors during this examination.

Sincerely,



Bernard J. McHugh
Director of State Expenditures

cc: Stephen Hamilton, OSC
Richard Marino, DOL
Richard Roy, DOCS
Vernon J. Fonda, DOCS



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

May 6, 2009

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

Re: Recommendations for DOL working with DOCS

Dear Mr. McHugh:

This is in response to your letter of March 17, 2009 regarding your recommendation for our respective departments to work more closely together to ensure that Unemployment Insurance (UI) benefits are not being issued inappropriately.

The following actions have been initiated by the Department of Labor (DOL) to enhance our working relationship with the Department of Corrections (DOC) and to identify and investigate illegal UI benefits obtained by inmates incarcerated in New York State correctional facilities.

1. On April 7, 2009, we met with DOCS officials to discuss your report and recommendations and develop operating procedures between our agencies.
2. We established a liaison arrangement so that all issues involved in possible benefits fraud by incarcerated inmates will be worked cooperatively between our Internal Security Unit in the Office of Special Investigations (OSI) and DOC Liaison with law enforcement agencies.
3. Appointments to visit inmates suspected of fraud in New York State correctional facilities will be made through the DOC Law Enforcement Liaison to expedite the interview process.
4. In cases where incarcerated inmates are using names and social security numbers that match claimants from the general public, we will work together with the Inspector General of the Social Security Administration to identify the true owner of the issued Social Security Number and then continue our joint investigation.
5. A monthly report of inmates' names and social security numbers will be delivered by DOCS beginning on April 15, 2009, via a secured electronic file transfer to DOL Internal Security Unit. This file will be matched against our benefit files to identify suspicious benefit payments. This replaces the quarterly report that was past practice.
6. Due to anticipated increases in Inmate Work Release programs associated with modified Rockefeller Drug Laws, Internal Security will contact DOC to verify if the inmate who is indicated incarcerated on the DOC website, is in fact incarcerated or in a Work Release program.

Below is the status of our investigation of claimants you identified in your report:

Albany Cases

Closed - Violation	\$1845.00	96 FED's ¹
Waiting for Inmate Interview		
Closed as Violation	\$9315.00	80 FEDS

Utica

Closed - No Violation
Closed - No Violation

Buffalo

Waiting for Inmate Interview
" " "
" " "
" " "

Rochester

Closed- No Violation

NYC

Closed - Violation \$258 16 FEDS

In each of the cases that were closed with a "Violation" determination, the claim was initiated and certified weekly by someone known by the inmate outside the correctional facility who had access to the claimant's identification and Personal Identification Number (PIN).

Cases that were closed with a "No Violation" determination were claims where the inmate was out of the correctional facility on a Work Release program and eligible for benefits.

You also provided a second set of UI names that you suspected were inmates who were incarcerated and receiving Unemployment Insurance benefits. Our investigation reveals this was not true. None of the names listed were ever incarcerated according to DOC records. We forwarded these cases to OSI regional offices for investigation. As these investigations close, we will assess the appropriate violation status, overpayments, and FEDS. These will be reported to the Comptroller's Office as recommended.

Finally, you recommended that we recover all UI benefits made to claimants who certified for payments while incarcerated. You further recommended, if applicable, to assess the claimants civil penalties for their actions and report these amounts to the Office of the State Comptroller's Bureau of State Expenditures.

¹ FEDS means Forfeited Effective Days, a punitive measure for willful misstatements. Claimants receiving this penalty will be ineligible for future benefits for the number of days reported above. The penalty is assessed by operation of the Labor Law.

When our investigation results in a "Violation," it is our regular practice to set up the overpayment and assess forfeit effective days. No special process is needed for DOCS related cases. The DOL has several processes in place to collect overpayments. As for the reporting these cases, we do not have a process in place, but can work with the Comptroller's office to develop a reporting procedure.

We believe the new initiatives and processes we developed address all your recommendations and will make a significant impact on the expediency and efficiency of investigations into possible illegal receipt of UI benefits by incarcerated inmates within New York State correctional facilities.

Sincerely,

A handwritten signature in black ink that reads "M Patricia Smith". The signature is written in a cursive, flowing style.

M. Patricia Smith



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS -- BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

April 22, 2009

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

Re: 2008-BSE-3A-002

Dear Director McHugh:

Department of Correctional Services' (DOCS) Inspector General's staff has been working jointly with Department of Labor (DOL) staff to address the issues and recommendations you outlined in your letter dated March 17, 2009. Below, please find the responses prepared as a result of your recommendations:

Recommendations to DOCS

Recommendation 1 – *Work with DOL to determine how claimants certified for UI benefits while incarcerated in a State Facility.*

Investigative members of the DOCS' Inspector General's Office have established contacts and dialog with DOL's Fraud Investigation Unit to determine strategies regarding how claimants are able to certify for UI benefits while incarcerated and the appropriate strategies to put in place to prevent and/or minimize potential abuse. DOCS will provide under-custody list. DOCS will identify those individuals and both agencies will investigate.

Recommendation 2 – *Determine the identity of the individuals assigned the social security numbers used by the four claimants that did not respond to OSI's inquiry. Take appropriate actions to correct the files based upon those determinations. Take appropriate action if these individuals certified for UI benefits while incarcerated in a State Facility.*

DOCS' Inspector General's Office and DOL's Fraud Investigation Unit is working with the Social Security Administration to establish the correct designation of social security numbers where multiple persons claim and provide proof that they are in fact the person entitled the use of said number. DOCS' Management Information System staff currently provides the Social Security Administration NY office with our under-custody population file. Upon completion

April 22, 2009

of the DOCS/DOL/SS Administration inquiry all agency files relative to the social security number in question will be appropriately updated. DOCS is working with DOL and the appropriate prosecutors to insure that the State's interests are met regarding potential criminal outcomes resulting from any identified abuses.

Recommendation 3 – *Determine if the social security numbers on the Under custody Population file are incorrect for the nine claimants that provided proof to DOL confirming them as the sole processor of the social security numbers in question.. If appropriate, correct the information on the Under custody Population file.*

DOCS' Inspector General's Office and Management Information Systems staff is examining the Social Security information on file regarding the nine (9) inmates mentioned in the report and will provide the unresolved findings to the social security administration for clarification as well as correcting the under-custody population file.

Recommendation 4 – *Provide the Undercustody Population file to DOL on a monthly basis for matching with the UI Payment file. Work with DOL to resolve any matches that indicate claimants receiving UI benefit payments have the same social security number as individuals incarcerated in a State Facility.*

DOCS is providing DOL with the under-custody population file, via a secured electronic file transfer; as agreed upon with DOL, on the 15th of each month. DOL is providing DOCS' Inspector General staff with any and all information regarding suspected fraudulent activity. DOCS Inspector General's staff is accessing the suspected material and working jointly with DOL Fraud Investigations Unit to determine the nature of the suspected material and the appropriate corrective action.

Your recommendations, along with the collaborative efforts of DOCS and DOL'S investigative units, combined with the results of those investigations, will certainly assist in our collaborative efforts to protect the fiscal interests of the State.

Sincerely,



Brian Fischer
Commissioner