



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 29, 2010

Ms. Colleen C. Gardner
Commissioner
Department of Labor
State Office Campus
Building 12, Room 506
Albany, NY 12240

Re: 2009-BSE-3A-004

Dear Commissioner Gardner:

Our Office examines payment requests processed by the Department of Labor (DOL) for the Unemployment Insurance Benefit and related Unemployment Insurance programs. This report covers payment requests we examined during the period April 1, 2009 through December 31, 2009.¹ The objective of our examination was to determine whether payment requests are free from processing errors and comply with applicable Federal and State laws and DOL regulations.

A. Background and Methodology

The New York State Department of Labor administers the Unemployment Insurance (UI), Trade Re-adjustment Allowance (TRA) and Shared Work programs, which provide benefit payments to workers who are unemployed through no fault of their own and are ready, willing and able to work. Workers who exhaust their UI benefits may be eligible for an extension of benefit payments through the Emergency Unemployment Compensation and Extended Benefit programs. All benefit payment requests are subject to audit by the State Comptroller prior to payment.

To accomplish our objective, we selected benefit payment requests for examination based on risk, using "filters" embedded in the DOL payment system. In addition, our examination included other tests designed to identify conditions not readily found by our filters. These tests were performed after payment of the benefit. The results are used to identify and recover any overpayments identified and to prevent future overpayments. We also performed file matches to identify (i) payments processed for recently deceased claimants and (ii) newly hired New York State employees who owe DOL money for outstanding benefit overpayments.

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

During our examination period, 45 million payments, totaling more than \$7.1 billion, were made to claimants for the UI, TRA and Shared Work programs. This includes about \$3 billion in federal stimulus monies. Of the total, we selected 26,229 payment requests for examination. This report summarizes the results of our examinations for the period.

B. Results of Examination

During our examination, we identified 16 instances where it appeared someone obtained UI benefit payments through illegal acts. We referred these instances to the DOL Benefit Technology Customer Service Unit for appropriate action. DOL found 14 individuals collected benefits by certifying a claimant's eligibility after the claimant died; one claimant admitted falsifying documents and one claimant certified he was unemployed nine different times after regaining employment. DOL did not to take legal action against claimants or others for these acts.

We also found 772 of the 26,229 payment requests we selected for examination, or almost 3 percent, either did not comply with applicable Federal and State laws and DOL regulations or were processed in error. This resulted in DOL's approving \$362,571 in overpayments to claimants. Of this, we stopped \$71,907 before payment. We also prevented an additional \$247,841 in overpayments when DOL took corrective action with the errors we identified.

In addition, our file match of the DOL UI Benefit Overpayment Accounts Receivable file to the New York State Payroll file led to the recovery of \$355,102 in UI benefits overpaid to New York State employees and identified \$91,391 in future recovery from newly hired employees.

We shared a draft of this report with DOL officials, who provided us with their response. (See Appendix A.) They agreed with our recommendations. They also agreed to review individual cases where it appeared someone obtained UI benefit payments through illegal acts and to take appropriate steps to mitigate overpayments. Officials also provided an overview of their efforts to recover overpayments to claimants. We considered their comments in preparing this report.

Referral of Potential Fraudulent Claims

As part of our examination of high-risk requests, we examine the supporting claimant record to determine the appropriateness of the intended payment. Supporting records include scanned documents submitted to DOL to support eligibility to receive benefits, wages earned and other claims. We also use information obtained from the United States Social Security Administration to ensure payment requests are not made for deceased claimants or for individuals that are not eligible to work in the United States.

During our examination period, we referred 16 cases to the DOL Benefit Technology Customer Service Unit for investigation. This includes (i) 14 individuals who collected a total of \$12,268 by certifying a claimant's eligibility after the claimant died, (ii) one claimant who admitted he falsified his W-2 to receive \$3,939, and (iii) one claimant who received \$4,398 by certifying he was unemployed 9 times after gaining employment. (These latter two cases are part of the 68 rate adjustment transactions discussed in the next section of the report.) Based on our referrals, DOL investigated these cases. Specifically:

- DOL confirmed that 14 UI claims totaling \$12,268 were paid after the claimant's date of death because someone other than the claimant certified the eligibility to collect UI benefits. We also prevented additional disbursements of \$5,865 to these claimants.

In all 14 instances, DOL established an overpayment receivable against the deceased claimants' accounts to recover the \$12,268. Since overpayments are recouped by offsetting future UI benefits to claimants, and these claimants are deceased, it is unlikely DOL will recoup these overpayments.

In addition to establishing overpayment receivables, DOL should take action against those individuals they determine illegally certified the claims and obtained UI benefit payments in the name of these deceased claimants.

- DOL processed a \$1,651 rate adjustment for a 2009 UI claim based on pay stubs and a handwritten 2009 W-2 Wage and Tax Statement (W-2) submitted by the claimant to support the adjustment. We rejected the transaction because the rate adjustment in question was for wages earned in 2008, not 2009. We also referred the matter to DOL for investigation because it appeared the claimant prepared the W-2 and because the pay stubs submitted had several inconsistencies, including questionable dates, obvious printing errors, and check numbers out of sequence. We further questioned the original 2009 claim's validity when we found the claimant had collected \$6,885 in UI benefit payments for a claim in 2007. For the 2007 claim, the reporting employer had the same address but a different employer name as the employer referenced on the handwritten 2009 W-2, adding further suspicion to the propriety of this claimant's UI benefits.

DOL officials told us that during their investigation, the claimant admitted he falsified the 2009 W-2. Based on our referral and DOL's subsequent investigation, the claimant's 2009 UI claim was invalidated, which prevented \$20,210 in inappropriate benefit payments to the claimant had this person continued to certify for unemployment benefits. However, the claimant did receive \$3,939 on the 2009 claim prior to our rejecting the claimant's rate adjustment transaction.

DOL assessed the claimant with a \$3,939 overpayment, but did not prosecute.

- Our review of a \$732 rate adjustment processed by DOL indicated the claimant may have submitted fraudulent payroll information to obtain the rate increase. We referred the matter to DOL for investigation. However, DOL discontinued the investigation when the employer did not cooperate. DOL continued to make payments to the claimant.

Subsequent to our questioning of the rate adjustment, DOL determined this claimant certified their eligibility for UI benefit payments for nine weeks after obtaining employment. As a result of the fraudulent certifications, the claimant received \$4,398 in UI benefit payments he was not entitled to because he was fully employed and ineligible to collect UI benefits. DOL assessed a \$4,398 overpayment against future UI benefit payments and a penalty of 92 days in future benefits, but took no further legal action against the claimant.

DOL officials determined that in each of the 16 cases we referred to the Benefit Technology Customer Service Unit for investigation, someone collected benefit payments by defrauding the UI system. In each case, DOL set up overpayments against the 16 accounts in question. In no case did DOL take further legal action against claimants or others for defrauding the UI program. As stated previously, it is unlikely DOL will recover the overpayment receivables set up against the accounts of the 14 deceased claimants.

While we acknowledge the amount of stolen benefits is small when compared to the millions of dollars in UI benefits paid each week, we believe prosecuting the individuals who obtained UI benefits through the illegal acts would serve as an effective deterrent to future theft of benefits. It would also reassure the business community that New York State is doing everything in its power to keep UI taxes as low as possible.

In their response, DOL officials stated they are reviewing the individual cases to determine the feasibility of identifying the individuals that performed illegal acts. The UI Division is also working with the DOL Office of Special Investigations in developing procedures and policies to address these types of fraud cases.

Review of Payment Requests

When we select a benefit payment request for examination, we review the supporting electronic claimant record and other supporting documentation to ensure the payment request is free from processing errors and complies with applicable Federal and State laws and DOL regulations. During the examination period, we identified 772 payment requests that either did not comply with applicable Federal and State laws and DOL regulations or were processed in error. These included the following general categories: payment requests from multiple programs for the same claimant in the same week; payment requests exceeding the maximum number of days

allowed by law; incorrect rate adjustments; duplicate Shared Work payment requests; various processing errors; and payment requests for deceased individuals.

During this period, we found:

- DOL administers the UI program, which includes UI benefits, Emergency Unemployment Compensation (EUC), and Extended Benefit (EB) payments. Federal law prohibits claimants from receiving benefits from more than one of these programs during the same week. DOL does not have automated controls in place to enforce Federal law. Instead, DOL procedures require staff to verify a claimant is not receiving benefits from more than one program before processing the payment. We found DOL staff does not always follow these procedures. As a result, we found 252 payment requests totaling \$45,301 for claimants collecting benefits from multiple programs in the same week. Of this amount, we stopped \$3,874 from being paid to the claimants.
- Under State Labor Law, claimants are entitled to accumulate up to four full days (effective days) of benefit payments per week, provided they did not work and properly certified the number of days they were unemployed during that week. DOL staff can increase or decrease the number of effective days a claimant is to be paid weekly, based on additional information obtained from the claimant or the claimant's employer. The four-day limit is the same for the UI, EUC, EB, and TRA programs. Despite this four-day limit, we identified 151 payment requests totaling \$64,947 for claimants who were paid more than four effective days of UI, EUC, EB or TRA benefits in the same week. This occurs when UI staff manually overrides the system edit that prevents a claimant from receiving benefits for more than four effective days in the same week. We stopped \$3,014 from being paid to the claimants.
- If a claimant disagrees with DOL's initial benefit rate determination, he or she can appeal with documentation that the benefit rate was based on incorrect or incomplete information. DOL staff review the appeal and may calculate a rate adjustment, as appropriate. If warranted, DOL will process a retroactive payment request to the claimant for any weeks paid at the lower rate. By using incorrect, incomplete, and/or duplicate information, we found DOL staff calculated in error 68 of the 2,140 (3 percent) rate adjustments we selected for review. As a result, we identified \$54,410 in overpayments to claimants, of which we stopped \$48,615 before payment. Based on our findings, DOL corrected the claimants' benefit rates, which prevented an additional \$241,976 in overpayments to these claimants over the life of the claim.

Over the examination period, DOL processed 18,606 rate adjustments. If the 3 percent error rate we found is indicative of the entire population of rate adjustments, DOL processed an additional 490 rate adjustments in error.

- The Shared Work Program provides employers facing a temporary decline in business with an alternative to employee layoffs. We found DOL does not have automated controls in place to identify and prevent duplicate Shared Work Program benefit payments for the same week. As a result, we identified 125 duplicate Shared Work payment requests totaling \$12,814. Of these, we stopped \$7,194 in payments to the claimants. Duplicate payments usually occur when employers provide duplicate information to DOL or DOL staff enters the same information in the system more than once.
- We identified 162 payment requests totaling \$172,831 that were processed in error. Of this amount, we stopped \$9,210 in payments to the claimants. This includes \$131,070 for non-citizens unauthorized to work in the United States, \$24,699 for claimants that were not totally unemployed but claimed they were when certifying for payments, and \$17,062 in duplicate payments.

DOL officials indicated they are taking multiple steps to address our findings, including (i) developing internal control edits to prevent manual adjustment errors that result in overpayments when charging multiple programs, (ii) determining the possibility of generating timely reports that will identify overpayments for prompt offset, (iii) reviewing existing reports to determine if they can assist supervisors when staff perform edit overrides, (iv) continuing to monitor rate adjustment errors for patterns to identify opportunities to make training improvements, and (v) working on generating a report to identify duplicate Shared Work Program payments.

Recovered Overpayments to NYS Employees

We match the DOL's UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees (employees) who owe DOL money. DOL uses this information to set up a payment schedule with the employees to recover the overpayments.

During the period of our examination, we identified 74 newly hired employees that owed \$91,391 to DOL for UI overpayments. During this same period, DOL recovered \$355,102 from employees identified by current and past matches.

In their response to our draft report, DOL officials stated they use a variety of methods to recover overpayments to claimants, including sending overpayment collection letters to claimants, referring cases to the Department of Taxation and Finance for collection under the State Withholding Offset Program and referring cases to the Attorney General's Office for

prosecution. In addition, DOL has begun working with the Federal Government to recapture overpayments by using Federal Tax Refund Offsets. In 2009, DOL collected over \$30 million in cash repayments and over \$23 million in offset UI Benefits due from these initiatives.

Recommendations

1. *Identify the individuals who illegally certified and obtained UI benefit payments for deceased claimants.*
2. *For the 16 cases we referred to the Department of Labor Benefit Technology Customer Service Unit for investigation, recover all overpayments and prosecute the individuals involved.*
3. *Ensure staff follows established procedures for processing payment requests from multiple programs.*
4. *Develop an exception report that identifies when staff overrides system edits. Take corrective action, as necessary.*
5. *Ensure staff uses the correct information when calculating rate adjustments.*
6. *Develop a system edit that identifies duplicate payments in the Shared Work Program.*
7. *Make every effort to recover overpayments identified in the examination from claimants.*

We would appreciate your response to this report by August 27, 2010 indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Department of Labor for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Encl: Appendix A

cc: Richard Marino
Carl Boorn

APPENDIX A



New York State Department of Labor
David A. Paterson, *Governor*
Colleen C. Gardner, *Commissioner*

July 20, 2010

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

RE: 2009-BSE-3A-004 – Draft Report

Dear Mr. McHugh:

This is in response to your letter dated June 11, 2010, regarding payment requests processed by the Department of Labor (DOL) for Unemployment Insurance (UI) Benefit and related UI programs for the period April 1, 2009, through December 31, 2009.

OSC Recommendations and DOL Responses

- 1) Identify the individuals who illegally certified and obtained UI benefits payments for deceased claimants.
- 2) For the 16 cases we referred to the Department of Labor Benefit Technology Customer Service Unit for investigation, recover all overpayments and prosecute the individuals involved.

DOL Response for (1) and (2)

DOL is reviewing individual cases provided by OSC to determine the feasibility of the identification of these individuals that performed these illegal acts. The UI Division is working with the Department's Office of Special Investigations in doing this assessment and in developing procedures and policies to address these types of fraud cases. The Department's aggressive prosecution of these individuals will send a message to those that intend to defraud the UI system by obtaining benefits from accounts of deceased claimants.

- 3) Ensure staff follows established procedures for processing payment requests from multiple programs.

DOL Response

Due to our current systems limitations, when adjustments are needed, there are not sufficient edits to prevent manual adjustment errors that result in overpayments when charging multiple programs. These and other internal control edits are part of our system improvement efforts. The estimated completion date for the Department's UI System Improvement is December 3, 2012. In addition to reminding staff to follow appropriate procedures, we are reviewing the possibility of generating timely reports that will identify these situations for prompt offset.

- 4) Develop an exception report that identifies when staff overrides system edits. Take corrective action, as necessary.

DOL Response

DOL is reviewing available reports to determine if we can capitalize on existing generated information that will assist supervisors when staff perform edit overrides. Override access is provided to supervisors and controlled by RACFID. Procedures are being reviewed for additional clarification and training when needed. More real time notifications will be included as system enhancements for our new UI system.

- 5) Ensure staff uses the correct information when calculating rate adjustments.

DOL Response

While our current system calculates rate adjustments when there aren't additional entries appearing on the claimant's ledger, future enhancements to the UI system will improve our automated rate calculations. As corrections to rate adjustments are sent to Benefit Technology Customer Service (BTCS) staff from OSC, they are transferred to the appropriate Telephone Claims

Center (TCC) staff for review and further training. We will continue to monitor these errors for patterns to make training improvements where necessary.

- 6) Develop a system edit that identifies duplicate payments in the Shared Work Program.

DOL Response

We agree with this recommendation and recognize that the Shared Work Program continues to be a manual, labor intensive program. We have begun to implement automation improvements starting with the Employer plans and would like to continue other phases of the automation of the Shared Work program through the weekly certification process. As a corrective measure, we are also working on generating a report to identify these duplicates until an upfront detection process can be implemented.

- 7) Make every effort to recover overpayments identified in the examination from claimants.

DOL Response

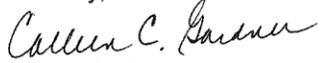
It should be noted that the Department of Labor uses a variety of methods to recover overpayments to claimants. In 2009, 370,387 overpayment collection letters were sent to claimants. DOL received \$17,767,532 in cash repayments and offset UI Benefits due in the amount of \$23,978,111. We also referred 75,687 cases to Tax & Finance under the State Withholding Offset Program. This resulted in the receipt of \$13,175,894. Our Office of Special Investigations referred 987 cases to the AG's Office for prosecution.

In addition, working with the Federal Government, this year, DOL has begun an initiative to recapture overpayments by using Federal Tax Refund Offsets.

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If you have any comments or questions, please contact Carl Boorn,
Director, UI Benefit Services at (518) 457-2177.

Sincerely,


Colleen C. Gardner

cc: Carl Boorn



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

September 14, 2010

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

Re: 2009-BSE-3A-004

Dear Mr. McHugh:

This is in response to your letter dated July 29, 2010 transmitting your office's Final Report, regarding payment requests processed by the Department of Labor (DOL) for unemployment insurance (UI) benefits and related UI programs for the period April 1, 2009 through December 31, 2009. This was in follow-up to the Draft Report dated June 11, 2010.

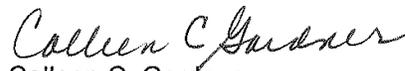
As indicated in our July 20, 2010 response to the Draft Report, NYSDOL is taking a number of steps to address processing errors associated with UI benefit payments as well as address the feasibility of more aggressive actions to address fraud on the part of the claimant community. These steps include implementation of additional automated systems controls; enhanced training of new staff, and continuing coordination with DOL's Office of Special Investigations and your office. While the period covered by the Report involved near unprecedented increases in claims and accordingly, a need for many new hires, we concur that adequate payments controls must be in place at all times.

Based on discussions that Richard Marino, UI Director, had with Mark Anderson from your staff, our response of July 20, 2010 to the Draft Report remains relevant and will serve as our response to the Final Report (see July 20, 2010 letter attached).

We look forward to working with your staff to address your recommendations and taking corrective actions as indicated in our response to those recommendations.

If you have any comments or questions, please contact Mr. Carlton Boorn, Director of UI Benefit Services, at (518) 457-2177.

Sincerely,


Colleen C. Gardner

Attachment
cc: Mr. Carlton Boorn



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

RECEIVED
DEPARTMENT OF LABOR

July 20, 2010

JUL 21 2010

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

Director
Unemployment Insurance Division

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If you have any comments or questions, please contact Carl Boorn,
Director, UI Benefit Services at (518) 457-2177.

Sincerely,

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Colleen C. Gardner

cc: Carl Boorn
CCG:CB:awr
bc: R. Marino
