

THOMAS P. DiNAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 16, 2016

Ms. Roberta Reardon
Commissioner
Department of Labor
State Office Campus
Building 12, Room 500
Albany, NY 12240

Re: Report 2016-BSE4-01

Dear Commissioner Reardon:

This report summarizes the results of the activities related to our Office's examination¹ of the Department of Labor's (DOL) Unemployment Insurance (UI) program during calendar year 2015. This includes our examination of high risk payment requests and payments DOL approved in 2015 and related prior year payments. In addition, this report includes the results of our prior years' findings confirmed by DOL in 2015. The objectives of our examination were to determine if payment requests and payments DOL approved were appropriate and in accordance with applicable Federal and State laws and regulations and DOL policies and procedures, and if DOL recouped overpayments based on our findings.

We shared a draft report with DOL officials and considered their comments (Attachment C) in preparing the final report. The State Comptroller's Office comments on DOL's response are included as Attachment D.

Summary of 2015 Audit Activities

We identified 11,306 overpayments totaling more than \$3.6 million. This is comprised of: (i) \$93,760 in payment requests stopped; (ii) \$280,276 in future payments that would have been made over the life of the claim had DOL not taken corrective action based on our findings; and (iii) \$3,311,848 in erroneous payments. Based on the overpayments identified, DOL assessed \$471,458 in monetary penalties to 344 claimants. We also identified 588 underpayments totaling \$105,744, which is comprised of \$23,662 in current payments and \$82,082 in future payments claimants would not have received had DOL not taken corrective actions based on our findings.

¹We performed our examination in accordance with the State Comptroller's authority 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.

We found the overpayments occurred because: DOL did not detect that claimants made false statements to obtain benefits they were not entitled to receive; limitations in the UI payment system permitted erroneous payments; or DOL staff did not follow established policies and procedures (See Attachments A and B for a complete summary of findings). In addition, when selecting a claim for review, we recommend DOL consider periodically reviewing a claim in its entirety as this may help prevent the overpayments and underpayments identified in this report.

Due to restrictions on sharing confidential data, our Office worked cooperatively with DOL to identify other potential recoveries totaling \$284,315 from 205 New York State employees hired during calendar year 2015 who owe DOL for UI overpayments received in prior years. We will continue to match the UI Benefit Overpayment File to the New York State Payroll File on behalf of DOL to identify opportunities for DOL to recover money from newly hired New York State employees who owe for prior UI benefit overpayments.

UI Payment System

We found DOL improved the UI payment process to better identify potentially inappropriate claims by enabling the system to: (i) better identify when the same wages were used to calculate a prior period claim and (ii) block payments to claimants who certified their eligibility to receive UI benefits while out of the country. DOL could further improve its UI payment process to prevent recurring overpayments, such as payments that exceed the four day maximum within the same week and payments made from multiple programs in the same week.

In its responses to this and prior years' audit reports, DOL stated that they are undertaking a major reengineering of its UI systems and entered into a multi-state consortium that will leverage efforts to realize a modernized UI system. These efforts may address many or all of the issues identified in this report.

Actions Taken by DOL Based on Current and Past Audit Results

In addition to our findings in Attachment A, as the result of our Office's current and prior years' findings, DOL recovered \$253,968 in forfeited UI benefits from claimants who DOL determined made false statements or representations to obtain benefits they were not eligible to receive. DOL also recovered \$488,138 from New York State employees who owed DOL for past UI overpayments because of our joint effort to match the UI Benefit Overpayment File to the New York State Payroll File.

Over the last three calendar years, overpayments have steadily decreased for the majority of findings categories presented in our annual reports. In their responses to our annual reports, DOL officials outline procedures implemented to fortify their audit process. For example, in its response to the draft copy of this report, DOL officials explained they implemented new

procedures in 2014 to better identify claimants who falsely certified their eligibility for UI benefits while they were partially or fully employed. Our annual reports show this category of overpayments has consistently been the largest. To date, overpayments DOL confirmed in this category for calendar year 2015 decreased by more than \$4 million from calendar year 2013.

Methodology

To accomplish our objectives, we used data analytics to select 69,646 transactions for audit, including: (i) high risk payment requests DOL approved in 2015; and (ii) prior year payments related to those 2015 payment requests. For example, we analyzed the daily payment file to identify potential inappropriate payment requests and to verify claimant eligibility. Other data analytics we performed included matching: (i) the Department of Taxation and Finance wage file to the DOL payment file to identify payments made to claimants that may have been employed while collecting benefits; (ii) monthly and quarterly payment files to identify duplicate payments; (iii) out of country indicators in the claimants' log file to the DOL payment file to identify claimants collecting benefits while out of the country; and (iv) the claimant application file to the DOL payment file to identify payments made to claimants that may have been day students attending an elementary or secondary school during the wage period. We also reviewed prior years' claims associated with a subset of those 69,646 payment requests and payments based on risk indicators.

Recommendations

- 1) *Enhance controls to identify claimants who are falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law when it is economically beneficial to do so.*
- 2) *Continue to develop a modernized UI system and provide our Office with a report on the progress made to date and target dates for future milestones.*
- 3) *Address the system limitations in the UI payment system identified in this report.*
- 4) *Ensure staff follow established policies and procedures to process claims appropriately.*
- 5) *Consider periodically reviewing individual claims in their entirety.*
- 6) *Recoup overpayments and monetary assessments from claimants, as appropriate.*

We request you provide a response to this report by October 17, 2016. 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

Enc: Attachment A
Attachment B
Attachment C
Attachment D

cc: Carl Boorn
Mary Batch
John Dormin
Michael Vaccaro

**Department of Labor
Unemployment Insurance Benefits
Summary of Overpayments Confirmed by DOL in 2015**

Finding	Total Errors		Value of Errors		
	Number	Amount	Erroneous Payments	Payments Stopped	Future Payments Prevented
Claimants Falsely Certified Eligibility					
Claimants were fully or partially employed	8,369	\$3,087,711	\$3,087,399	\$312	\$0
Claimants were out of the country	199	53,484	15,934	37,147	403
UI System Limitations					
Weekly benefits exceed four day maximum	124	31,811	31,760	51	0
Same wages used to calculate multiple claims	102	18,673	4,832	570	13,271
Inappropriate payments to educators during school recess	106	14,901	547	9,060	5,294
System approved payments to disqualified claimants	51	2,263	353	1,910	0
Benefit rate increases made prior to implementation date	436	5,510	448	5,062	0
Payments from multiple programs in the same week	5	1,412	1,412	0	0
Policies and Procedures Not Followed					
DOL staff approved payments to disqualified claimants	883	256,924	147,491	3,776	105,657
Incorrect wage information used to calculate benefit rate	1,001	210,516	19,377	35,488	155,651
Duplicate payments	30	2,679	2,295	384	0
Total	11,306	\$3,685,884	\$3,311,848	\$93,760	\$280,276

**Department of Labor
Unemployment Insurance Benefits
Summary of Underpayments Confirmed by DOL in 2015**

Finding	Total Errors		Value of Errors	
	Number	Amount	Underpayments Corrected	Future Underpayments Prevented
Incorrect information used to calculate benefits	588	\$105,744	\$23,662	\$82,082

Mrs. Roberta Reardon
Commissioner
Department of Labor

New York State Department of Labor
Harriman State Office Campus
Building 12, Room 500, Albany, NY 12240
www.labor.ny.gov

August 10, 2016

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

Dear Mr. McHugh:

This is in response to your letter dated July 1, 2016, regarding Draft Report 2016-BSE4-01. Your draft report summarized the findings from your office's ongoing examination of Unemployment Insurance (UI) Benefit payment requests from January 1, 2015 through December 31, 2015. Your report notes that you identified overpayments based on cross-matches to certain Department of Labor (Department) files and to New York State employees.

During the time period covered by your report, the Department processed 8 million benefit payments, totaling nearly \$2.4 billion dollars. The errors detected by your office amount to 0.15% of all benefit payment dollars processed by the Department. Further, an analysis of your findings shows that 74% of the improper payment requests you identified, and 93% of the improper payments made, were for payment requests in 2013, not in 2015 which is outside the scope of the audit period. When we remove the 2013 payment requests which were outside of the audit scope the errors detected by your office drop from 0.15% to 0.010%. Strategies implemented by this Department to further reduce improper payments and to recover overpayments have in large measure been successful. Steps completed or underway include:

1. Implementation of a data analytics/predictive modeling solution in cooperation with the National Unemployment Insurance Integrity Center of Excellence and the states of Idaho and Kansas. This system will assist in identification of potential frauds and in preventing improper payments earlier in the process.
2. Continuing implementation efforts for an additional cross match against New York State and New York City Electronic Death Reporting systems to prevent improper payments to deceased individuals.
3. Completed an automated questionnaire system. This system allows claimants to reply electronically to Department inquiries. The ability to reply electronically improves the quality of

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Comment
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responses and speeds the adjudication of issues. The Department is now expanding the number of questionnaires in the system.

4. Continued addition of third party agents and employers to the State Information Data Exchange System (SIDES), which helps employers respond timely and accurately to claim notices. New York is currently using SIDES with four of thirteen available third party agents. Those four represent the largest share of employers and claimants in the state. Three more third party agents are completing testing and will be added by the end of 2016. The remaining six will be added when they are ready. Over 25% of original claims are handled through SIDES.
5. Developed an "Alternate Base Period Report" in December 2014. This report prevents wages that were previously used to establish entitlement to benefits from being credited a second time. Since there were claims reviewed in this audit that were on original claims that predated the implementation of the Alternate Base Period Report, the Comptroller's report did not reflect this improvement.
6. Developed a report in July 2015 to identify claims with base period wages earned while attending high school. Since there were claims reviewed in this audit that were on original claims that predated the implementation of the High School Base Period Report, the Comptroller's report did not reflect this improvement.
7. Recent system improvements have streamlined the ability to capture and update claimant addresses for more accurate billing and collection activities.

Recommendations and Responses:

Below are the Comptroller's recommendations and the Department's responses:

Comptroller's Recommendation

1. Enhance controls to identify claimants who are falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law when it is economically beneficial to do so.

Department's Response

As noted above and in prior responses, the Department has and continues to implement new processes and improve existing strategies and tools in order to prevent improper payments. Various initiatives include:

- New Hire, Wage, Incarceration, Decedent, and Out-of-Country cross-matching;
- Programs that support electronic communication such as State Information Data Exchange System (SIDES), Two-Way Communication, and automated questionnaires;
- Participation in national efforts led by the Center of Excellence; and
- Enhanced training for Department staff.

All of these efforts and the many other day-to-day initiatives undertaken by the Department are indicative of our effort and commitment.

For the most part, the leads that the Comptroller's Office reported in regard to working and collecting are leads that the Department had already identified. The majority of these overpayments were for 2013 which pre-dates the audit period.

Prior to our efforts to implement a comprehensive data analytics/predictive modeling solution, the Department studied the characteristics of improper payments in this category. In August 2014 a change in procedures focused efforts on claimants with the highest likelihood of a large overpayment. These were given a higher priority. As a result, these cases can now be completed up to eighteen months sooner. It must be noted that adjudication of these issues can be delayed if timely evidence cannot be obtained from witnesses and sources. As such, the actual completion date for any case remains highly dependent on witness and source response time.

The Department has one of the more robust criminal prosecution referral systems in the nation. Last year we referred 568 cases to District Attorneys around the State, and our investigators provided assistance to these prosecutors. This strong partnership with law enforcement returned \$1,807,629 to the Unemployment Insurance Trust Fund last year. We expect to continue to refer viable cases for criminal prosecution.

Comptroller's Recommendation

2. Continue to develop a modernized UI system and provide our Office with a report on the progress made to date and target dates for future milestones.

Department's Response

The Department developed a full array of requirements for a modernized unemployment insurance system using Federal funding under the NY/NJ consortium. These were needed for a Request for Proposal (RFP) that is completed and under review. The RFP will procure a proven vendor to implement a fully integrated modernized system. The Department is coordinating this effort with the Office of Information Technology Services.

Comptroller's Recommendation

3. Address the system limitations in the UI payment system identified in this report.

Department's Response

While waiting for a modernized system, the Department continues to explore, and where feasible and appropriate, develop system improvements and internal reports to address current system limitations.

Comptroller's Recommendation

4. Ensure staff follow established policies and procedures to process claims appropriately.

Department's Response

The Department makes every effort to ensure procedures are current and easily accessible to staff. When areas needing improvement are identified, refresher training is provided to staff, and completed work is monitored to ensure procedures are adhered to. The Department also utilizes the Lean management philosophy to systematically achieve incremental changes in processes in order to improve efficiency and quality. Within the Department, the Unemployment Insurance Division is the primary user of the Governor's Lean Program Initiative.

Comptroller's Recommendation

5. Consider periodically reviewing individual claims in their entirety.

Department's Response

The United States Department of Labor requires states to conduct Benefit Accuracy Measurement and Benefit Timeliness and Quality reviews on an on-going basis. As such, the Department already samples and thoroughly reviews unemployment insurance claims according to federal criteria. Based on a prior recommendation from OSC, the Department already periodically reviews claims in their entirety whenever an issue is raised that needs adjudication and when working with claimants in the area of re-employment assistance. The findings reflect exceptions not identified in the period review.

Comptroller's Recommendation

6. Recoup overpayments and monetary assessments from claimants, as appropriate.

Department's Response

All debts owed are thoroughly acted upon for recovery by utilizing techniques including but not limited to judgments, payment plans, referrals for civil and criminal action, and the activities noted below.

- Continued use of the Treasury Offset Program (TOP) to intercept Federal tax refunds. Since the Offset Program's inception in February 2011, the Department has recovered over \$165 million of which \$29.7 million was recovered in 2015. Claimants subject to notices warning them of possible refund intercepts often make additional efforts to reduce their debt in order to avoid having tax refunds redirected to the Department. When those payments are included, over \$222.8 million has been collected.
- Continued use of the Statewide Offset Program. The Department recovered over \$16.9 million in 2015. Over \$14.8 million has been recovered through June 2016.
- Identification of claimants currently collecting benefits in other states who owe the New York State Department for UI prior overpayments. These claimants' current benefits are offset by other states who then send payment to New York. From the start of 2015 to date, \$169,000 has been received from other states.

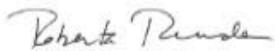
Attachment C

- Maintaining benefit offsets for claimants with prior overpayments who are currently collecting benefits in New York. The Department has recovered over \$17 million through this offset process.

The Department is actively pursuing the implementation of an electronic payment system that will provide claimants an additional option for paying their debt.

If you have any comments, please contact Carl Boorn, Director Unemployment Insurance Division.
(518) 457-2979.

Sincerely,



Roberta Reardon

Cc: Mario Musolino
Mary Batch
Carl Boorn
John Dormin
James Konicki
Michael Vaccaro

State Comptroller's Office Comments on Auditee Response

1. This report summarizes all activities related to our Office's examination of the UI program during calendar year 2015, not just a summary of findings related to UI payments processed in 2015. Therefore, these findings are within the scope of our audit period.

It is our policy to report a finding only when it has been confirmed by DOL. As of September 15, 2016, our Office is monitoring the outcome of an additional 362 potential erroneous payment requests or payments that we sent to DOL from January 2013 through December 2015. We will report any findings that pertain to these notifications in the year in which DOL confirms them.

Roberta Reardon
Commissioner
Department of Labor

New York State Department of Labor
Harriman State Office Campus
Building 12, Room 500, Albany, NY 12240
www.labor.ny.gov

October 5, 2016

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

Dear Mr. McHugh:

This is in response to your Final Report 2016-BSE4-01, dated September 16, 2016, containing the Office of the State Comptroller's (OSC's) ongoing examination of payment requests and related payments for Unemployment Insurance (UI) Benefits from January 1, 2015 through December 31, 2015.

DOL Response to OSC Comment 1

We understand that OSC's report is summarizing all activities related to their Office's examination of the UI program during calendar year 2015. If findings exist from multiple years when UI payments were processed, as they do in this report, we request that the controller's office segregate those findings by year so that the report accurately shows the improvements gained year over year.

Sincerely,

Mike Vaccaro
Internal Audit Director

Cc: Roberta Reardon
Mario Musolino
Mary Batch
Carl Boorn
James Konicki