

Office of Inspector General

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

November 2024





As required by the Reports Consolidation Act of 2000, the Office of Inspector General (OIG) has identified the most serious management and performance challenges facing the U.S. Department of Labor (Department or DOL).

These challenges are included in DOL's "Agency Financial Report" for FY 2024.

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:

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 UI program provides benefits to eligible workers who are unemployed through no fault of their own and meet other state eligibility requirements. UI benefits are typically funded by state employer taxes, with administrative costs covered by the federal government; however, during emergencies or disasters, enhanced UI benefits are generally funded federally. The U.S. Department of Labor's (Department or DOL) Employment and Training Administration (ETA) is responsible for providing UI program direction and oversight.

For over 20 years, the Office of Inspector General (OIG) has reported² on weaknesses in the Department's ability to measure, report, and reduce improper payments in the UI program. The UI program has experienced some of the highest improper payment rates across the federal government, with an estimated rate above 10 percent³ for 17 of the last 20 years.⁴ The long-standing challenge with UI improper payments can be further exacerbated in times of crisis, including natural disasters and economic downturns.⁵

- 1 When referring to UI, this 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, the Commonwealth of Puerto Rico, and the District of Columbia, that administrative body is a state workforce agency. There are, therefore, 53 state workforce agencies that signed agreements with the Department to administer pandemic-related UI programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. 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 they signed an agreement with the Department.
- 2 To learn more about the UI program and our oversight in this area, please visit our UI Oversight webpage at: <https://www.oig.dol.gov/doloiguioversightwork.htm>.
- 3 To fully comply with the Payment Integrity Information Act of 2019, agencies must report an improper payment rate of less than 10 percent for each program and activity for which an estimate was published.
- 4 UI improper payments data for Fiscal Year (FY) 2004 through FY 2023 as reported to the Office of Management and Budget.
- 5 Recent examples include hurricanes, the Great Recession, and the COVID-19 pandemic. For instance, 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 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.

Reducing Unemployment Insurance Improper Payments

Over the last 3 years, the Department has reported historically high rates of improper payments, including fraud, in the UI program. Specifically, the Department reported an estimated improper payment rate of 18.71 percent for Fiscal Year (FY) 2021 and 21.52 percent for FY 2022. Based on our audit and investigative work, the actual improper payment rate for these periods was likely higher. Although the improper payment rate for FY 2023 has been reduced to 14.83 percent,⁶ this rate still exceeds pre-pandemic levels and fails to meet federal requirements.

CHALLENGE FOR THE DEPARTMENT

The Department continues to face challenges in ensuring UI improper payments are reduced—first and foremost through prevention. When prevention fails, timely and accurate detection and reporting—as well as recovery of all practicable funds—become essential. If sufficient action to course correct is not taken, improper payments within the UI program will likely remain high.

Improper payments have largely resulted from a combination of four primary causes. First, some claimants fail to demonstrate that they meet their states' requirements for searching for new jobs (work search).⁷ Second, some claimants continue to claim UI benefits after returning to work or misreport earnings (benefit year earnings). Third, some employers, or their third-party administrators, fail to provide prompt and adequate information about why individuals left their employment (employee separation). Fourth, individuals intentionally commit deceptive acts related to the payment or collection of UI benefits.⁸

WHAT IS AN IMPROPER PAYMENT?

A payment is improper if it should not have been made or was to the wrong recipient.

*

Examples include overpayments and underpayments.

*

An improper payment can be unintentional or intentional.

*

Intentional improper payments are more commonly referred to as financial fraud.

6 The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2023, Report No. 22-24-007-13-001 (May 29, 2024), available at: <https://www.oig.dol.gov/public/reports/oa/2024/22-24-007-13-001.pdf>

7 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 comply with a state's required work search activities.

8 ETA has included fraud as an element of the leading causes rather than as a separate cause. For Program Year 2023, ETA reported the top three causes for overpayments resulted in more than \$2.9 billion in overpayments. Of this total, over \$1.2 billion was attributable to fraud. Overpayments, a subset of improper payments, constitute the majority of improper payments.

Prevention

One key challenge in preventing improper payments is ensuring UI benefits are paid to only those individuals eligible under program requirements. Accurate initial determinations of eligibility are critical to ensuring that benefits are provided only to those eligible under the program. States struggle to accurately determine eligibility and identify sophisticated fraud schemes due to factors such as limited staff and outdated information technology (IT) systems.

Our audit work confirmed that the issues of staffing and system capabilities persisted into the pandemic and beyond. Staffing shortages and outdated IT systems were identified, at least in part, as causes for the issues found in over 70 percent of our pandemic-related UI audits. According to ETA's FY 2023 Unemployment Insurance Integrity Strategic Plan, states continue to face significant challenges with staff turnover and outdated IT systems.

Detection

Over the past 4 years, we have continued to identify internal control weaknesses in the UI program to prevent improper payments, particularly fraud. Currently, states face ever-evolving fraud schemes, including those by malicious cyber-enabled⁹ bad actors and criminal enterprises, which can overwhelm state systems. Our work identified that the pandemic turned UI into a lucrative target for criminals who continue to focus on the program, adapting their tactics to exploit systemic weaknesses. ETA's FY 2023 Unemployment Insurance Integrity Strategic Plan reported that underfunding and outdated technology have limited states' responsiveness. It also reported that states worked to combat relentless fraud schemes—such as cyber-attacks, claims filed with stolen identities, spoofing of state UI websites to steal personally identifiable information, and bot attacks that overwhelm state systems—that circumvent many prevention and detection tools.



Establishing a data analytics capability with a dedicated team of data scientists at the federal level would allow ETA to monitor and analyze UI claims data on an ongoing basis.

⁹ Per Executive Order 13984, issued January 19, 2021, “the term ‘malicious cyber-enabled activities’ refers to activities, other than those authorized by or in accordance with United States law that seek to compromise or impair the confidentiality, integrity, or availability of computer, information, or communications systems, networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon.”

Reducing Unemployment Insurance Improper Payments

ETA would then be able to identify high-risk areas across multiple states and quickly flag potentially fraudulent claims to refer to the OIG and states for further action. These early detection flags could help prevent losses due to fraud. For example, our investigators, auditors, and data scientists collaboratively identified \$46.9 billion in potentially fraudulent UI benefits paid from March 2020 to April 2022 in six specific high-risk areas, involving claims with Social Security numbers:

- filed in multiple states,
- of deceased persons,
- of federal prisoners,
- used to file UI claims with suspicious email accounts,
- belonging to individuals under 14 years of age, and
- belonging to individuals 100 years of age or older.

Furthermore, our investigators have identified crimes related to UI fraud both throughout the United States and by foreign bad actors, resulting in the conviction of over 1,300 criminals. Notable cases included a criminal organization involved in murder and narcotics trafficking; former federal and state employees targeting UI funds; federal and state inmates committing fraud; a criminal enterprise committing UI fraud with stolen personally identifiable information and operating a fentanyl distribution ring; and a foreign national convicted of UI and elder fraud schemes.

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Reporting

In May 2021, we reported that, during the first 6 months of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, states did not complete required reporting for nonfraudulent and fraudulent overpayments.¹⁰ This, in part, ultimately resulted in the Department receiving its first qualified opinion on its consolidated financial statements in 25 years.¹¹ Specifically, the \$4.4 billion reported in UI benefit overpayments could not be relied upon because certain states did not

¹⁰ COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

¹¹ The Department received a qualified opinion on its FY 2021 financial statement audit. The FY 2021 Independent Auditor's Report on the DOL Financial Statements, Report No. 22-22-003-13-001 (November 19, 2021), is available at: <https://www.oig.dol.gov/public/reports/oa/2022/22-22-003-13-001.pdf>.

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report UI overpayment activity. In August 2022, we issued an alert memorandum¹² reporting that some states continued to not submit reports to ETA or inaccurately reported zero activity.

As of September 25, 2024, approximately 4 out of 53 states have not completed all required overpayment reporting for CARES Act programs. This lack of accurate state performance information hinders Congress and ETA's ability to assess state activities, identify program weaknesses, and improve future temporary programs.

To meet improper payment reporting requirements under federal law, ETA uses the Benefit Accuracy Measurement (BAM) program. BAM is a diagnostic tool designed for federal and state staff to identify systemic errors, determine their root causes, implement corrective actions, and estimate the improper payment rate for states and the nation. Each state selects weekly random samples of UI paid and denied claims. BAM investigators then audit these claims to determine whether the claimant was properly paid or denied UI benefits. The criteria for determining payment and denial accuracy include federal and state laws, administrative codes, rules, and official policies.



However, because BAM relies on statistical sampling, the improper payment rate determined by the BAM program may not accurately reflect the true rate or causes of improper payments. Additionally, the complexity of the criteria used for assessments can be interpreted and applied differently across states. This variability can complicate efforts to accurately measure and address improper payments. Due to these concerns, the OIG plans to assess ETA's use of the BAM system as a tool to measure the accuracy of states' paid and denied claims and identify root causes to reduce improper payments in UI programs.

¹² Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs, Report No. 19-22-004-03-315 (August 2, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-004-03-315.pdf>

Recovery

The OIG estimated states may have paid \$191 billion improperly during the COVID-19 pandemic period, with the majority being overpayments.¹³ ETA and individual states continue to face the daunting task of recovering overpayments. From April 1, 2020, to September 25, 2024, states have reported recovering approximately \$8.6 billion in improperly paid UI program funds.¹⁴

Of this amount, states have reported recovering only about \$1.7 billion of the estimated \$76 billion in fraudulent UI funds paid. A critical timeline underpins this recovery effort. The statute of limitations pertaining to the majority of these UI cases, which occurred during the pandemic period, will begin to expire in early 2025. Beyond that point, not only will the recovery of these UI funds become exceedingly difficult, but the ability to hold fraudsters accountable will also become increasingly unlikely. The importance of swift and effective action in these recovery efforts cannot be overstated. In addition, the OIG is concerned about the possible untimely disposal of pandemic UI program claims data and supporting records by state workforce agencies. Without this data, the OIG will not be able to conduct effective audit and investigative oversight even if Congress extends the statute of limitations for pandemic UI fraud.

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According to ETA, many of the estimated fraudulent overpayments, especially those from the pandemic, involve UI identity fraud, where the perpetrator of the fraud is unknown. Identity fraud is often perpetrated by sophisticated criminal organizations, with many of these fraud rings operating outside of the United States. States indicated that if they can identify the individual responsible for the identity fraud, they will establish an overpayment and initiate prosecution and recovery efforts. However, if the perpetrator remains unknown, overpayment recovery is not possible until the individual is identified.

We are also concerned that the ability of state workforce agencies to recover UI overpayments is negatively affected by the waiver authority granted by the CARES Act. In addition, under ETA's guidance, blanket waivers allow states to waive the recovery of multiple claimants'

¹³ With the exception of Pandemic Unemployment Assistance, for which claims could be backdated to January 27, 2020, we define the UI pandemic period as March 27, 2020, through September 6, 2021.

¹⁴ This recovery amount includes benefits paid under regular UI, Federal Pandemic Unemployment Compensation, Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Mixed Earners Unemployment Compensation. Some of these recoveries may apply to overpayments made after September 6, 2021, when the pandemic period ended.

overpayments at once using a single set of facts instead of on a case-by-case basis. In August 2023, we started assessing the effects of waivers, including blanket waivers, on the recovery of UI overpayments, including fraud. While the Department has provided guidance stating the recovery of fraudulent overpayments may not be waived, there is a risk that states—operating under weak program controls—may have waived or will waive fraudulent overpayments. As of September 25, 2024, states reported waiving recovery of more than \$12 billion in overpayments for the three key¹⁵ CARES Act programs.

Furthermore, in December 2023, ETA's guidance granted states the authority to apply their finality laws¹⁶ to CARES Act claims. The OIG is concerned that the application of finality laws may have a negative impact on the detection of fraudulent pandemic UI claims and the recovery of overpayments.

DEPARTMENT'S PROGRESS

The Department has emphasized the progress it has made in addressing challenges with the UI program. For example, 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. According to DOL, the Office of Unemployment Insurance Modernization will provide oversight and management of the \$1 billion¹⁷ allotted to UI initiatives by the American Rescue Plan Act of 2021. These initiatives aim to prevent and detect fraud, promote equitable access, ensure timely benefit payments, and reduce backlogs. To achieve this, ETA, in coordination with the Office of Unemployment Insurance Modernization, has awarded targeted grants to states and territories, offered improved guidance, directed assistance, and tested technology-driven solutions.

To this end, in April 2024, the Department reported that it had awarded \$783 million in grants to 52 states. This included, but was not limited to, \$226 million in fraud prevention grants to 51 states and territories, \$219 million in equity grants to 45 states and the District of Columbia, \$113 million in Tiger Teams funding and assistance to 36 states, and \$204 million in IT modernization grants to 19 states.

15 The CARES Act established three key new UI programs: Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, and Pandemic Emergency Unemployment Compensation.

16 There are two common types of finality laws. The first limits the ability of the state agency to redetermine or reconsider one of its prior determinations or decisions. The second limits the ability of a claimant or employer to seek redetermination or reconsideration of a decision or to file an appeal from a determination or decision outside of the specific timelines set out in state law. ETA's guidance applies to the first type of finality laws—state laws limiting the state agency's authority to reconsider or redetermine prior determinations or decisions, not those related to appeals.

17 The American Rescue Plan Act of 2021 initially allotted \$2 billion to UI initiatives; however, \$1 billion was rescinded by the Fiscal Responsibility Act of 2023.

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Furthermore, ETA continued to provide oversight and technical assistance through State Quality Service Plans, the FY 2023 Unemployment Insurance Integrity Strategic Plan, and information provided by the OIG. Additionally, in response to a Government Accountability Office recommendation, ETA worked with the Office of the Chief Financial Officer to develop a UI fraud risk profile in line with the Government Accountability Office's Fraud Risk Framework. Also, in response to a Government Accountability Office recommendation, the Department published a plan to transform the UI program.¹⁸ According to DOL, this plan represents a more complete account of activities and strategies underway and being pursued by the Department—along with recommendations for necessary legislative action. The plan is structured around DOL's key action areas:

- adequately funding UI administration,
- delivering high-quality customer service,
- building resilient and responsive state IT systems,
- bolstering state UI programs against fraud,
- ensuring equitable access to robust benefits and services,
- rebuilding and stabilizing the long-term funding of state UI benefits, and
- strengthening reemployment and connections to suitable work.

Finally, as part of efforts to bolster state UI programs against fraud, the Department also made available a nationwide tool for states to strengthen identity verification. According to ETA, states cannot rely solely on an identity verification service or a single fraud prevention solution to detect complex, evolving fraud threats. The Department is supporting states through antifraud strategies like the UI Integrity Center, which offers program integrity resources. In October 2021, DOL enabled state access to the Social Security Administration's Prisoner Update Processing System via the Interstate Connection Network to help flag UI claims by incarcerated individuals. Thirty-seven states are either connected or establishing a connection to the Prisoner Update Processing System. Additionally, the UI Integrity Center partnered with the U.S. Department of the Treasury's Bureau of the Fiscal Service to provide states access to the Do Not Pay system, a resource that provides access to data sources and services to support eligibility determinations and analytics services for agencies.



ETA also announced its intent to amend its regulations to facilitate the OIG's ongoing access to state claims and wage data, and it anticipates a notice of proposed rulemaking by May 2025. In July 2023, ETA published a request for information on potential revisions that would require

¹⁸ ETA, "Building Resilience: A Plan for Transforming Unemployment Insurance" (April 18, 2024), available at: https://oui.doleta.gov/unemploy/transformation_plan.asp

states to disclose unemployment compensation data to the OIG for oversight activities, including audits. Currently, ETA is using the responses to draft the updated regulations. In the interim, ETA has required the sharing of state UI data as a condition of the fraud prevention grants to provide such access through 2025, and recently issued guidance supporting additional grants that would provide access for potentially the next 2 to 5 years. The Inspector General is authorized to have timely access to this data without constraints under the Inspector General Act of 1978, as amended, and needs access to all UI program data to fulfill his mission.

WHAT REMAINS TO BE DONE

It is crucial that the Department take proactive steps to improve improper payment prevention and detection. These improvements are essential in ordinary circumstances, and their importance escalates during emergencies.

For the UI program, the Department needs to:

- Continue to work with states to modernize their UI systems, upgrade their technological capabilities, and leverage technology and automated solutions to protect federal benefits from improper payments, including fraud.
- Amend 20 C.F.R. § 603.5 and § 603.6(a) to ensure and reinforce that state UI information must be provided to the OIG for all Inspector General engagements authorized under the Inspector General Act of 1978, as amended, including audits, evaluations, and investigations. This needs to be done by the end of 2025, when integrity grants expire and the OIG's direct access to state UI information could again be impeded.
- Obtain access to state UI data and wage records and develop a data analytics capability at the federal level to regularly monitor the data to proactively detect and prevent improper payments, including fraud, and to identify trends and emerging issues that could negatively impact the UI program.
- Implement OIG recommendations on reporting, including by:
 - assisting states with claims, overpayment, and fraud reporting to create clear and accurate information; then, using the overpayment and fraud reporting to prioritize and assist states with fraud detection and recovery;
 - designing and implementing controls over certain UI program estimates to ensure management's review of the estimates are performed and documented at a sufficient level of detail; and
 - designing and implementing controls to timely reconcile state monthly financial summary reports to the Department's financial statements and determine the appropriate accounting treatment for adjustments.

CHALLENGE:

Protecting the Safety and Health of Workers



BACKGROUND

Federal law entitles U.S. workers to a safe and healthful workplace. Failure to keep workplaces free of known safety and health hazards can lead to injuries, illnesses, fatalities, and serious legal consequences. The Federal Mine Safety and Health Act of 1977 and the Occupational Safety and Health Act of 1970 are federal laws administered by, respectively, the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) to keep employees safe and healthy at work. MSHA is responsible for the safety and health of more than 320,000 miners who work at nearly 13,000 mines, and OSHA is responsible for the safety and health of approximately 130 million workers employed at more than 8 million worksites.

CHALLENGE FOR THE DEPARTMENT

MSHA and OSHA face significant challenges in completing their mandates to ensure the protection of American workers' safety and health, particularly in high-risk industries such as health care, meat packing, agriculture, construction, fishing, forestry, manufacturing, and underground and surface mining. Specifically, MSHA experienced challenges with completing inspections, writing violations, verifying operators abated hazards timely, improving the frequency of sampling for silica, and reducing the number of powered haulage and machinery accidents. OSHA faced challenges with employers' reporting of injuries and illnesses, inspecting enough worksites, developing standards on infectious diseases, and addressing workplace violence.



MSHA has not completed mandatory inspections mostly due to the elimination of inspection requirements when a mine was initially inaccessible by an inspector.¹⁹ This led to MSHA not inspecting 176 mines for at least 2—and, in some cases, 4—consecutive years. Additionally, MSHA is challenged with identifying when a mine needs a change in the mine's operating status

¹⁹ COVID-19: MSHA Did Not Complete or Accurately Report Mandatory Inspections, Report No. 19-24-001-06-001 (October 17, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2024/19-24-001-06-001.pdf>

or verifying its status, which factors into how many inspections MSHA conducts at the mine. Not maintaining accurate mine statuses in its systems has also led to other significant issues. For example, MSHA's system showed 6,070 underground coal mines that it had changed to "abandoned" status prior to FY 2018 but had not changed to "abandoned-sealed" status. This indicated the mine's underground openings still had not been sealed in accordance with the Federal Mine Safety and Health Act of 1977 and potentially presented a danger to the public.

We also found thousands of violations did not comply with the Federal Mine Safety and Health Act of 1977 and MSHA handbook requirements.²⁰ MSHA inspectors terminated nearly a third of violations after the abatement due date.

Regarding issues related to silica exposure limits, on April 18, 2024, MSHA issued its final rule on respirable crystalline silica, which is found in coal mine dust and various construction materials. However, there is still a risk of miners being susceptible to higher levels of exposure during the 12 to 24-month compliance transition period. The OIG is also focused on MSHA's efforts to improve the frequency of testing for silica exposure levels and is monitoring MSHA's progress to close a related audit recommendation.

In our November 2020 audit report,²¹ we noted MSHA generally performed sampling during its mandatory quarterly inspections for underground coal mines and semiannually for surface mines. Since silica levels can fluctuate, we have concerns regarding whether this frequency is enough to ensure the safety of miners at high-risk mines. Therefore, we recommended MSHA enhance its sampling program to increase the frequency of inspector samples where needed, such as through implementation of a risk-based approach. While MSHA agreed to study this recommendation and determine the necessity of increasing the frequency of inspector sampling by November 2021, it has yet to provide the results of that study or any corrective actions.

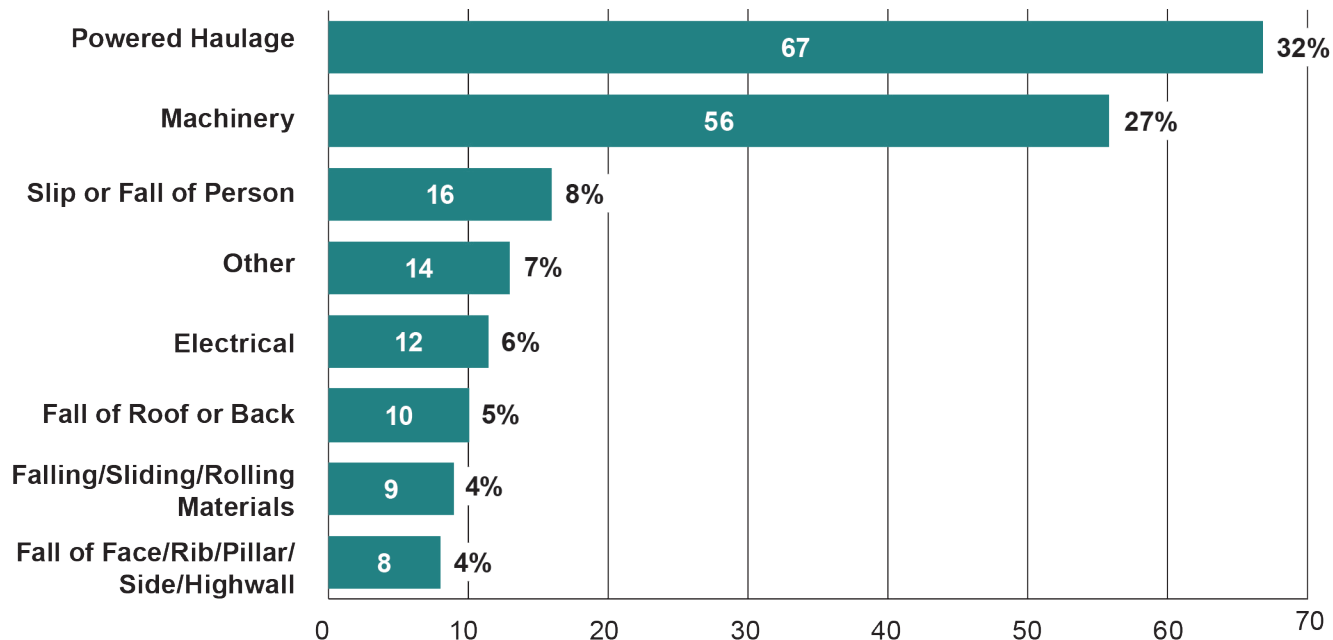
Since silica levels
can fluctuate, we
have concerns
regarding
whether quarterly
inspections are
enough to ensure
the safety of miners
at high-risk mines.

20 MSHA Can Improve How Violations Are Issued, Terminated, Modified, and Vacated, Report No. 05-21-002-06-001 (March 31, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-002-06-001.pdf>

21 MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica, Report No. 05-21-001-06-001 (November 12, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-06-001.pdf>

MSHA must also make the reduction of powered haulage and machinery accidents a top priority. These accidents have accounted for more than half of all mine fatalities for nearly 7 years (see Figure 1).

Figure 1: Number and Percentage of Top 8 Classes of Mining Fatalities, Calendar Years 2018–2024



Source: MSHA's Accident Injuries public dataset, as of August 30, 2024

Regarding OSHA, the underreporting of injuries and reporting noncompliance by employers limited OSHA's ability to focus inspection and compliance efforts where they were most needed. A recent OIG audit identified, on average, between 2016 and 2020,²² 59 percent of establishments in all industries failed to report their mandatory annual injury and illness data to OSHA. Additionally, OSHA could not identify if an establishment met the criteria for mandatory reporting. Therefore, OSHA could neither proactively remind specific establishments that they must report, nor effectively cite employers for non-compliance. Non-reporting continues to be a challenge for OSHA and results in an incomplete view of workplace injury and illness.

While OSHA has increased its number of inspectors—from 750 in 2021 to 846 as of February 29, 2024—it continues to be challenged with reaching the number of worksites

²² At the time of our fieldwork, Calendar Year 2021 data for the "Summary of Work-Related Injuries and Illnesses" form was not available. This information was reported in COVID-19: OSHA Needs to Do More to Address High Injury Rates of Warehouse Workers, Report No. 19-23-013-10-105 (September 27, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/19-23-013-10-105.pdf>.

for which it is responsible. Lack of available inspectors and time 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. OSHA, with its state partners, has approximately 1,850 inspectors responsible for the safety and health of workers at their worksites—translating to about 1 compliance officer for every 70,000 workers (see Figure 2).

Figure 2: Inspector to Worker Ratio



Source: OSHA's Commonly Used Statistics

In March 2022, we reported that OSHA did not attempt to collaborate with external federal agencies' enforcement and oversight personnel during the COVID-19 pandemic. This led to missed opportunities to protect vulnerable workers through interagency collaboration.²³ In the event of a future global health crisis, it would help OSHA to be prepared with a whole-of-government approach by leveraging partnerships within the regulatory community.

OSHA continues to be hampered by the lack of a permanent standard on infectious diseases aimed at protecting workers in all high-risk industries. Without this standard, OSHA will not be in a position to effectively protect the safety and health of workers operating in high-risk industries during future emergencies.

²³ COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies, Report No. 19-22-003-10-105 (March 31, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-003-10-105.pdf>

OSHA also needs to enhance its efforts to address workplace violence, which may include taking regulatory action to mitigate a worsening problem. Workplace violence is a growing hazard that has resulted in serious physical harm or death to employees. It is the third-leading cause of death on the job and an increasing cause of nonfatal injuries resulting in days away from work in private industry. In 2022, nearly 1 in every 6 work-related deaths were attributed to workplace violence, resulting in a total of 849 deaths—an increase from 761 in 2021 and 705 in 2020. These deaths exceeded the total number of reported fatalities resulting from exposure to harmful substances or environments, or fires and explosions.

DEPARTMENT'S PROGRESS

MSHA published its final rule on respirable crystalline silica on April 18, 2024. In the final rule, the permissible exposure limit was lowered to 50 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) for a full shift, calculated as an 8-hour time-weighted average for all miners. This rule is designed to lower miners' exposure to respirable crystalline silica and improve respiratory protection.

MSHA continues its initiative to lower powered haulage accidents through guidance on preventing accidents and meeting with mine personnel to emphasize best safety practices and training. On January 19, 2024, MSHA's final rule for the Safety Program for Surface Mobile Equipment became effective. The rule requires mine operators to develop, implement, and update written safety programs describing the actions it will take to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment. This final rule is a positive mitigating step in conjunction with the performance of other prevention outreach.



OSHA finalized a new injury and illness reporting rule that went into effect on January 1, 2024. The rule revises the injury and illness reporting requirements for employers by adding a new category of workplace—establishments with 100 or more employees in industries designated as very high-risk. Specifically, the rule not only requires continued annual submission of the “Summary of Work-Related Injuries and Illnesses” (300A) form but also requires annual submission of the “Log of Work-Related Injuries and Illnesses” (300) form as well as the “Injury and Illness Incident Report” (301) form, which provide details on those injuries and illnesses suffered at these workplaces.

To support the implementation of this final rule, OSHA also advised it updated the data collection capabilities of its Injury Tracking Application. This included developing a methodology and applications to collect, process, and analyze individual case reports of establishment-specific occupational injury and illness data from establishments with 100 or

more employees in certain high-risk industries nationwide. OSHA conducted initial analysis of the data, assigned occupation codes to individual cases, developed guidance materials for data users, and began initial steps to categorize data. Following the implementation of the newly effective final rule, OSHA received over 378,000 Form 300A submissions and over 778,000 Form 300 and 301 records from over 81,000 establishments as of April 2024.

WHAT REMAINS TO BE DONE

To improve the safety and health of miners, MSHA needs to:

- Improve the internal control system for the mandatory inspections program.
- Provide additional training to inspectors and improve internal controls related to its violation process.
- Enhance its sampling program to increase the frequency of inspector samples where needed.

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

- Create a permanent standard aimed at protecting workers in all high-risk industries from infectious diseases.
- Complete its initiatives to improve employer reporting of severe injuries and illnesses.
- 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.



CHALLENGE:

Helping Adults and Youth Succeed in the Labor Market



BACKGROUND

ETA manages programs that provide U.S. workers with job training services to enhance their employment opportunities primarily through state and local workforce development systems. In FY 2023, ETA received \$4.1 billion 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 more than \$1.7 billion for its Job Corps program, which provides education, training, career counseling, and support services to disadvantaged, at-risk youth at more than 120 Job Corps centers. While in the program, Job Corps students can earn their high school diploma (or equivalent) and industry-recognized credentials, with the goal of obtaining employment or entering a registered apprenticeship or the military.

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 effectively managing its workforce development grants, ensuring its training investments align with employers' needs, and ensuring Job Corps funding is used efficiently to help youth succeed in the labor market.

In March 2022, we issued an advisory report that highlighted three areas of concern where our body of work over the past decade identified weaknesses in DOL's management of its workforce development grants: (1) awarding grants, (2) reviewing grant recipients' use of funds, and (3) measuring grant recipients' performance.²⁴ Although DOL has addressed many of the related recommendations from our prior reports, the Department needs to ensure these issues do not reoccur. In our September 2021 report,²⁵ 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. Insufficiently designed grant goals and metrics make it difficult for ETA to determine if the goals and agency's expected outcomes are being achieved.

24 ETA's Management of Workforce Development Grants: Key Concerns, Report No. 09-22-001-03-001 (March 31, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/09-22-001-03-001.pdf>

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

In September 2023,²⁶ we reported ETA needs to improve its oversight of grant recipients and sub-recipients²⁷ in New Jersey to ensure grant funds serve their intended purposes. New Jersey received statutory and discretionary grant funds²⁸ to provide training and supportive services to eligible job seekers, but ETA did not ensure these funds were consistently used for the grants' intended purposes. Specifically, we found ETA did not ensure grant recipients effectively: (1) used over \$100 million to serve the intended population, (2) enrolled eligible individuals, and (3) complied with federal requirements when paying \$168,460 for services. In addition, statutory grant sub-recipients did not have a system in place to account for \$6.9 million in grant funding, including how it was spent. The OIG is currently conducting additional work in New York and Texas to further evaluate ETA's grant oversight.

In our work on ETA's administration of the Disaster National Dislocated Worker Grants (DWG) published in October 2024,²⁹ we reported on the DWG awarded under the Additional Supplemental Appropriations for Disaster Relief Act, 2019. The act provided ETA with \$50 million³⁰ for the dislocated workers assistance national reserve³¹ for necessary expenses directly related to the consequences of multiple natural disasters. We found ETA did not establish written interagency agreements with the Federal Emergency Management Agency (FEMA) to formalize collaboration efforts in disaster recovery. ETA needs to strengthen its controls over how grant recipients and sub-recipients: (1) coordinate with FEMA, (2) document participant eligibility, (3) receive timely grant funds to prevent future work stoppages, and (4) use grant funds. In total, we identified questioned costs of \$926,513 consisting of \$909,240 for ineligible participants and \$17,273 in costs not allocable to the grant.

26 COVID-19: The Employment and Training Administration Needs to Improve Oversight of Grants Awarded in New Jersey, Report No. 19-23-016-03-391 (September 28, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/19-23-016-03-391.pdf>

27 A sub-recipient is a non-federal entity that receives a sub-award from a pass-through entity to carry out part of a federal program. It does not include an individual who is a beneficiary of the program.

28 Statutory grants are noncompetitive grants required by law to be given to the state or outlying area based on statistical criteria. Discretionary grants are awarded based on competitive selection and eligibility.

29 ETA Needs to Improve Oversight of Disaster Dislocated Worker Grants, Report No. 02-25-001-03-391 (October 24, 2024), available at: <https://www.oig.dol.gov/public/reports/oa/2025/02-25-001-03-391.pdf>

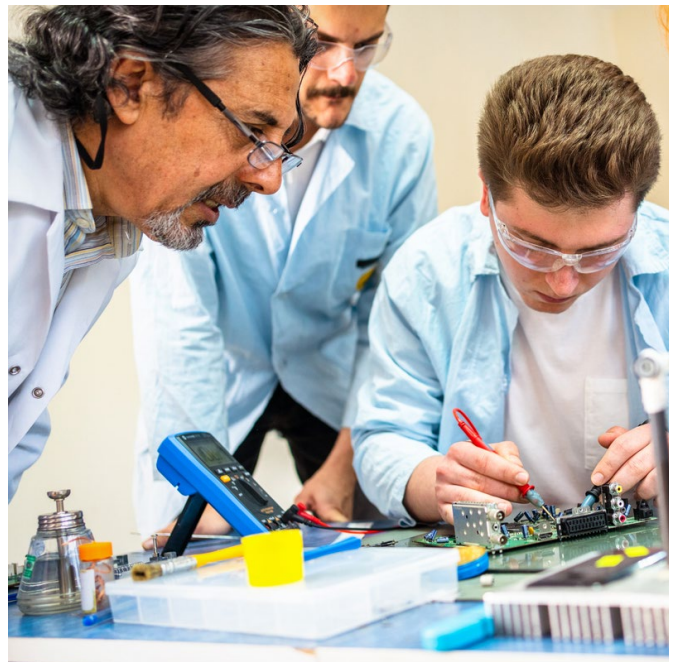
30 Of the \$50 million, \$500,000 was transferred to the OIG for oversight of activities responding to the covered disasters or emergencies.

31 Approximately 80 percent of the Workforce Innovation and Opportunity Act's Dislocated Worker funding is allotted to states by formula, and the remaining 20 percent is for a national reserve to address specific dislocation events.

ETA is also challenged to ensure its training investments align with employers' needs. Our audit work from September 2020³² found that, although ETA had data to determine whether 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. Similarly, in a 2018 audit³³ that followed up on the employment status of a sample of Job Corps students 5 years after they left the program, we found ETA was unable to demonstrate the extent to which its training programs helped those participants obtain meaningful jobs appropriate to their training.

Another challenge for the Job Corps program is ensuring funds are used efficiently to help youth succeed in the labor market—particularly because enrollment has continued to decline as a long-term trend while funding has remained relatively the same. Prior to the pandemic, average on-board strength (OBS)³⁴ declined from a high of 42,982 students in Program Year (PY)³⁵ 2012 to 28,998 in PY 2019. During the pandemic, average OBS dropped to as low as 9,817 students during PY 2021 due to suspending in-person instruction and new enrollments. In April 2021, Job Corps began to transition back to in-person instruction and started enrolling students again. However, in PY 2023, average OBS was still significantly below pre-pandemic levels

(see Figure 3). Despite the decline in average OBS, Job Corps has requested and received a constant level of similar funding of approximately \$1.7 billion each year. The OIG plans to examine how Job Corps is spending funds in light of the decline in student enrollment and the effectiveness of Job Corp's actions taken to address declining program enrollment.



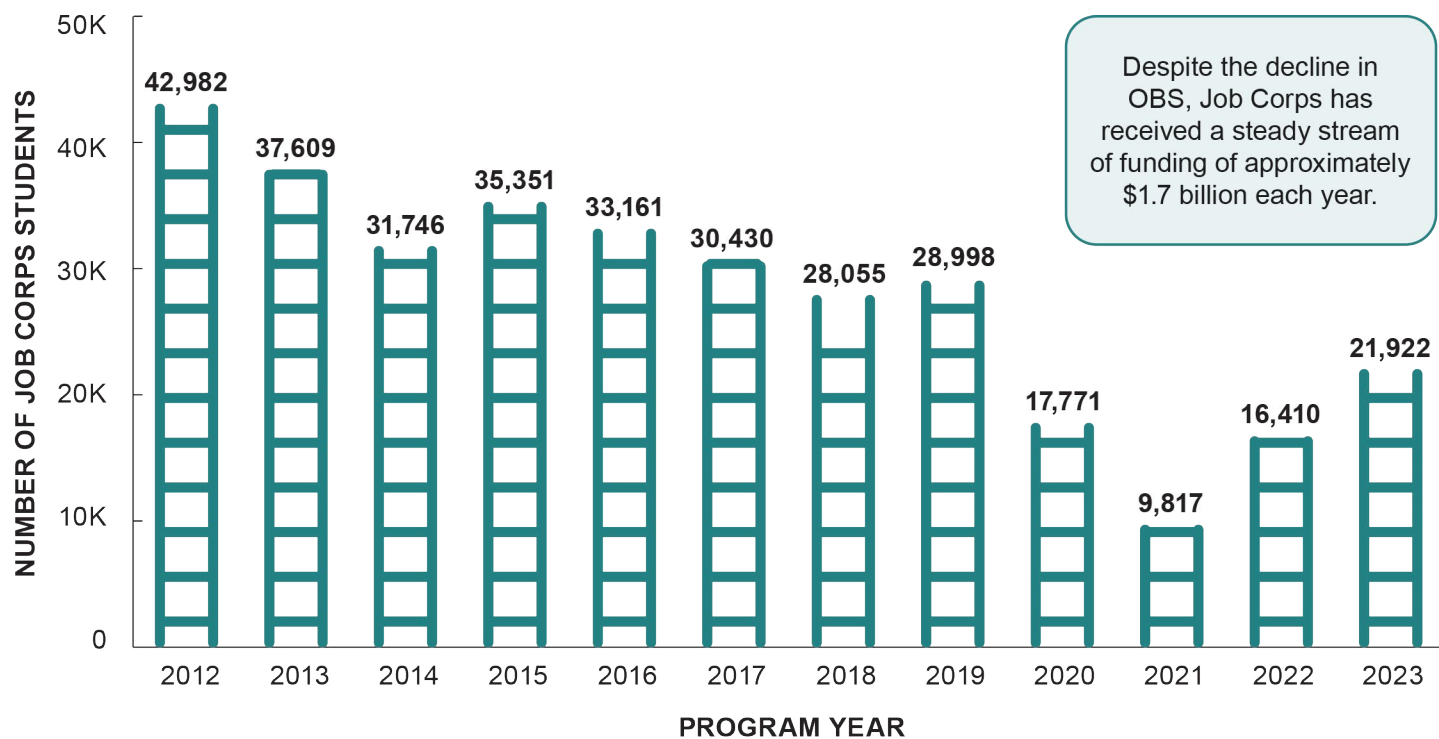
32 ETA Could Not Demonstrate That Credentials Improved WIOA Participants' Employment Outcomes, Report No. 03-20-002-03-391 (September 30, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/03-20-002-03-391.pdf>

33 Job Corps Could Not Demonstrate Beneficial Job Training Outcomes, Report No. 04-18-001-03-370 (March 30, 2018), available at: <https://www.oig.dol.gov/public/reports/oa/2018/04-18-001-03-370.pdf>

34 On-board strength measures the number of students active in the program on a given day.

35 Job Corps is operated on a program year basis, which runs from July 1 of a given year to June 30 of the following year. For example, PY 2022 ran from July 1, 2022, through June 30, 2023.

Figure 3: Job Corps Average On-Board Strength from PY 2012 to PY 2023



Source: Data provided by ETA as of July 31, 2024

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: (1) which credentials are available; (2) the quality and labor market value of those credentials; and (3) 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 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.

ETA has also taken actions to improve grant oversight of its Disaster National Dislocated Worker Program. A prior audit³⁶ found ETA needed to improve grant recipient oversight to ensure timely community restoration, expedited disaster relief assistance, and efficient use of grant funds for maximum employment outcomes. In March 2020, ETA issued its Training and Employment Guidance Letter 12-19 to update the documents grant recipients need to collect

³⁶ ETA Needs to Improve Its Disaster National Dislocated Worker Program, Report No. 02-21-002-03-391 (January 29, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/02-21-002-03-391.pdf>

and maintain to support eligibility for DWG participants. In addition, in June 2022, ETA issued Training and Employment Guidance Letter 16-21,³⁷ which emphasizes the importance of quickly beginning services to support post-disaster employment and economic recovery. It clarifies self-attestation as an acceptable use of eligibility determination and the expectation for subsequent efforts at obtaining appropriate documentation. The guidance also provides additional information on allowable cleanup and recovery activities.



WHAT REMAINS TO BE DONE

The Department needs to continue to:

- Manage its workforce development grants more effectively by having sufficient controls to ensure proposals submitted by grant applicants meet all solicitation requirements and grant program objectives.
- Establish performance goals and metrics that appropriately measure grant recipient performance against grant and program objectives using reliable and accurate data.
- Improve and strengthen its processes to assess risk and review grant recipients' and sub-recipients' use of funds to ensure funds are used efficiently and as intended.
- Coordinate with FEMA and update Dislocated Worker Grant program guidance to establish requirements for coordinating with FEMA during large-scale disasters.
- Bolster Job Corps student enrollment while reassessing the program's budgetary needs as student enrollment remains significantly below capacity.

³⁷ ETA, Training and Employment Guidance Letter 16-21, Updated National Dislocated Worker Grant Program Guidance (June 16, 2022), available at: https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2021/TEGL_16-21.pdf

CHALLENGE:

Maintaining the Integrity of Foreign Labor Certification Programs



BACKGROUND

Foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. These programs are designed to assure that the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

The programs involve a number of agencies within the Department, as well as the state workforce agencies, U.S. Citizenship and Immigration Services, and the U.S. Department of State. The Immigration and Nationality Act and related laws assign specific responsibilities to the U.S. Secretary of Labor for employment-based immigration and temporary nonimmigrant programs.

The Department's responsibilities include certifying 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 wage³⁸ determinations and reviewing the permanent labor certification program (PERM), H-1B, H-2A, and H-2B employer applications. In addition, the Department's Wage and Hour Division (WHD) conducts civil investigations of employer-issued Foreign Labor Certifications (FLC) to enforce certain worker protections that 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.



³⁸ 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 at: <https://www.dol.gov/agencies/eta/foreign-labor/wages>.

CHALLENGE FOR THE DEPARTMENT

The Department's primary challenge in ensuring the integrity of FLC programs is approving applications for all four FLC programs based on employers' attestations. Such attestations are the main criteria—meaning, employers agree to the conditions of employment without providing supporting documentation to validate their agreements. For example, a farmer may apply and state that, due to a lack of appropriate skilled local labor, a farm needs 50 foreign laborers for the upcoming season. Among other attestations, the farmer attests that the farm: (1) needs all those workers, (2) will pay the proper wage, and (3) will provide proper working conditions.

The Department is reliant on an employer's attestation that a given application meets its requirements for impacts on U.S. workers. For instance, whether employers meet requirements to determine if there is actually local labor available or if hiring a foreign worker might otherwise adversely affect wages and working conditions of similarly employed U.S. workers. In addition, DOL must balance a thorough review of FLC visa applications with the need to timely process these applications to meet 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.



OIG investigations continue to reveal FLC program integrity challenges. Over the last 11 years, the OIG, along with other federal partners, have conducted 189 criminal investigations related to fraud in FLC programs (see Table).

Table: Breakdown of the OIG’s Criminal Investigations Related to FLC Programs from 2013 to the Present

FLC Program	Number of Investigations	Percentage of Investigations
H-1B	85	45%
H-2A	30	16%
H-2B	44	23%
PERM	23	12%
Other (e.g., multiple programs)	7	4%
Total	189	100%

Source: OIG investigations data

These investigations have shown FLC programs to be susceptible to significant fraud and abuse by perpetrators, including immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. For example, in one recent OIG investigation, an employer was sentenced to 18 months in prison and ordered to pay more than \$1.1 million in restitution for fraudulently placing H-2B workers in jobs not approved by DOL and for exploiting workers by paying them significantly less than the wages required under the H-2B program.

Significantly, OIG investigations also uncovered illegal activities of employers misusing FLC programs to engage in human trafficking—with victims being exploited for employers’ economic gain. For example, in an ongoing OIG investigation,³⁹ 16 individuals have pled guilty, and 13 individuals have been sentenced to date as part of a federal racketeering conspiracy, which victimized agricultural workers admitted to the United States under the H-2A temporary visa program. The investigation revealed the conspirators committed multiple offenses, including subjecting H-2A workers to forced labor, harboring and concealing workers, visa fraud, and fraud in foreign labor contracting. The conspirators used coercive means to obtain thousands of

39 U.S. Department of Justice, U.S. Attorney’s Office, Southern District of Georgia, “Human Smuggling, Forced Labor Among Allegations in South Georgia Federal Indictment,” press release (November 22, 2021), available at: <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>; and U.S. Department of Justice, U.S. Attorney’s Office, Southern District of Georgia, “Three Men Sentenced to Federal Prison on Charges Related to Human Trafficking,” press release (March 31, 2022), available at: <https://www.justice.gov/usao-sdga/pr/three-men-sentenced-federal-prison-charges-related-human-trafficking>

hours of physically demanding agricultural labor from the victimized H-2A workers, all for lesser pay. The coercive means included: (1) confiscating the workers' passports; (2) subjecting the workers to crowded, unsanitary, and degrading living conditions; and (3) isolating the workers and limiting their ability to interact with anyone other than employees.

Also, each of the four FLC programs have unique rules, some resulting in specific integrity challenges. In 2020, we issued a report⁴⁰ that found rulemaking since 2003 had revamped the PERM, H-2A, and H-2B visa programs and addressed some of the vulnerabilities cited in audits and investigations by the OIG and the Government Accountability Office. Those same rules created challenges regarding DOL's responsibilities, specifically, implementing employer attestation programs. Additionally, the Department continues to have limited authority over the H-1B and PERM programs, which challenges the goal of protecting the welfare of the nation's workforce.

The statute limits DOL's ability to deny H-1B applications and to investigate potential violations. Specifically, DOL may only deny incomplete and obviously inaccurate H-1B applications and has only limited authority to conduct H-1B investigations in the absence of a complaint. DOL established a process for information-sharing between U.S. Citizenship and Immigration Services and WHD related to Secretary-certified H-1B investigations. The PERM program itself is persistently vulnerable to employers not complying with its qualifying criteria. Therefore, both the PERM and H-1B programs remain prone to fraud.

The H-1B visa program, which allows U.S. employers to temporarily hire foreign workers in specialty occupations such as software engineers, software developers, or systems analysts, has significant vulnerability. 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."⁴¹ The OIG continues to investigate and discover various fraud schemes within the H-1B program, including

40 Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs, Report No. 06-21-001-03-321 (November 13, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2021/06-21-001-03-321.pdf>

41 According to 8 U.S.C. § 1182(n) and (t)

labor leasing,⁴² benching of foreign workers,⁴³ and wage kickbacks.⁴⁴ In addition, WHD is generally limited by statute⁴⁵ to conducting investigations of alleged H-1B violations only when a complaint has been filed. That puts tremendous pressure on and increases the risk for vulnerable individuals as foreign workers are generally reluctant to file complaints in fear of retaliation and losing their jobs.

The H-2B program, which allows U.S. employers to hire foreign workers for temporary or seasonal jobs, has seen rising demand while the availability of visas remains limited. The increase in applications impacts DOL's ability to process applications in a timely manner. These increases can temporarily overload FLC's case processing and increase the risk of delays. DOL is challenged to balance a thorough review of H-2B visa applications with the need to timely process these applications to meet workforce demands.

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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—unlike the H-2A and H-2B programs—to validate the integrity of employers' attestations. Furthermore, 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.

42 Labor leasing is when workers are provided to a third party that usually offers limited or no benefits to the workers and for a limited time.

43 Benching of foreign workers is when employers, during a period of low productivity or otherwise slow business, refuse to pay foreign workers their wages, also known as "benching" them.

44 Wage kickbacks are 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 employer-employee relationship required by U.S. Citizenship and Immigration Services 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 the petitioning employer.

45 Under the Immigration and Nationality Act, before the Secretary may investigate an employer of H-1B workers, the Secretary must either: (a) have already found an employer to have willfully failed to meet the statutory requirements or (b) receive specific credible information from a known source likely to have knowledge of an employer's non-compliance or willful violations.

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: (1) replace the legacy iCERT System, (2) improve customer service, and (3) 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 DOL, the FLAG system also enhanced data sharing between the Department and state workforce agencies.

The SeasonalJobs.dol.gov website 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. 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.

As of June 2023, ETA has transitioned the PERM application process to the FLAG system and updated the PERM application forms. According to WHD, DOL has established a process to initiate Secretary-certified H-1B investigations and entered into a memorandum of agreement with DHS. The memorandum of agreement allows DHS to share data and U.S. Citizenship and Immigration Services referrals of suspected violations of the terms of H-1B labor condition applications with WHD.



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 DOL with the funding structures used by DHS and the U.S. Department of State 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.

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 programs.
- Pursue statutory and regulatory authority to strengthen its ability to debar employers who abuse these programs.

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.⁴⁶
- 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 its efforts to ensure 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.
- Investigate whether PERM workers are still working for the employers designated in the applications.

⁴⁶ As required of DOL and DHS, according to Executive Order 13940, issued on August 3, 2020.

CHALLENGE:

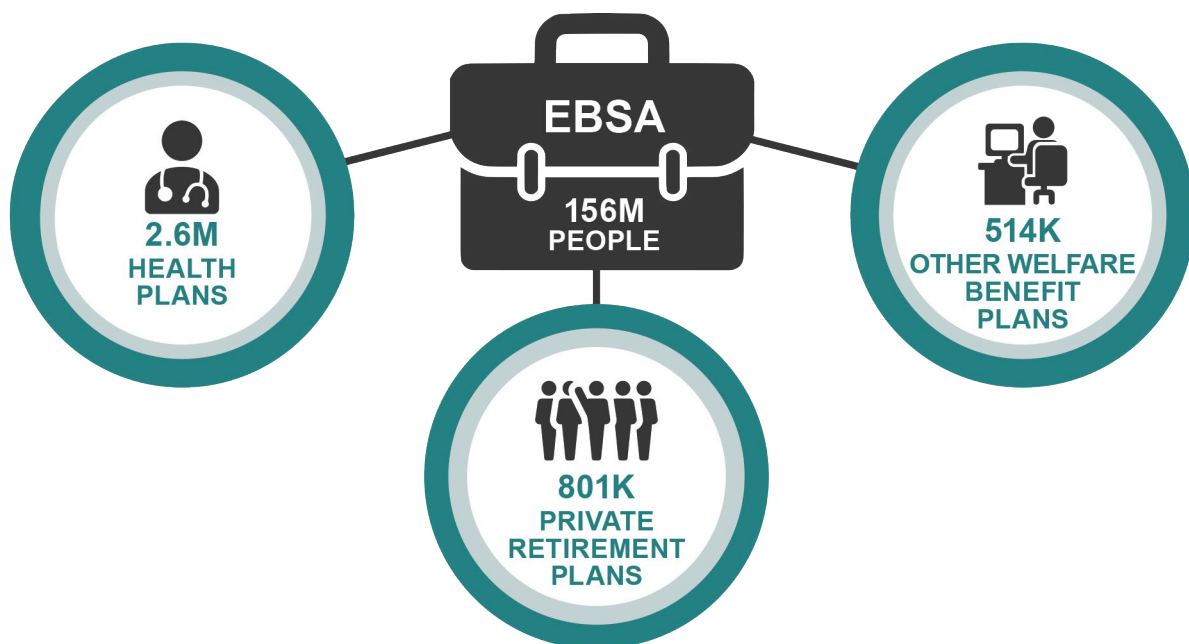
Protecting Retirement, Health, and Other Benefit Plans for Workers, Retirees, and Their Families



BACKGROUND

The Employee Benefits Security Administration (EBSA) protects the integrity of pension, health, and other employee benefit plans of about 156 million workers, retirees, and their families under the Employee Retirement Income Security Act of 1974 (ERISA).⁴⁷ The agency's responsibilities include enforcement authority over approximately 2.6 million health plans, 801,000 private retirement plans, and 514,000 other welfare benefit plans, which altogether hold approximately \$13.6 trillion in assets. It also has interpretive and regulatory responsibilities for Individual Retirement Accounts, which hold about \$14.3 trillion in assets.

Additionally, EBSA provides oversight of the federal government's Thrift Savings Plan (TSP), the largest defined contribution retirement plan in the United States, with nearly 7.1 million federal employees and uniformed military service members participating and \$927 billion in assets according to EBSA as of July 31, 2024.⁴⁸



⁴⁷ 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.

⁴⁸ The total value of TSP assets fluctuates over time and is affected by market volatility. For example, per EBSA, the TSP financial statement's asset value was \$726 billion as of December 31, 2022, as compared to \$927 billion as of July 31, 2024.

CHALLENGE FOR THE DEPARTMENT

EBSA faces the challenge of how to allocate limited resources in a way that will maximize its efforts. For example, at current staffing levels, EBSA has the enforcement capacity of roughly 1 investigator for every 13,000 plans and \$45 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. These regulatory changes include:

- Congress' 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,
 - air ambulance reporting, and
 - parity in the provision of mental health and substance use disorder benefits; and
- requirements mandated by the SECURE 2.0 Act of 2022.



EBSA also faces the challenge of ensuring private-sector group health plans—which cover approximately 135.6 million workers and their families—comply with federal health insurance regulations. This includes the Mental Health Parity and Addiction Equity Act of 2008, which requires most plans and health insurance companies to cover mental health and substance use disorder benefits in parity with the way they cover benefits for physical health. This is critical as workers suffering from mental health and substance use disorder conditions could be economically and socially disadvantaged with limited resources to access and pay for care

when benefits have been improperly denied or limited. The OIG is currently examining the extent of EBSA's enforcement of mental health parity laws and regulations and plans to issue a report in FY 2025.

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. Past OIG work⁴⁹ revealed that approximately \$3 trillion in pension assets—including an estimated \$800 billion to \$1.1 trillion in hard-to-value alternative investments—received only limited-scope audits. According to EBSA, the pension asset amount increased to \$5.3 trillion as of 2022. 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.

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.

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 in the early 2000s, when closer to half of plan audits were limited-scope. In 2019, the American Institute of Certified Public Accountants replaced limited-scope audits with ERISA Section 103(a)(3)(C) audits and imposed new performance requirements on plan management and auditors. However, it is unclear how these changes impact EBSA's oversight of the vast amount of pension assets it oversees. In FY 2025, the OIG plans to follow up on our previous work on EBSA's oversight of limited-scope audits.

Additionally, EBSA has limited legal authority to enforce its oversight of \$927 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

⁴⁹ EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments, Report No. 09-13-001-12-121 (September 30, 2013), available at: <https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf>

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.

DEPARTMENT'S PROGRESS

EBSA is currently reviewing plans for compliance, which include using a service provider approach to correct violations. In addition, 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 ERISA-covered plans, such as 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:

- 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' pensions, health, and other benefits.
- 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.
- 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 more than 120 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. Previous OIG audits⁵⁰ have found a wide range of safety and security issues at Job Corps centers, including security staff shortages and failure to report and investigate serious student misconduct such as drug abuse and assaults. We also found some Job Corps centers downgraded incidents of violence to lesser infractions, creating an unsafe environment for students and staff.

In PY 2022, Job Corps centers reported almost 1,300 on-campus assaults, or approximately 4.66 assaults⁵¹ per 100 students. Preventing on-campus violence and other potentially criminal behavior remains a significant challenge for Job Corps centers. The OIG will soon resume an audit focused on whether Job Corps ensured the safety of and mitigated program disruptions involving its minor students, who can be living on campus with adults up to age 27.⁵²

In PY 2022, Job Corps centers reported almost 1,300 on-campus assaults. Preventing on-campus violence and other potentially criminal behavior remains a significant challenge for Job Corps centers.

50 Job Corps Needs to Improve Enforcement and Oversight of Student Disciplinary Policies to Better Protect Students and Staff at Centers, Report No. 26-15-001-03-370 (February 27, 2015), available at: <https://www.oig.dol.gov/public/reports/oa/2015/26-15-001-03-370.pdf>; and Review of Job Corps Center Safety and Security, Report No. 26-17-001-03-370 (March 31, 2017), available at: <https://www.oig.dol.gov/public/reports/oa/2017/26-17-001-03-370.pdf>

51 Job Corps defines an assault as “taking a physical action with the intent to cause immediate bodily harm to another person unless taken in immediate response to another person taking such an action with the intent to prevent its continuation.”

52 Individuals aged 16 through 24 years are eligible to enroll in Job Corps and, once enrolled, can be in training for up to 3 years before finishing the program.

In addition to physical security protocols, part of establishing a safe, secure, and healthy learning environment entails Job Corps considering how the program can better serve students facing difficulties, such as those attributed to mental health challenges and substance abuse, which frequently occur in tandem. Our audit from 2021⁵³ found center personnel frequently attributed student and staff safety issues to mental health challenges or substance abuse or both. Moreover, the number of students experiencing these issues has steadily increased over time.

The use of fentanyl and other dangerous drugs is also a concern. In PY 2022, six Job Corps students died of suspected unintentional drug overdoses, including three on campus. The OIG continues to monitor various safety initiatives and actions taken by Job Corps to keep students and staff safe.



DEPARTMENT'S PROGRESS

In response to our audits, 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.

⁵³ Job Corps Should Improve Its Pre-Admission Evaluation Process, Report No. 05-21-001-03-370 (March 25, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-03-370.pdf>

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

To help prevent opioid overdoses, Job Corps developed an emergency response strategy in 2023 requiring that Narcan⁵⁴ and other life-saving devices be readily available on campus. Additionally, it requires all staff and students to be trained in how to identify an opioid overdose and administer Narcan.

Job Corps has also been performing an ongoing assessment of centers for safety and security risks to allow it to prioritize and address those risks. It is seeking to align its center security standards with the standards of college campuses, which include installing video surveillance, access control, and emergency notification systems. Job Corps officials indicated the program is seeing fewer security-related incidents, while its center entry screening process has been successful in catching students who attempt to bring unauthorized goods, including weapons, on campus.



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 continue to:

- Ensure existing policies and procedures are periodically reviewed and monitored for compliance.
- 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 continue to:

- Timely identify and remediate noncompliance.

⁵⁴ Narcan (generic Naloxone) is a lifesaving emergency treatment that can reverse the effects of an opioid overdose if administered quickly.

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 2023, OWCP paid medical benefits in the amounts of \$760 million under the Federal Employees' Compensation Act (FECA) and approximately \$1.1 billion for home health care under the Energy Employees Occupational Illness Compensation Program Act (Energy).

CHALLENGE FOR THE DEPARTMENT

OWCP is challenged to address the inherent high risk of fraud, waste, and abuse as it manages medical benefits in its workers' compensation programs. This challenge includes effectively managing the use and cost of pharmaceuticals in the FECA program. Similar to agencies DOL-wide, OWCP is challenged by flat budgets and rising costs that reduce the resources it has to ensure timeliness in processing claims and the necessity and appropriateness of home health care costs in the Energy program.

Our audit work in the FECA program has identified numerous concerns with OWCP's management of pharmaceuticals. Most recently, in March 2023,⁵⁵ we reported OWCP did not effectively manage pharmaceutical spending in the FECA program from FY 2015 through FY 2020. We found OWCP did not pay the best available prices for prescription drugs, which resulted in up to \$321 million in excess spending during the audit period. We also found OWCP did not timely identify and address emerging issues, which resulted in OWCP spending hundreds of millions of dollars on drugs that may not have been necessary or appropriate for FECA claimants.



⁵⁵ OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program, Report No. 03-23-001-04-431 (March 31, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf>

For the Energy program, in May 2024,⁵⁶ we reported OWCP could improve its medical claims processing. For example, we found OWCP did not use complete information to measure and publicly report how long it took to make claims decisions, from start to finish. This distorted the perception of how long claimants waited for decisions needed to receive compensation and medical expense coverage. Our analyses showed wait times for final decisions increased from an average of 182 days in FY 2018 to 207 days in FY 2022, even though the volume of final decisions dropped. In addition, annual home and residential health care costs have risen from almost \$100 million in FY 2010 to approximately \$1.1 billion in FY 2023. With an aging claimant population and an increased demand for home health care services, there is potential for providers to exploit these benefits through unethical practices.

Wait times for final claims decisions increased from an average of 182 days in FY 2018 to 207 days in FY 2022, even though the volume of final decisions dropped.

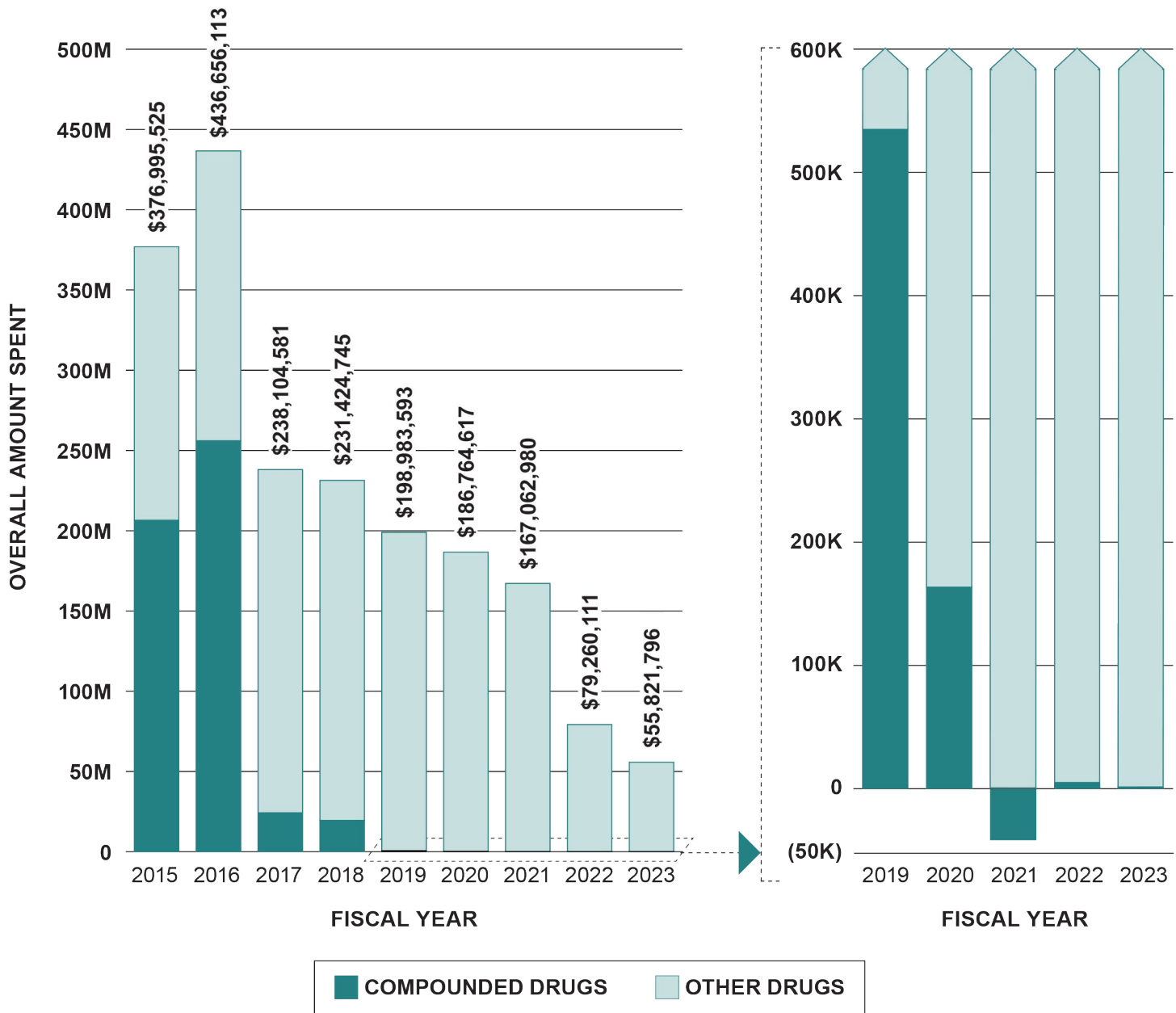
DEPARTMENT'S PROGRESS

OWCP has taken actions to better manage pharmaceuticals in the FECA program. For instance, OWCP started requiring prior authorizations for specialty and compounded drugs and enhanced its opioid policies to include drug utilization reviews and quantity limits on fills and refills. In 2021, OWCP contracted with a pharmacy benefit manager⁵⁷ to be responsible for pharmaceutical transactions, including implementation of FECA eligibility determinations and pricing for prescription drugs. These actions have resulted in a significant reduction to overall pharmaceutical spending—from \$436 million in FY 2016 to \$55.8 million in FY 2023—and practically eliminated spending on compounded drugs in the FECA program (see Figure 4).

⁵⁶ OWCP Could Improve Its Existing Guidelines for Processing DEEOIC Claims, Report No. 09-24-001-04-437 (May 2, 2024), available at: <https://www.oig.dol.gov/public/reports/oa/2024/09-24-001-04-437.pdf>

⁵⁷ Pharmacy benefit managers are third-party administrators of prescription drug programs, primarily responsible for: (1) developing and maintaining formularies, which include an approved listing of prescriptions; (2) negotiating discounts and rebates with drug manufacturers; and (3) processing and paying prescription drug claims.

Figure 4: OWCP's Reduced FECA Pharmaceutical Spending



Source: OIG analysis of FY 2017–2023 FECA pharmaceutical data as of August 8, 2024. Data for FY 2015–2016 provided by OWCP.

For the Energy program, OWCP is working to improve the timeliness of performance metrics for its claims processing. In addition, OWCP continues to analyze and audit home health care billing practices in the Energy program for the purpose of modifying billing rules and policies when it uncovers abusive practices.

In 2023, OWCP contracted with another pharmacy benefit manager to cover pharmaceutical transactions for both the Energy and Black Lung programs. In 2025, OWCP plans to award a comprehensive pharmacy benefit manager contract—covering prescription drugs, durable medical equipment, and diagnostic services—for all four of its programs: FECA, Energy, Black Lung, and Longshore.

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 before they become critical issues.
- Monitor closely the performance of its pharmacy benefit manager contractor(s) to ensure appropriate price and savings.

For the FECA program, OWCP needs to:

- Continue to analyze and monitor FECA costs to promptly detect and address problems given the high risk of fraud and abuse related to prescription payments.
- Evaluate alternate pricing methodologies and other sources regularly and update its pricing methodology as appropriate to ensure competitive prices.
- Continue to monitor the effectiveness of policy and process changes related to claimant prescriptions to ensure appropriate implementation.

For the Energy program, OWCP needs to:

- Revise its “average number of days to issue a final decision” metric to include remand time,⁵⁸ show it is regularly assessing progress toward meeting performance metrics and goals related to processing claims from start to finish, and publicly report results.
- Regularly analyze home health care billings for unethical practices and refer instances involving potential fraud or abuse to the OIG for further investigation.

⁵⁸ The time a claims examiner takes to perform additional development for a claim is referred to as “remand time.”

CHALLENGE:

Managing and Securing Data and Information Systems



BACKGROUND

The Department and its program agencies depend on reliable and secure 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 2024, DOL invested an estimated \$807 million in IT to implement services and functions needed to safeguard the U.S. workforce.

Between 2019 and 2021, the Department moved from its decentralized IT management and operations to an IT shared services model that centralized IT for approximately 70 percent of its information systems under the Office of the Assistant Secretary for Administration and Management. Currently, the information systems of the Bureau of Labor Statistics, Office of Job Corps, Office of Inspector General, and Office of the Chief Financial Officer are only partially integrated into DOL's IT Shared Services.

CHALLENGE FOR THE DEPARTMENT

The Department continues to be challenged in securing and managing data and information systems, particularly in the following areas: (1) maintaining an effective information security program and (2) ensuring the Chief Information Officer is able to represent the IT needs of the Department at executive level function area discussions.

While the Department has moved its information systems to a centralized IT shared services model to improve the management and security of its systems, DOL remains challenged to adequately implement information security controls and technology tools required to manage and monitor IT security. In our 2024 audit of DOL's information security program,⁵⁹ the Department's IT security program was assessed overall as not effective according to the CyberScope rating.⁶⁰ This rating is based on the Department's challenges in identifying security weaknesses, protecting its systems and data, and recovering from incidents.

59 Under the Federal Information Security Modernization Act of 2014 (FISMA), the OIG is required to perform annual independent evaluations of the Department's information security program and practices.

60 CyberScope, operated by DHS on behalf of the Office of Management and Budget, is a web-based application designed to streamline IT security reporting for federal agencies. It gathers and standardizes data from federal agencies to support FISMA compliance. The rating of "not effective" was based on a calculated score of the individually assessed maturity levels for the FY 2024 Core Inspector General Metrics and Supplemental Metrics Group 2.

In addition, we have continuing concerns about the Department's IT governance. The Department consolidated approximately 70 percent of its IT and resources under the Assistant Secretary for Administration and Management as part of an IT shared services model. We are still concerned the remaining systems and agencies that are not part of DOL's IT Shared Services environment are not receiving the governance and oversight required to sufficiently secure all of DOL's data and information systems. Furthermore, the Department has not ensured the Chief Information Officer is a leading member with voting rights of DOL's executive strategy and management boards and committees.



DEPARTMENT'S PROGRESS

The Department has shown improvement in managing and securing IT as part of its shared services model. DOL continues 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 IT, the Department has reorganized some of its IT resources and capabilities into a shared services environment under the Office of the Assistant Secretary for Administration and Management. This effort includes realigning information processes and personnel.

WHAT REMAINS TO BE DONE

The Department needs to improve its governance and management over all DOL agencies' IT and systems. To improve the security of its information systems, the Department needs to:

- Strengthen its oversight in implementing information security policies, procedures, and controls.
- Focus on recurring information security deficiencies.
- Ensure the implementation of security requirements with its third-party cloud systems and IT services.

While DOL has implemented a shared services model within the Office of the Assistant Secretary for Administration and Management for its IT, to improve the management of its information systems, the Department needs to:

- Incorporate the remaining information systems into DOL's IT Shared Services model.
- Ensure the Chief Information Officer is a leading member with voting rights of DOL's executive strategy and management boards and committees.



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