# Top Management and Performance Challenges Facing the U.S. Department of Labor

*Office of Inspector General*

*November 2016*

As of November 2016, the OIG considers the following as the most serious management and performance challenges facing the Department:

## CHALLENGE: Providing a Safe Learning Environment at Job Corps Centers

### BACKGROUND

The Job Corps program provides residential and nonresidential education, training, and support services to approximately 50,000 disadvantaged, at-risk youth, ages 16-24, at 126 Job Corps centers nationwide. The goal of this $1.7 billion program is to offer an intensive intervention to this targeted population as a means to help them learn a career, earn a high school diploma or pass the high school equivalency test, and find and keep a good job.

### CHALLENGE FOR THE DEPARTMENT

The Job Corps program remains challenged in its efforts to control violence and provide a safe learning environment at its centers. Without providing a safe learning environment for students and staff, Job Corps will struggle to meet its core mission of attracting young people who face economic disadvantages or come from debilitating environments, teaching them the skills they need to become employable and independent, and placing them in meaningful jobs or further education.

Job Corps centers have been troubled by violence and other criminal behavior for years, and the program remains challenged in its efforts to prevent violence and provide a safe learning environment at its centers. In 2015, two students were murdered at two different Job Corps centers, allegedly by fellow students. OIG audits prior to these serious incidents disclosed that some Job Corps centers failed to report and investigate serious misconduct, including drug abuse and assaults, or downgraded incidents of violence to lesser infractions to keep students enrolled, creating an unsafe environment for students and staff. Our continuing work in this area revealed Job Corps had not determined what law enforcement organization had jurisdiction to enforce criminal laws on 99 center campuses operated by contractors. Where law enforcement agreements were in place, they lacked the specificity needed to ensure timely and effective law enforcement involvement. Furthermore, Job Corps had not conducted system-wide assessments of center campuses to determine the security challenges it faced. We found a variety of problems at the centers we visited, such as inadequate security camera monitoring and security staff shortages. We also found that Job Corps did not require background checks for all center employees.

### DEPARTMENT'S PROGRESS

Job Corps established a Division of Regional Operations and Program Integrity, in part, to improve oversight of center safety. Job Corps also developed a Risk Management Dashboard that allows for targeted interventions at centers before problems fully emerge that could lead to safety issues. Additionally, Job Corps began conducting center culture and safety assessments and unannounced monitoring trips that review center safety, security, and culture through direct observation and interviews with center staff and students. During the year, Job Corps revised its "Zero-Tolerance" student conduct policy to increase student accountability and clarify center staff authority to address misconduct. Also, Job Corps stated "Industry Foundation Courses" were being implemented to quickly ramp up students' academic and technical knowledge and skills. The courses are intended to increase student engagement and retention, and decrease behavioral issues. Job Corps is currently piloting a new enrollment process for potential students. The new enrollment process requires recruitment contractors to assess applicants' readiness to participate in the program. Job Corps is implementing a more thorough process for conducting criminal background checks on potential students that includes a national search, as opposed to previous local searches.  Job Corps is also implementing a toll-free student safety hotline. The hotline will handle calls of an urgent nature, including calls that relate to the safety and security of Job Corps students and staff. Lastly, Job Corps has a series of Center Safety and Security Vulnerabilities Assessments underway. These assessments include access control of buildings, campus lighting, and security operations.

**WHAT REMAINS TO BE DONE**

Job Corps needs to continue its efforts to provide a safe and healthy center environment for students and staff. To accomplish this, Job Corps needs to expeditiously complete the various safety initiatives it has recently begun. After these initiatives have been implemented, Job Corps must be more vigilant in its monitoring to ensure center operators and regional office personnel fully enforce Job Corps' zero tolerance policy. Job Corps also needs to establish appropriate law enforcement jurisdiction and agreements for each center, assess campus physical security system-wide, and develop and implement policy for criminal background checks of center employees.

## CHALLENGE:  Protecting the Safety and Health of Workers

**BACKGROUND**

The Department administers the Occupational Safety and Health Act of 1970 (OSH Act) and the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). DOL's effective enforcement of these laws is critical to protecting workers from death, injury, and illness.

The two DOL agencies primarily responsible for enforcing these laws are the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). OSHA and its state partners are responsible for the safety and health of 121 million workers employed at more than 9 million establishments. MSHA is responsible for the safety and health of almost 350,000 miners who work at more than 13,000 mines.

**CHALLENGE FOR THE DEPARTMENT**

The Department faces challenges in determining how to best use its limited resources to help ensure the safety and health of workers, particularly in high risk industries such as construction, forestry, fishing, agriculture, and mining. Past OIG audits have found OSHA lacks outcome-based data needed to determine the effectiveness of its programs. The Department's recently completed multi-year study of OSHA's Site Specific Targeting found the impact of the program interventions on future employer compliance was not statistically significant. OSHA also encounters challenges in its efforts to protect workers from retaliation and discrimination when they "blow the whistle" on unsafe or unhealthy workplace practices.

Given the significant decline in coal production and closings of coal mines in the last year, MSHA is challenged to appropriately redeploy resources where needed. In addition, MSHA reports 64 percent of its top leadership will be eligible to retire in 2018. As a result, the agency is challenged to maintain an experienced and diverse cadre of top management. MSHA is also challenged by the underreporting of occupational injuries and illnesses by mine operators. This underreporting hinders MSHA's ability to focus its resources on the most dangerous mines.

## DEPARTMENT'S PROGRESS

OSHA has introduced 10 new performance measures (in addition to the 8 existing measures) for monitoring State Plans, one of which is intended to help OSHA determine the effectiveness of inspection targeting in states that operate their own worker safety and health programs. For its whistleblower protection program, OSHA has created and updated its dedicated website – www.whistleblowers.gov. The site provides workers, employers, and the public with information about the 22 federal whistleblower protection statutes OSHA currently administers. OSHA has also established whistleblower dedicated Assistant Regional Administrator positions in its regions.

MSHA has taken steps to reallocate resources based on need; for example, the agency has closed or consolidated some field offices, transferred personnel among offices, and offered relocation incentives. MSHA stated it stepped up its targeted enforcement at metal/nonmetal mines and continued to engage in compliance initiatives. These initiatives include implementing the third phase of the Respirable Dust Rule to end black lung disease among coal miners and promoting the Rules to Live By campaign to prevent common types of mining deaths. The agency also issued a final rule on proximity detection systems for continuous mining machines in underground coal mines and extended its mine rescue reach by establishing regional mine emergency stations. MSHA stated it has taken actions to enhance its knowledge of underreporting of injuries and illnesses through a number of evaluations and is currently working on a proposal to evaluate predictors of injury and illness reporting patterns within the mining industry. MSHA further stated it has been following its succession plan for FYs 2013-2017. The plan includes leadership development activities such as training, mentoring and detailing employees to developmental assignments.

## WHAT REMAINS TO BE DONE

OSHA's performance measures for federal and state enforcement have focused on output activities rather than outcomes. The agency needs to continue its efforts to develop performance measures that reflect the impact of its enforcement efforts on improving workplace safety and health. While OSHA has implemented timeliness measures for whistleblower investigations, it needs to develop outcome measures that will indicate if the Whistleblower Program is working as intended and complaints are being thoroughly investigated.

MSHA needs to critically examine its resource allocations to ensure its enforcement staff is deployed where most needed and continue taking actions responsive to declining coal production. MSHA needs to continue taking action to further enhance its knowledge of the underreporting of accidents, injuries and illnesses by mine operators and use this knowledge to finalize its strategy to address mine operator programs and practices that discourage reporting. MSHA also needs to continue working on the next steps in mine safety, including training the mine rescue community on state-of-the-art communications, monitoring and tracking systems; developing new mine rescue and command and control guidance; investing in video tools for advancing rescue teams; and upgrading seismic and robotics technology. MSHA needs to update its succession plan as part of its continuing efforts to recruit and hire senior leadership.

## CHALLENGE: Helping Adults and Youth Obtain the Education, Training, and Support Services Needed to Succeed in the Labor Market

### BACKGROUND

In Fiscal Year (FY) 2016, the Department's Employment and Training Administration (ETA) was appropriated $3.3 billion to operate a system of education, skills training, and employment services directed toward increasing the post-program employment and earnings of current and future workers, particularly low-income persons, dislocated workers, and at-risk and out-of-school youth. The majority of the activities are authorized by the Workforce Innovation and Opportunity Act (WIOA). WIOA contains provisions to strategically align workforce development programs to develop participants' skills to meet the needs of employers and to improve accountability and transparency in reporting. ETA also operates the Job Corps program, spending $1.7 billion dollars annually to provide residential and nonresidential education, training, and support services to approximately 50,000 disadvantaged, at-risk youths (ages 16-24), at 126 Job Corps centers nationwide.

### CHALLENGE FOR THE DEPARTMENT

The Department remains challenged to ensure its job training programs and related services are helping those with barriers to employment secure the skills and credentials they need to obtain jobs paying a living wage. This challenge is made even more difficult by a lack of reliable performance data. As the Government Accountability Office (GAO) reported in March 2016, state program officials have identified several challenges to WIOA performance reporting, including the cost and complexity of integrating data systems, limited staff expertise, and antiquated information technology systems. The Department also faces challenges in assuring credentials that participants obtain from DOL-funded training programs are industry-recognized and actually help participants obtain jobs in those industries. Our work in Job Corps has found its graduates have been often placed in jobs unrelated to the occupational certifications and skills training they received or in jobs that required little or no training.

### DEPARTMENT'S PROGRESS

On August 19, 2016, the Department published final rules to implement WIOA.  Before issuing the final rules, the Department provided ongoing guidance and technical assistance to the public workforce system on how to prepare for full implementation. Through the Innovation and Opportunity Network (ION), stakeholders may access a range of information and technical assistance, such as ETA guidance letters, fact sheets, and webinars. Additionally, the Department provided for the use of Workforce Investment Act funds to plan and implement WIOA programs and related transition activities.

Beyond the final rules, the Departments of Education and Labor developed several Information Collection Requests on performance accountability, state planning, and others, which have been approved by the Office of Management and Budget.  States will use this information to create or revise management information systems used to collect the necessary data to satisfy WIOA reporting requirements. The Department also reported it completed the WIOA Integrated Performance System (WIPS) by its October 1, 2106 target, and is working with the Department of Education on several additional performance-related guidance documents for the workforce system.

Job Corps indicated it is continuing its efforts to ensure access to a standards-based teaching and learning system. In response to requirements outlined within WIOA, Job Corps is assessing all credential attainments relative to in-demand occupations and wages. The effort is intended to align credential offerings with those most valued by potential employers. Job Corps also stated a technology-based platform called MyPACE (Pathway to Achieving Career Excellence) will be used to help students identify education and training goals and allow Career Management Teams made up of teachers and counselors to track and support student progress from entry through transition to college or career.

#### WHAT REMAINS TO BE DONE

Now that WIOA final rules are in effect, and states can prepare reports under new performance requirements using WIPS, the Department will need to address data reliability and validity challenges as states begin to report. The Department should also continue pursuing statutory access to the National Directory of New Hires.  Such access would streamline the process of obtaining earnings data needed to assess program impact. Additionally, the Department should use results from GAO's review of WIOA implementation to identify promising practices states can use to promote regional collaboration and resource sharing — one of WIOA's strategies for building job-driven labor markets. In Job Corps, the Department needs to refine its performance management system to focus on being proactive in identifying and addressing low performing centers and training programs to ensure its students are comprehensively prepared to enter and complete in the workforce.

## 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 pensions, health, and other employee benefits for about 149 million people. EBSA's enforcement authority extends to an estimated 685,000 private retirement plans, 2.2 million health plans, and a similar number of other employee welfare plans that together hold $9.1 trillion in assets. EBSA's responsibilities include providing oversight of the federal Thrift Savings Plan, the largest defined-contribution plan in the United States, with nearly $450 billion in assets and 5 million participants.

#### CHALLENGE FOR THE DEPARTMENT

EBSA's limited authority and resources present challenges in achieving its mission of administering and enforcing ERISA requirements protecting the pensions, health, and other employee benefits for approximately 143 million participants and beneficiaries. An important part of EBSA's mission is to deter and correct violations of ERISA through a strong enforcement program to ensure workers receive promised benefits. Given the number of plans the agency oversees relative to the number of investigators, EBSA has to devise ways to focus its available resources on investigations, audits and other reviews that it believes will most likely result in the deterrence, detection, and correction of ERISA violations. In order to do so, EBSA must determine which of its enforcement initiatives are the most effective. For many years, EBSA's oversight efforts have been challenged by the fact that billions of dollars in pension assets held in otherwise regulated entities, such as banks, escaped audit scrutiny. ERISA provides an option for a limited-scope audit under which plan auditors generally do not need to audit

investment information certified by certain banks or insurance carriers, presumably because they are being audited by other entities for other purposes. As a result, the independent public accountants that conduct limited-scope audits express “no opinion” on the financial statements of plans that receive certifications from the banks or insurance carriers holding assets on behalf of the plans. These
limited-scope audits weaken assurances to stakeholders and may put retirement plan assets at risk because such audits provide little or no confirmation regarding the existence or value of plan assets. These concerns were renewed by recent audit findings that as much as $3.3 trillion in pension assets, including an estimated $800 billion in hard-to-value alternative investments, received limited-scope audits that provided few assurances to participants as to the financial health of their plans.

EBSA is further challenged by the large increase in the types and complexity of investment products available to pension plans. EBSA’s final conflict of interest rule is intended to ensure workers enrolled in retirement plans can be assured the investment advice they receive is delivered with their best interest in mind, but the rule faces significant opposition from Congress and the financial industry.

EBSA also faces challenges in protecting participants in ERISA-covered, self-funded health plans from improper claim denials. EBSA has little or no information about the plans it oversees because it has exempted 98% of health plans from the requirement to file Form 5500 informational reports. EBSA should reexamine the filing exemption for small plans and begin capturing health plan claims data on Form 5500.

**DEPARTMENT’S PROGRESS**

EBSA created the Sample Investigation Program (SIP) to measure overall compliance with the civil provisions of ERISA and the impact of EBSA investigations on compliance rates of investigated employee benefit plans. EBSA has continued to analyze the compliance data available to the agency and use lessons learned to improve the SIP as well as its overall enforcement program. EBSA has begun to focus on specific compliance issues of special importance to the integrity of plans and plan benefits. For instance, EBSA initiated a bonding compliance project in FY 2015 that will continue into FY 2016

As part of the Form 5500 “21st Century” project, EBSA is developing proposed changes to strengthen the requirements for limited scope audit certifications from banks and insurance companies. As part of the same project, EBSA is developing certain changes to the Form 5500 financial statements and schedules to improve reporting of alternative and hard-to-value assets and to improve group health plan reporting. The agency issued a proposed regulation in July 2016.

EBSA also published a proposed rule in July 2016 that would require all ERISA covered group health plans to file Form 5500 information and related health claims data.

**WHAT REMAINS TO BE DONE**

EBSA should continue to analyze violation trends as an additional methodology to help guide its resource allocation strategies. The agency should concentrate on obtaining legislative changes to repeal the limited-scope audit exemption. In the interim, EBSA should further expand its existing authority to clarify and strengthen limited scope audit regulations and evaluate the ERISA Council's recommendations on the issue. Regarding health plans, EBSA needs to finalize its proposed rule, increase its enforcement activities, and improve its analysis of the denial of claims data at the plan and insurer levels. EBSA should also collaborate with states on data and enforcement activities, and work with health plans to identify other ways it could improve the external review process for participants and beneficiaries.

## CHALLENGE: Securing and Managing Information Systems

### BACKGROUND

The Department's major information systems contain sensitive information that is central to its mission and to the effective administration of its programs. Departmental systems are used to analyze and house the nation's leading economic indicators, such as the unemployment rate and the Consumer Price Index. These systems also maintain critical and sensitive data related to the Department's financial activities, enforcement actions, worker safety, health, pension, and welfare benefits, job training services, and other worker benefits. In FY 2015, the Department spent a total of $667 million on information technology investments, including $15 million for specific cyber security efforts.

### CHALLENGE FOR THE DEPARTMENT

Safeguarding data and information systems is a continuing challenge for all federal agencies, including DOL. Consistent with findings reported over the past ten years, in FY 2015 we identified continuing deficiencies in the areas of access controls, configuration management, and contingency planning. For the past five years, we reported deficiencies in third-party oversight, incident response and reporting, risk management, and continuous monitoring. Despite many previous reports that identified similar control weaknesses, these deficiencies continue to exist or reoccur, and represent ongoing, unnecessary risks to the confidentiality, integrity, and availability of DOL's information. The Department has not placed sufficient emphasis or prioritized available resources necessary to address these deficiencies. We have recommended that realigning the position of the Chief Information Officer (CIO) to report directly to the Deputy Secretary would give the CIO greater independence and authority for implementing and maintaining an effective information security program, compared to the existing structure of reporting to the Assistant Secretary for Administration and Management, the Office of the Chief Information Officer's (OCIO) largest customer. Such a realignment would bring the CIO's placement in line with other cabinet level agencies such as Commerce, Interior, Justice, Agriculture, and Energy.

Ensuring proper management of multimillion-dollar information technology systems is also a challenge for the Department. Under the Federal Information Technology Acquisition Reform Act, in FY 2017 the Department's CIO will have oversight responsibility for information technology investments totaling an estimated $759 million. The Department has encountered difficulties in managing its financial system due to the 2014 bankruptcy of the private-sector firm that was providing these services. The Department procured the financial system assets and entered into another interagency agreement for a federal shared services provider to assume operations and maintenance of the system at a cost of more than $2 million per month. From July 2014 to July 2016, the Department operated under time and materials contracts to run and maintain the financial system. In July 2016, the Department entered into a delivery order contract with some fixed price items.

**DEPARTMENT'S PROGRESS**

According to the OCIO, the Department finalized an Enterprise-wide corrective action plan in the Spring of 2016 that prioritizes actions to be taken to address the Department's information security control deficiencies. OCIO reported significant material progress had been achieved, but there are likely to be some remaining issues identified in future audits. Accomplishments cited by OCIO included implementation of PIV access for end users, publication of the DOL Third Party Monitoring Guide to improve oversight of systems owned or operated by contractors, improvements in capabilities to drive the deployment of critical patches, and the standing up of a failover site for critical systems to meet recovery time objectives. OCIO also reported agencies within the Department have been informed and trained on Computer Security Handbook policy and provided Plan of Action and Milestone scorecards semiannually.

The Department stated it has taken steps to mitigate costs associated with its financial system, including entering into a new contract in July 2016, but contended financial system operations continue to lack the certainty needed to make a firm-fixed priced agreement a reasonable and prudent choice as we recommended. The Department stated it will closely monitor costs under its current agreement and will consider a firm-fixed priced agreement if and when it becomes the more cost efficient model.

**WHAT REMAINS TO BE DONE**

Departmental agencies need to prioritize available resources to implement planned actions to correct remaining deficiencies in identity and access management, configuration management, contingency planning, incident response, reporting, and monitoring of contractor systems. OCIO needs to update the DOL Third Party Monitoring Guide to make it clear the Department's responsibility for oversight of third-party systems applies to all systems that are owned and operated on behalf of Labor, including
Cloud-based systems.

To improve the ability of the Chief Information Officer to implement and maintain a more effective information security program, the Department needs to realign the position of the Chief Information Officer to provide the proper independence and authority.

The Department must closely monitor the operation and maintenance services of its financial system to mitigate financial and operational risks. The Department should establish a firm-fixed priced agreement with the service provider for routine operation and maintenance to assist the Department in managing its costs within budgeted amounts and reduce the need for agencies to shift funds from program-related requirements.

## CHALLENGE: Reducing Improper Payments

**BACKGROUND**

The Department's most recent risk assessment cycle in FY 2014 identified the Unemployment Insurance (UI) and Federal Employee Compensation Act (FECA) benefit programs as susceptible to improper payments. According to OMB, in 2015 the UI program had the seventh highest amount of reported improper payments ($3.5 billion) among all federal programs. OIG investigations continue to uncover fraud committed by individual UI recipients who do not report or underreport earnings, as well as fraud related to fictitious employer schemes. In FY 2015, the Department estimated improper payments in the FECA benefit program totaled roughly $86 million. The Department conducted risk assessments of programs newly authorized by the WIOA and determined all WIOA authorized programs were low risk and did not require improper payment reporting.

**CHALLENGE FOR THE DEPARTMENT**

The Department remains challenged in its efforts to measure, report, and reduce improper payments in its UI and FECA benefit programs.

OMB has recognized the UI program as being at high risk for improper payments. UI improper payments declined from $5.6 billion in 2014 to $3.4 billion in 2015. While this reduction was primarily due to the $16 billion decrease in total UI payments, the reduction of the improper payment rate from an estimated 11.6 percent in 2014 to an estimated 10.7 percent in 2015 also contributed to the decline. However, the UI improper payment rate of 10.7 percent remained above OMB's threshold of 10 percent. Fraud continues to be a significant threat to the integrity of the UI program, as identity thieves and organized criminal groups have found ways to exploit program weaknesses.

The Department also remains challenged in identifying the full extent of improper payments in the FECA program, and OIG continues to have concerns regarding the completeness of the claims universe used to determine DOL's published FECA improper payment estimates. DOL again excluded two categories of compensation payments in its improper payment estimates for FECA, but did not determine and report the full effect of those exclusions on its estimates. Also, DOL could improve its improper payment estimate by identifying the FECA improper payment issues discovered by fraud investigations and estimating the extent to which these issues exist in the payment population.

**DEPARTMENT'S PROGRESS**

The Department has worked with states to reduce UI improper payment rates, which decreased from an estimated 11.6 percent in 2014 to 10.7 percent in 2015. For FY 2016, DOL is tracking state implementation of seven core strategies for lowering the rate of UI improper payments. Among these strategies is implementation of the State Information Data Exchange System (SIDES), a web-based system that allows electronic transmission of UI information requests from UI agencies to multi-state employers and/or Third Party Administrators, as well as transmission of replies containing the requested information back to the UI agencies. The core strategies also include the Treasury Offset Program to recover certain unemployment debts from federal income tax refunds, use of technology or other solutions designed to address improper payments due to a claimant's failure to register with the state's Employment Service, implementation of statewide claimant-employer messaging designed to improve claimants' awareness of their responsibilities to report any work and earnings and improving their understanding of state work search requirements, and state use of published recommended operating procedures for using the National Directory of New Hires to identify claimants who have returned to work. The Department stated it has supported and promoted state implementation of strategies to lower the improper payment rate, such as software for states to identify multiple claims from the same Internet Protocol address. In addition, the Department cited the development of the state-driven UI Integrity Center for Excellence with the goal of promoting the development and implementation of innovative integrity strategies. According to the Department, the Center is also working to develop a secure data repository for state UI agencies to access information on known “suspicious actors” determined to be fraudulent as well as other data for cross-matching purposes.

With respect to improper payments in the FECA program, the Department stated that many improper payments in the FECA program were “technically proper” when they were initiated, but due to current payment cycles, the payments could not be adjusted when additional information was received. The Department believes the changes to an enhanced Treasury payment cycle that were initiated toward the end FY 2015 period will result in even larger improper payment reductions  in FY 2016. The Department stated it has hired additional staff dedicated to process improvement and improper payment reduction, and contracted with a data analytics firm to assist in developing technology and tools to detect and monitor inherent risk in claims, payments, and providers. In particular, the Department stated it has developed new controls to address issues associated with pharmaceutical payments. Additionally, the Department continues to work with other federal partners, such as the Social Security Administration, Internal Revenue Service, and Office of Personnel Management, to facilitate data matches aimed at reducing improper payments.

**WHAT REMAINS TO BE DONE**

The Department needs to employ cost benefit and return on investment analyses to evaluate the impact of its improper payment reduction strategies for UI. The Department can further improve oversight of the states’ detection and prevention of UI overpayments by increasing the frequency of on-site reviews at State Workforce Agencies. In addition, the Department needs to continue pursuing legislation to allow states to use a percentage of recovered UI overpayments to detect and deter benefit overpayments.

OIG’s July 2015 investigative advisory report included several recommendations on actions the Department should take to address systemic weaknesses that make the UI program more susceptible to fraudulent activity. For example, State Workforce Agencies should pay all UI claims by physical check, direct deposit, or a debit card issued by state-approved vendors. Such cards provide for account holder verification and make it easier to identify individuals who are submitting fraudulent claims. The Department also needs to work with SWAs to implement strategies to identify multiple claims that originate from the same IP addresses, provide all identified fraudulent claimant information to a shared database that can be queried to identify the filing of fraudulent claims against multiple states, discontinue auto-populating any data in their systems, and require UI claimants to fill out all employer contact information correctly and completely. Additionally, the Department needs to work with states to strengthen existing systematic audit controls to track access to personally identifiable information, and to identify and implement best practices and strategies for communication between tax operations and benefit operations.

The Department also needs to continue developing the technology and analytic tools to enhance its FECA improper payment estimation methodology.

## CHALLENGE: Monitoring and Managing Compounded Drug Medications in the FECA Program

### BACKGROUND

FECA provides workers' compensation coverage to approximately three million federal and postal workers around the world for employment-related injuries and occupational diseases. FECA is administered by the Office of Workers' Compensation Programs (OWCP), Division of Federal Employees' Compensation (DFEC). DFEC made payments totaling about $3 billion in Chargeback Year 2015 (July 1, 2014 to June 30, 2015) for compensation and medical benefits. Compensation payments are those made to replace lost wages for a work related injury, benefits for a permanent physical impairment due to those injuries, as well as benefits to beneficiaries of federal employees that die as a result of a work-related injury. Medical payments are made to cover the expenses of medical services, prescription drugs, equipment and supplies incurred from treatment for illness and/or injury sustained while an employee was engaged in job-related activities. In Chargeback Year 2015, compensation payments totaled about $1.92 billion (64%); medical payments totaled about $1.07 billion (36%).

### CHALLENGE FOR THE DEPARTMENT

The Department's FECA program is challenged to monitor and manage compounded drug medications (drugs created by combining, mixing, or altering the ingredients of drugs to tailor them to individual patients). The FECA program, along with the other Federal and state government health programs and private sector benefit managers, has experienced a large increase in the use and cost of compounded drugs – medications about which there are safety and fraud concerns. Compounded drugs may be appropriate for a small number of patients who have distinct circumstances, but they are not subject to approval by the Food and Drug Administration (FDA). The FDA has repeatedly reported and testified on the unsafe practices associated with the manufacturing of compounded drugs in both sterile and non-sterile pharmacies. State boards of pharmacy, which generally oversee the compounding pharmacies, have started to strengthen their oversight after multiple safety violations, such as a 2012 meningitis outbreak caused by contaminated compounded injections, which resulted in over 60 deaths and over 750 cases of severe fungal infection.

The compounded drug industry has also come under much scrutiny due to the sharp rise in the cost and number of compounded drug prescriptions, and the recent detection of several fraud schemes. Pharmaceutical costs in the FECA program jumped from $184 million in FY 2011 to $413 million in FY 2015, or 124 percent. Costs for compounded drugs accounted for much of this increase, rising from just $2 million in FY 2011 to $214 million in FY 2015. Compounded drug costs jumped from $80 million in FY 2014 to $214 million in FY 2015, surpassing the costs of all other drugs billed to FECA ($199 million).

### DEPARTMENT'S PROGRESS

Effective July 1, 2016, the Department reduced FECA reimbursements for generic drugs from 70% of average wholesale price to 60%, and created a tiered reimbursement structure that pays 50% of average wholesale price for compounded drugs with three or fewer ingredients and 30% of average wholesale price for compounded drugs with four or more ingredients. DFEC estimates this change should result in a reduction in reimbursements of nearly $118 million below 2015 levels.

In October 2016, DFEC implemented a new policy requiring an injured worker's treating physician to complete a certification/letter of medical necessity prior to authorization of any compounded medication, as well as a policy restricting authorizations for compounded drug prescriptions to a maximum of 90 days, with initial fills and refills to be issued in 30-day supplies. DFEC has been working with the Department of Veterans' Affairs, TRICARE, and other insurance providers to identify the most effective practices for managing compounded drug medications. According to OWCP officials, the DFEC has formed a data integrity unit. OWCP officials stated it plans for this unit to analyze pharmaceutical and medical cost data for the purpose of identifying, evaluating, and proposing steps to remediate (if necessary) and monitor unusual or trending cost developments.

**WHAT REMAINS TO BE DONE**

The Department needs to take a proactive approach in working with the FDA and other federal benefit programs to decide if the reasons for providing compounded drugs are worth the associated safety risks and costs.

The Department stated that it plans to take additional actions related to the payment and authorization of compounded drugs. These actions include implementing a Pharmacy Benefits Manager, establishing an exception-based policy for payment of ingredients that have the same of similar mechanism of action in compounded drugs, requiring the use of the universal claim form for physician-dispensed compounded drugs to improve tracking, and establishing an exception-based policy for prescriptions containing herbal supplements. Other longer-term actions the Department is considering include limiting the cost or use of inactive ingredients, and implementing a pre-payment/post-payment fraud and abuse detection capability in its medical bill processing contract.

The Department needs to follow through on its planned actions and measure the impact of those actions on the use and cost of compounded drugs, as well as consider options for evaluating the safety, efficacy, and necessity of compounded drugs being dispensed to FECA recipients. It will need to modify its central bill processing contract to add the performance of medical necessity reviews. The Department also needs to ensure it has the most appropriate pricing structure for compounded drugs. The Department should continue its efforts to identify what insurance providers and other federal, state and local agencies are doing to manage pharmaceutical use and costs and determine what best or promising practices may be transferable.

Office of Inspector General, U.S. Department of Labor
200 Constitution Avenue, NW
Room S-5506
Washington, DC 20210

To learn more about the Office of Inspector General's current and planned work, please visit www.oig.dol.gov.