



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 7, 2015

Mr. Mario J. Musolino
Acting Commissioner
Department of Labor
State Office Campus
Building 12, Room 500
Albany, NY 12240

Re: Report 2014-BSE-3A-001

Dear Acting Commissioner Musolino:

This report summarizes the results of all activities related to our Office's examination¹ of the Department of Labor's (DOL) Unemployment Insurance (UI) program during calendar year 2014. This includes our examination of high risk payment requests and payments processed in 2014 and prior year payments associated with those high risk payment requests and payments. In addition, this report includes the results of prior years' findings confirmed by DOL in 2014. The objectives of our examination were to determine if payment requests and payments were appropriate and in accordance with applicable Federal and State laws and regulations and DOL policies and procedures, and if DOL took corrective action and recouped overpayments based on the results of our findings.

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

Summary of 2014 Audit Activities

To accomplish our objectives, we selected for audit 94,846 payment requests and payments processed by DOL in 2014 based on risk. For example, we analyzed the daily payment file to identify inappropriate payment requests. We also matched: (i) the Department of Taxation and Finance wage file to the DOL payment file to identify payments made to claimants that may have been employed while collecting benefits; (ii) monthly and quarterly payment files to identify

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

duplicate payments; and (iii) out of country indicators in the claimants' log file to the DOL payment file to identify claimants collecting benefits while out of the country. We also reviewed prior years' claims associated with a subset of those 94,846 payment requests and payments based on risk indicators in the claimants' log file and followed up on previous years' findings not yet confirmed by DOL.

As a result of our audit activities, we identified 8,392 overpayments totaling more than \$2.1 million. This includes \$168,878 in payment requests stopped, \$399,356 in future payments that would have been made over the life of the claim had DOL not taken corrective action based on our findings and \$1,600,459 in erroneous payments. We also identified 711 underpayments totaling \$118,804. This includes \$27,508 in current payments and \$91,296 in future payments that the claimant would not have received over the life of the claim had DOL not taken corrective actions based on our findings.

We found erroneous payments occurred because: claimants made false statements to obtain benefits they were not entitled to receive; limitations in the DOL UI payment system permitted erroneous payments; or DOL staff did not follow established policies and procedures. (See Attachments A and B for a complete summary of findings.)

Included in the erroneous payments are overpayments resulting from the "same wages used to calculate multiple claims" category. According to State Labor Law, a basic claim is established using the wages the claimant earned in the first four of the last five calendar quarters worked. A claimant has the right to request an alternate claim, which is established using the last four calendar quarters. However, once wages are used to establish a benefit rate, those wages cannot be reused when establishing the benefit rate on subsequent claims. A claimant must earn wages in future calendar quarters to establish a subsequent claim.

We recommended in our 2012 report (2011-BSE-3A-006) that DOL establish and implement controls to prevent overpayments resulting from system limitations such as allowing the same wages to be used to calculate multiple claims. We also recommended that DOL determine the financial impact of Section 597.3 of the State Labor Law on the UI Program and, if warranted, consider amending the statute to prevent future overpayments once they are identified. However, we found that since we issued our report in 2012, 1,707 claimants were overpaid by \$241,839 because the same wages were inappropriately reused. Implementing controls to prevent these overpayments and amending Section 597.3 of the State Labor Law to prevent future

overpayments once they are identified could have saved DOL more than the \$241,839 in overpayments we identified.

We also identified other potential recoveries of \$403,456, including \$224,220 from 143 newly hired New York State employees who owe DOL for UI overpayments made in prior years, and \$179,236 from 168 claimants against whom DOL assessed monetary penalties as the result of our findings. We will continue to match the DOL UI Benefit Overpayment File to the New York State Payroll File to identify newly hired New York State employees who owe DOL money for past UI benefit overpayments.

Actions Taken by DOL Based on Current and Past Audit Results

In addition to our findings in Attachment A, DOL recovered \$737,695 from UI claimants and New York State employees in 2014 as the result of our Office's current and prior years' findings. This includes \$260,163 in forfeited UI benefits from claimants who DOL determined from our findings made false statements or representations to obtain benefits they were not eligible to receive, and \$477,532 from New York State employees who owed DOL for past UI overpayments. The total findings and recoveries for 2014 represent a return on investment of more than \$6 saved for every dollar our Office spent to perform the examination.

Our Office has been conducting continuous pre and post payment examinations of the UI Program since the 1970s pursuant to Article 18, Section 550 of the New York State Labor Law. Since that time, we have recognized that often it is not possible to detect and prevent erroneous claims prior to payment because of the lack of information available. However, whenever our Office and DOL identify a particular fraud scheme, our agencies work to end the scheme before future payments are made.

For example, in 2011 we identified claimants who certified that they were available to work while out of the country. In response to our report for that year (2011-BSE-3A-006), DOL officials stated that the feedback provided in that report, as well as regular meetings between our Office and DOL, enabled DOL to develop best practices that move us toward our common goal. One of the best practices cited was the prevention of payments to persons attempting to claim benefits from disallowed locations outside the United States. In a press release issued on November 10, 2014, DOL stated that since 2012 it has prevented \$97 million in payments to claimants while out of the country and not available to work. This is just one example of a best practice resulting from our

common goal of eliminating fraud schemes that result in overpayments of UI benefits. We look forward to continued successful joint efforts in the future.

Recommendations

- 1) *Continue to enhance controls to identify claimants falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law when it is economically beneficial to do so.*
- 2) *Ensure staff follows established policies and procedures when processing claims.*
- 3) *Establish and implement controls to prevent overpayments resulting from limitations in the DOL UI payment system identified in Attachment A.*
- 4) *Continue to recoup overpayments and monetary assessments from claimants, as appropriate.*
- 5) *Determine the financial impact of Section 597.3 of the NYS Labor Law on the Unemployment Insurance Program. If warranted, consider amending the statute to prevent future overpayments once they are identified.*

We request you provide a response to this report by November 6, 2015. We thank the management and staff of the Department of Labor for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A
Attachment B
Attachment C
Attachment D

cc: Carl Boorn
Mary Batch
John Dormin

**Department of Labor
Unemployment Insurance Benefits
Summary of Findings
Overpayments**

Finding	Total Errors		Value of Errors		
	Number	Amount	Payments Made	Payments Stopped	Future Payments Prevented
Claimants Falsely Certified Eligibility					
When fully or partially employed	3,266	\$1,150,296	\$1,147,994	\$2,302	\$0
When out of the country	251	78,509	30,804	47,705	0
UI System Limitations					
Same wages used to calculate multiple claims	1,707	250,055	241,839	2,659	5,557
Benefit rate increases made prior to implementation date	1,044	14,168	3,750	10,418	0
Inappropriate payments to educators during school recess	424	51,951	1,215	50,736	0
Weekly benefits exceed four day maximum	157	39,651	39,577	74	0
Payments from multiple programs in the same week	25	6,730	6,730	0	0
System approved payments to disqualified claimants	11	11,309	172	1,417	9,720
Policies and Procedures Not Followed					
Incorrect wage information used to calculate benefit rate	1,101	324,125	26,078	48,514	249,533
DOL staff approved payments to disqualified claimants	382	239,126	100,002	4,578	134,546
Duplicate payments	24	2,773	2,298	475	0
Total	8,392	\$2,168,693	\$1,600,459	\$168,878	\$399,356

**Department of Labor
Unemployment Insurance Benefits
Summary of Findings
Underpayments**

Finding	Total Errors		Value of Errors	
	Number	Amount	Recoverable Underpayments	Non-Recoverable Underpayments
Incorrect wage information used to calculate benefit rate	698	\$118,558	\$27,262	\$91,296
Benefit rate increases made prior to implementation date	12	145	145	0
When out of the country	1	101	101	0
Total	711	\$118,804	\$27,508	\$91,296

John W. Dormin
Acting Director of Audit Unit

Department of Labor
W. Averell Harriman State Office Campus
Building 12, Room 569, Albany, NY 12240
www.labor.ny.gov

August 13, 2015

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

Dear Mr. McHugh:

This is in response to your letter dated June 16, 2015, regarding Draft Report 2014-BSE-3A-001 containing the Office of the State Comptroller's (Comptroller's) ongoing examination of payment requests and related payments for Unemployment Insurance (UI) Benefits during the period from January 1, 2014 through December 31, 2014.

The New York State Department of Labor (Department), for period from January 1, 2014 through December 31, 2014, successfully processed over 9 million payments, totaling more than \$2.6 billion dollars. The errors detected by the Comptroller amount to .04% of all payments processed by the Department. The Department continues to take steps to further reduce improper payments and to better recover overpayments that have been established.

Steps completed or underway include:

1. The Department has received additional grants exceeding \$2.3 million that assist us in preventing, discovering, and recapturing improper payment of UI benefits through:
 - a. Additional automation of claims from former members of the military through the Military-State Data Exchange System (MSDES). Based on other states' experiences, the savings could be in the millions.
 - b. Implementation of additional cross matching against New York State and New York City Electronic Death Reporting systems to prevent improper payments to deceased individuals.
 - c. Provision for additional staff focused on integrity efforts.
 - d. Funding of the Unemployment Insurance (UI) State Information Data Exchange System (SIDES), which helps employers to respond timely and accurately to claim notices.
2. Continued use of the Treasury Offset Program. Since the Offset Program's inception in February 2011, the Department has recovered over \$182.5 million. Over \$36 million has been recovered through June 2015, which is a nearly 7% increase from \$33.7 million collected in the first half of 2014.
3. Implementation of the Social Security Administration's Prisoner Update Processing System (PUPS) for additional cross-matching of incarcerated individuals. While the Department had

already implemented an aggressive prisoner cross-matching program within New York State several years ago, PUPS provides additional data on out-of-state incarcerations and from other New York State jurisdictions not formerly available to the Department.

4. In 2011 New York State was chosen as the home for the National Unemployment Insurance Integrity Center of Excellence (Center), which coordinates and collaborates with the federal government and other states in preventing, detecting and recovering improper payments. As the host state agency, the Department immediately benefits from the products and services developed by the Center. The department plans to implement the Center's Integrity Training program as well as its Data Analytics and Predictive Modeling solution.
5. Continued use of the Statewide Offset Program. The Department recovered over \$16.5 million in 2014. Over \$16.4 million has been recovered through June 2015.
6. The identification of claimants collecting benefits in other states who owe the Department for UI overpayments. These claimants' benefits are offset and payments are sent to the Department.

The Department identified several issues in the Comptroller's calculation of the number of "Total Errors" and the stated "Value of Errors."

- The "Value of Errors." is incorrectly presented because the Comptroller counted amounts it found to have been underpaid as amounts overpaid.
- The number of "Total Errors" and the stated "Value of Errors." are improperly represented as calendar year 2014 errors. In fact, the vast majority of errors noted in the report were for years prior to 2014, some of those dating as far back as 2005.
- The overstatement of number of "Total Errors" and the "Value of Errors" in 2014 misrepresents the significant improvements the Department has made in prevention and detection of improper UI Benefit Payments.

*
Comment
1

*
Comment
2

Review of selected Comptroller findings.

The Department was presented with a listing of the detailed transactions examined by the Comptroller. While the Department was not afforded sufficient time to re-examine all of the transactions, the following are the Department's observations based on our analysis:

*
Comment
3

Comptroller's Finding

1. *Same Wages used to calculate multiple claims.*

Department's Response

We believe the Comptroller's projection of "Total Errors" and "Value of Errors" is incorrectly presented for the following reasons:

- Of 5,061 errors detected by the Comptroller, only 555 are based on payments issued in 2014. This means 90% of errors listed are payments issued prior to 2014 which is outside the Comptroller's identified review period.
- Of 5,061 errors detected by the Comptroller, 2,497 are based upon records that have been purged from Department files. This represents 49% of the total errors and \$321,702 of the

*
Comment
4

improper payments noted. The Comptroller is aware that the Department is precluded from recovering those funds since none of the claimants involved made a willful false statement (reference §597.3 of the Labor Law).

The Department has taken action on the remaining 51% of payments totaling \$364,389. This total amounts to .014% of all payments processed by the Department in calendar year 2014.

Comptroller's Finding

2. Incorrect wage information used to calculate benefit rate.

Department's Response

We believe the Comptroller's projection of "Value of Errors" is overstated for the following reasons:

- The Comptroller did not distinguish underpayments from overpayments. The Comptroller considered underpayments to be the same as overpayments and counted additional money due to claimants as "Payments Prevented." When the Department finds that additional money is due to a claimant the Department takes action to pay all funds due that claimant. As such, any increase in the funds due to a claimant resulting from information provided by the Comptroller does not translate into "savings" or "Payments Prevented." While the Comptroller has corrected Attachment A to remove the word "saving" to avoid misunderstanding, "Payment Made" should also be broken into two components to clarify payment made and underpayment identified.
- The Comptroller's projection of "Future Payments Prevented" is overstated by 35% because the Comptroller's estimate is based upon findings projected to the maximum number of weeks of benefits a claimant could collect over the life of his or her claim. Since the average duration of a claim in New York is 17 weeks, the Comptroller should base its estimate on this average duration, not the maximum possible duration.

*
Comment
5

*
Comment
6

Comptroller's Finding

3. When fully or partially employed.

Department's Response

The Department disagrees with the "Total Errors" identified in the Attachment A "Summary of Findings" for the Calendar year 2014.

- The Comptroller listed a total of 3,266 errors. Our analysis shows that only 144 payments were erroneously issued in year 2014. The other 3,122 payments were issued between 2010 and 2013. Since 96% of the errors were payments which occurred prior to year 2014, we believe these errors should be separately identified in the report so the amount of errors made in year 2014 is not overstated.

*
Comment
7

Recommendations and Responses:

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

Comptroller's Recommendation

1. *Continue to enhance controls to identify claimants falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law.*

Department's Response

The Department continues to enhance its prevention and detection programs as noted earlier in this response. The Department has a very robust fraud prosecution program. Our investigators refer more fraud cases for prosecution than any State in our region, and possibly the Nation. Last year our investigators referred 605 cases for criminal prosecution, representing more than \$6.6 million in fraudulently collected payments. Last year this program returned more than \$2 million as a result of criminal dispositions, and 10 separate counties each recovered more than \$100,000 for the Department, a new record.

Comptroller's Recommendation

2. *Ensure staff follows established policies and procedures when processing claims.*

Department's Response

The Department actively reviews procedures and notices used to solicit information from UI claimants and employers. In light of findings, staff are advised and re-trained on proper methods used to solicit missing wage information and process claims. Procedures have been updated to provide further clarity. Procedure changes are highlighted for quick reference. We have also indexed our procedure manual so that it is easily searchable based on key words.

Comptroller's Recommendation

3. *Establish and implement controls to prevent overpayments resulting from limitations in the Department's UI payment system identified in Attachment A.*

Department's Response

As noted above, the Department continues to implement a variety of strategies to reduce overpayments. By including previous years' errors, the Comptroller's report does not reflect the substantial improvement realized by the Department year-over-year.

Comptroller's Recommendation

4. *Review claimants who file multiple claims in consecutive calendar years to ensure their benefit rate was established correctly.*

Department's Response

The Department has put in place a process to review the UI benefit rate when there are multiple claims in consecutive calendar years. In April 2014, the Department has started using a new

Alternate Base Period report to prevent the lag quarter on the prior claim from being used on the new claim. By working on this new report, the Department has prevented \$302,865 in possible overpayments in year 2014 and a total of \$558,465 for the period from April 2014 through July 3, 2015.

Comptroller's Recommendation

5. *Continue to recoup overpayments and monetary assessments from claimants, as appropriate.*

Department's Response

The Department actively pursues debts owed as a result of improper payments. In fact, the Department is a national leader in the recovery of improper payments. Through the various tools and techniques including: correspondence, telephone calls, re-payment agreements, the Treasury Offset Program, State Offset Programs, Interstate Offset, the filing of judgments, and referral for civil or criminal action, significant recoveries of improper payments are made.

Other efforts

Modernizing UI systems: The Department is in the midst of a major re-engineering of its UI systems. Current systems are decades old, some dating back to the 1960's. In 2014 the Department entered into a multi-state consortium that will leverage efforts to realize a modernized UI system.

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

Sincerely,



John W. Dornin
Acting Director of Audit Unit

Cc: Carl Boorn
Mary Batch
James Konicki
Diane Taylor

State Comptroller Comments on Auditee Response

1. Payments requested and made that are over or under the amount due and owing to claimants are erroneous. To avoid confusion, we separated the erroneous payments into overpayments in Attachment A and underpayments in Attachment B. We also updated the language in the report to separately account for the number and dollar value of overpayments and underpayments.
2. We amended the first paragraph of the report to reflect that we examined payment requests and payments processed in prior years that are associated with payment requests DOL processed in 2014. These prior payments pertain to certain findings under the “same wages used to calculate multiple claims” category. The remaining errors that predate the 2014 calendar year pertain to payment requests identified as findings in a prior year and confirmed by DOL in 2014. Since our Office does not report a finding until DOL confirms it, the number and total value of errors pertaining to these findings are not overstated.
3. We send electronic inquiries to DOL officials throughout the year at the time we discover a potential error. We also provide DOL with an electronic compilation of all findings subsequent to issuing the draft audit report. In addition, DOL officials requested, and were granted, two extensions to respond to our draft report. Should DOL officials identify other concerns related to our findings subsequent to the issuance of this final report, we welcome the opportunity to address them at that time.
4. We amended the first paragraph of the report to reflect that we examined payment requests and payments processed in prior years that are associated with payment requests DOL processed in 2014. These prior years’ payments pertain to certain findings under the “same wages used to calculate multiple claims” category.

We also removed from the report and Attachment A findings in the “same wages used to calculate multiple claims” category that pertain to payments made prior to 2012 when we first reported this issue in our 2012 report (2011-BSE-3A-006). We removed these findings because DOL officials were not aware of the issue at that time, and therefore, could not have taken corrective action. The remaining findings in this category include payments since 2012, when DOL officials were aware of the issue, and thus, had an opportunity to take corrective action prior to payment.

5. We modified the attachments to include only overpayments in Attachment A and underpayments in Attachment B. We also updated the language in the report to separately account for the number and dollar value of overpayments and underpayments.
6. Since every claimant is entitled to 26 weeks of UI benefits per claim, we calculate future payments prevented based on the number of weeks remaining on a claim, not the average duration of a UI claim.
7. This report summarizes all activities related to our Office's examination of the UI program during calendar year 2014, not just a summary of findings related to UI payments processed in 2014. We have amended the report to clarify this issue. In addition, as of December 31, 2014, DOL had not responded to 647 notifications of potential erroneous payment requests or payments that we sent to DOL during 2013 or 2014. The notifications are associated with more than 8,000 payment requests or payments. Since we do not report on a finding until it is confirmed by DOL, any findings that pertain to these notifications will be reported on in subsequent reports.

MARIO J. MUSOLINO
Acting Commissioner

Department of Labor

Harriman State Office Campus
Building 12, Room 500, Albany, NY 12240
www.labor.ny.gov

November 9, 2015

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

Re: Report 2014-BSE-3A-001

Dear Mr. McHugh:

We have received your letter dated October 7, 2015 and the final annual report of your examination of Unemployment Insurance (UI) Benefit processing for the period January 1, 2014 through December 31, 2014.

Our first four responses are consistent with our reply to your letter dated June 16, 2015 which contained an earlier draft of the same report. Those responses are copied here:

Comptroller's Recommendation

- 1) Continue to enhance controls to identify claimants falsely certifying eligibility to receive UI benefits. Prosecute these individuals to the fullest extent of the law when it is economically beneficial to do so.

Department's Response

The Department continues to enhance its prevention and detection programs as noted earlier in our response to Draft Report 2014-BSE-3A-001. The Department has a very robust improper payment prevention and fraud prosecution program. Our investigators regularly refer fraud cases for prosecution. Last year our investigators referred 605 cases for criminal prosecution, representing more than \$6.6 million in fraudulently collected payments. Last year this program returned more than \$2 million as a result of criminal dispositions, and 10 separate counties each recovered more than \$100,000 for the Department, a new record.

Comptroller's Recommendation

- 2) Ensure staff follows established policies and procedures when processing claims.

Department's Response

The Department actively reviews procedures and notices used to solicit information from UI claimants and employers. In light of findings, staff are advised and re-trained on proper methods used to solicit missing wage information and process claims. Procedures are updated on a regular basis to provide staff with the most accurate information.

Comptroller's Recommendation

- 3) Establish and implement controls to prevent overpayments resulting from limitations in the Department's UI payment system identified in Attachment A.

Department's Response

As noted in our response to Draft Report 2014-BSE-3A-001, the Department continues to implement a variety of strategies to reduce overpayments. The Department has a very robust improper payment prevention program that includes:

- Automation of claims from former members of the military through the Military-State Data Exchange System (MSDES);
- Implementation of additional cross matching against New York State and New York City Electronic Death Reporting systems to prevent improper payments to deceased individuals;
- Provision for additional staff focused on integrity efforts;
- Implementation of the Unemployment Insurance (UI) State Information Data Exchange System (SIDES), which helps employers to respond timely and accurately to claim notices;
- Continued use of the Treasury Offset Program recovering over \$186 million to date;
- Implementation of the Social Security Administration's Prisoner Update Processing System (PUPS) for additional cross-matching of incarcerated individuals;
- Use of the products being developed by the National Unemployment Insurance Integrity Center of Excellence including its Integrity Training program and Data Analytics and Predictive Modeling solution;
- Continued use of the Statewide Offset Program;
- The identification of claimants collecting benefits in other states who owe the Department for UI overpayments and cross-state collection of debts; and
- A fraud prosecution program.

We appreciate the Comptroller's distinguishing of over and underpayments in the data included with the report. We continue to encourage the Comptroller to break out identified errors by year. By including previous years' errors as 2014 issues, the Comptroller's report fails to recognize the substantial improvements realized by the Department year-over-year.

Comptroller's Recommendation

- 4) Continue to recoup overpayments and monetary assessments from claimants, as appropriate.

Department's Response

The Department actively pursues debts owed as a result of improper payments. In fact, the Department is a national leader in the recovery of improper payments. The United States Department of Labor's UI Performs Core Measures require that states achieve overpayment recoveries of 55% in 2013 (New York achieved 57.78%), 58% in 2014 (New York achieved 81.43%), 65% in 2015 (New York achieved 95.97%), and 68% in 2016 (which the Department expects to exceed). The Department's recovery rates far exceed the latest national average of 71.41%. New York has achieved these high levels of recovery through the various tools and techniques including: correspondence, telephone calls, re-payment agreements, the Treasury Offset Program, State Offset Programs, Interstate Offset, the filing of judgments, and referrals for civil or criminal action.

The following is in response to an additional recommendation your office included in the final version of your report dated October 7, 2015.

Comptroller's Recommendation

- 5) Determine the financial impact of Section 597.3 of the NYS Labor Law on the Unemployment Insurance Program. If warranted, consider amending the statute to prevent future overpayments once they are identified.

Department's Response

The Department will take this under advisement.

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

Sincerely,



Mario J. Musolino
Acting Commissioner

cc: Carl Boorn
Mary Batch
James Konicki
Diane Taylor
John Dormin